

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

APPLICANTS

MOTION RECORD OF THE APPLICANTS

(Motion for Approval of Agreement of Purchase and Sale
with Groupe Mach Inc. (Belleville Distribution Centre))

August 29, 2018

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TAB 1

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

Ontario
**SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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CANADA INC.

APPLICANTS

NOTICE OF MOTION

**(Motion for Approval of Agreement of Purchase and Sale
with Groupe Mach Inc. (Belleville Distribution Centre))**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on September 4, 2018, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order (the “**Approval and Vesting Order**”) substantially in the form attached to the Motion Record, *inter alia*:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;

- (b) approving the Agreement of Purchase and Sale (the “**APS**”) dated with effect as of August 17, 2018 between Sears Canada Inc. (“**Sears Canada**”) and Groupe Mach Inc. (the “**Purchaser**”) and vesting Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the Approval and Vesting Order) in the Purchaser; and
- (c) sealing from the public record certain commercially-sensitive information and documents (as described below).

2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicants were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated;
2. FTI Consulting Canada Inc. was appointed to act as the Monitor (the “**Monitor**”) in the CCAA proceeding;

Approval and Vesting Order

3. On July 13, 2017, the Court approved a process by which the Applicants’ Financial Advisor on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada and the Monitor sought bids and proposals for a broad range of transaction alternatives with respect to the business, assets and/or leases of the Applicants;
4. Sears Canada entered into the APS dated with effect as of August 17, 2018 in which the Purchaser would purchase the Subject Assets, including the property municipally located at 500 and 531 College Street East, Belleville, Ontario (the “**Property**”), in accordance with the terms and conditions set out in the APS (the “**Transaction**”);

5. Pursuant to the APS, on August 23, 2018, the Purchaser informed Sears Canada that it wished to exercise its right to assign all its rights and obligations under the APS to its affiliate, Belleville Complex Inc. Accordingly, on August 24, 2018, the Purchaser and Sears Canada entered into an Assignment and Assumption of Purchaser Agreement;
6. Pursuant to the Approval and Vesting Order, the Monitor shall be entitled to retain the net proceeds from the Transaction on behalf of the Applicants to be dealt with by further Order of the Court.
7. The consideration to be received in the transaction is fair and reasonable;
8. The process leading to the APS was fair and reasonable in the circumstances and was approved by the Monitor;
9. The APS is in the best interests of the creditors and other stakeholders of the Applicants;
10. The relief sought on this motion is supported by the Monitor;

Sealing Order

11. The Confidential Appendix to the Monitor's Report filed in connection with this motion contains confidential and commercially sensitive information which, if made public, would be materially prejudicial to Sears Canada and detrimental to any further marketing efforts for the Property if the proposed transaction is not completed;
12. There are no reasonable alternative measures to sealing this information from the public record;
13. The salutary effects of sealing this information outweigh the deleterious effects of doing so;
14. The provisions of the CCAA, including section 36, and the inherent and equitable jurisdiction of this Honourable Court;

15. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

16. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Affidavit of Philip Mohtadi affirmed August 29, 2018 and the exhibits attached thereto;
2. The Report of the Monitor to be served in connection with this Motion; and
3. Such further and other evidence as counsel may advise and this Court may permit.

August 29, 2018

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Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF MOTION

(Motion for Approval of Agreement of Purchase and Sale with
Groupe Mach Inc. (Belleville Distribution Centre))

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TAB 2

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

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APPLICANTS

AFFIDAVIT OF PHILIP MOHTADI
(Affirmed August 29, 2018)

**(Motion for Approval of Agreement of Purchase and Sale with
 Groupe Mach Inc. (Belleville Distribution Centre))**

I, Philip Mohtadi, of the City of Toronto, in the Province of Ontario, AFFIRM

AND SAY:

1. I am the General Counsel and Corporate Secretary of the Applicant Sears Canada Inc. ("**Sears Canada**"). I am also a director of each of the other Applicants. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisors to Sears Canada, members of the senior management team of Sears Canada, and representatives of FTI Consulting Canada Inc. ("**FTI**" or the "**Monitor**") and its counsel.

2. I affirm this Affidavit in support of the motion brought by the Applicants seeking an Order, substantially in the form attached to the Motion Record, approving the Agreement of Purchase and Sale dated with effect as of August 17, 2018 (the “**APS**”) between Sears Canada and Groupe Mach Inc. (the “**Purchaser**”), relating to the Subject Assets (as defined in the APS), which include all of the right, title and interest of Sears Canada in and to the property municipally located at 500 and 531 College Street East (the “**Property**”), located in Belleville, Ontario, the details of which are summarized in the following chart:

Property	Province	Address	Legal Description / Square Footage
Distribution Centre	Ontario	500 College Street East, Belleville	PIN 40520-0331 (LT) PT LTS 11-13 CON 2 THURLOW PTS 1 TO 9 21R7327, PTS 1 TO 6 21R13826, EXCEPT PTS 1-17 21R22046; EXCEPT COLLEGE ST; S/T QR452000, QR452002, QR452004, QR91249, QR452005, QR534786, THD8364, THD9461, BELLEVILLE; COUNTY OF HASTINGS 1,804,896 sq ft
Repair Shop	Ontario	531 College Street East, Belleville	PIN 40520-0313 (LT) PT LTS 12, 13 CON 2 THURLOW PTS 10-11 21R22046; S/T QR452004; BELLEVILLE; COUNTY OF HASTINGS approximately 8,000 sq ft

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

4. This Affidavit should be read in conjunction with the affidavit of Mark Caiger sworn May 28, 2018 (the “**Owned Real Estate Process Affidavit**”), which describes in more detail the sales and marketing efforts undertaken by Sears Canada and BMO Capital

Markets (the “**Sale Advisor**”) pursuant to the Applicants’ court-approved sale process (the “**SISP**”), which efforts resulted ultimately in the APS which is the subject of this motion.

5. I understand from the Monitor that the consideration (the “**Purchase Price**”) that Sears Canada will receive in this proposed transaction, including the Deposit, will be included in a Confidential Appendix to the Monitor’s Report (the “**Confidential Appendix**”) that will be filed in connection with this motion. In the view of the Applicants and the Sale Advisor, the Purchase Price is confidential information and the disclosure of such information could be materially prejudicial to the Applicants in connection with the sale process generally, and in connection with any further marketing of the Subject Assets in particular, should the proposed transaction not proceed to close as anticipated. As such, the Purchase Price and the amount of the Deposit in the APS, which is attached as Exhibit “A” to this Affidavit, has been redacted. The Applicants are requesting that a sealing order be granted with respect to the Confidential Appendix.

6. The Applicants and the Sale Advisor believe that this transaction is in the best interests of the Applicants and their stakeholders, and that the consideration to be paid is fair and reasonable. Moreover, the Applicants and the Sale Advisor believe that the process leading to the transaction, as described in the Owned Real Estate Process Affidavit and herein, was reasonable in the circumstances.

7. It is my understanding that the Monitor approves the process that has been followed by Sears Canada and the Sale Advisor and supports the Applicants’ motion seeking approval of the APS.

Unique Nature of the Property

8. The Property includes the Distribution Centre and the Repair Shop. The Distribution Centre, purpose-built for Sears Canada and opened in 1991, was one of five national logistics centres operated by Sears Canada, and the largest of the five. Its location in Belleville is close to both highway and rail networks. The Distribution Centre functioned as a warehouse and logistics centre, for retail and e-commerce distribution of merchandise, receiving and inspecting incoming shipments, preparing outbound shipments and inventory control, and was also used as a call centre.

9. The Distribution Centre included a sophisticated array of equipment and systems to manage logistics: metal racking throughout the building to store the merchandise, tracking systems to ensure merchandise could be stored in its designated area within the building and retrieved as required, conveyor systems to offload and onload merchandise as it arrived at or left the building, and life safety systems, particularly fire sprinkler systems, integrated within the racking. The equipment and systems were built to Sears Canada's unique specifications and needs.

10. The sale of the Distribution Centre represented a significant challenge:

- (a) although it may have been a state-of-the-art facility at the time of its construction, the existing equipment and systems were not likely to be of use to a buyer today, particularly as they were designed for use by a full-line merchandiser such as Sears Canada;

- (b) Sears Canada did not expect the existing racking and other equipment could be used by a buyer, and the cost and time involved to remove all remaining equipment and racking would be significant;
- (c) for some logistics providers, proximity to air travel is more important than to road and rail networks; and
- (d) the sheer size of the Distribution Centre at 1.8 million square feet.

Background to the Purchaser's Bid

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

12. The efforts of the Sale Advisor to market the Property are outlined in the Owned Real Estate Process Affidavit. In addition to those efforts, I am advised by the Sale Advisor and believe that a customized listing for the Property was sent to the Sale Advisor's property brokerage distribution list in July/August 2017, which includes over 2,500 individuals from approximately 1,300 unique companies.

13. Although expressions of interest were received for the Property, including one from the Purchaser, and for other owned properties of Sears Canada as part of the SISP, Sears Canada determined, in consultation with the Sale Advisor and the Monitor, as well as representatives of various creditor groups and their advisors (i.e., the "**Owned Real Estate Consultation Parties**", as defined in the Owned Real Estate Process Affidavit), that better

opportunities to monetize the Property and other owned properties would likely be available only after additional due diligence materials, including environmental studies, were available to potential purchasers.

14. To that end, a Phase II Environmental Site Assessment report for the Property was completed and uploaded to the electronic data room.

15. As set out in the Owned Real Estate Process Affidavit, in or around February 2018, the Applicants resumed the sale process in relation to the Applicants' owned real estate in order to seek out proposals for the acquisition of the Applicants' owned real estate, and to implement one or a combination of such proposals with the objective of maximizing value for the benefit of the Applicants' stakeholders.

16. The Owned Real Estate Process Affidavit provides details regarding the steps that were taken to market and solicit interest in Sears Canada's owned real estate, including the Subject Assets which are subject to the APS.

17. Over the course of March to July 2018, the Purchaser and others submitted several offers in respect of the Property as described in more detail in paragraphs 18 to 25 below. During the period leading up to and following the offers, Sears Canada continued to sell by public auction equipment and other property in its owned and leased buildings, including some of the racking and equipment in the Distribution Centre, in order to monetize its remaining assets for the benefit of creditors.

18. On March 7, 2018, the Purchaser submitted an offer to purchase the Subject Assets, including the Property, on the terms and conditions set out in a proposed form of asset purchase and sale agreement. Negotiations ensued with the Purchaser in respect of the financial and legal aspects of this offer, and the purchase price in respect of this offer was revised by the Purchaser several times over the course of these negotiations. Ultimately, the Purchaser verbally confirmed that it would be prepared to make an offer on terms acceptable to the Applicants (the “**Initial Acceptable Offer**”) for the Property. The Board of Directors of Sears Canada (the “**Board**”) authorized Sears Canada to enter into a transaction on the terms of the Initial Acceptable Offer, subject to Court approval.

19. However, before the agreement of purchase and sale for the Initial Acceptable Offer was signed, the Purchaser conducted a final inspection of the Property. As a result of that inspection, the Purchaser expressed concerns about the condition of the Property. Consequently, the proposed transaction on the terms of the Initial Acceptable Offer did not proceed and effectively lapsed.

20. On June 11, 2018, the Purchaser submitted a revised offer to purchase the Subject Assets, including the Property, on the terms and conditions set out in a proposed form of asset purchase and sale agreement. This offer, the details of which are included in the Confidential Appendix, was lower than the Initial Acceptable Offer.

21. Throughout June and early July 2018, Sears Canada worked to address the concerns that the Purchaser had expressed about the Property, including the state of the racking removal in the Distribution Centre. This involved removing the racking that had previously been sold, repairing any damage to the concrete floors resulting from its removal,

and providing information to the Purchaser on the Distribution Centre and its life safety systems. These steps were believed to be value increasing steps for any potential purchaser. During this time Sears Canada also continued negotiations with other potential purchasers.

22. Following these remediation efforts, several offers were received to purchase the Property, including a revised offer from the Purchaser. Sears Canada and the Monitor consulted with the Owned Real Estate Consultation Parties who did not support pursuing any transactions at the purchase prices contained in these offers. This was communicated to the Purchaser as well as other interested parties who had expressed continued interest in the Property, and the Purchaser and those other interested parties were invited by the Sale Advisor to submit their best and final offers.

23. On or before August 10, 2018, a number of revised offers were received to purchase the Property, including a further revised offer from the Purchaser to purchase the Subject Assets, including the Property, on the terms and conditions set out in a proposed form of asset purchase and sale agreement. This offer (the “**New Offer**”) was moderately lower than the Initial Acceptable Offer, but reflected an increase from the Purchaser’s offers made in June and July 2018, in light of the remediation efforts undertaken by Sears Canada.

24. Negotiations ensued with the Purchaser in respect of the financial and legal aspects of the New Offer, draft documents were exchanged by the parties, and follow up discussions were held as necessary. As a result of those negotiations, and considering the Purchaser’s New Offer, the ongoing monthly occupancy costs of the Property of approximately \$350,000 per month, and the alternative offers and other options available, the Sale Advisor recommended to the Board that Sears Canada enter into a transaction with the

Purchaser for the Subject Assets. After carefully considering the New Offer, including considering alternative options and the possibility of retaining the Property for a further period of time, shouldering the ongoing occupancy costs, as well as the costs of removing the remaining racking and other equipment that the Purchaser had agreed to assume responsibility for, and re-marketing the Property in the future, the Board ultimately determined that it was satisfied that the Purchase Price being offered was fair and reasonable, and that the New Offer was in the best interests of the Applicants and their stakeholders and authorized Sears Canada to enter into the proposed transaction subject to Court approval.

25. This transaction is supported by the Monitor and the Owned Real Estate Consultation Parties who were consulted throughout this process.

The APS

26. Sears Canada and the Purchaser entered into the APS dated with effect as of August 17, 2018. The APS provides for, among other things, the following:

- (a) Subject to the terms of the APS, the Initial Order and the SISP Order, Sears Canada agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase and assume from Sears Canada, the Subject Assets on the Closing Date in accordance with the terms and conditions set out in the APS.
- (b) The Purchaser will pay the Purchase Price, plus all applicable taxes. The Purchaser paid the Deposit on August 21, 2018, which is 10% of the Purchase Price, by wire transfer of immediately available funds to the Monitor, in trust. If the transaction is not completed by reason of a default of the Purchaser, the

full amount of the Deposit shall be paid to Sears Canada as liquidated damages, without limitation to any other right or remedy Sears Canada may have against the Purchaser. If the Transaction is not completed by any reason other than by a default of the Purchaser, the full amount of the Deposit shall be repaid to the Purchaser as full and final settlement and the Purchaser would have no further remedies against Sears Canada.

- (c) The Purchaser will pay the balance of the Purchase Price by wire transfer of immediately available funds to the Monitor payable on the Closing Date. The Purchase Price is subject to certain closing adjustments as set out in the APS, including realty taxes, which adjustments will be final and not subject to readjustment. This allows for final settlement of all of Sears Canada's obligations relating to the Subject Assets, giving certainty of result.
- (d) The APS and the Transaction contemplated therein are subject to the Court issuing the proposed Approval and Vesting Order that is not subject to an appeal or motion for leave to appeal that has not been fully disposed of and the Monitor delivering the Monitor's Certificate.
- (e) Closing will take place on the Business Day that is three (3) Business Days following the issuance of the Approval and Vesting Order or such later date as Sears Canada (with the consent of the Monitor) may advise the Purchaser in writing, or as otherwise ordered by the Court, provided that the Closing Date shall be no later than October 31, 2018.

- (f) Subject to the terms of the APS and the Approval and Vesting Order, the Purchaser is purchasing the Subject Assets on an “as is, where is” basis. On Closing, the Subject Assets shall be subject to the Permitted Encumbrances.
- (g) There are no financing conditions to the APS.
- (h) During the Interim Period between the Execution Date and the Closing Date, Sears Canada shall not be obligated to (i) remove any Inventory, FF&E or Excluded Assets and Sears Canada shall have no liability for any removal or destruction costs relating thereto, or (ii) repair, renovate, alter, improve or upgrade the Property in any manner. Any Inventory, FF&E or Excluded Assets left on the Property on the Closing Date shall become the property of the Purchaser without representation or warranty by Sears Canada.

Subsequent Offers

27. Several days after Sears Canada and the Purchaser had executed the APS and after the Monitor had received the full amount of the Deposit from the Purchaser, another party who had previously expressed interest in the Property and who had been in contact with the Sale Advisor throughout the SISP, submitted two unsolicited offers for the Property, the details of which are included in the Confidential Appendix. Sears Canada rejected the offers on the basis that it already had a binding agreement for the sale of the Property with the Purchaser.

28. Counsel to Sears Canada advised the Owned Real Estate Consultation Parties of the late offers and no concerns were raised by the Owned Real Estate Consultation Parties

as to Sears Canada's rejection of them. The party who submitted the late offers was provided opportunities to submit offers prior to the acceptance of the Purchaser's offer and had submitted offers previously. The late offers were not of a nature or value that would cause Sears Canada to question the integrity of the SISP. I am advised and believe the Monitor shares this opinion.

Assignment and Assumption Agreement


29. Pursuant to section 8.22 of the APS, on August 23, 2018 the Purchaser informed Sears Canada that it wished to exercise its rights to assign all of its rights and obligations pursuant to the APS to its affiliate, Belleville Complex Inc. Accordingly, on August 24, 2018, the Purchaser and Sears Canada entered into an Assignment and Assumption of Purchase Agreement.

Distribution of Proceeds

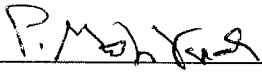
30. Under the terms of the APS, the Monitor is entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

31. For all of the foregoing reasons, the Applicants believe that approval of the APS is in the best interests of the Applicants and their stakeholders.

AFFIRMED BEFORE ME at the City
of Toronto, on the 29th day of August
2018.



Commissioner for taking Affidavits
Lia Buechetta



Philip Mohtadi

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

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Proceeding commenced at Toronto

AFFIDAVIT OF PHILIP MOHTADI
(Motion for Approval of Agreement of Purchase and Sale with
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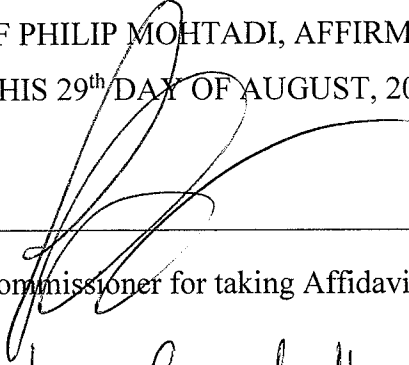
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Lawyers for the Applicants

TAB A

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF PHILIP MOHTADI, AFFIRMED BEFORE ME
THIS 29th DAY OF AUGUST, 2018.



A Commissioner for taking Affidavits, etc.

Lea Barchetta

AGREEMENT OF PURCHASE AND SALE

SEARS CANADA INC.
as the Vendor

- and -

GROUPE MACH INC.
as the Purchaser

For the property known as "Belleville"

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SCHEDULE "I" ASSUMED CONTRACTS 1

THIS AGREEMENT OF PURCHASE AND SALE dated with effect as of August 17, 2018

BETWEEN:

SEARS CANADA INC.
(the “**Vendor**”)

OF THE FIRST PART,

- and -

GROUPE MACH INC.
(the “**Purchaser**”)

OF THE SECOND PART,

RECITALS:

- A. The Vendor operated a chain of retail department stores throughout Canada under the “Sears” banner.
- B. On the Filing Date, the Vendor and certain of its affiliates and subsidiaries (the “**Sears Group**”) applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- C. On the SISP Order Date, the Court granted the SISP Order which, among other things, approved the SISP. The SISP Order and the SISP govern the process for soliciting and selecting bids for the sale of, among other things, the Assets (as defined in the SISP) of the Sears Group.
- D. The Purchaser hereby offers to acquire from the Vendor, the Vendor’s right, title and interest in and to the Subject Assets on the terms and conditions set out herein (the “**Offer**”).
- E. This Agreement is subject to approval by the Court, and the completion of the Transaction is subject to the Court issuing the Approval and Vesting Order and the Monitor releasing the Monitor’s Certificate, all as more particularly described herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Vendor and the Purchaser (individually, a “**Party**” and collectively, the “**Parties**”) covenant and agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

Unless otherwise provided for herein, all capitalized terms set out below when used in this Agreement shall have the meaning ascribed thereto unless the context expressly or by necessary implication otherwise requires:

“Adverse Entry” means all Encumbrances other than Permitted Encumbrances.

“Agreement” means this agreement constituted by the Vendor’s acceptance of the Offer together with all schedules and instruments in written amendment or confirmation of it and the expression **“Section”** followed by a number means and refers to the ascribed thereto Section of this Agreement.

“Applicable Law” means, in respect of any Person, assets, transaction, event or circumstance:

- (i) statutes (including all regulations enacted thereunder);
- (ii) judgments, decrees and orders of courts of competent jurisdiction; and
- (iii) regulations, orders, ordinances and directives issued by Governmental Authorities;

which are applicable to such Person, asset, transaction, event or circumstance;

“Approval and Vesting Order ” means an order issued by the Court approving this Agreement and the transactions contemplated by this Agreement and conveying to the Purchaser all of the Vendor’s right, title and interest in and to the Subject Assets free and clear of all Encumbrances other than the Permitted Encumbrances, which order shall be substantially in the form of Schedule “D” (with only such changes as the Parties shall approve in their reasonable discretion, but in all cases in form and substance acceptable to the Monitor).

“Assignment and Assumption of Assumed Contracts and Permitted Encumbrances” means an assignment by the Vendor and an assumption by the Purchaser of the Vendor’s right, title and interest and all liability, covenants and obligations in, to and under the Assumed Contracts and any Permitted Encumbrances. The agreement evidencing same shall include an indemnity given by the Purchaser in favour of the Vendor from and against any Claims arising pursuant to or in connection with any of the Assumed Contracts and Permitted Encumbrances, and shall be in substantially the form attached as Schedule “F”.

“Assignment and Assumption of Realty Tax Appeals” means an assignment by the Vendor and an assumption by the Purchaser of the Vendor’s right, title and interest and all liability, covenants and obligations, in respect of the Realty Tax Appeals to be delivered on Closing. The agreement shall be in substantially the form attached as Schedule “G”.

“Assumed Contracts” means the Contracts listed on Schedule “I”.

“Authorization” means, with respect to any Person, any order, permit, approval, waiver, licence or similar authorization of any Governmental Authority having jurisdiction over the Person.

“**Balance**” has the meaning ascribed thereto in Section 3.1(b).

“**Buildings**” means, individually or collectively, as the context requires, all of the buildings and structures, improvements, appurtenances and fixtures, located on, in or under the Lands, but, for greater certainty, excluding the Excluded Assets.

“**Business Day**” means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario.

“**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).

“**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Sears Group pursuant to the Initial Order (Court File No. CV-17-11846-00CL).

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, equitable interests, options, preferential arrangements of any kind or nature, assignments, restrictions, financing statements, deposit arrangements, rights of others, leases, sub-leases, licences, rights of first refusal or similar restrictions, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, including loss of value, reasonable professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all actual and documented costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“**Closing**” has the meaning ascribed thereto in Section 7.6(a).

“**Closing Date**” means the Business Day that is three (3) Business Days following the issuance of the Approval and Vesting Order or such later date as the Vendor (with the consent of the Monitor) may advise the Purchaser in writing, or as otherwise ordered by the Court.

“**Closing Documents**” means those documents and deliveries to be delivered in connection with the Closing as contemplated in this Agreement including those set out in Section 7.5.

“**Contracts**” means, collectively, all of the Vendor’s contracts and agreements to enter into contracts with respect to the operation, fire protection, servicing, maintenance, repair and cleaning of the Subject Assets (and no other properties), or the furnishing of supplies or services to the Subject Assets, any property management or asset management contracts, any employment contracts and any insurance contracts entered into by the Vendor or any manager or agent on behalf of the Vendor, in each case solely with respect to the Subject Assets.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Data Site**” means the electronic data site with respect to information and material regarding the Subject Assets.

“**Deposit**” has the meaning ascribed thereto in Section 3.1(a).

“**Disclosed to the Purchaser**” means any information which no later than the date which is one (1) Business Day immediately before the Execution Date, is either: (a) delivered or made available to the Purchaser on the Data Site; (b) a Permitted Encumbrance that is registered (and/or notice of

which is registered) against title to the Property; or (c) delivered to the Purchaser or the Purchaser's solicitors.

"Encumbrance" means any security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise.

"Environment" means the environment or natural environment as defined in any Environmental Laws and includes air, surface water, ground water, land surface, soil and subsurface strata.

"Environmental Laws" means Laws relating to the protection of human health and the Environment, and includes Laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, Release, remediation, management and disposal of Hazardous Substances.

"Excise Tax Act" means the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended, restated, supplemented or substituted from time to time.

"Excluded Assets" means those assets (in each case, as of the Closing Date) described in Schedule "B".

"Execution Date" means the date of this Agreement as set out on the top of page 1 hereof.

"FF&E" means all tools, signs, furniture, machinery, equipment, personal or moveable property, chattels, furnishings and fixtures including shelves, counters, video cameras and equipment, security systems, point-of-sales systems and related appurtenances, telecommunications systems and related appurtenances, electric light fixtures, elevating devices and equipment, in each case to the extent owned, leased or licensed by the Vendor, if any.

"Filing Date" means June 22, 2017.

"Financial Advisor" means BMO Nesbitt Burns Inc.

"Governmental Authorities" means governments, regulatory authorities, governmental departments, agencies, agents, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"GST/HST Certificate, Undertaking and Indemnity" mean the Purchaser's certificate to be in substantially the form set out in Schedule "E".

"Hazardous Substances" means pollutants, contaminants, wastes of any nature, hazardous substances, hazardous materials, toxic substances, prohibited substances, dangerous substances or dangerous goods regulated by or under Environmental Laws.

"Holders" has the meaning ascribed thereto in Section 5.3.

“**Initial Order**” means the Initial Order granted by the Court on June 22, 2017 pursuant to which the Sears Group were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).

“**Interim Period**” means the period between the close of business on the Execution Date and the Closing on the Closing Date.

“**Inventory**” includes all inventory, stock, supplies and all other items owned by the Vendor and located at the Property.

“**Joint Direction**” has the meaning ascribed thereto in Section 3.2(e).

“**Lands**” means the lands and premises legally described in Schedule “A”.

“**Laws**” means any and all Applicable Laws, including all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, ruling or awards, and general principles of common and civil law and equity, binding on or affecting the Person referred to in the context in which the word is used.

“**Monitor**” means FTI Consulting Canada Inc., in its capacity as Court-appointed monitor of the Sears Group pursuant to the Initial Order and not in its personal capacity.

“**Monitor’s Certificate**” means the certificate to be filed with the Court by the Monitor certifying receipt of (i) confirmation from the Purchaser and the Vendor that all conditions of Closing in Sections 7.1, 7.2 and 7.3 of this Agreement have been satisfied or waived and (ii) the Purchase Price and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser.

“**NDA**” means the confidentiality, non-disclosure and non-use agreement between the Vendor and the Purchaser dated July 12, 2017, as amended or supplemented in writing from time to time.

“**Notice**” has the meaning ascribed thereto in Section 8.15.

“**Off-Title Compliance Matters**” means open permits or files, work orders, deficiency notices, directives, notices of violation, non-compliance and/or complaint and/or other outstanding matters or matters of non-compliance with the zoning and/or other requirements of any Governmental Authorities or any open building permits and Orders relating to any of the foregoing.

“**Offer**” has the meaning ascribed thereto in Recital D.

“**Orders**” means orders, injunctions, judgments, administrative complaints, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by any Governmental Authority or arbitrator.

“**Outside Date**” means October 31, 2018.

“**PE Assumption Agreements**” has the meaning ascribed thereto in Section 5.3.

“Permitted Encumbrances” means, collectively: (a) any Encumbrances resulting from the Purchaser’s actions; and (b) the items identified in Schedule “H” hereto.

“Person” means an individual, partnership, corporation, trust, unincorporated organization, company, government, or any department or agency thereof, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual.

“Plans” means all documentation in the Vendor’s possession and located on the Property on the Closing Date or located on the Execution Date in the electronic data room and monitored by the Financial Advisor relevant to the construction of the Buildings including, working drawings, detail drawings, shop drawings, approved municipal plans, structural, mechanical, electrical and engineering plans, site plans, surveys, reference or topographical plans, other documentation prepared to illustrate or define a particular aspect of the Buildings, consultants’ contracts, construction contracts, and plans submitted with all building permits issued for the Property.

“Property” means, collectively, the Lands and the Buildings.

“Purchase Price” has the meaning ascribed thereto in Section 3.1.

“Purchaser” has the meaning ascribed thereto on page 1 hereof.

“Realty Tax Appeals” has the meaning ascribed thereto in Section 4.3(a).

“Realty Tax Refunds” has the meaning ascribed thereto in Section 4.3(b).

“Release” has the meaning prescribed in any Environmental Laws and includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction.

“SISP” means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).

“SISP Order” means the Order granted by the Court on the SISP Order Date (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.

“SISP Order Date” means July 13, 2017.

“Subject Assets” means all of the right, title and interest of the Vendor, if any, in and to: (a) the Property; (b) the Realty Tax Appeals; (c) the Assumed Contracts; (d) the Warranties; and (e) all Inventory, FF&E and Excluded Assets left on the Property on the Closing Date, but excludes, the Vendor’s right, title and interest in and to each of the other Excluded Assets and any and all other assets of the Vendor relating to the Property not included in the foregoing.

“Taxes” means taxes, duties, fees, premiums, assessments, imposts, levies and other similar charges imposed by any Governmental Authority under applicable Laws, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, registration, sales, goods and

services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, and all licence, franchise and registration fees.

“**Transaction**” means collectively the transactions contemplated in this Agreement.

“**Vendor**” has the meaning ascribed thereto on page 1 hereof.

“**Warranties**” means any existing warranties and guarantees in favour of the Vendor in connection with the construction, condition or operation of the Buildings or any component thereof or any improvements made to the Buildings or any component thereof (other than the Excluded Assets) which are assignable without the consent of the counterparty thereto.

ARTICLE 2 SALE TRANSACTION

2.1 Offer and Acceptance

- (a) Subject to the terms of this Agreement, the Initial Order and the SISP Order, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase and assume from the Vendor, the Subject Assets on the Closing Date in accordance with the terms and conditions of this Agreement.
- (b) The Offer shall be irrevocable by the Purchaser until 5:00 p.m. (Toronto time) on August 24, 2018.
- (c) Upon acceptance of this Offer by the Vendor, this Offer shall constitute a binding agreement to acquire the Subject Assets, on the terms of this Agreement.

2.2 As Is, Where Is

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees in favour of the Vendor that as of the Execution Date and the Closing Date:

- (a) the Purchaser is purchasing the Subject Assets (including the state of title thereto and/or the state of any Encumbrances and Permitted Encumbrances) and accepting and assuming the Subject Assets on an “as is, where is” basis, without any written or oral statements, representations, warranties, promises or guaranties of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), as to the condition of any of the Subject Assets, the Permitted Encumbrances, the rentable area of the Buildings, the existence of any default on the part of the Vendor, the physical, environmental or other condition of, in, on, under or in the vicinity of the Property, the use permitted at the Property, the existence of any Encumbrance and/or Off-Title Compliance Matters affecting the Subject Assets, or any other aspects of any of the Subject Assets and the Permitted Encumbrances, the structural integrity or any other aspect of the physical condition of any Subject Assets, the conformity of any Building to any Plans or specifications (including, but not limited to, any Plans and specifications that may have been or

which may be provided to the Purchaser), compliance with Environmental Laws, the conformity of the Property to past, current or future applicable zoning or building code requirements or other applicable Laws, the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the Lands, or any Building situated on or as part of the Property, the sufficiency of any drainage, whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, the existence or non-existence of underground and/or above ground storage tanks, the availability of public utilities, access, parking and/or services for the Property, the fitness or suitability of the Property for occupancy or any intended use (including matters relating to health and safety), the potential for further development of the Property, the existence of land use, zoning or building entitlements affecting the Property, the presence, release or use of wastes of any nature, Hazardous Substances, pollutants, contaminants or other regulated substances in, under, on or about the Property or any neighbouring lands; and without limiting the foregoing, any and all conditions or warranties expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation in other jurisdictions will not apply and are hereby waived by the Purchaser and the Parties agree to exclude the effect of the legal warranty provided for by Article 1716 of the Civil Code of Québec and that the Purchaser is purchasing the Subject Assets at its own risk within the meaning of Article 1733 of the Civil Code of Québec;

- (b) on Closing, the Subject Assets shall be subject to, without limitation, the Permitted Encumbrances;
- (c) any disclosure in respect of any of the Subject Assets was made available to the Purchaser solely as a courtesy but the Purchaser is not entitled to rely on such disclosure, and it is expressly acknowledged by the Purchaser that no written or oral statement, representation, warranty, promise or guarantee of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), is made by the Vendor and/or the Monitor and/or their respective legal counsel, the Financial Advisor or other advisors or representatives as to the accuracy, currency or completeness of any such disclosure, and each of them expressly disclaims any and all liabilities with respect to such disclosure and any and all errors therein or omissions therefrom;
- (d) the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Purchaser might have against the Vendor pursuant to any warranty, legal or conventional, express or implied, of any kind or type relating to the Subject Assets or any other assets or any other aspect of the Transaction. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects, whether or not discoverable, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights;

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- (e) the Purchaser conducted its own independent review, inspection, diligence and investigations and forming its own independent opinions and conclusions in respect of the Subject Assets. The Purchaser's decision to make this Offer and enter into this Agreement was made of its own accord without reference to or reliance upon any disclosure in respect of any of the Subject Assets. The Purchaser acknowledges having been given a reasonable and adequate opportunity to conduct its own independent diligence prior to entering in this Agreement;
- (f) the Vendor shall not be responsible for making any repairs, replacements, renovations, alterations, improvements or upgrades or undertaking any remediation to address a Release in or to the Property or any part thereof, and it shall be the sole responsibility of the Purchaser to make, at the Purchaser's sole cost, any repairs, replacements, renovations, alterations, improvements and upgrades in or to the Property following Closing as may be required by the Purchaser to make the Property suitable for its purposes and to undertake any required, necessary, or desired remediation to address a Release at, on, under or migrating from the Property or any part thereof;
- (g) the Subject Assets may be subject to certain Off-Title Compliance Matters, municipal requirements, including building or zoning by-laws and regulations, easements or servitudes for hydro, gas, telephone affecting the Subject Assets, and like services to the Property, and restrictions and covenants which run with the land, including but not limited to the Permitted Encumbrances. Without limiting the foregoing, the Vendor shall not be responsible for rectification of any matters disclosed by any Governmental Authority or quasi-governmental authority having jurisdiction and the Purchaser shall accept the Subject Assets subject to such matters;
- (h) the Purchaser shall accept full responsibility for all conditions related to the Property, and the Purchaser shall comply with all orders relating to the condition of the Property issued by any competent Governmental Authority, including any order issued against the Vendor including without limitation, any non-compliance with Environmental Laws or relating to the existence of any Hazardous Substance; and
- (i) if any statement, error or omission shall be found in the particulars of the legal and/or the Subject Assets' description, the same shall not annul the sale or entitle the Purchaser to be relieved of any obligation hereunder, nor shall any compensation be allowed to the Purchaser in respect thereof.

The Vendor has no and shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Subject Assets or the condition thereof save and only to the extent expressly provided in this Agreement. The Purchaser shall be responsible for and hereby indemnifies and saves harmless the Vendor and its employees, directors, officers, appointees and agents from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgments, awards, including awards of costs, that may arise as a result of the condition of the Property, any order issued by any competent Governmental Authority in connection with the condition of the Property, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property including, without limitation, non-compliance

with Environmental Laws or the existence of any Hazardous Substances. This Section 2.2 shall survive and not merge on Closing and all Closing Documents shall incorporate this Section 2.2 by reference.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

The Purchase Price for the Subject Assets shall be [REDACTED] (the "**Purchase Price**") exclusive of HST/GST. Subject only to adjustment in accordance with this Agreement, the Purchase Price shall be paid to the Vendor as follows:

- (a) as to the sum of [REDACTED] (the "**Deposit**"), by wire transfer of immediately available funds payable to or to the order of the Monitor, in trust, or as it may otherwise direct in writing, on or prior to 5:00 p.m. (Toronto time) within forty-eight (48) hours of the signature of this Offer by the Vendor, to be held in trust as a deposit and invested in accordance with the provisions of Section 3.2 below pending the completion or other termination of this Agreement; provided that if the Deposit is not delivered to the Monitor, in trust, on or prior to 5:00 p.m. (Toronto time) within forty-eight (48) hours of the signature of this Offer by the Vendor, the Vendor may terminate this Agreement by notice to the Purchaser; and
- (b) as to the balance of the Purchase Price (the "**Balance**"), subject only to the adjustments made in accordance with this Agreement, by wire transfer of immediately available funds payable to the Monitor or as it may direct on the Closing Date.

3.2 Deposit

- (a) Following receipt, the Deposit shall be invested by the Monitor, in trust, in an interest bearing account or term deposit or guaranteed investment certificate pending completion of the Transaction or earlier termination or non-completion of this Agreement. In holding and dealing with the Deposit and any interest earned thereon pursuant to this Agreement, the Monitor is not bound in any way by any agreement other than this Section 3.2, and the Monitor shall not and shall not be considered to assume any duty, liability or responsibility other than to hold the Deposit, and any interest earned thereon, in accordance with the provisions of this Section 3.2, and to pay the Deposit, and any interest earned thereon, to the Person becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the Parties as to entitlement to the Deposit. In the case of such dispute, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by any of the Parties, pay the Deposit and any and all interest earned thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit or any interest earned thereon. The Monitor shall not, under any circumstances, be required to verify or determine the validity of any notice or other document whatsoever delivered to the Monitor and the Monitor is

hereby relieved of any liability or responsibility for any Claims which may arise as a result of the acceptance by the Monitor of any such notice or other document.

- (b) If the Transaction is completed, the Deposit shall be paid to the Vendor forthwith on Closing and applied to the Purchase Price. Interest on the Deposit shall accrue from the date of deposit with the Monitor until the Closing or other termination or non-completion of this Agreement. If the Transaction is successfully completed, all interest earned on the Deposit until Closing shall be paid to the Purchaser following Closing or applied to the Purchase Price.
- (c) If the Transaction is not completed by reason of a default of the Purchaser, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Vendor as liquidated damages (and not as a penalty) to compensate the Vendor for the expenses incurred and the delay caused and opportunities foregone as a result of the failure of the Transaction to close. The entitlement of the Vendor to receive and retain the Deposit together with all accrued interest earned thereon, if any, in such circumstances shall not limit the Vendor's right to exercise any other rights or remedies, which the Vendor may have against the Purchaser in respect of such breach or default.
- (d) If the Transaction is not completed by any reason other than the default of the Purchaser, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Purchaser as full and final settlement and the Purchaser shall have no further recourse against the Vendor.
- (e) In holding and dealing with the Deposit and any interest earned thereon pursuant to this Agreement, the Monitor shall release the Deposit and any interest earned thereon to the Persons becoming entitled thereto in accordance with the provisions of (i) Section 7.8(c); or (ii) this Section 3.2 as evidenced by a joint direction in writing executed by the Vendor and the Purchaser (the "**Joint Direction**") except in the event of a dispute between the Parties as to entitlement to the Deposit and any interest earned thereon in which event the Monitor may, in its sole, unfettered and unreviewable discretion, pay the Deposit and any interest earned thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit and any interest earned thereon or otherwise hereunder.
- (f) The Monitor shall not, under any circumstances, be required to verify or determine the validity of the Joint Direction or any written confirmation received pursuant to Section 7.8(b) and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as the result of the acceptance by the Monitor of the Joint Direction.
- (g) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Vendor and the Purchaser acknowledges and agrees that: (i) the Monitor's obligations hereunder are and shall remain limited to those specifically set out in this Section 3; and (ii) FTI Consulting Canada Inc. is acting solely in its capacity as the Court-appointed Monitor of the Vendor in the CCAA Proceedings and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise.

- (h) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 3.2 notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 3.2 shall survive the termination or non-completion of the Transaction.

3.3 Purchase Price Allocation

The allocation of the Purchase Price as between the Subject Assets is as set out on Schedule "C". The Vendor and the Purchaser shall adopt such allocations for the purposes of all tax returns, elections and filings respectively made by them or on their behalf. The Vendor and the Purchaser shall each use reasonable commercial efforts to agree, by the Closing Date, upon the allocation of the Purchase Price between the Lands and the Buildings for the Property. If no such agreement is reached by Closing, each of the Vendor and the Purchaser shall be free to make its own allocation.

3.4 Trade-Marks

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees that: (a) no signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying "Sears" are conveyed or intended to be conveyed to the Purchaser as part of the Subject Assets; and (b) all right, title and interest of the Vendor in and to all of its existing signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying "Sears" or containing the words "Sears" are hereby specifically reserved and excluded from the Subject Assets. Notwithstanding the foregoing or anything to the contrary, the Vendor shall not be obligated to remove any interior or exterior signs located at the Property, including those identifying "Sears" and the Vendor shall have no liability for any removal or destruction costs relating thereto and any such signs left on the Property on the Closing Date shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. This Section shall survive and not merge on Closing.

ARTICLE 4 ADJUSTMENTS

4.1 Statement of Adjustments and Absence of Post-Closing Adjustments

The Vendor shall prepare a statement of adjustments and deliver same with supporting documentation to the Purchaser no later than two (2) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be made by the Vendor as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably and such estimate shall serve as a final determination. The final form of statement of adjustments shall be satisfactory to the Monitor, acting reasonably. There shall be no further adjustments or readjustments after Closing of any amounts adjusted or intended to be adjusted on the statement of adjustments pursuant to this Agreement and the amounts set out on the statement of adjustments shall be final.

4.2 General Adjustments

- (a) The adjustments shall include realty taxes, local improvement rates and charges and, except as set out in this Agreement, other adjustments established by usual practice in the municipality in which the Property is located for the purchase and sale of similar properties. In addition, the adjustments shall include the other matters referred to in this Agreement which are stated to be the subject of adjustment and shall exclude the other matters in this Agreement which are stated not to be the subject of adjustment.
- (b) From and after the Closing Date, the Purchaser shall be responsible for all expenses and shall be entitled to all revenue from the Subject Assets. The Vendor shall be responsible for all expenses and entitled to all revenue from the Subject Assets for that period prior to the Closing Date.
- (c) The Purchaser shall be responsible for and pay all applicable Taxes payable in connection with the transfer of any of the Subject Assets by the Vendor to the Purchaser.

4.3 Realty Tax Appeals

- (a) The Vendor and the Purchaser acknowledge that with respect to the Property the Vendor may have instituted certain appeals and/or claims in respect of realty taxes or assessments for certain periods prior to the Closing Date and possibly including the tax year in which the Closing Date occurs (all such appeals and any associated reassessments are hereinafter collectively referred to as the “**Realty Tax Appeals**”).
- (b) On Closing and provided all municipal taxes due are paid, in consideration of an additional adjustment in favour of the Vendor in the amount equal to 100% of any expected credit, refund and/or rebate which may arise from any of the Realty Tax Appeals (collectively, the “**Realty Tax Refunds**”) for any period that is prior to the Closing Date, the Vendor shall assign to the Purchaser all of its right, title and interest, if any, in and to such Realty Tax Refunds.

4.4 Utilities

- (a) The Purchaser shall not assume any contracts or agreements entered into by or on behalf of the Vendor for the supply of any utilities (including electricity, gas, water, fuel, telephone service, internet services, security and surveillance services or otherwise) at the Property. On or before the Closing Date, the Vendor shall terminate all of its contracts and agreements for the supply of any utilities to the Property. For the avoidance of doubt, there shall be no adjustment at Closing in respect of the payment of any utilities provided that there are no outstanding amounts owing by the Vendor in connection with such accounts for which the Purchaser would be liable. The provisions of this Section 4.4(a) shall survive and not merge on Closing.

- (b) From and after the Closing Date, any and all utility charges and other related fees payable for any of the Property, pursuant to any invoice or statement issued on or after the Closing Date, shall be the sole responsibility of the Purchaser, and there shall be no adjustments between the Vendor and the Purchaser of any utility charges or related fees paid by the Purchaser pursuant to any such invoice or statement issued on or after the Closing Date, with the exception of any costs for utilities that were incurred before the Closing Date which shall be the responsibility of the Vendor.

ARTICLE 5 INTERIM PERIOD

5.1 Interim Period

- (a) The Vendor shall not be obligated to (i) remove any Inventory, FF&E or Excluded Assets and the Vendor shall have no liability for any removal or destruction costs relating thereto, or (ii) repair, renovate, alter, improve or upgrade the Property in any manner. Any Inventory, FF&E or Excluded Assets left on the Property on the Closing Date shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. This Section shall survive and not merge on Closing.
- (b) From and after the Execution Date, the Vendor will not agree to enter into any new Permitted Encumbrance without the consent of the Purchaser.
- (c) In the event that prior to the Closing Date all or a part of the Lands is expropriated or notice of expropriation or intent to expropriate all or a part of the Lands is issued by any Governmental Authority, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Vendor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis.
- (d) The Subject Assets shall be and remain until Closing at the risk of the Vendor. In the event of material damage by fire or other hazard to the Subject Assets or any part thereof occurring before the Closing Date, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without the reduction of the Purchase Price and the proceeds of any insurance actually paid or payable to the Vendor to a maximum of that portion of the Purchase Price allocated in Schedule "C" for the Subject Assets which are so damaged, shall be paid and/or assigned to the Purchaser.

5.2 Contracts

The Vendor covenants to terminate effective as of the Closing Date, at its sole cost and expense, all Contracts other than the Assumed Contracts and Permitted Encumbrances.

5.3 Permitted Encumbrances

The Purchaser shall provide such reasonable financial, business, organizational, managerial and other information and enter into such assumption agreements or deeds of re-hypothecation as the relevant party to a Permitted Encumbrance (the relevant party being a “**Holder**”) shall require to effect the assumption of the Permitted Encumbrances, as applicable, by the Purchaser (collectively, the “**PE Assumption Agreements**”). The Purchaser shall use reasonable efforts to assist the Vendor and shall co-operate with the Vendor (but at no additional cost to the Purchaser), as reasonably requested, to obtain from third parties a full release of the Vendor’s obligations under the Permitted Encumbrances, and shall provide such financial and other information and enter into such assumption agreements as such third parties may reasonably require, in form and substance acceptable to each of the parties thereto acting reasonably and without delay.

ARTICLE 6 REPRESENTATIONS, WARRANTIES & COVENANTS

6.1 Vendor’s Representations and Warranties

The Vendor represents and warrants to and in favour of the Purchaser that as of the Execution Date and as of Closing as to the following and acknowledges and confirms that the Purchaser is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) the execution, delivery and performance by the Vendor of this Agreement has been duly authorized by all necessary corporate action on the part of the Vendor subject to the Approval and Vesting Order and authorization as is required by the Court;
- (b) the Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada); and
- (c) the Vendor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*.

6.2 Purchaser’s Representations and Warranties

The Purchaser represents and warrants to and in favour of the Vendor that as of the Execution Date and as of Closing as to the following and acknowledges and confirms that the Vendor is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) the Purchaser has been duly formed or incorporated and is validly subsisting under the Laws of the jurisdiction of its formation or incorporation, and has all requisite corporate or other capacity, power and authority to carry on its business as now conducted by it and to own its properties and assets and is qualified to carry on business under the Laws of the jurisdictions where it carries on a material portion of its business;
- (b) the Purchaser is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

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- (c) the Purchaser is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*;
- (d) the execution, delivery and performance by the Purchaser of this Agreement:
 - (i) has been duly authorized by all necessary corporate or other action on the part of the Purchaser;
 - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and
 - (iii) will not result in the violation of any Laws;
- (e) this Agreement has been duly executed and delivered by the Purchaser and constitutes legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with their respective terms subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction; and
- (f) the Purchaser has, and will have at Closing, all funds on hand necessary to pay the Purchase Price and any Taxes payable and that are not self-assessed and remitted by the Purchaser.

The Purchaser's representations and warranties shall survive Closing for a period of one (1) year thereafter.

6.3 Purchaser's Covenants

- (a) The Purchaser shall use commercially reasonable efforts to take all such actions as are within its power or control, and to use commercially reasonable efforts to cause other actions to be taken which are not within its power or control, so as to ensure compliance with each of the conditions and covenants set forth in Article 7 which are for the benefit of any other Party.
- (b) The Purchaser shall take any and all commercially reasonable steps in order to avoid the filing of an application for, or the issuance of any interim Order or other Order which would have the effect of delaying or preventing the Closing, and if any such interim Order or other Order is issued, the Purchaser shall take any and all steps to have it rescinded, revoked or set aside as soon as possible. For greater certainty, "any and all steps" shall include, committing to or effecting undertakings, a consent agreement, a hold separate arrangement, a consent Order, a hold separate Order, a sale, a divestiture, a disposition or other action, in any such case without any reduction of the Purchase Price.

- (c) The Purchaser will promptly notify the Vendor and the Vendor will promptly notify the Purchaser upon:
 - (i) becoming aware of any Order or any complaint requesting an Order restraining or enjoining the execution of this Agreement or the consummation of the Transactions; or
 - (ii) receiving any notice from any Governmental Authority of its intention:
 - (A) to institute a suit or proceeding to restrain or enjoin the execution of this Agreement or the consummation of the Transaction; or
 - (B) to nullify or render ineffective this Agreement or such Transaction.

6.4 Vendor's Covenants

The Vendor agrees, that subject to the Initial Order, the SISP Order and the Approval and Vesting Order, to thereafter take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to fulfill the conditions set forth in Article 7 which are for the benefit of the Vendor or the mutual benefit of the Parties.

6.5 Tax Matters

In addition to the representations and warranties set forth in Section 6.2, the Purchaser further warrants, represents and covenants to the Vendor, and acknowledges and confirms that the Vendor is relying on such representations and warranties, indemnities and covenants in connection with the entering into of this Agreement, that:

- (a) the Purchaser is duly registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* with respect to the goods and services tax and harmonized sales tax and that such registration number shall be in full force and effect and shall not have been cancelled or revoked on the Closing Date;
- (b) the Purchaser has entered into this Agreement and is purchasing the Subject Assets on the Closing Date, as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of another Person;
- (c) to the extent permitted under subsection 221(2) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation, the Purchaser shall self-assess and remit directly to the appropriate Governmental Authority any Taxes including goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax imposed by any applicable provincial or territorial legislation payable in connection with the purchase and sale transaction of the Subject Assets, including the transfer of the Vendor's real or immovable property interests in the corresponding Subject Assets;
- (d) on Closing, the Purchaser will pay, in addition to the Purchase Price, and the Vendor will collect, any Taxes including transfer taxes as well as goods and

services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax exigible on the purchase and sale transaction of the Subject Assets, except to the extent that the Purchaser is permitted under subsection 221(2) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation to self-assess and remit such Taxes directly to the appropriate Governmental Authority, and the Purchaser shall have executed and delivered a certificate, undertaking and indemnity which includes its certification of its registration number issued under the *Excise Tax Act*, and incorporates the provisions of this Section 6.5 (the “**GST/HST Certificate, Undertaking and Indemnity**”);

- (e) the Purchaser shall make and file all required return(s) in accordance with the requirements of subsection 228(4) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation; and
- (f) the Purchaser shall indemnify and save the Vendor harmless from and against any and all Taxes including, transfer taxes and goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of any failure by the Vendor to collect and remit any goods and services tax or harmonized sales tax payable under the *Excise Tax Act* or any similar value added or multi-staged tax or sales tax and applicable on the sale and conveyance of the Subject Assets by the Vendor to the Purchaser or as a result of any inaccuracy, misstatement, or misrepresentation made by the Purchaser in connection with any matter raised in this Section 6.5 or in the GST/HST Certificate, Undertaking and Indemnity or any failure by the Purchaser to comply with the provisions of this Section 6.5 or the GST/HST Certificate, Undertaking and Indemnity.

The provisions of this Section 6.5 shall survive and not merge on Closing.

6.6 Survival of Covenants,

Except as otherwise expressly provided in this Agreement to the contrary, no representations, warranties, covenants or agreements of the Vendor or the Purchaser in this Agreement shall survive the Closing.

ARTICLE 7 CLOSING

7.1 Conditions of Closing for the Benefit of the Purchaser

The Purchaser’s obligation to complete the purchase and sale of the Subject Assets is subject to the following conditions to be fulfilled or performed, on or before the Closing Date, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser:

- (a) the representations and warranties of the Vendor in Section 6.1 shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date;
- (b) the Vendor shall have performed and complied with all of the other terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the Closing Documents contemplated or required to be so executed and delivered in this Agreement;
- (c) vacant possession of the Property shall have been given to the Purchaser subject to the Assumed Contracts and Permitted Encumbrances; and
- (d) the Purchaser shall have received the Closing Documents.

7.2 Conditions of Closing for the Benefit of the Vendor

The Vendor's obligation to complete the purchase and sale of the Subject Assets is subject to the following conditions to be fulfilled or performed, on or before the Closing Date, which conditions are for the exclusive benefit of the Vendor and may be waived, in whole or in part, by the Vendor:

- (a) the representations and warranties of the Purchaser in Section 6.2 shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date;
- (b) the Purchaser shall have paid the Balance in its entirety to the Monitor and shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Vendor at Closing all the documents contemplated required to be so executed and delivered in this Agreement; and
- (c) the Vendor shall have received the Closing Documents.

7.3 Conditions of Closing for the Mutual Benefit of the Parties

The obligations of either the Vendor or the Purchaser to complete the purchase and sale of the Subject Assets are subject to the following conditions to be fulfilled or performed, on or before the Closing Date, which conditions are for the mutual benefit of each of the parties and may only be waived, in whole or in part, by agreement of the parties to this Agreement:

- (a) the Approval and Vesting Order, substantially in the form attached hereto as Schedule "D", shall have been issued and entered by the Court and any appeal or motion for leave to appeal related to the Approval and Vesting Order shall have been fully disposed of with no further right of appeal or leave to appeal;
- (b) there shall be no Order against either of the parties or involving any of the Subject Assets enjoining, preventing or restraining the completion of the Transaction; and

- (c) the Monitor shall have delivered the Monitor's Certificate.

7.4 Conditions Not Fulfilled

If any of the conditions contained in Sections 7.1, 7.2. or 7.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the applicable party benefitting from such condition, then the party entitled to the benefit of such condition may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (a) terminate this Agreement by notice to the other parties and the Monitor, in which event the Purchaser and the Vendor shall be released from their obligations under this Agreement to complete the Transaction and the Deposit and all interest accrued thereon shall forthwith be returned to the Purchaser without deduction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

7.5 Closing Documents

On or before Closing, subject to the provisions of this Agreement, the Vendor and the Purchaser shall, execute or cause to be executed and shall deliver or cause to be delivered into escrow (in a sufficient number of copies or counterparts for the Purchaser and the Vendor and, where applicable, in registerable form), the following, which shall be in form and substance reasonably satisfactory to the Purchaser and the Vendor and their respective solicitors:

- (a) By the Vendor and the Purchaser:
 - (i) the Assignment and Assumption of Realty Tax Appeals;
 - (ii) the Assignment and Assumption of Assumed Contracts and Permitted Encumbrances; and
 - (iii) such other documents as each Party or each Party's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (b) By the Vendor:
 - (i) the Approval and Vesting Order;
 - (ii) the statement of adjustments evidencing the adjustments made at Closing;
 - (iii) a certificate signed by a senior officer of the Vendor confirming that the Vendor is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada);
 - (iv) an assignment of Warranties, to the extent there are any and are in the Vendor's possession and located on the Property and to the further extent that they are assignable without cost or consent;

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- (v) all master keys relating to the Buildings, if any, all security cards and access cards relating to the Buildings, if any, and all combinations and passwords to vaults and combination locks and other security features located in the Buildings, if any, in each case, to the extent in the possession of the Vendor;
 - (vi) such other documents as the Purchaser or the Purchaser's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (c) By the Purchaser:
- (i) the Balance plus all Taxes thereon;
 - (ii) GST/HST Certificate, Undertaking and Indemnity;
 - (iii) an assignment of this Agreement, if applicable, in accordance with Section 8.22;
 - (iv) where applicable, the PE Assumption Agreements along with any deliveries to the Holders required in respect of the Assumed Contracts or Permitted Encumbrances; and
 - (v) such other documents as the Vendor or the Vendor's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.

7.6 Closing Date

- (a) The completion of the Transaction contemplated by this Agreement (the "Closing") shall take place at 10:00 a.m. (Toronto time) on the Closing Date at the Toronto office of Osler, Hoskin and Harcourt LLP, or at such other place as may be agreed upon by the Vendor and the Purchaser in writing.
- (b) Subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of closing in its favour contained in this Article 7, at Closing, the Purchaser will pay or satisfy the Purchase Price in accordance with Article 3, and the Closing of the Transaction will take effect, pursuant to the Approval and Vesting Order, upon delivery of the Monitor's Certificate.

7.7 Confirmation of Satisfaction of Conditions

On the Closing Date, subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of Closing in its favour contained in Article 7, the parties or their respective solicitors shall confirm to the Monitor the satisfaction of all conditions to Closing and upon the Monitor receiving the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser, the Monitor shall deliver copies of the Monitor's Certificate to the Parties hereto and release the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser to the Vendor and following Closing file the Monitor's Certificate with the Court.

7.8 Closing

- (a) Subject always to Section 3.2 hereof, the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be held by the Monitor, in trust in a separate interest bearing account, pending completion of the Transaction or earlier termination of this Agreement. In holding and dealing with the funds paid to the Monitor in trust and any interest earned thereon pursuant to this Agreement, the Monitor is not bound in any way by any agreement other than Section 3.2 and this Section 7.8 and the Monitor shall not assume or be deemed to assume any duty, liability or responsibility other than to hold the trust funds and any interest earned thereon in accordance with the provisions of this Section 7.8 and to pay the funds, and any interest earned thereon, to the Party becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the parties as to entitlement to the trust funds, of which the Monitor has been given notice in writing, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by either of the parties, pay the trust funds and any and all interest earned thereon into court, whereupon the Monitor shall have no further obligations relating to the trust funds or any interest earned thereon or otherwise hereunder.
- (b) The Monitor shall not, under any circumstances, be required to verify or determine the validity of any written notice or other document whatsoever delivered to the Monitor in connection with the trust funds and the Monitor is hereby relieved of any liability or responsibility for any loss or damage, which may arise as a result of the acceptance by the Monitor of any such written notice or other document.
- (c) On or before Closing, the parties' respective solicitors shall exchange the Closing Documents in escrow and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be delivered to or paid to the order of the Monitor, in trust, and the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall remain in escrow with the Monitor until the Monitor has delivered the Monitor's Certificate to the Vendor and the Purchaser, upon the occurrence of which the escrow shall be lifted, the Closing Documents shall take effect as of the date and time set out in the Monitor's Certificate, the entire amount of the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be forthwith released to the Vendor and the Closing shall be deemed to have occurred as of such date and time set out in the Monitor's Certificate and fully signed Closing Documents shall be released to each of the Vendor and Purchaser.
- (d) The parties acknowledge that, notwithstanding that the Monitor is not a party to this Agreement, the Monitor may rely upon the provisions of Section 3.2 hereof and this Section 7.8.
- (e) This Section 7.8 shall survive the Closing or termination of this Agreement.

7.9 Filings and Authorizations

- (a) Each of the Vendor and the Purchaser, as promptly as practicable after the execution of this Agreement, will make, or cause to be made, all such filings and submissions under all Laws applicable to it, as may be required for it to consummate the purchase and sale of the Subject Assets in accordance with the terms of this Agreement (other than the motion seeking approval of the Transaction and the issuance of the Approval and Vesting Order). The Vendor and the Purchaser shall co-ordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing including, providing each other with all notices and information supplied to or filed with any Governmental Authority (except for notices and information which the Vendor or the Purchaser, in each case acting reasonably, considers highly confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any Governmental Authority.
- (b) The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the parties and file the Monitor's Certificate with the Court, without independent investigation, upon receiving written confirmation from the Vendor and the Purchaser or their respective solicitors that all conditions of Closing have been satisfied or waived and upon receipt of the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser, and the Monitor shall have no liability to the Vendor or the Purchaser or any other Person as a result of filing the Monitor's Certificate.

7.10 Court Matters

- (a) The Vendor shall consult and co-ordinate with the Purchaser and their respective legal advisors regarding the parties upon whom the motion seeking the Approval and Vesting Order will be served.
- (b) The Purchaser shall provide such information and take such actions as may be reasonably requested by the Vendor to assist the Vendor in obtaining the Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the transactions contemplated by this Agreement, including, any Court ordered assignment of the Contracts.
- (c) Notwithstanding anything else contained in this Agreement or elsewhere, the Purchaser acknowledges and agrees that the Vendor cannot guarantee that it will obtain the Approval and Vesting Order and the Approval and Vesting Order may or may not be granted by the Court.

7.11 Termination

This Agreement may, by notice in writing given at or prior to Closing, be terminated:

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- (a) by mutual consent of the Purchaser and the Vendor (in respect of which the Vendor shall require the consent of the Monitor to provide its consent) or on further order of the Court;
- (b) by the Purchaser if any of the conditions in Section 7.1 have not been satisfied on or before the Closing Date and the Purchaser has not waived such condition;
- (c) by the Vendor with the consent of the Monitor if any of the conditions in Section 7.2 have not been satisfied on or before the Closing Date and the Vendor has not waived such condition; or
- (d) by either Party if any of the conditions precedent in Section 7.3 have not been satisfied on or before the Closing Date and the parties have not waived such condition; or
- (e) by the Vendor (with the consent of the Monitor) or the Purchaser if Closing has not occurred on or before the Outside Date, provided that the Vendor or the Purchaser may not terminate this Agreement pursuant to this Section 7.11(e) if it has failed to perform any one or more of its respective obligations or covenants under this Agreement and the Closing has not occurred because of such failure.

ARTICLE 8 OTHER PROVISIONS

8.1 Confidentiality

The Vendor shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the Court, the Monitor, and parties in interest to the CCAA Proceedings. The NDA shall survive and not merge on Closing.

8.2 Time of the Essence

Time shall be of the essence of this Agreement.

8.3 Entire Agreement

This Agreement and the NDA constitute the entire agreement between the parties with respect to the Transaction and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the Transaction.

8.4 Waiver

- (a) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the Party to be bound by the waiver.

- (b) No failure on the part of the Vendor or the Purchaser to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

8.5 Further Assurances

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be reasonably deemed to be necessary or advisable from time to time in order to effectively transfer the Subject Assets to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent. The provisions of this Section 8.5 shall survive and shall not merge on Closing.

8.6 Severability

If any provision of this Agreement shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

8.7 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable Laws, any objection that it may now or hereafter have to the venue of any action or proceeding arising out of or relating to this Agreement or the Transaction in any court of the Province of Ontario. Each of the Parties hereby irrevocably waives, to the fullest extent permitted by applicable Laws, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

8.8 English Language

The parties hereto have requested that this Agreement be drafted in English only. *Les parties aux présentes ont demandé à ce que la présente convention soit rédigée en anglais seulement.*

8.9 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

8.10 Headings

The division of this Agreement into Sections, the insertion of headings is for convenience of reference only and are not to be considered in, and shall not affect, the construction or interpretation of any provision of this Agreement.

8.11 References

Where in this Agreement reference is made to an article or section, the reference is to an article or section in this Agreement unless the context indicates the reference is to some other agreement.

The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. The word “includes” or “including” shall mean “includes without limitation” or “including without limitation”, respectively. The word “or” is not exclusive.

8.12 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

8.13 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day must be made or taken by no later than 5:00 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

8.14 Currency and Payment Obligations

Except as otherwise expressly provided in this Agreement all dollar amounts referred to in this Agreement are stated in Canadian Dollars.

8.15 Notice

Any notice, consent or approval required or permitted to be given in connection with this Agreement (a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

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

Sears Canada Inc.
82 Peter Street
Toronto, ON M5V 2G5

Attn: Philip Mohtadi
Email: pmohtad@sears.ca

With a copy to:

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

Attn: Marc Wasserman & Tracy Sandler
Email: mwasserman@osler.com & tsandler@osler.com

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With a copy to:

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

Attn: Paul Bishop
Email: paul.bishop@fticonsulting.com

With a copy to:

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

Attn: Orestes Pasparakis & Virginie Gauthier
Email: orestes.pasparakis@nortonrosefulbright.com
& virginie.gauthier@nortonrosefulbright.com

(b) in the case of a Notice to the Purchaser at:

Groupe Mach Inc.
407 McGill Street, Suite 710
Montreal, Quebec H2Y 2G3

Attn.: Vincent Chiara
Email: vchiara@groupemach.com,
ldlegendre@groupemach.com,
bmartin@groupemach.com and
jsoliman@groupemach.com

A Notice is deemed to be given and received (i) if sent by personal delivery or same day courier, on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day, (ii) if sent by overnight courier, on the next Business Day, or (iii) if transmitted by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile, or (iv) if sent by email, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic "read receipt" does not constitute acknowledgment of an email for purposes of this section. Any Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Subject to Section 8.17, sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery

of the Notice to that Party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

8.16 Subdivision Control Legislation

This Agreement and the Transaction are subject to compliance with the applicable subdivision control legislation to the extent applicable.

8.17 Solicitors as Agent and Tender

Any Notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement (including, without limitation, any agreement to amend this Agreement) may be given or delivered and accepted or received by the Purchaser's solicitors on behalf of the Purchaser and by the Vendor's solicitors on behalf of the Vendor and any tender of Closing Documents may be made upon the Vendor's solicitors and the Purchaser's solicitors, as the case may be.

8.18 No Registration of Agreement

The Purchaser covenants and agrees not to register or cause or permit to be registered this Agreement or any notice of this Agreement on title to any of the Subject Assets and that no reference to or notice of it or any caution, certificate of pending litigation or other similar court process in respect thereof shall be registered on title to the Subject Assets and/or any part thereof and the Purchaser shall be deemed to be in material default under this Agreement if it makes, or causes or permits, any registration to be made on title to the Subject Assets and/or any part thereof prior to the successful completion of the Transaction contemplated herein on the Closing Date. The Purchaser shall indemnify and save the Vendor harmless from and against any and all Claims whatsoever arising from or with respect to any such registration, including, all the legal fees, on a full indemnity basis, including those incurred by the Vendor with respect to obtaining the removal of such registration. This indemnity shall survive and not merge on the expiration, non-completion and/or termination of this Agreement for any reason.

8.19 Third Party Costs

Each of the Parties hereto shall be responsible for the costs of their own solicitors, respectively, in respect of the Transaction. The Purchaser shall be solely responsible for and shall pay, in addition to the Purchase Price, any land transfer taxes and transfer duties payable on the transfer of the Subject Assets, all registration taxes, fees and other costs payable in respect of registration of any documents to be registered by the Purchaser at Closing and all federal and provincial sales and other taxes payable upon or in connection with the conveyance or transfer of the Subject Assets, including, goods and services tax, harmonized sales tax or other similar value added or multi-staged tax imposed by any applicable provincial or territorial legislation, as the case may be, and any other provincial sales taxes. This Section 8.19 shall survive the Closing or the termination of this Agreement. The Purchaser acknowledges that, subject to the limitations contained in Section 2.2, the Vendor has provided to the Purchaser, solely as a courtesy an updated environmental report prepared by Pinchin in respect of the Lands and an updated building condition report prepared by Pinchin in respect of the Buildings and reliance letters for such reports, and that the costs and expenses incurred by the Vendor in obtaining such reports and reliance letters will be paid by the Purchaser to the Vendor on Closing and will be shown on the statement of adjustments as an

additional adjustment in favour of the Vendor. This Section 8.19 shall survive the Closing or the termination of this Agreement.

8.20 Interpretation

The parties hereto acknowledge and agree that: (a) each Party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to their revision, (b) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and (c) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favour of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

8.21 No Third Party Beneficiaries

Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person, other than the Parties hereto and the Monitor, and no Person, other than the Parties hereto and the Monitor, shall be entitled to rely on the provisions hereof in any Claim, proceeding, hearing or other forum. The Parties acknowledge and agree that the Monitor, acting in its capacity as the Monitor, will have no liability in connection with this Agreement whatsoever, in its capacity as Monitor, in its personal capacity or otherwise.

8.22 Enurement

This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. The Purchaser has and shall have no right to assign, convey and/or transfer its rights and/or obligations hereunder or to direct title to any of the Subject Assets to any other Person or to effect a "change of control" so as to indirectly effect the foregoing, without in each case first obtaining the prior written consent of the Vendor, which consent may be arbitrarily and unreasonably withheld by the Vendor. Notwithstanding the foregoing, the Purchaser shall have the right, upon 5 Business Days' prior written notice to the Vendor and before the Approval and Vesting Order is issued, but in Purchaser's sole discretion, to assign all of its rights and obligations pursuant to this Agreement, to another Person(s) which is/are controlled directly or indirectly by the Purchaser, provided in the case of such assignment the assignee executes and delivers an agreement in favour of the Vendor (in a form approved by Vendor acting reasonably) agreeing to be bound by all obligations of the Purchaser hereunder and the original Purchaser shall not be relieved of its obligations hereunder, until the occurrence of Closing.

8.23 Amendments

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Vendor and the Purchaser, except that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor or the Vendor's solicitors on one hand and the Purchaser or the Purchaser's solicitors on the other.

8.24 Counterparts and Delivery

All Parties agree that this Agreement and any amendments hereto (and any other agreements, Notices, or documents contemplated hereby) may be executed in counterpart and transmitted by facsimile or e-mail (PDF) and that the reproduction of signatures in counterpart by way of facsimile or e-mail (PDF) will be treated as though such reproduction were executed originals.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF the parties have executed this Agreement.

SEARS CANADA INC.

By: P. M. [Signature]
Name:
Title:

By: _____
Name:
Title:

GROUPE MACH INC.

By: [Signature]
Name: Vincent Chiara
Title: President

SCHEDULE "A"
LANDS

PIN 40520-0313 (LT)

PT LTS 12, 13 CON 2 THURLOW PTS 10-11 21R22046; S/T QR452004; BELLEVILLE;
COUNTY OF HASTINGS

("Firstly")

PIN 40520-0331 (LT)

PT LTS 11-13 CON 2 THURLOW PTS 1 TO 9 21R7327, PTS 1 TO 6 21R13826, EXCEPT
PTS 1-17 21R22046; EXCEPT COLLEGE ST; S/T QR452000, QR452002, QR452004,
QR91249, QR452005, QR534786, THD8364, THD9461, BELLEVILLE; COUNTY OF
HASTINGS

("Secondly")

SCHEDULE "B"
EXCLUDED ASSETS

1. All intellectual property or proprietary rights, whether registered or not, and any intangible property, owned, used or held by the Vendor.
2. All items, materials and signs bearing the logo, trade-mark, trade-name or business name or other mark or design of the Vendor.
3. All FF&E and Inventory which have been removed from the Property by or on behalf of the Vendor or its agents or their respective representatives prior to the Closing Date.
4. All insurance policies of the Vendor.
5. All rights and interests in trade-marks, trade-names, logos, commercial symbols and business names containing "Sears" or any other proprietary wording or intellectual property rights of the Vendor or any of its affiliates (including, the websites).
6. All rights of the Vendor against the Purchaser pursuant to this Agreement.
7. All (i) computers and related systems and information storage media and other IT equipment, (ii) video cameras and equipment, and (iii) point-of-sales systems and all appurtenances thereto.

SCHEDULE "C"
PURCHASE PRICE ALLOCATION

100% to Lands and Buildings.

**SCHEDULE “D”
FORM OF APPROVAL AND VESTING ORDER**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	●, THE ● TH
)	
JUSTICE HAINES)	DAY OF ●, 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
QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES
INC., INITIUM COMMERCE LABS INC., INITIUM TRADING
AND SOURCING CORP., SEARS FLOOR COVERING
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO
INC., 6988741 CANADA INC., 10011711 CANADA INC.,
1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

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

APPROVAL AND VESTING ORDER – ●

THIS MOTION, made by the Applicants, pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: the sale of lands and buildings located at ●, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and ● (the “**Purchaser**”) as purchaser dated ●, 2018 (the “**APA**”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of ● sworn on ●, 2018 including the exhibits thereto (the “**● Affidavit**”), and the ● Report of FTI Consulting

Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2018, filed:

SERVICE AND DEFINITIONS

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

APPROVAL OF THE APA

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the APA by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor) and the Purchaser may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the sale, assignment and transfer by Sears Canada of its right, title and interest in and to the Subject Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Subject Assets are as set out on Schedule “B” hereto.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other

financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act or any other personal property registry system; and
- (c) those Claims listed on Schedule “B” hereto;

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to Sears Canada’s right, title and interest in and to the Subject Assets are hereby expunged and discharged as against Sears Canada’s right, title and interest in and to the Subject Assets including the real or immoveable property identified in Schedule “B”.

5. THIS COURT ORDERS that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar is hereby directed to specifically discharge, cancel, delete and expunge from title to the applicable real or immovable property described in Schedule “B” all of the Encumbrances listed in Schedule “B” hereto.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds received on the Closing of the Transaction shall stand in the place and stead of the Subject Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the “**Net Proceeds**”) with the same priority as they had with respect to the Subject Assets immediately prior to the Closing of the Transaction, as if the Transaction had not been completed.

7. THIS COURT ORDERS that the Monitor shall be entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

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

SEALING

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

GENERAL PROVISIONS

10. THIS COURT ORDERS that, notwithstanding:

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

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

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

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

SCHEDULE “A”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

MONITOR’S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2018 (the “**Approval and Vesting Order**”) approving the Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and ● (the “**Purchaser**”) as purchaser dated ●, 2018 (the “**APA**”), a copy of which is attached as Exhibit ● to the Affidavit of ● dated ●, 2018.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the sale, assignment and transfer to the Purchaser of Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the APA), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the delivery by the Monitor to the Purchaser and Sears Canada of a certificate confirming that (i) the conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APA have been satisfied or waived by the Purchaser and Sears Canada, as applicable,

and (ii) the Purchase Price and any Taxes payable (each as defined in the APA) to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APA have been satisfied or waived by the Purchaser and Sears Canada, as applicable; and
2. The Purchase Price and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

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

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

Per: _____

Name:

Title:

SCHEDULE "B"

No .	Location / Address	Provi nce	Land Registr y Office	Legal Description	Encumbr ances to be Expunged/ Deleted
Sect	●	●	●	●	[NIL]

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SCHEDULE "C"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, collectively, (a) any Encumbrances resulting from the Purchaser's actions; and (b) the items identified in Schedule "H" of the APA.

SCHEDULE "E"
PURCHASER'S GST/HST CERTIFICATE, UNDERTAKING AND INDEMNITY

TO: Sears Canada Inc. (the "Vendor")

AND TO: Osler, Hoskin & Harcourt LLP, the Vendor's solicitors

RE: Agreement of Purchase and Sale dated ●, 2018, made between the Vendor, as Vendor, and ●, as Purchaser, (the "Purchaser"), as amended from time to time (the "Purchase Agreement"), for the purchase and sale of the Property and other Subject Assets (as such terms are defined in the Purchase Agreement)

In consideration of the completion of the transaction set out in the Agreement, the Purchaser hereby certifies and agrees as follows:

- a) the Subject Assets are being purchased by the Purchaser as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of or for another Person;
- b) the Purchaser is registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) (the "*Excise Tax Act*") for the collection and remittance of goods and services tax and harmonized sales tax ("GST/HST") and its registration number is ● and such registration is in good standing and has not been varied, cancelled or revoked;
- c) the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate governmental authority, all GST/HST which is payable under the *Excise Tax Act* in connection with the transfer of the Subject Assets, all in accordance with the *Excise Tax Act*;
- d) the Purchaser shall indemnify and save harmless the Vendor from and against any and all GST/HST, penalties, interest and/or other costs which may become payable by or be assessed against the Vendor as a result of any failure by the Vendor to collect and remit any GST/HST applicable on the sale and conveyance of the Subject Assets by the Vendor to the Purchaser or as a result of any inaccuracy, misstatement or misrepresentation by the Purchaser in this GST/HST Certificate, Undertaking and Indemnity or any failure by the Purchaser to comply with the provisions of this GST/HST Certificate, Undertaking and Indemnity; and
- e) this GST/HST Certificate, Undertaking and Indemnity shall survive and not merge upon closing of the above-noted transaction.

This GST/HST Certificate, Undertaking and Indemnity may be executed in counterpart and transmitted by facsimile or e-mail (PDF) and that the reproduction of signatures in counterpart by way of facsimile or e-mail (PDF) will be treated as though such reproduction were executed originals.

DATED _____, 2018.

[PURCHASER]

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

SCHEDULE "F"

**FORM OF ASSIGNMENT AND ASSUMPTION OF ASSUMED CONTRACTS AND
PERMITTED ENCUMBRANCES**

THIS AGREEMENT is made as of the _____ day of _____, 2018 (the "Effective Date")

B E T W E E N:

SEARS CANADA INC.

(the "Vendor")

- and -

●

(the "Purchaser")

RECITALS:

A. The Vendor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.

B. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2018 (the "**Purchase Agreement**"), whereby, among other things, the Vendor agreed to assign to the Purchaser all of the Vendor's right, title and interest in and to the Permitted Encumbrances.

C. The Purchase Agreement was approved by the Court pursuant to the Order dated ● (the "**Approval and Vesting Order**").

D. The Vendor and the Purchaser are entering into this Agreement to provide for the assignment and assumption of the Assumed Contracts and the Permitted Encumbrances by the Vendor to the Purchaser in accordance with the Purchase Agreement and the Approval and Vesting Order.

E. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Purchase Agreement.

THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

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ARTICLE 1 ASSIGNMENT

1.1 Assignment by Vendor

The Vendor assigns and transfers to the Purchaser, as of the Effective Date, all of the Vendor's obligations, rights, title and interest, both at law and at equity, in and to the Assumed Contracts and the Permitted Encumbrances and all related rights, benefits and advantages thereto (collectively, the "**Assigned Interest**").

1.2 Assumption by Purchaser

The Purchaser hereby accepts the assignment of the Assigned Interest provided for in this Agreement and assumes all of the Vendor's obligations, right, title and interest in and to the Assigned Interest from and after the Effective Date.

1.3 Indemnity

The Purchaser hereby covenants with the Vendor, as of and from the Effective Date to indemnify and save the Vendor harmless from any and all Claims arising from, relating to or in connection with any non-payment of amounts payable on the part of the Purchaser to be paid from time to time under the Assumed Contracts and the Permitted Encumbrances, or any non-observance or non-performance of any of the terms, agreements, covenants, obligations and conditions on the part of the Purchaser under the Assumed Contracts and the Permitted Encumbrances to be paid, observed or performed from time to time, in respect of the period on or after the Effective Date, or otherwise arising, incurred or accrued on or after the Effective Date whether in respect of the period before or after the Effective Date, including, without limitation, any default as a consequence of the closing of the Transaction contemplated by the Purchase Agreement.

1.4 Paramountcy

The rights and obligations of the parties respectively with respect to the Assumed Contracts and the Permitted Encumbrances and any other Subject Assets shall be governed by the Purchase Agreement. In the event of any conflict, inconsistency, ambiguity or difference between the provisions of this Agreement and of the Purchase Agreement, then the provisions of the Purchase Agreement shall govern and be paramount, and any such provision in this Agreement shall be deemed to be amended, to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

ARTICLE 2 GENERAL

2.1 Time of the Essence

Time shall be of the essence of this Agreement.

2.2 Enurement

This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs,

executors, personal legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

2.3 Entire Agreement

This Agreement and the Purchase Agreement constitute the entire agreement between the parties with respect to the assignment and assumption of the Assumed Contracts and the Permitted Encumbrances contemplated in the Purchase Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and the Purchase Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement and the Purchase Agreement.

2.4 Waiver

- (a) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver.
- (b) No failure on the part of the Vendor or the Purchaser to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

2.5 Further Assurances

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Subject Assets to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent.

2.6 Severability

If any provision of this Agreement shall be determined to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

2.7 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province in which the Property is located and the federal laws of Canada applicable therein.

2.8 CCAA Proceedings

Each party to this Agreement submits to the exclusive jurisdiction of the Court in any action, application, reference or other proceeding arising out of or related to this Agreement or the

Purchase Agreement and agrees that all claims in respect of any such actions, application, reference or other proceeding shall be heard and determined in the CCAA Proceedings before the Court.

2.9 English Language

The parties hereto have requested that this Agreement be drafted in English only. *Les parties aux présentes ont demandé à ce que la présente convention soit rédigée en anglais seulement.*

2.10 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

2.11 Headings

The division of this Agreement into Sections, the insertion of headings is for convenience of reference only and are not to be considered in, and shall not affect, the construction or interpretation of any provision of this Agreement.

2.12 References

Where in this Agreement reference is made to an article or section, the reference is to an article or section in this Agreement unless the context indicates the reference is to some other agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. The word “includes” or “including” shall mean “includes without limitation” or “including without limitation”, respectively. The word “or” is not exclusive.

2.13 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

2.14 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day must be made or taken by no later than 4:30 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

2.15 Notice

Any notice, consent or approval required or permitted to be given in connection with this Agreement (a “**Notice**”) shall be in writing and shall be sufficiently given if delivered or transmitted in accordance with the Purchase Agreement.

2.16 Counterparts and Delivery

All parties agree that this Agreement may be executed in counterpart and transmitted by facsimile or e-mail (PDF) and that the reproduction of signatures in counterpart by way of facsimile or e-mail (PDF) will be treated as though such reproduction were executed originals.

[Signature pages follow.]

IN WITNESS WHEREOF the Vendor has executed this Agreement.

SEARS CANADA INC.

By: _____
Name:
Title:
By: _____
Name:
Title:

IN WITNESS WHEREOF the Purchaser has executed this Agreement.

●

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

SCHEDULE "G"
FORM OF ASSIGNMENT AND ASSUMPTION OF REALTY TAX APPEALS

THIS AGREEMENT is made as of the _____ day of _____, 2018 (the "Effective Date")

B E T W E E N:

SEARS CANADA INC.

(the "Vendor")

- and -

●

(the "Purchaser")

RECITALS:

A. The Vendor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.

B. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2018 (the "Purchase Agreement"), whereby, among other things, the Vendor agreed to assign to the Purchaser all of the Vendor's right, title and interest in and to the Property.

C. The Purchase Agreement was approved by the Court pursuant to the Order dated ● (the "Approval and Vesting Order").

D. The Vendor and the Purchaser are entering into this Agreement to provide for the assignment of the Realty Tax Refunds by the Vendor to the Purchaser in accordance with the Purchase Agreement and the Approval and Vesting Order.

E. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Purchase Agreement.

THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 2 -

ARTICLE 1 ASSIGNMENT

1.1 Assignment and Assumption

Subject to the terms and conditions contained herein, effective as of the Effective Date, the Vendor hereby assigns, transfers and sets over unto the Purchaser all of the Vendor's right, title and interest, if any, in and to the Realty Tax Appeals and any Realty Tax Refunds which may arise from any of the Realty Tax Appeals for any period that is prior to the Closing Date.

1.2 Carriage of Realty Tax Appeals

From and after the Closing Date, the Purchaser may, at its sole cost and expense but without any obligation to do so, assume or retain the carriage of the Realty Tax Appeals and continue as the appellant in the Realty Tax Appeals.

1.3 Authorization and Direction

This Agreement shall serve as authorization and direction to the municipal and/or provincial taxing authority to pay to the Purchaser, from and after the Effective Date, the Realty Tax Refunds.

1.4 Paramountcy

The rights and obligations of the parties respectively with respect to the Realty Tax Appeals and Realty Tax Refunds shall be governed by the Purchase Agreement. In the event of any conflict, inconsistency, ambiguity or difference between the provisions of this Agreement and of the Purchase Agreement, then the provisions of the Purchase Agreement shall govern and be paramount, and any such provision in this Agreement shall be deemed to be amended, to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

ARTICLE 2 GENERAL

2.1 Time of the Essence

Time shall be of the essence of this Agreement.

2.2 Enurement

This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

2.3 Entire Agreement

This Agreement and the Purchase Agreement constitute the entire agreement between the parties with respect to the assignment and assumption of the Realty Tax Appeals contemplated in the Purchase Agreement and supersede all prior agreements, understandings, negotiations and

discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and the Purchase Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement and the Purchase Agreement.

2.4 Waiver

- (a) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver.
- (b) No failure on the part of the Vendor or the Purchaser to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

2.5 Further Assurances

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Subject Assets to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent.

2.6 Severability

If any provision of this Agreement shall be determined to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

2.7 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province in which the Property is located and the federal laws of Canada applicable therein.

2.8 CCAA Proceedings

Each party to this Agreement submits to the exclusive jurisdiction of the Court in any action, application, reference or other proceeding arising out of or related to this Agreement or the Purchase Agreement and agrees that all claims in respect of any such actions, application, reference or other proceeding shall be heard and determined in the CCAA Proceedings before the Court.

2.9 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

2.10 Headings

The division of this Agreement into Sections, the insertion of headings is for convenience of reference only and are not to be considered in, and shall not affect, the construction or interpretation of any provision of this Agreement.

2.11 References

Where in this Agreement reference is made to an article or section, the reference is to an article or section in this Agreement unless the context indicates the reference is to some other agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. The word “includes” or “including” shall mean “includes without limitation” or “including without limitation”, respectively. The word “or” is not exclusive.

2.12 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

2.13 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day must be made or taken by no later than 4:30 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

2.14 English Language

The parties hereto have requested that this Agreement be drafted in English only. *Les parties aux présentes ont demandé à ce que la présente convention soit rédigée en anglais seulement.*

2.15 Currency and Payment Obligations

Except as otherwise expressly provided in this Agreement all dollar amounts referred to in this Agreement are stated in Canadian Dollars.

2.16 Notice

Any notice, consent or approval required or permitted to be given in connection with this Agreement (a “Notice”) shall be in writing and shall be sufficiently given if delivered or transmitted in accordance with the Purchase Agreement.

2.17 Counterparts and Delivery

All parties agree that this Agreement may be executed in counterpart and transmitted by facsimile or e-mail (PDF) and that the reproduction of signatures in counterpart by way of facsimile or e-mail (PDF) will be treated as though such reproduction were executed originals.

[*Signature pages follow.*]

IN WITNESS WHEREOF the Vendor has executed this Agreement.

SEARS CANADA INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

IN WITNESS WHEREOF the Purchaser has executed this Agreement.

●

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

SCHEDULE "H"

PERMITTED ENCUMBRANCES

GENERAL ENCUMBRANCES

- (a) The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any royalties, mines and minerals in the Crown or in any other person.
- (b) Subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements with Governmental Authorities or private or public utilities affecting the development or use of any Property, in each of the foregoing cases, Disclosed to the Purchaser.
- (c) Any easements, servitudes, or rights-of-way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner, in each of the foregoing cases, Disclosed to the Purchaser.
- (d) Any unregistered easements, servitudes, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property, in each of the foregoing cases, Disclosed to the Purchaser.
- (e) Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable Law (which, if exercised shall be governed by the terms of this Agreement).
- (f) Encumbrances for real or immovable property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
- (g) Minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners.
- (h) The provisions of all applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property.
- (i) The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) (other than paragraphs 4, 6 and 11) or the *Land Titles Act* (Alberta).
- (j) Security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Property in the ordinary course of business, including, without limitation, the right of the municipality to

- 2 -

acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property.

- (k) Any minor title defects, irregularities, easements, servitudes, encroachments, rights of way or other discrepancies in title or possession relating to the Property, in each of the foregoing cases, Disclosed to the Purchaser.
- (l) Permits, licenses, agreements, servitudes, easements, (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, options, rights-of-way, public ways, rights in the nature of an easement or servitude and other similar rights in land granted to or reserved by other persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) (other than those described in paragraph (c) and (d) of this Schedule) which do not materially impair the current operation of the Property.
- (m) All Off-Title Compliance Matters.
- (n) Any reference plans or plans registered pursuant to the *Boundaries Act* (Ontario).
- (o) Any unregistered interests in the Property of which the Purchaser has actual notice.
- (p) All instruments which are registered against title to a Property: (i) otherwise agreed to by the Purchaser; or (ii) permitted by this Agreement, except for those Encumbrances to be vested off pursuant to the Approval and Vesting Order.

SPECIFIC ENCUMBRANCES

The characterization or descriptions of those items on the balance of this Schedule "H" is prepared for purposes of convenience only and for accurate reference, recourse should be had to the registration itself.

- (a) Instrument No. THD8364 registered December 18, 1933 being a Transfer Easement in favour of The Bell Telephone Company of Canada
(Affects Secondly only)
- (b) Instrument No. THD9461 registered October 1, 1940 being a Transfer Easement in favour of The Hydro Electric Power Commission of Ontario
(Affects Secondly only)
- (c) Instrument No. QR91249 registered April 8, 1965 being a Transfer Easement in favour of The Public Utilities Commission of the City of Belleville
(Affects Secondly only)

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- (d) Instrument No. QR96975 registered November 16, 1965 being a Bylaw
- (e) Instrument No. QR123504 registered December 13, 1968 being a Bylaw
- (f) Instrument No. QR185436 registered November 6, 1973 being a Notice of Claim
(Affects Secondly only)
- (g) Instrument No. QR332169 registered August 9, 1984 being an Agreement
- (h) Instrument No. QR421547 registered September 7, 1989 being a Notice of Agreement with City of Belleville
- (i) Instrument No. QR431512 registered February 21, 1990 being a Notice of Agreement with City of Belleville
- (j) Instrument No. QR452000 registered April 10, 1991 being a Transfer Easement in favour of The Public Utilities Commission of the City of Belleville
(Affects Secondly only)
- (k) Instrument No. QR452002 registered April 10, 1991 being a Transfer Easement in favour of The Corporation of the City of Belleville
(Affects Secondly only)
- (l) Instrument No. QR452004 registered April 10, 1991 being a Transfer Easement in favour of The Corporation of the City of Belleville
- (m) Instrument No. QR452005 registered April 10, 1991 being a Transfer Easement in favour of The Corporation of the City of Belleville
(Affects Secondly only)
- (n) Instrument No. QR534786 registered November 20, 1996 being a Transfer Easement in favour of Bell Canada
(Affects Secondly only)
- (o) Instrument No. QR548568 registered October 29, 1997 being a Notice of Airport Zoning Regulations
- (p) Instrument No. QR570341 registered July 15, 1999 being a Notice of Site Plan Agreement with The Corporation of the City of Belleville
- (q) Instrument No. QR576503 registered December 23, 1999 being a Notice of Claim
(Affects Secondly only)
- (r) Instrument No. QR576562 registered December 24, 1999 being a Notice of Claim
- (s) Instrument No. QR589210 registered December 5, 2000 being a Notice of Site Plan Agreement with The City of Belleville

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- (t) Instrument No. QR633384 registered October 27, 2003 being a Notice of Site Plan Agreement with The Corporation of the City of Belleville
- (u) Instrument No. HT11220 registered December 23, 2005 being an Application to Change Name-Owner from 169281 Canada Inc. to Sears Canada Inc.

SCHEDULE "I"
ASSUMED CONTRACTS

Nil.

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) TUESDAY, THE 4TH
)
JUSTICE HAINEY) DAY OF SEPTEMBER, 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
QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES
INC., INITIUM COMMERCE LABS INC., INITIUM TRADING
AND SOURCING CORP., SEARS FLOOR COVERING
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO
INC., 6988741 CANADA INC., 10011711 CANADA INC.,
1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

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

**APPROVAL AND VESTING ORDER
(Belleville DC)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors
Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*,
approving: the sale of lands and buildings located at 500 and 531 College Street East, Belleville,
Ontario, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement
of Purchase and Sale dated with effect as of August 17, 2018 (the “**APS**”) between Sears Canada
Inc. (“**Sears Canada**”), as vendor, and Groupe Mach Inc. (“**Groupe Mach**”), as such APS has
been assigned by Groupe Mach to Belleville Complex Inc. (the “**Purchaser**”) as purchaser in
accordance with the terms of the APS pursuant to an assignment and assumption of purchase
agreement dated as of August 24, 2018 (the “**Assignment Agreement**”), and certain related relief,
was heard this day at 330 University Avenue, Toronto, Ontario.

Draft

ON READING the Notice of Motion of the Applicants, the Affidavit of Philip Mohtadi affirmed on August 29, 2018 including the exhibits thereto (the “**Mohtadi Affidavit**”), and the ● Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2018, filed:

SERVICE AND DEFINITIONS

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

APPROVAL OF THE APS

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the APS and the Assignment Agreement by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor) and the Purchaser may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the sale, assignment and transfer by Sears Canada of its right, title and interest in and to the Subject Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APS and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Subject Assets are as set out on Schedule “B” hereto.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Purchaser, free and clear of and from any and all

security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act or any other personal property registry system; and
- (c) those Claims listed on Schedule “B” hereto;

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to Sears Canada’s right, title and interest in and to the Subject Assets are hereby expunged and discharged as against Sears Canada’s right, title and interest in and to the Subject Assets including the real or immoveable property identified in Schedule “B”.

Draft

5. THIS COURT ORDERS that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar is hereby directed to specifically discharge, cancel, delete and expunge from title to the applicable real or immovable property described in Schedule “B” all of the Encumbrances listed in Schedule “B” hereto.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds received on the Closing of the Transaction shall stand in the place and stead of the Subject Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the “**Net**

Proceeds”) with the same priority as they had with respect to the Subject Assets immediately prior to the Closing of the Transaction, as if the Transaction had not been completed.

7. THIS COURT ORDERS that the Monitor shall be entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

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

SEALING

9. THIS COURT ORDERS that Confidential Appendix “●” to the ● Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

GENERAL PROVISIONS

10. THIS COURT ORDERS that, notwithstanding:

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

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

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

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

Draft

SCHEDULE “A”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

MONITOR’S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2018 (the “**Approval and Vesting Order**”) approving the Agreement of Purchase and Sale dated with effect as of August 17, 2018 (the “**APS**”) between Sears Canada Inc. (“**Sears Canada**”), as vendor, and Groupe Mach Inc. (“**Groupe Mach**”), as such APS has been assigned by Groupe Mach to Belleville Complex Inc. (the “**Purchaser**”) as purchaser, in accordance with the terms of the APS pursuant to an assignment and assumption of purchase agreement dated as of August 24, 2018, a copy of such APS as attached as Exhibit “A” to the Affidavit of Philip Mohtadi dated August 29, 2018.

B. Pursuant to the Approval and Vesting Order the Court approved the APS and provided for the sale, assignment and transfer to the Purchaser of Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the APS), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the delivery by the Monitor to the Purchaser and Sears

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Canada of a certificate confirming that (i) the conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APS have been satisfied or waived by the Purchaser and Sears Canada, as applicable, and (ii) the Purchase Price and any Taxes payable (each as defined in the APS) to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

THE MONITOR CERTIFIES the following:

- 1. The conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APS have been satisfied or waived by the Purchaser and Sears Canada, as applicable; and
- 2. The Purchase Price and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

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

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

Per: _____
Name:
Title:

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SCHEDULE "B"

No .	Location / Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
1.	500 and 531 College Street East, Belleville	ON	LRO #21 Hastings	PIN 40520-0313 (LT) PT LTS 12, 13 CON 2 THURLOW PTS 10-11 21R22046; S/T QR452004; BELLEVILLE; COUNTY OF HASTINGS PIN 40520-0331 (LT) PT LTS 11-13 CON 2 THURLOW PTS 1 TO 9 21R7327, PTS 1 TO 6 21R13826, EXCEPT PTS 1-17 21R22046; EXCEPT COLLEGE ST; S/T QR452000, QR452002, QR452004, QR91249, QR452005, QR534786, THD8364, THD9461, BELLEVILLE; COUNTY OF HASTINGS	NIL

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SCHEDULE "C"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, collectively, (a) any Encumbrances resulting from the Purchaser's actions; and (b) the items identified in Schedule "H" of the APS.

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

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

MOTION RECORD OF THE APPLICANTS

(Motion for Approval of Agreement of Purchase and Sale
with Groupe Mach Inc. (Belleville Distribution Centre))

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