

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

APPLICANTS

MOTION RECORD OF THE APPLICANTS
(Motion for Approval of Further Amended Agreement of Purchase and Sale with
1562903 Ontario Limited
Garden City Mall Winnipeg (Store #1424)),
returnable October 4, 2017)

September 29, 2017

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TO: SERVICE LIST

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TAB 1

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

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

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CANADA INC.

Applicants

**NOTICE OF MOTION
(Motion for Approval of Further Amended Agreement of
Purchase and Sale with 1562903 Ontario Limited
Garden City Mall Winnipeg (Store #1424))**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on October 4, 2017 at 10:00 a.m., 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 Further Amended Agreement of Purchase and Sale (the “**APA**”) dated as of September 27, 2017 between Sears Canada Inc. (“**Sears Canada**”) and 1562903 Ontario Limited (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 (the “**SISP**”) by which BMO Nesbitt Burns Inc. (the “**Sale 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. On September 28, 2017, Sears Canada entered into the APA with the Purchaser to purchase Sears Canada’s lands and buildings located at the Garden City Shopping Centre, 2311 McPhillips Street, Winnipeg, Manitoba;
5. The consideration to be received in the transaction is fair and reasonable;

6. The process leading to the APA was fair and reasonable in the circumstances and was approved by the Monitor;
7. The APA is in the best interests of the creditors and other stakeholders of the Applicants;
8. The relief sought on this motion is supported by the Monitor and the Sale Advisor;
9. The debtor-in-possession credit agreements (“**DIP Agreements**”) require that the Net Proceeds of any Disposition (both as defined in the DIP Agreements) shall be applied promptly, and in any event no later than three business days after receipt thereof, to prepay the Obligations (as defined in the DIP Agreements) in the priority provided for in the DIP Agreements;

Sealing Order

10. The Confidential Appendix to the Third Report of the Monitor contains confidential and commercially sensitive information which, if made public, would be materially prejudicial to Sears Canada and detrimental to the SISP if the proposed transaction is not completed and the leases must be the subject of further marketing efforts;
11. There are no reasonable alternative measures to sealing this information from the public record;
12. The salutary effects of sealing this information outweigh the deleterious effects of doing so;
13. The provisions of the CCAA, including section 36, and the inherent and equitable jurisdiction of this Honourable Court;
14. 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
15. 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 Mark Caiger sworn September 28, 2017 and the exhibits attached thereto;
2. The Affidavit of Billy Wong sworn September 28, 2017 and the exhibits attached thereto;
3. The Third Report of the Monitor; and
4. Such further and other evidence as counsel may advise and this Court may permit.

September 29, 2017

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TO: SERVICE LIST

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

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

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

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

NOTICE OF MOTION
(Motion for Approval of Further Amended Agreement of
Purchase and Sale with 1562903 Ontario Limited
Garden City Mall Winnipeg (Store #1424))

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TAB 2

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
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APPLICANTS

**AFFIDAVIT OF BILLY WONG
(Sworn September 28, 2017)**

**(Motion for Approval of Further Amended Agreement of
Purchase and Sale with 1562903 Ontario Limited
Garden City Mall Winnipeg (Store #1424))**

I, Billy Wong, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Executive Vice-President and Chief Financial Officer of the Applicant
Sears Canada Inc. ("**Sears Canada**" or the "**Company**"). I am also a director of each of the other
Applicants. As such, I have personal knowledge of the matters deposed to herein. 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 consulted with members of the senior management
team of Sears Canada, legal, financial and other advisors of Sears Canada, and representatives of
FTI Consulting Canada Inc. (the "**Monitor**").

2. I swear 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 Further Amended Agreement of Purchase and Sale dated September 27, 2017 (the “**APA**”) and vesting in and to 1562903 Ontario Limited (the “**Purchaser**”), an affiliate of RioCan Real Estate Investment Trust, all right, title and interest of Sears Canada in and to the lands and buildings located at the Garden City Shopping Centre, 2311 McPhillips Street, Winnipeg, Manitoba (the “**Garden City Property**”), where Sears Canada currently operates an outlet store (#1424) (the “**Garden City Outlet Store**”).

3. Capitalized terms used but not otherwise defined in this Affidavit have the meaning given to them in the APA.

4. This Affidavit should be read in conjunction with the Affidavit of Mark Caiger sworn September 28, 2017 (the “**Caiger Affidavit**”), which describes in more detail the sales efforts undertaken by Sears Canada and BMO Nesbitt Burns Inc. (the “**Sale Advisor**”) pursuant to the Court-approved Sale and Investment Solicitation Process (the “**SISP**”), which efforts resulted in, among other things, the Purchaser’s bid and the APA which is the subject of this motion.

5. I understand from the Monitor that the consideration that Sears Canada will receive in this proposed transaction (the “**Purchase Price**”) is included in a Confidential Appendix to the Monitor’s Report that will be filed separately in connection with this motion. In the view of the Applicants and the Sale Advisor, the Purchase Price is confidential information and general disclosure of such information could be materially prejudicial to the Applicants in connection with the SISP generally and in connection with any further marketing of the Garden City Property in particular in the event the proposed transaction does not proceed to close as anticipated. As such,

the Purchase Price in the APA, 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 in respect of the transaction is fair and reasonable. It is greater than the consideration that was to be paid by the proposed purchaser in the Original Garden City APA (defined and described below). Moreover, the Applicants and the Sale Advisor believe that the process leading to the APA that is the subject of the present motion, as described in the Caiger 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 APA.

Background to the APA

8. As described in the Affidavit of Stephen Champion, affirmed August 11, 2017 (the “**Champion Affidavit**”, a copy of which is attached, without exhibits, as Exhibit “B”), during the pre-filing period, Sears Canada marketed the Garden City Property by contacting a number of buyers including national retailers, property developers and the landlord who owns the remainder of the Garden City Shopping Centre. It received several proposals in 2016 and 2017 (as set out in more detail in the Champion Affidavit).

9. Ultimately, Sears Canada and WCRE Investments Ltd. (“**WCRE**”) entered into an asset purchase agreement on April 12, 2017 (the “**Original Garden City APA**”) where WCRE

agreed to buy and Sears Canada agreed to sell the Garden City Property for \$5 million. Sears Canada subsequently filed for CCAA protection on June 22, 2017.

10. 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 (the "**Special Committee**").

11. Following the commencement of the SISP, Sears Canada decided to proceed with the Original APA for the reasons described in the Champion Affidavit. The Garden City Property was therefore removed from the SISP and Sears Canada and WCRE amended the terms of the Original Garden City APA by way of an amending agreement dated as of July 28, 2017 (the "**Amendment**", and together with the Original Garden City APA, the "**Garden City APA**") to account for the requirement to obtain an Approval and Vesting Order of the Court to effect the transfer of the Garden City Property.

12. On August 11, 2017, the Applicants served a motion returnable August 18, 2017 seeking, among other things, approval of the Garden City APA. On August 17, 2017, Sears Canada received an unsolicited competing offer for the Garden City Property from the Purchaser, which is the landlord of the remainder of the shopping centre in which the Garden City Outlet Store is located.

13. The motion was ultimately heard on August 22, 2017. The motion was opposed by, among others, the Purchaser. On August 23, 2017, the Court dismissed the motion seeking approval of the Garden City APA, with written reasons to be provided at a later date. The Garden City Property was therefore placed back into the SISP by the Applicants.

14. In accordance with the SISP, on August 31, 2017, the Purchaser submitted a bid in respect of the Garden City Property in which the Purchaser agreed to purchase and assume all right, title and interest of Sears Canada in and to the Garden City Property and related ancillary assets in accordance with the terms and conditions set out in the Purchaser's proposed form of asset purchase agreement.

15. Following receipt of the bid, the Special Committee directed Sears Canada and the Sale Advisor to engage in negotiations with the parties who submitted bids in respect of the Garden City Property in an effort to conclude a transaction. I am advised by Mr. Caiger and believe that negotiations ensued with the Purchaser in respect of financial and legal aspects of its bid, draft documents were exchanged by the parties, and follow up discussions were held as necessary. As a result of those negotiations, and after considering the Purchaser's offer and alternatives available, the Sale Advisor recommended to the Special Committee, and the Special Committee subsequently recommended to the Board, that Sears Canada enter into a transaction with the Purchaser in respect of the Garden City Property. After carefully considering the Purchaser's offer, including being satisfied that the Purchase Price being offered is fair and reasonable, the Board determined that the Purchaser's offer was in the best interests of the Applicants and their stakeholders.

16. In coming to this view, Sears Canada and the Special Committee, in consultation with the Sale Advisor, took into account the fact that the consideration offered by the Purchaser was the highest price offered for the Garden City Property. In particular, the Purchase Price exceeded all other bids, including the amount previously offered by the Purchaser on August 17, 2017.

The APA with the Purchaser

17. On September 28, 2017, Sears Canada and the Purchaser entered into the APA. The APA includes the following terms:

- a. Consideration in the amount of the Purchase Price, which will be adjusted for certain closing adjustments, including realty taxes;
- b. A Deposit of approximately nine percent of the Purchase Price that was previously provided by the Purchaser to the Monitor, in trust;
- c. The requirement that the transaction be completed on an “as is, where is” basis;
- d. There are no financing conditions to the APA; and
- e. Closing of the transaction will occur five business days after issuance of the Approval and Vesting Order, or such later date as Sears Canada (with the approval of the Monitor) may advise the Purchaser in writing, provided that the Closing Date shall be no later than October 16, 2017.

18. On July 18, 2017, the Court granted an Order approving the commencement of liquidation sales (the “**Liquidation Sale Approval Order**”) to be conducted by a contractual joint venture comprised of four liquidation firms (collectively, the “**Agent**”). The Garden City Outlet Store is one of the stores subject to the Consultant’s Sale (as defined in the Liquidation Sale Approval Order), and Sears Canada is currently in the process of conducting a liquidation sale of the Merchandise and FF&E (as defined in the Liquidation Sale Approval Order) at this store. As noted above, Sears Canada has the right pursuant to the APA to extend the Closing Date until no

later than October 16, 2017, which will allow sufficient time for the liquidation sale at this store to be completed.

Proposed Distribution of Proceeds of Transaction

19. The proposed Approval and Vesting Order provides that the Monitor will distribute any net proceeds from the transaction (“**Net Proceeds**”) to repay amounts owing under the DIP ABL Credit Agreement or the DIP Term Credit Agreement after filing the Monitor’s Certificate (a “**Distribution**”). Any Distribution will be made free and clear of all claims and encumbrances. If all amounts owing under the DIP Credit Agreements have been repaid, the Monitor will retain any Net Proceeds remaining on behalf of the Applicants pending further Order of the Court.

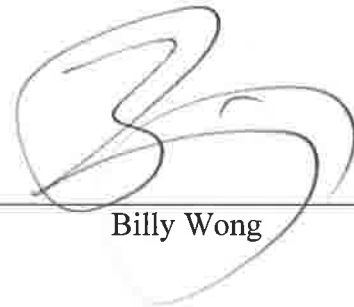
20. For all of the foregoing reasons, the Applicants believe that approval of the APA is in the best interests of the Applicants and their stakeholders.

SWORN BEFORE ME at the City of Toronto,
in the Province of Ontario, on September 28,
2017.




Commissioner for Taking Affidavits

Karen Saeber



Billy Wong

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT
OF BILLY WONG SWORN BEFORE ME ON
THIS 28th DAY OF SEPTEMBER, 2017.**



A commissioner for taking Affidavits

September 20, 2017

FURTHER AMENDED AGREEMENT OF PURCHASE AND SALE

SEARS CANADA INC.
as the Vendor

- and -

1562903 ONTARIO LIMITED
as the Purchaser

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THIS FURTHER AMENDED AGREEMENT OF PURCHASE AND SALE dated with effect as of September 27 2017

BETWEEN:

SEARS CANADA INC. (the "Vendor")

OF THE FIRST PART,

- and -

1562903 ONTARIO LIMITED (the "Purchaser")

OF THE SECOND PART,

RECITALS:

- A. The Vendor operates 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 all or substantially all of the Business, Assets and/or Leases (each as defined in the SISP) of the Sears Group.
- D. The Purchaser hereby submits this amended offer 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:

"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.

"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 DIP Lenders and the Monitor).

“**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).

“**Binding Bid Deadline**” has the meaning ascribed thereto in the SISP Order.

“**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 7.5(a).

“**Closing Date**” means the Business Day that is: (i) five (5) Business Days following the issuance of the Approval and Vesting Order or (ii) such later date as the Vendor (with the approval of the Monitor) may advise the Purchaser in writing prior to the date set out in (i), and provided that the Closing Date shall be no later than October 16, 2017.

“**Closing Documents**” means those documents and deliverables to be delivered in connection with the Closing as contemplated in this Agreement including those set out in Section 7.4.

“**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).

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

“**Encumbrance**” means any restrictive covenant, easement, servitude, right-of-way, encroachment, mortgage, charge, pledge, hypothec, prior claim, lien (statutory or otherwise), security interest, title retention agreement or arrangement, assignment, claim, prior claim, liability (direct, indirect, absolute or contingent), obligation, trust, deemed trust, right of retention, judgment, writ of seizure or execution, notice of sale, contractual right, option, right of first refusal, or any other right or interest, of any nature or any other arrangement or condition whether or not registered, published or filed, statutory or otherwise, secured or unsecured.

“**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 Inventory, FF&E and 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" includes all tools, signs, furniture, machinery, equipment, personal or moveable property, chattels, furnishings and fixtures including shelves, 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, and Trade Fixtures, 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" 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.

"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.

"Letters of Credit" means letters of credit, letters of guarantee, deposits and/or security deposits provided by or on behalf of the Vendor to any third party in respect of any of the Subject Assets.

"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 20, 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.

“**Permitted Encumbrances**” means, collectively: (a) any Encumbrances resulting from the Purchaser’s actions or omissions; 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, 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.

“**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; and (b) the Warranties, but excludes, the Vendor’s right, title and interest in and to each of the Excluded Assets and any and all other assets of the Vendor relating to the Property not included in the foregoing.

“**Successful Bid**” has the meaning ascribed thereto in the SISP Order.

“**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.

"**Trade Fixtures**" means the fixtures, shelves, counters, equipment, and other improvements used in connection with the operation of the Subject Assets, in each case to the extent owned, leased or licensed by the Vendor.

"**Transaction**" means collectively the transactions contemplated in this Agreement.

"**Vendor**" has the meaning ascribed thereto on page 1 hercof.

"**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 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 twenty (20) Business Days following the Binding Bid Deadline, provided that if this Offer is selected as a Successful Bid, this Offer will remain irrevocable until the closing of the Transaction.
- (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;

- (b) 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;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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

- (h) 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 Amended Purchase Price

The Purchase Price for the Subject Assets shall be [REDACTED] (the "Purchase Price") exclusive of all Taxes. 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"), previously delivered to the Monitor, 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; 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.
- (c) If the Transaction is not completed by any reason other than the default of the Vendor, 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 reason of the default of the Vendor, 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 7.7(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 3.2; 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

- (a) The Purchase Price shall be 100% allocated to the Property.

3.4 Letters of Credit

On the Closing Date, the Purchaser shall issue replacement letters of credit and/or security deposits for the Letters of Credit and shall use its best commercial efforts to cause the Letters of Credit to be released and returned to the Vendor without any further drawings thereunder. Provided that to the extent that the Purchaser is unable to cause all of the Letters of Credit to be released and returned to the Vendor, if and to the extent that the Vendor's Letters of Credit are

drawn upon from time to time, and the Purchaser shall reimburse the Vendor for any direct incremental costs incurred and indemnify and hold the Vendor harmless from and against all Claims, incurred or asserted, as a result of any Letters of Credit which are not so released and returned to the Vendor.

3.5 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. 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 retail 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 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. 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.

ARTICLE 5 INTERIM PERIOD

5.1 Interim Period

- (a) During the Interim Period the Vendor by itself or through its agent shall be entitled to remove and sell, or permit any other Persons to remove and sell, any and all Inventory and FF&E and any other Excluded Assets, from the Property in the manner deemed appropriate by the Vendor subject to this Agreement, the Initial Order, the SISP Order and any other Order of the Court. The Vendor shall not be obligated to remove any Inventory, FF&E or Excluded Assets or repair the Property. Any Inventory, FF&E or Excluded Assets left on the Property on the Closing Date shall become the property of the Purchaser at no cost, without a bill of sale, representation, warranty or other title documentation.
- (b) 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.
- (c) 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 reduction of the Purchase Price and the proceeds of any insurance available or actually paid or payable to the Vendor 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.

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 incorporated and is validly subsisting under the Laws of the jurisdiction of its incorporation, and has all requisite corporate 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);
- (c) the Purchaser is or will be prior to the Closing Date 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 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 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 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 or will be before the Closing Date a 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, which registration 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 the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation, the Purchaser will self-assess and remit 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 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");
- (d) the Purchaser shall make and file all required return(s) in accordance with the requirements of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation; and
- (e) 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* 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.

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

7.4 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) such 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) 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;
 - (iv) 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; and
 - (v) 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 that are not self-assessed;
 - (ii) the GST/HST Certificate; and
 - (iii) 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.

7.5 Closing Date

- (a) Subject to the SISP Order, 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.

7.6 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, 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.

7.7 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 7.7 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 7.7 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 7.7.
- (e) This Section 7.7 shall survive the Closing or termination of this Agreement.

7.8 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.

7.9 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.

7.10 Termination

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

- (a) by mutual consent of the Purchaser and the Vendor (in respect of which the Vendor shall require the consent of the DIP Lenders and 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 DIP Lenders and 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 DIP Lenders and the Monitor) if Closing has not occurred on or before the Closing Date, provided that the Vendor may not terminate this Agreement pursuant to this Section 7.10(e) if it has failed to perform any one or more of its 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 (subject to customary sealing provisions for CCAA transactions of this nature), the Monitor, and following the Binding Bid Deadline, to parties in interest to the CCAA Proceedings. The Purchaser may disclose this Agreement and such information in respect of the Transaction as may be required by applicable securities law.

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 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. 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 in which the Property is located 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.
290 Yonge Street, Suite 700
Toronto, ON M5B 2C3

Attn:
Email:

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

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:

1562903 Ontario Limited
c/o RioCan Real Estate Investment Trust
1 Eglinton Square
Toronto, Ontario
M1L 2K1

Attn: Jonathan Gitlin
email: gitlin@riocan.com

with a copy to:

WeirFoulds LLP
4100-66 Wellington Street West
P.O. Box 35 TD Bank Tower
Toronto, ON M5K 1B7

Attention: Edmond Lamek
email: elamек@weirfoulds.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, all fees and expenses in respect of all necessary applications pursuant to the *Compulsion Act*, the *Investment Canada Act*, 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. 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.

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. MONTGOMERY
Name: P. MONTGOMERY
Title: Secretary

By: _____
Name: _____
Title: _____

1569023 ONTARIO LIMITED

By: [Signature]
Name: Jonathan Gillin
Title: Authorized Signing Officer

By: [Signature]
Name: _____
Title: Harold Spring

**SCHEDULE "A"
LANDS**

Municipal Address:

2311 McPhillips Street, Winnipeg Manitoba

Legal Description:

**PARCEL "A" PLAN 9874 WLTO
EXC, ROADS, PLAN 11532, 15110 AND 39216 WLTO
IN RL 13 TO 15 PARISH OF KILDONAN**

Current Title Number: **2134980/1**

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;
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.

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.

JUSTICE HAINEY

)
)
)
)

●, THE ●TH

DAY OF ●, 2017

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

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

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

**APPROVAL AND VESTING ORDER – GARDEN CITY MALL WINNIPEG (STORE
#1424)**

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 2311 McPhillips Street, together with certain ancillary assets (the "Transaction") contemplated by a Further Amended Agreement of Purchase and Sale between Sears Canada Inc. ("Sears Canada"), as vendor, and 1562903 Ontario Limited (the "Purchaser") as purchaser dated ●, 2017 (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 Stephen Champion sworn on 11, 2017 including the exhibits thereto (the "Champion 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, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2017, filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the 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 after consultation with the DIP Lenders) 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, and the conveyance and sale, 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 DIP ABL Lenders' Charge, the DIP Term Lenders' Charge, the KERP Subordinated Charge and the Directors' Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the "**CCAA Charges**");
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Manitoba) or any other personal property registry system; and
- (c) those Claims listed on Schedule "C" hereto;

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

5. THIS COURT ORDERS that upon the registration in the Winnipeg Land Titles Office (the “WLTO”) of a certified copy of this Order together with the Monitor’s Certificate and a Request/Transmission in the form prescribed by *The Real Property Act* (Manitoba), C.C.S.M. c. R30, duly executed by the Purchaser or its solicitor, the District Registrar of the WLTO is hereby directed to: (i) cancel Title No. 2134980/1 and issue a new title in the name of the Purchaser as the owner of the subject real property identified in Schedule “B” hereto in fee simple, free and clear of all Encumbrances, save and except the Permitted Encumbrances listed in Schedule “D” hereto; and (ii) delete and expunge all Encumbrances listed in Schedule “C” hereto, notwithstanding that the time for appeal of this Approval and Vesting Order has not yet expired.

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 therefrom 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 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.

8. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:

- (a) the rights and obligations of Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “Agent”) under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017;
- (b) the rights and obligations of Sears Canada and the Agent under the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017; and
- (c) the terms of the Liquidation Sale Approval Order granted July 18, 2017 including the Sale Guidelines attached as Schedule “A” thereto.

SEALING

10. THIS COURT ORDERS that Confidential Appendix “X” 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 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" TO APPROVAL AND VESTING ORDER

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

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

MONITOR'S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2017 (the "Approval and Vesting Order") approving the Agreement of Purchase and Sale between Sears Canada Inc. ("Sears Canada"), as vendor, and 1562903 Ontario Limited (the "Purchaser") as purchaser dated ●, 2017 (the "APA"), a copy of which is attached as Exhibit ● to the Affidavit of ● dated ●, 2017.

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" TO APPROVAL AND VESTING ORDER

LANDS

Municipal Address:

2311 McPhillips Street, Winnipeg Manitoba

Legal Description:

**PARCEL "A" PLAN 9874 WLTO
EXC, ROADS, PLAN 11532, 15110 AND 39216 WLTO
IN RL 13 TO 15 PARISH OF KILDONAN**

Current Title Number: 2134980/1

**SCHEDULE "C" TO APPROVAL AND VESTING ORDER
ENCUMBRANCES TO BE DELETED AND EXPUNGED**

*[TO BE UPDATED PRIOR TO SERVICE OF MOTION FOR APPROVAL AND VESTING
ORDER.]*

**SCHEDULE "D" TO APPROVAL AND VESTING ORDER
PERMITTED ENCUMBRANCES**

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

SCHEDULE "E"- PURCHASER'S GST/HST CERTIFICATE

TO: Sears Canada Inc. (the "Vendor")
AND TO: Osler, Hoskin & Harcourt LLP, the Vendor's solicitors

RE: Agreement of Purchase and Sale dated as of XX, 2017, made between the Vendor, as Vendor, and 1562903 Ontario Limited, 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)

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 and its registration number is XXXX 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, or any failure by the Purchaser to comply with the provisions of this GST/HST Certificate; and
- e) this GST/HST Certificate, Undertaking and Indemnity shall survive and not merge upon closing of the above-noted transaction.

DATED _____, 2017.

1562903 Ontario Limited

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.
- (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.
- (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.
- (e) Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable Law.
- (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) Restrictive covenants, private deed restrictions and other similar land use control agreements.
- (h) 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.
- (i) The provisions of all applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property.
- (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 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 which would be disclosed by an up-to-date plan of survey, real property report, certificate of location, or technical description.
- (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 (d) and (e) of this Schedule) which do not materially impair the current use, operation or marketability of the Property.

- (m) Undetermined or inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Property or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Lien Act* (Ontario) or similar legislation, and in respect of any of the foregoing cases, the Vendor has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts.
- (n) All Off-Title Compliance Matters.

SPECIFIC ENCUMBRANCES

1. Caveat No. 213947/1 – an easement in favour of Manitoba Hydro Electric Board / Manitoba Telephone registered November 6, 1969;
2. Caveat No. 81-89998/1 – in favour of Northwest Freehold Ltd. registered December 9, 1981;
3. Caveat No. 81-94133/1 – in favour of Northwest Freehold Ltd. registered December 30, 1981;
4. Caveat No. 81-94132/1 – in favour of Northwest Freehold Ltd. registered December 30, 1984;
5. Assignment of Caveat No. 3039448/1 – in favour of 1562903 Ontario Limited registered by Grosvenor Canada Limited on September 21, 2004 with respect to Caveat No. 81-94133/1;
6. Assignment of Caveat No. 3039449/1 – in favour of CDPQ Mortgage Corporation registered by 1562903 Ontario Limited on September 21, 2004 with respect to Caveat No. 81-94133/1;
7. Assignment of Caveat No. 3039450/1 – in favour of 1562903 Ontario Limited registered by Grosvenor Canada Limited on September 21, 2004 with respect to Caveat No. 81-94132/1;
8. Assignment of Caveat No. 3039451/1 – in favour of CDPQ Mortgage Corporation registered by 1562903 Ontario Limited on September 21, 2004 with respect to Caveat No. 81-94132/1;
9. Assignment of Caveat No. 3039452/1 – in favour of 1562903 Ontario Limited registered by Grosvenor Canada Limited on September 21, 2004 with respect to Caveat No. 81-89998/1; and
10. Assignment of Caveat No. 3039453/1 – in favour of CDPQ Mortgage Corporation registered by 1562903 Ontario Limited on September 21, 2004 with respect to Caveat No. 81-89998/1.

**THIS IS EXHIBIT "B" TO THE AFFIDAVIT
OF BILLY WONG SWORN BEFORE ME ON
THIS 28th DAY OF SEPTEMBER, 2017.**

A handwritten signature in cursive script, appearing to read "Kun 8", written above a horizontal line.

A commissioner for taking Affidavits

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

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

APPLICANTS

AFFIDAVIT OF STEPHEN CHAMPION

(Affirmed August 11, 2017)

I, Stephen Champion, of the Village of Nobleton, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the Executive Vice-President, Real Estate and Strategic Opportunities of Sears Canada Inc. ("**Sears Canada**" or the "**Company**"), one of the Applicants in these proceedings. In this role, I am responsible for managing Sears Canada's real estate portfolio, including negotiating and completing numerous real estate transactions. As such, I have personal knowledge of the matters deposed to in this affidavit, except where stated to be on information and belief, in which case I believe the information to be true.
2. This affidavit is being affirmed in support of a motion seeking an Approval and Vesting Order, substantially in the form attached to the Motion Record, approving the APA (as

defined below) and vesting in and to the Purchaser (as defined below) all right, title and interest of Sears Canada in and to the Garden City Property (as defined below).

Background to the APA

3. The Applicants were granted protection from their creditors under the CCAA pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated on July 13, 2017 (the “**Initial Order**”). Further details regarding the background to these proceedings are set out in the Affidavit of Billy Wong sworn June 22, 2017 (the “**Initial Order Affidavit**”). Except where so stated, capitalized terms not otherwise defined herein have the meaning ascribed to them in the Initial Order Affidavit, the Initial Order or the APA.

4. As described in the Initial Order Affidavit, the Sears Canada Group owns a number of properties where it operates retail stores. One of these properties is the lands and buildings located at the Garden City Shopping Centre, 2311 McPhillips Street, Winnipeg, Manitoba (the “**Garden City Property**”), where Sears currently operates an Outlet store. Sears had previously operated a full-line department store in this location. A copy of the status of title for the Garden City Property from the Property Registry for the province of Manitoba is attached as Exhibit “A”.

5. Prior to the CCAA filing, the Garden City store was operating at a net loss of over \$1 million per year. As a result of the poor performance of the Garden City Property and the uncertainty of Sears Canada’s future viability in this location management decided to seek the sale of the property. Further, the Garden City store was listed as a store that the Applicants intend to close in the Initial Order Affidavit.

6. Over the course of several months, based on my market knowledge of potential purchasers, Sears Canada marketed the Garden City Property by contacting a number of buyers including national retailers, property developers and the landlord who owns the remainder of the Garden City Shopping Centre. The proposals received by Sears Canada were as follows:

- a. In November 2016, Sears Canada received a letter of interest relating to numerous properties from a party that was interested in, among other things, leasing the Garden City Property from Sears Canada. However, as part of the proposal, the interested party sought to lease the property (not to purchase) with the expectation that Sears Canada, as the landlord, would provide tenant allowances for redevelopment capital expenditures. As Sears Canada was unwilling to pay for capital expenditures associated with the Garden City Property, Sears Canada did not further pursue this indication of interest.
- b. On April 4, 2017, Sears Canada received a letter of interest with respect to the Garden City Property from WCRE Investments Ltd. (“**WCRE**” or the “**Purchaser**”), a company related to Hungerford Properties Inc. Sears Canada entered into negotiations with WCRE. On April 12, 2017, Sears Canada entered into an asset purchase agreement (the “**Original APA**”) with WCRE to purchase the Garden City Property on an “as is, where is” basis for a purchase price of \$5,000,000. Under the Original APA, there was no requirement that Sears Canada be a tenant of the property after the sale. Sears Canada understands that the Purchaser intends to redevelop the property. The Purchaser has been a highly motivated and cooperative party throughout the negotiations.

- c. Prior to the CCAA filing, Sears Canada received a non-binding proposal relating to a number of properties. This proposal specified a purchase price of \$6,750,000 for the Garden City Property, providing that Sears Canada would sell the property and would lease it back from the purchaser on the terms contained in the proposal. In the event that the parties elected not to sign the lease, the proposal provided that the purchase price for a standalone sale would be \$4,500,000. Sears Canada considered this non-binding proposal and determined that it would not be in Sears Canada's best interests to pursue a sale leaseback transaction, as this would require Sears Canada to spend the necessary capital expenditures to improve the property and the property had been slated for closure by the company. The potential purchase price for the standalone sale was lower than the firm and committed purchase price offered by the Purchaser in the Original APA, and was therefore not attractive.
- d. Since entering into the Original APA, nothing has arisen that would cause Sears Canada to move in a different direction with respect to the Garden City Property.

7. Sears Canada received a property value appraisal for the Garden City Property from a leading property valuation firm dated December 31, 2016. At the request of the Term Loan Lenders, a subsequent appraisal was prepared for the Garden City Property dated May 31, 2017. No potential purchaser has been identified who is prepared to purchase the property based on the assumptions contained in the appraisals. Copies of the appraisals will be attached as a Confidential Appendix to the Monitor's Report that will be filed in connection with this motion. The appraisals contain confidential information that could be materially prejudicial to the Sears Canada Entities in connection with the Sale Process generally and in connection with any further marketing of the Garden City Property in particular if the proposed transaction does not proceed to close as

anticipated. As such, Sears Canada is requesting that a sealing order be granted with respect to these documents.

The APA with the Purchaser

8. After canvassing the market and considering the proposals outlined above, Sears Canada decided to proceed with the Original APA with the Purchaser. The Original APA contained a Condition Waiver Date (as defined in the Original APA) of July 25, 2017 (5:00 pm CST). Therefore, although the transaction was entered into prior to the commencement of the CCAA proceedings, it had not yet closed when Sears Canada filed for CCAA protection.

9. As a result of the commencement of these CCAA proceedings, Sears Canada and the Purchaser agreed to amend the terms of the Original APA by way of an amending agreement to account for the requirement to obtain an Approval and Vesting Order of the Court to effect the transfer of the assets. Sears Canada and the Purchaser signed an amendment to purchase and sale agreement and waiver of conditions dated as of July 28, 2017 (the “**Amendment**”, and together with the Original APA, the “**APA**”).

10. A copy of the APA is attached to this affidavit as Exhibit “B”. The APA includes the following terms:

- a. A purchase price of \$5,000,000;
- b. An Initial Deposit of \$20,000 that was provided to the Purchaser’s solicitors in trust within two business days of the execution of the Original APA (this deposit was subsequently transferred, along with interest accrued thereon, to the Monitor in trust, within three business days of the execution of the Amendment);

- c. An Additional Deposit of \$380,000 that was provided to the Monitor in trust within two business days after the satisfaction or waiver of the Purchaser's conditions precedent;
- d. The requirement that the transaction be completed on an "as is, where is" basis;
- e. The requirement that the Purchaser's conditions precedent be waived or satisfied by July 26, 2017. The Purchaser's conditions precedent include Board approval, completion of due diligence following a review of the Delivery Materials, an environmental assessment, geotechnical review and land and building survey, and a financing commitment from a third party lender. The Amendment confirmed that the Purchaser had waived all conditions precedent set out in section 6.1 of the Original APA.

11. The only condition that remains to be satisfied before Closing is obtaining the Approval and Vesting Order. The Amendment provides that it is a condition precedent that the Approval and Vesting Order be issued and entered by August 25, 2017. Closing of the transaction will occur five business days after issuance of the Approval and Vesting Order, or such other date agreed to by the parties in writing, provided that Sears Canada will have the right (with the approval of the Monitor) to extend the Completion Date of the transaction until no later than October 16, 2017.

12. On July 13, 2017, the Court approved a Sale Process whereby BMO Nesbitt Burns Inc. (the "Sale 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 will seek bids and proposals for a broad range of transaction alternatives with respect to the Business, Property, Assets and/or Leases of the Applicants (each as defined in the Court-approved Sale Process). The Sale Process

was designed to be flexible in order to maximize the realization of the value of the Sears Canada Entities' assets for the benefit of their stakeholders. The Sears Canada Entities and the Sale Advisor contemplated that the process may result in multiple transactions in a variety of forms, and provided for the possibility that certain Leases and/or Assets may be withdrawn from the Sale Process in certain circumstances. To that end, the Sale Process includes a mechanism in paragraph 16 that allows Sears Canada to withdraw any Leases or Assets from the Sale Process:

Notwithstanding anything else contained herein, Sears Canada, in its reasonable business judgment and in consultation with the Sale Advisor, the Monitor and the DIP Lenders may, from time to time, withdraw any Leases or Assets from this Sale Process in accordance with the CCAA, and Sears Canada's rights under the Initial Order.

13. As the transaction with the Purchaser had not yet closed, the Applicants and the Sale Advisor considered whether to terminate the APA and include the Garden City Property in the broader Sale Process, having regard to a variety of factors, including but not limited to:

- a. the estimated market value of the Garden City Property based on the sales and marketing efforts undertaken to date;
- b. the identity and anticipated motivations of any third parties who may be interested in acquiring the Garden City Property or any part thereof;
- c. the form and amount of consideration being offered;
- d. the certainty of the transaction set out in the APA as opposed to the uncertain prospect of a better bid;
- e. the financial capability of the Purchaser to consummate the contemplated transaction;

- f. the timing of the contemplated transaction;
- g. certainty of closing, including the fact that the Purchaser waived its conditions precedent when it executed the Amendment, which included a financing condition; and
- h. the impact on the Sale Process of removing the Garden City Property from the process.

14. Sears Canada is of the view that the market for the Garden City Property was canvassed and that the current APA with the Purchaser represents fair market value for the property and is in the best interests of the estate and its stakeholders. I am advised by the Sale Advisor that removing the Garden City Property from the Sale Process and completing the APA will likely maximize the value to be achieved from the property and that the Sale Advisor supports its removal from the Sale Process. I understand that the Monitor and the DIP Lenders have been consulted and support this view. Accordingly, subject to the approval of the Court, Sears Canada proposes to withdraw the Garden City Property from the Sale Process in accordance with its rights under paragraph 16 of the Sale Process and under the Initial Order in order to sell it to the Purchaser in accordance with the APA.

15. On July 18, 2017, the Court granted an Order approving the commencement of liquidation sales (the “**Liquidation Sale Approval Order**”) to be conducted by a contractual joint venture comprised of four liquidation firms (collectively, the “**Agent**”). The Garden City Outlet store is one of the stores subject to the Consultant’s Sale (as defined in the Liquidation Sale Approval Order), and Sears Canada is currently in the process of conducting a liquidation sale of the Merchandise and FF&E (as defined in the Liquidation Sale Approval Order) at this store. As noted above, Sears Canada has the right pursuant to the APA to extend the Completion Date until

no later than October 16, 2017, which will allow sufficient time for the liquidation sale at this store to be completed.


16. I believe that Sears Canada and the Sale Advisor have analyzed the alternatives for maximizing value with respect to the Garden City Property. It is Sears Canada's view, with the support of the Monitor, the Sale Advisor and the DIP Lenders, that the sale of the property through the APA provides the best opportunity to maximize value for this property for the benefit of all stakeholders of the Applicants and that the consideration that Sears Canada will receive under the APA is fair and reasonable. As such, the Applicants are seeking an Approval and Vesting Order approving the APA and the vesting in and to the Purchaser all right, title and interest of Sears Canada in and to the Garden City Property and related ancillary assets.

AFFIRMED BEFORE ME at the City of
Toronto, in the Province of Ontario, on
August 11, 2017.



Commissioner for Taking Affidavits

Karin Sechar



Stephen Champion

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

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

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

Applicants

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF BILLY WONG

**(Motion for Approval of Further Amended Agreement
of Purchase and Sale with 1562903 Ontario Limited,
Garden City Mall Winnipeg (Store #1424))**

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TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEDNESDAY, THE 4TH
)
JUSTICE HAINEY) DAY OF OCTOBER, 2017
)

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

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

APPROVAL AND VESTING ORDER – GARDEN CITY MALL WINNIPEG (STORE
#1424)

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 2311 McPhillips Street, together with certain ancillary assets (the "Transaction") contemplated by a Further Amended Agreement of Purchase and Sale between Sears Canada Inc. ("Sears Canada"), as vendor, and 1562903 Ontario Limited (the "Purchaser") as purchaser dated September 27, 2017 (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 Billy Wong sworn on September 28, 2017 including the exhibits thereto, 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, the DIP ABL Agent, the DIP Term Agent

and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2017, filed:

SERVICE AND DEFINITIONS

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

2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the 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 after consultation with the DIP Lenders) 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, and the conveyance and sale, 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 DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Manitoba) or any other personal property registry system; and
- (c) those Claims listed on Schedule “C” hereto;

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

5. THIS COURT ORDERS that upon the registration in the Winnipeg Land Titles Office (the “**WLTO**”) of a certified copy of this Order together with the Monitor’s Certificate and a Request/Transmission in the form prescribed by *The Real Property Act* (Manitoba), C.C.S.M. c. R30, duly executed by the Purchaser or its solicitor, the District Registrar of the WLTO is hereby directed to: (i) cancel Title No. 2134980/1 and issue a new title in the name of the Purchaser as the owner of the subject real property identified in Schedule “B” hereto in fee simple, free and clear of all Encumbrances, save and except the Permitted Encumbrances listed in Schedule “D” hereto; and (ii) delete and expunge all Encumbrances listed in Schedule “C” hereto, notwithstanding that the time for appeal of this Approval and Vesting Order has not yet expired.

6. THIS COURT ORDERS 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, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Net Proceeds, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable (a "**Distribution**").

8. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

9. 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 distribution permitted by paragraph 7 above 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.

10. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

11. 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.

12. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:
- (a) the rights and obligations of Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “Agent”) under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017;
 - (b) the rights and obligations of Sears Canada and the Agent under the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017; and
 - (c) the terms of the Liquidation Sale Approval Order granted July 18, 2017 including the Sale Guidelines attached as Schedule “A” thereto.

SEALING

13. 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

14. 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.

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

16. 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" TO APPROVAL AND VESTING ORDER

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL
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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 ●, 2017 (the "**Approval and Vesting Order**") approving the Agreement of Purchase and Sale between Sears Canada Inc. ("**Sears Canada**"), as vendor, and 1562903 Ontario Limited (the "**Purchaser**") as purchaser dated September 27, 2017 (the "**APA**"), a copy of which is attached as Exhibit A to the Affidavit of Billy Wong dated September 28, 2017.

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" TO APPROVAL AND VESTING ORDER

LANDS

Municipal Address:

2311 McPhillips Street, Winnipeg Manitoba

Legal Description:

**PARCEL "A" PLAN 9874 WLTO
EXC, ROADS, PLAN 11532, 15110 AND 39216 WLTO
IN RL 13 TO 15 PARISH OF KILDONAN**

Current Title Number: **2134980/1**

**SCHEDULE "C" TO APPROVAL AND VESTING ORDER
ENCUMBRANCES TO BE DELETED AND EXPUNGED**

NIL

**SCHEDULE “D” TO APPROVAL AND VESTING ORDER
PERMITTED ENCUMBRANCES**

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

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

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

MOTION RECORD OF THE APPLICANTS
(Motion for Approval of Further Amended Agreement of
Purchase and Sale with 1562903 Ontario Limited
Garden City Mall Winnipeg (Store #1424)),
returnable October 4, 2017)

OSLER, HOSKIN & HARCOURT LLP

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