

**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 Lease Surrender Agreement with Fairmall Leaseholds Inc. and
Fairview Pointe-Claire Leaseholds Inc. Fairview Mall (Store #1322) and
Pointe Claire (Store #1305)
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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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CANADA INC.

Applicants

NOTICE OF MOTION

**(Motion for Approval of Lease Surrender Agreement with
Fairmall Leaseholds Inc. and Fairview Pointe-Claire Leaseholds Inc.
CF Fairview Pointe-Claire and CF Fairview Mall (Stores #1305 and 1322))**

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 Lease Surrender Agreement made as of September 27, 2017 between Sears Canada Inc. (“**Sears Canada**”) and Fairmall Leaseholds Inc. and Fairview Pointe-Claire Leaseholds Inc. (the “**Landlord Entities**”), and vesting Sears Canada’s right, title and interest in and to the Surrendered Assets (as defined in the Approval and Vesting Order) in the Landlord Entities; 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 a Lease Surrender Agreement in which Sears Canada has agreed to surrender its real property interest related to Sears Canada’s

lease in respect of the full-line stores located at CF Fairview Mall (North York, ON) and at CF Fairview Pointe Claire (Pointe Claire, QC);

5. The consideration to be received in the transaction is fair and reasonable;
6. The process leading to the Lease Surrender Agreement was fair and reasonable in the circumstances and was approved by the Monitor;
7. The Lease Surrender Agreement 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;
10. The proposed Approval and Vesting Order provides that an amount equal to the aggregate of amounts claimed by certain lien claimants will be set aside with the Monitor to address any dispute between the lien claimants and other parties regarding their entitlement to parts of the proceeds of the transaction;

Sealing Order

11. 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;
12. There are no reasonable alternative measures to sealing this information from the public record;
13. The salutary effects of sealing this information outweigh the deleterious effects of doing so;

14. The provisions of the CCAA, including section 36, and the inherent and equitable jurisdiction of this Honourable Court;
15. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
16. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Affidavit of 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 Affidavit of Billy Wong sworn June 22, 2017 and exhibit K attached thereto;
4. The Third Report of the Monitor; and
5. Such further and other evidence as counsel may advise and this Court may permit.

September 29, 2017

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Lawyers for the Applicants

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 Lease Surrender Agreement with Fairmall Leaseholds Inc. and Fairview Pointe-Claire Leaseholds Inc. CF Fairview Pointe-Claire and CF Fairview Mall (Stores #1305 and 1322))

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Lawyers for the Applicants

TAB 2

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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APPLICANTS

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

**(Motion for Approval of Lease Surrender Agreement with
Fairmall Leaseholds Inc. and Fairview Pointe-Claire Leaseholds Inc.
CF Fairview Pointe-Claire and CF Fairview Mall (Stores #1305 and 1322))**

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**"). 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 have 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 Lease Surrender Agreement made as of September 27, 2017 (the “**Lease Surrender Agreement**”) between Sears Canada, and Fairmall Leaseholds Inc. and Fairview Pointe-Claire Leaseholds Inc. (the “**Landlord Entities**”) relating to the leases held by Sears Canada (the “**Leases**”) for the Sears Canada full-line stores located at CF Fairview Mall in North York, Ontario (Store #1322) and at CF Fairview Pointe Claire in Pointe Claire, Quebec (Store #1305), the details of which are summarized in the following chart:

Property	City	Landlord	Size of Store (square feet)	Lease Expiration	Options Remaining, Outside Expiration
CF Fairview Mall	North York, ON	Fairmall Leaseholds Inc.	159,192	November 30, 2027	7 options, November 30, 2087
CF Fairview Pointe Claire	Pointe Claire, QC	Fairview Pointe-Claire Leaseholds Inc.	181,795	March 31, 2026	4 options, March 31, 2066

3. Any capitalized terms used but not otherwise defined in this Affidavit have the meaning given to them in the Lease Surrender Agreement.

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 Landlord Entities' bid and the Lease Surrender Agreement 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 "**Surrender Consideration**") and the allocation of the Surrender Consideration as between each of the Leases 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 Surrender Consideration 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 Leases in particular in the event the proposed transaction does not proceed to close as anticipated. As such, the Surrender Consideration and its allocation in the Lease Surrender Agreement, 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 Surrender Consideration to be paid in respect of the transaction is fair and reasonable. Moreover, the Applicants and the Sale Advisor believe that the process leading to the transaction, 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 Lease Surrender Agreement.

Background to the Landlord Entities' Bid

8. On July 13, 2017, the Court granted the Applicants' request for an order approving the SISP that would be conducted by Sears Canada's Sale Advisor under the supervision of the Monitor and a special committee of independent directors of the board of Sears Canada (the "**Special Committee**").

9. The purpose of the SISP was to seek out proposals for the acquisition of, or an investment in, Sears Canada's business, property and/or leases, and to implement one or a combination of such proposals with the objective of maximizing value for the benefit of Sears Canada's stakeholders.

10. The Caiger Affidavit provides details regarding the steps that were taken to market and solicit interest in Sears Canada's assets pursuant to the SISP, including the Leases that are subject to the Lease Surrender Agreement.

11. In accordance with the SISP, on August 18, 2017, the Landlord Entities submitted a bid in respect of the Leases in which the Landlord Entities offered to accept a surrender from Sears Canada of all of Sears Canada's right, title and interest in and to each of the Leases, the Real Property Interests and the Premises, and the termination of the Leases on the terms and conditions set out in the Landlord Entities' proposed form of lease surrender agreement.

12. Following the passing of the Binding Bid Deadline on August 31, 2017, the Special Committee directed Sears Canada and the Sale Advisor to engage in negotiations with the Landlord Entities in an effort to conclude a transaction. I am advised by Mr. Caiger and believe that negotiations ensued with the Landlord Entities in respect of financial and legal

aspects of their 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 Landlord Entities 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 Landlord Entities in respect of the Leases. After carefully considering the Landlord Entities' offer, including being satisfied that the Surrender Consideration being offered is fair and reasonable, the Board determined that the Landlord Entities' offer was in the best interests of the Applicants and their stakeholders.

13. In coming to this view, Sears Canada and the Special Committee, in consultation with the Sale Advisor, took into account the fact that the proposed transaction also eliminates certain potential claims into the Applicants' estate, including pre-filing claims into the estate from the Landlord Entities relating to the Leases and any claims the Landlord Entities might otherwise have arising from a potential disclaimer of the Leases.

The Lease Surrender Agreement

14. On September 28, 2017, Sears Canada and the Landlord Entities entered into the Lease Surrender Agreement. The Lease Surrender Agreement provides for, among other things, the following:

- (a) Sears Canada had the right to exclude the Lease in respect of the CF Fairview Mall property and the related Real Property Rights from the transaction with the Landlord Entities, with a resulting reduction in the Surrender Consideration payable by the Landlord Entities. For the reasons set out above, Sears Canada

did not exercise this right, and elected to proceed with the transaction in respect of both Leases.

- (b) The Landlord Entities will pay the Surrender Consideration, plus all applicable taxes, as aggregate consideration for the surrender of the Leases and the related Real Property Interests. The Surrender Consideration is subject to certain adjustments as set out in the Lease Surrender Agreement, and shall be reduced by the Lease Termination Fee payable by Sears Canada. The Lease Termination Fee represents compensation for loss of rent under the Surrendered Leases for the period from October 9, 2017 to October 31, 2017. If the Closing Date occurs later than October 9, 2017, the Lease Termination Fee will be adjusted to reflect the rent payable under the Leases for the period from the Closing Date to October 31, 2017.
- (c) Except for the adjustments set out in the Lease Surrender Agreement, the Surrender Consideration will be final and not subject to readjustment. This allows for final settlement of all of Sears Canada's obligations relating to the Leases, Real Property Interests and Premises, giving certainty of result.
- (d) The Landlord Entities will pay a Deposit equal to 10 percent of the Surrender Consideration for each Lease on the second Business Day following the Acceptance Date, to be held by the Monitor, as escrow agent. If the Transaction is completed, the Deposit will be paid to Sears Canada and applied to the Surrender Consideration. If the Transaction is not completed by reason of a breach by any of the Landlord Entities of any of its representations,

warranties or covenants or other default of the Landlord Entities, the full amount of the Deposit together with all accrued interest earned thereon shall become the property of Sears Canada to compensate it for the expenses incurred and the delay caused and opportunities foregone as a result of the failure of the Transaction to close. In addition, Sears Canada has all other rights and remedies against the Landlord Entities in event of such breach by the Landlord Entities. Otherwise, if the Transaction is terminated or not completed, the Monitor shall return the Deposit to Cadillac Fairview Corporation Limited on behalf of the Landlord Entities.

- (e) The Lease Surrender Agreement and the Transaction contemplated therein are subject to the Court issuing the proposed Approval and Vesting Order and the Monitor issuing the Monitor's Certificate. The Approval and Vesting Order must be issued by October 26, 2017, in order to permit the parties to close the Transaction by October 31, 2017. In addition, the Transaction is conditional upon Sears Canada having on or before the Closing Date vacated or discharged any Encumbrances listed in Schedule "M" of the Lease Transfer Agreement and any Encumbrances arising as a result of work completed by or on behalf of Sears Canada that have been registered on or prior to the Closing Date against any real or immovable property owned by one or more of the Landlord Entities and/or their respective Affiliates listed in Schedule "O" of the Lease Surrender Agreement (whether or not these properties are the subject of this Lease Surrender Agreement).

- (f) The Closing will take place on the date that is three Business Days following the issuance of the Approval and Vesting Order or at such other date as Sears Canada (with the consent of the DIP Lenders and the Monitor) may advise the Landlord Entities on not less than three Business Days' written notice, provided that the Closing Date shall be no later than October 31, 2017.

- (g) Subject to the terms of the Lease Surrender Agreement, the Landlord Entities are accepting the Surrendered Premises on an "as is, where is" basis.

- (h) On Closing, the Landlord Entities shall execute and deliver to Sears Canada a Release, on their own behalf and on behalf of certain related entities (collectively, the "**Releasers**"), whereby each of the Landlord Entities will fully and unconditionally release and forever discharge each of the Releasees (which include, among others, Sears Canada and the other Applicants) of and from any and all Claims which each of the Releasers ever had, now has or hereafter can, shall, or may have against any of the Releasees in any way relating to or arising from any of the Surrendered Leases, the Surrendered Premises or Properties of which the Surrendered Premises form a part. However, the release explicitly excludes any Claims relating to or arising from Sears Canada's obligations under the Lease Surrender Agreement that are expressly stated to survive Closing or any other Closing Documents. Sears Canada will also deliver a similar release releasing the Landlord Entities from the same claims and with the same exceptions.

- (i) During the Interim Period and the Post-Closing Access Period, which will last until December 15, 2017, Sears Canada or an agent authorized by a Liquidation Sale Approval Order will be permitted to conduct a Sale (as defined in the Liquidation Sale Order) and to sell any FF&E from the Premises during such a Sale. During this Post-Closing Access Period, Sears Canada will remain bound by the provisions of the Leases (except for provisions requiring the payment of basic rent, common area costs, property tax and additional rent thereunder), and Sears Canada will comply with the Liquidation Sale Approval Order and the relevant terms of the Lease Transfer Agreement.¹
- (j) Sears Canada and the Landlord Entities are required to use commercially reasonable efforts to seek as part of the Approval and Vesting Order a provision stating that the Landlord Entities are bound by and have the benefit of the Initial Order, including the stay of proceedings, until the earlier of (i) six months from the date of the Approval and Vesting Order, and (ii) the period during which any other owners, operators, managers or landlords of commercial shopping centres or other commercial properties in which there is a store, office or warehouse owned or operated by Sears Canada is bound by or obtains any benefit from the same.

It is my understanding that the Landlord Entities have requested this relief so that they can continue to have breathing space after the Closing of the transaction and preserve the *status quo*, in case their other tenants seek to

¹ The Applicants will be seeking Court approval for a proposed liquidation process in order to conduct a sale of the Applicants' Inventory and FF&E at the Premises.

exercise rights against the Landlord Entities that may arise or exist as a result of the Applicants' insolvency.

Construction Liens

15. A number of lien claimants have registered construction liens on title for the CF Fairview Mall property as of September 28, 2017, which are described below:

Lien Claimant	Instrument No. of Document Registering Lien on Title	Registration Date	Amount of Claim
APM Construction Services Inc.	AT4629454	July 17, 2017	\$1,589,520.93
Abbarch Architecture Inc.	AT4623149	July 10, 2017	\$106,032.03
Belmont Concrete Services Inc.	AT4644554	August 1, 2017	\$164,437.60
Sterling Concrete Sawing and Drilling Ltd.	AT4645580	August 2, 2017	\$94,183.80
TAG Electric Ltd.	AT4643425	August 1, 2017	\$197,845.21
Total			\$2,152,019.57

16. There are no construction liens registered on title for Pointe-Claire as of September 28, 2017.

17. The proposed Approval and Vesting Order will expunge the above-listed construction liens from title. The amount of the Surrender Consideration allocated to the Fairview Mall property is less than the aggregate of amounts claimed by the above-noted lien claimants. As such, the entirety of the Surrender Consideration that is allocated to the Fairview Mall property will be set aside with the Monitor to address any dispute between the lien

claimants and other parties regarding their entitlement to parts of the proceeds of the transaction (the “**Construction Lien Claim Reserve**”).

18. As noted above, the Lease Surrender Agreement requires that Sears Canada will vacate or expunge any Encumbrances arising as a result of work completed by or on behalf of Sears Canada that have been registered on or prior to the Closing Date against any real or immovable property owned by one or more of the Landlord Entities and/or their respective Affiliates, including liens filed against properties that are not the subject of this Lease Surrender Agreement. These liens as of September 28, 2017, are described below:

Property	Lien Claimant	Instrument No. of Document Registering Lien on Title	Registration Date	Amount of Claim
Fairway Park Mall (Kitchener, ON)	Traugott Building Contractors Inc.	WR1047201	July 12, 2017	\$2,226,971.77
Fairway Park Mall (Kitchener, ON)	Citymark Construction and Drywall Ltd.	WR1047113	July 11, 2017	\$151,742.05
Fairway Park Mall (Kitchener, ON)	Toronto Concrete Floors Ltd.	WR1047088	July 11, 2017	\$276,413.82
Fairway Park Mall (Kitchener, ON)	C3 Buildings and Infrastructure Inc.	WR1050296	July 24, 2017	\$81,300.11
Fairway Park Mall (Kitchener, ON)	Sean Teperman Consulting Corp.	WR1050899	July 26, 2017	\$199,295.34
Fairway Park Mall (Kitchener, ON)	Petroff Partnership Architects	WR1045740	July 6, 2017	\$130,637.74

Oshawa Centre (Oshawa, ON)	APM Construction Services Inc.	DR1617122	July 17, 2017	\$134,295.54
CF Lime Ridge (Hamilton, ON)	Citymark Construction and Drywall Ltd.	WE1218818	July 4, 2017	\$111,688.92
CF Lime Ridge (Hamilton, ON)	152610 Canada Inc.	WE1219488	July 6, 2017	\$1,059,648.80
CF Lime Ridge (Hamilton, ON)	Nelnor Construction, a division of Décor Craft Inc.	WE1220411	July 10, 2017	\$111,982.05
CF Lime Ridge (Hamilton, ON)	Hanson + Jung Architects Inc.	WE1226666	August 3, 2017	\$71,013.40
CF Lime Ridge (Hamilton, ON)	T. Lloyd Electric Ontario Ltd.	WE1226849	August 3, 2017	\$85,445.88
Mapleview Shopping Centre (Burlington, ON)	APM Construction Services Inc.	HR1472837	July 17, 2017	\$109,630.73
Mapleview Shopping Centre (Burlington, ON)	Hanson + Jung Architects Inc.	HR1478188	August 3, 2017	\$14,786.71
Total				\$4,764,852.86

19. Despite the requirement to vacate or expunge liens on title for properties not subject to the Lease Surrender Agreement, the Applicants are of the view that the Lease Surrender Agreement is fair and reasonable and in the best interest of the Applicants and their stakeholders. The total Surrender Consideration to be paid under the Lease Surrender Agreement and the related transaction for Sears Canada's leases at CF Lime Ridge and Polo Park, which are


the subject of a separate motion, is materially greater than the aggregate amount of liens to be vacated or expunged. The Monitor is aware of the requirement to vacate liens filed against properties that are not subject to the Lease Surrender Agreement and supports this transaction.

Proposed Distribution of Proceeds of Transaction


20. Subject to setting aside funds for the Construction Lien Claim Reserve, 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, then, subject to the Construction Lien Claim Reserve, the Monitor will retain any Net Proceeds remaining on behalf of the Applicants pending further Order of the Court.

21. For all of the foregoing reasons, the Applicants believe that approval of the Lease Surrender Agreement is in the best interests of the Applicants and their stakeholders.

SWORN BEFORE ME at the City of Toronto, on the 28th day of September, 2017.

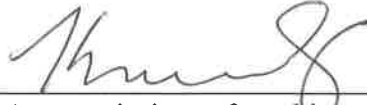


Commissioner for taking Affidavits
Charan Sachar



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

**LEASE SURRENDER AGREEMENT
CF FAIRVIEW MALL
CF FAIRVIEW POINTE CLAIRE**

SEARS CANADA INC.
as Tenant

- and -

**FAIRMALL LEASEHOLDS INC. and
FAIRVIEW POINTE-CLAIRE LEASEHOLDS INC.**
collectively, as Landlord Entities

made as of September 27, 2017

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THIS OFFER is made as of September 27, 2017

AMONG:

SEARS CANADA INC.

- and -

**FAIRMALL LEASEHOLDS INC. and
FAIRVIEW POINTE-CLAIRE LEASEHOLDS INC.**

RECITALS:

- A. The Landlord Entities are the head tenant and landlord of the Properties and the Tenant's Leases and lease the Premises at the Properties to the Tenant as more particularly set out in Schedules "A" and "B" hereto.
- B. On the Filing Date, the Tenant and certain of its Affiliates (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 Landlord Entities hereby offer to accept a surrender from the Tenant of all of the Tenant's right, title and interest in and to each of the Leases, the Real Property Interests and the Premises and the termination of the Leases 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 issuing 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 Tenant and the Landlord Entities (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:

“**Acceptance Date**” means the date the Tenant accepts this Offer in accordance with Section 2.1 by written notice to the Landlord Entities.

“**Affiliate**” of any Person means, at the time such determination is being made, any other entity controlling, controlled by or under common control with such first entity, in each case, whether directly or indirectly, and “control” and any derivation thereof means the possession, directly or indirectly, of the power to direct or significantly influence the management, policies, business or affairs of an entity whether through the ownership of voting securities or otherwise.

“**Agreement**” means: (i) until this Offer has been accepted by the Tenant in accordance with Section 2.1, this Offer; and (ii) after acceptance of this Offer by the Tenant in accordance with Section 2.1, the binding agreement of surrender from the Tenant of all of the Tenant’s right, title and interest in and to each of the Leases, the Real Property Interests and the Premises and the termination of the Leases on the terms and conditions set out herein constituted by such acceptance by the Tenant of this Offer, in each case, together with all schedules 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 Transaction, and surrendering to the Landlord Entities all of the Tenant’s right, title and interest in and to the Surrendered Leases and the Surrendered Real Property Interests free and clear of all Encumbrances other than the Permitted Encumbrances, which order shall be substantially in the form of Schedule “E”.

“**ARQST**” means *An Act respecting the Quebec Sales Tax*, CQLR, c. T-0.1, as amended, restated, supplemented or substituted from time to time.

“**Assignment of Realty Tax Appeals and Realty Tax Refunds**” means an assignment by the Tenant to the Landlord of the Tenant’s right, title and interest in the Realty Tax Appeals and the Realty Tax Refunds, in substantially the form attached as Schedule “I”.

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

“**Binding Bid Deadline**” means August 31, 2017.

“**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 and in Montreal, Quebec.

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

“**CCAA Proceedings**” means the proceedings commenced by the Sears Group in the Court with the Court File No. CV-17-11846-00CL.

“**CFCL**” means The Cadillac Fairview Corporation Limited and its successors and permitted assigns as manager of the Properties on behalf of the Landlord Entities.

“**Claims**” means 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 three (3) Business Days following the issuance of the Approval and Vesting Order or such later date as the Tenant (with the consent of the DIP Lenders and the Monitor) may advise the Landlord on not less than three (3) Business Days’ written notice; provided that the Closing Date shall be no later than the Outside Date.

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

“**Consideration**” has the meaning ascribed thereto in Section 3.1.

“**Contracts**” means, collectively, all of the Tenant’s contracts and agreements to enter into contracts with respect to the operation, fire protection, servicing, maintenance, repair and cleaning of the Premises, or the furnishing of supplies or services to the Premises, any property management or asset management contracts, any employment contracts and any insurance contracts entered into by the Tenant or any manager or agent on behalf of the Tenant, in each case with respect to the Premises or the Leases.

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

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

“**DIP Lenders**” has the meaning ascribed thereto in the SISP.

“**Encumbrance**” means any restriction, reservation, easement, servitude, right-of-way, encroachment, mortgage, charge, pledge, hypothec, prior claims, 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, and includes the Encumbrances set out in Schedule “M”.

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

“**Excluded Assets**” means those assets (in each case, as of the Closing Date) described in Schedule “C”.

“**Excluded Lease**” has the meaning ascribed thereto in Section 2.1(d).

“**FF&E**” means the fixtures, improvements, tools, signs, furniture, machinery, equipment, personal or moveable property, chattels, furnishings including shelves, counters, video cameras and equipment, security systems, point-of-sales systems and related appurtenances, telecommunications systems and related appurtenances, and trade fixtures located at the Premises, in each case, to the extent owned or leased by the Tenant or its subtenants or licensees, if any, as of the Closing Date excluding, in all cases, the Excluded Assets and the items listed in Schedule “G” hereto.

“**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**” means the tax payable under the *Excise Tax Act*.

“**GST/QST Amount**” has the meaning ascribed in Section 3.1.

“**HST**” means the harmonized sales tax payable under the *Excise Tax Act*.

“**Initial Order**” means the Initial Order granted by the Court on June 22, 2017 pursuant to which the Sears Group was granted certain relief.

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

“**Inventory**” means all inventory, stock, supplies and all other items to be sold from any of the Premises, excluding, for greater certainty, the items listed in Schedule “G”.

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

“**Landlord**” means, in respect of an individual Lease, the Landlord Entity that is the landlord under that Lease as shown in Schedule “A” or Schedule “B”.

“**Landlord Entities**” means, subject to Section 8.1, Fairmall Leaseholds Inc. and Fairview Pointe-Claire Leaseholds Inc.

“**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.

“**Leases**” means the leases and other agreements to occupy the Premises entered into by, or assigned in favour of the Tenant, as same have been amended, restated, renewed or supplemented from time to time, including but not limited to those documents listed on Schedule “B”. If the Premises comprise more than one leased location, the Leases related to any one leased location are referred to as a “Lease”.

“**Lease Amendment and Surrender Agreement**” means, with respect to each surrendered Lease, an amendment, termination and surrender of lease in substantially the form attached as Schedule “H”.

“**Lease Termination Fee**” has the meaning ascribed thereto in Section 4.5.

“**Liquidation Sale Approval Order**” means, subject to Section 5.1(d), the Order granted by the Court on July 18, 2017 in respect of Sales (as defined therein) and certain other matters related thereto.

“**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 delivered to the Parties by the Monitor certifying receipt of confirmation from CFCL on behalf of the Landlord Entities and the Tenant that all conditions of Closing in Sections 7.1, 7.2 and 7.3 of this Agreement have been satisfied or waived.

“**Non-Quebec Landlord Entity**” means the Landlord Entity that is the landlord under the Non-Quebec Surrendered Lease.

“**Non-Quebec Surrendered Lease**” means the Surrendered Lease which is in respect of the Surrendered Premises located outside the Province of Quebec.

“**Notice**” has the meaning ascribed thereto in Section 8.18.

“**Notice of Excluded Lease**” has the meaning ascribed thereto in Section 2.1(d).

“**Off-Title Compliance Matters**” means open building 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 related to any of the foregoing.

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

“**Offer Date**” means August 18, 2017.

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

“**Outside Date**” means October 31, 2017.

“**Permitted Encumbrances**” means, collectively: (a) any Encumbrances encumbering the freehold or ownership interest in the Properties or any other Landlord Entity’s interest in the Properties, but excludes any Encumbrances solely encumbering the Tenant’s leasehold interest (or the rights of the Tenant as lessee) in and to any Properties situated outside the Province of Quebec on which the Premises are located; (b) Encumbrances resulting from any Landlord Entity’s actions or omissions; and (c) the items identified in Schedule “J” hereto. In no event shall an Encumbrance arising as a result of work completed by or on behalf of the Tenant in respect of any Premises constitute a Permitted Encumbrance.

“**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.

“**Post-Closing Access Period**” has the meaning ascribed thereto in Section 5.1(c).

“**Premises**” means, collectively, the lands and premises which are leased to the Tenant pursuant to the Leases, as more particularly described in Schedule “A”.

“**Properties**” means collectively, the real or immovable property of which the Premises form part for the purposes of the Leases and includes the Landlord’s freehold or other ownership interest, ground leasehold interest or right of emphyteusis therein or rights as head landlord and tenant, and “**Property**” refers to any one of such Properties of which the Premises for one leased location form a part for the purposes of an individual Lease.

“**Property Claims**” means any and all Claims which the Landlord Entities ever had, now have or hereafter can, shall or may have against the Tenant in respect of the Surrendered Leases, the Surrendered Real Property Interests, the Surrendered Premises or the Properties of which any Surrendered Premises form a part.

“**QST**” means the tax payable under the ARQST.

“**Quebec Landlord Entity**” means the Landlord Entity that is the landlord under the Quebec Surrendered Lease,

“Quebec Surrendered Lease” means the Surrendered Lease which is in respect of the Surrendered Premises located in the Province of Quebec.

“Real Property Interests” means all properties, assets, interests and rights of the Tenant which are related to the operation at each of the Premises, which for greater certainty do not include Excluded Assets but include: (a) the Tenant’s right, title and interest, including its leasehold interest at common law and its rights as a lessee under civil law, in and to the Leases and the Premises, including, if any, the benefit of all servitudes, easements, restrictive covenants, access rights, licences to use any common areas or rooftop areas of the buildings or shopping centres of which the Premises form part, rights to renew or extend the term of any Lease, options and similar rights of first offer, first refusal or first opportunity or otherwise to lease or purchase (if any), parking rights and signage rights; (b) any FF&E which are left on the Premises on the Closing Date; and (c) the items listed on Schedule “G”.

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

“Realty Tax Refunds” means all credits, refunds and/or rebates which may arise from any of the Realty Tax Appeals.

“Release of Property Claims” means a release by the Landlord Entities of any Property Claims against the Tenant and all predecessors in interest to the Tenant under any of the Surrendered Leases, in substantially the form attached as Schedule “K”.

“Release of Tenant Claims” means a release by the Tenant of any Claims against any of the Landlord Entities in respect of any of the Surrendered Leases, in substantially the form attached as Schedule “L”.

“SISP” means the Sale and Investment Solicitation Process approved by the SISP Order.

“SISP Order” means the Order granted by the Court on the SISP Order Date, which, among other things, approved the SISP.

“SISP Order Date” means July 13, 2017.

“SOA” has the meaning ascribed thereto in Section 4.1(a).

“Surrender Consideration” has the meaning ascribed thereto in Section 3.1.

“Surrendered Assets” means, collectively, the Surrendered Leases and the Surrendered Real Property Interests.

“Surrendered Leases” means the Leases.

“Surrendered Premises” means the lands and premises which are leased by the Tenant pursuant to a Surrendered Lease.

“Surrendered Real Property Interests” means the Real Property Interests.

“**Tax Certificate, Undertaking and Indemnity**” means the certificate to be delivered by the Non-Quebec Landlord Entity in substantially the form set out in Schedule “F”.

“**Taxes**” means land transfer, mutation, sales, goods and services, harmonized sales, use, value added, excise, stamp or similar taxes 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, including, without limitation, QST and GST/HST.

“**Tenant**” means Sears Canada Inc.

“**Transaction**” means surrender from the Tenant of all of the Tenant’s right, title and interest in and to each of the Leases, the Real Property Interests and the Premises and the termination of the Leases and the transactions related thereto as contemplated in this Agreement.

ARTICLE 2 SURRENDER TRANSACTION

2.1 Offer to Surrender

- (a) The Landlord Entities hereby offer to accept a surrender from the Tenant of all of the Tenant’s right, title and interest in and to each of the Leases, the Real Property Interests and the Premises and the termination of the Leases in each case on the Closing Date and otherwise in accordance with the terms and conditions of this Agreement.
- (b) This Offer shall be irrevocable by the Landlord Entities and open for acceptance by the Tenant at any time on or before 5:00 p.m. on the date that is 20 Business Days following the Binding Bid Deadline (the “**Acceptance Deadline**”) unless this Agreement is terminated in accordance with its terms.
- (c) Subject to Section 2.1(d), if (but only if) this Offer is accepted by the Tenant on or before the Acceptance Deadline, there shall automatically be created, without any further action or documentation, a binding agreement of surrender from the Tenant of all of the Tenant’s right, title and interest in and to each of the Leases, the Real Property Interests and the Premises and the termination of the Leases on and subject to the terms and conditions of this Agreement. If this Offer is not accepted by the Tenant on or before the Acceptance Deadline, this Offer shall be null and void and of no further effect.
- (d) The Tenant shall have the right to exclude the Lease in respect of Property known as CF Fairview Mall and the Real Property Interests related thereto (the “**Excluded Lease**”) from the Transaction. Such right shall be exercised by the Tenant, in its sole and absolute discretion, by written notice (a “**Notice of Excluded Lease**”) delivered to the Landlord Entities concurrently with the acceptance by the Tenant of this Offer in accordance with Section 2.1(c). Upon such delivery on such time of a Notice of Excluded Lease:

- (i) this Agreement shall terminate automatically in respect of (and only in respect of) the Excluded Lease identified in such Notice of Excluded Lease and, upon such termination, the Landlord Entities and the Tenant shall be released from all obligations under this Agreement in respect of the Excluded Lease;
- (ii) the Balance payable on the Closing Date shall be reduced by the aggregate amount of the Consideration allocated to the Excluded Lease as set forth on Schedule "D"; and
- (iii) this Agreement shall continue in full force and effect with respect to the remaining Lease and the Real Property Interest related thereto related thereto, excluding the Excluded Lease.

For greater certainty, the Tenant shall be only be entitled to deliver the Notice of Excluded Lease concurrently with the acceptance by the Tenant of this Offer in accordance with Section 2.1(c), and if the Tenant accepts this Offer and fails to deliver a Notice of Excluded Lease at such time, its right to exclude the Lease in respect of the Property known as CF Fairview Mall and the Real Property Interest related thereto shall be null and void. Notwithstanding any provision of this Agreement, the foregoing right to exclude shall not apply to the Lease in respect of the Property known as CF Fairview Point Claire and/or the Real Property Interest related thereto and the delivery of any notice (including a Notice of Excluded Lease) purporting to exclude the Lease in respect of the Property known as CF Fairview Point Claire and/or the Real Property Interest related thereto shall be null and void.

2.2 As Is, Where Is

Notwithstanding the foregoing or anything else contained herein or elsewhere, each Landlord Entity hereby acknowledges and agrees, on behalf of itself, that:

- (a) except as expressly stated in this Agreement including the Tenant's covenant to leave the Premises in a broom-swept condition on the Closing Date as set out in Section 5.1(b), the Landlord Entities are accepting the surrender of the Surrendered Leases and the Surrendered Real Property Interests and accepting the Surrendered Premises on an "as is, where is" basis, without any written or oral statements, representations, warranties, promises or guarantees of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise) as to the state of title thereto, the state of any Encumbrances, the condition of any of the Surrendered Premises and the Surrendered Real Property Interests and the status of any of the Leases or the Encumbrances, the existence of any default on the part of the Tenant, the physical, environmental or other condition of, in, on, under or in the vicinity of any of the Surrendered Premises, the existence of any Encumbrance and/or Off-Title Compliance Matters affecting the Surrendered Leases, the Surrendered Real Property Interests, the Surrendered Premises, or the Permitted Encumbrances, the structural integrity or

any other aspect of the physical condition of the Surrendered Premises, the conformity of the Surrendered Premises 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 Surrendered Premises, the sufficiency of any drainage, the availability of public utilities, access, parking and/or services for the Surrendered Premises, the fitness or suitability of the Surrendered Premises for occupancy or any intended use (including matters relating to health and safety), the potential for further development of the Surrendered Premises, the existence of land use, zoning or building entitlements affecting the Surrendered Premises, the presence, release or use of wastes of any nature, hazardous materials, pollutants, contaminants or other regulated substances in, under, on or about the Surrendered Premises 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) and any other similar legislation of any other jurisdiction will not apply and are hereby waived by the Landlord and the Parties agree to exclude, to the extent applicable, the effect of the legal warranty provided for by Article 1716 of the *Civil Code of Québec* and that the Landlord is accepting a surrender of the Surrendered Real Property Interests at its own risk within the meaning of Article 1733 of the *Civil Code of Québec*;

- (b) it is expressly acknowledged by the Landlord Entities that, except as expressly stated in this Agreement, 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 Tenant and/or the Monitor and/or their respective legal counsel, the Financial Advisor or other advisors or other representatives as to the accuracy, currency or completeness of any disclosure in respect of any of the Real Property Interests, the Premises, the Leases or any Encumbrances made to the Landlord Entities, 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 Landlord Entities hereby unconditionally and irrevocably waive any and all actual or potential rights or Claims the Landlord Entities might have against the Tenant pursuant to any warranty, legal or conventional, express or implied, of any kind or type relating to the Surrendered Leases, the Surrendered Real Property Interests, the Surrendered Premises or any other aspect of the Transaction, save and except the representations, warranties and covenants of the Tenant expressly stated in this Agreement. 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 Landlord Entities were given the opportunity to conduct their own independent review, inspection, diligence and investigations and to form their own independent opinions and conclusions in respect of the Leases, the Real Property Interests, and the Premises prior to entering into this Agreement. The Landlord Entities' decision to make this Offer and enter into this Agreement was made of their own accord without reference to or reliance upon any disclosure made by the Tenant and/or the Monitor and/or their respective legal counsel, the Financial Advisor or other advisors or representatives; and
- (e) during the Interim Period and the Post-Closing Access Period in accordance with the Liquidation Sale Approval Order and the provisions of Section 5.1, the Tenant shall be entitled to, but is not obligated to, remove any and all Inventory, FF&E and any other Excluded Assets from all or any of the Premises;
- (f) except as provided in the Liquidation Sale Approval Order and except as expressly stated in this Agreement, including Sections 5.1(b) and 5.1(e)(ii), the Tenant 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 Landlord Entities to make, at their sole cost, any repairs, replacements, renovations, alterations, improvements and upgrades in or to the Property following Closing as may be required by the Landlord Entities to make the Property suitable for its purposes;
- (g) the Leases, the Real Property Interests, or the Premises may be subject to certain Off-Title Compliance Matters, municipal requirements, including building or zoning by-laws and regulations, servitudes, easements for hydro, gas, telephone affecting same, and like services to the Premises, and restrictions and covenants affecting the Premises, including but not limited to the Permitted Encumbrances. Without limiting the foregoing, the Tenant shall not be responsible for rectification of any matters disclosed by any Governmental Authority or quasi-governmental authority having jurisdiction, and the Landlord Entities shall accept the Property subject to such matters.

The Tenant has no and shall have no obligations or responsibility to the Landlord after Closing with respect to any matter relating to the Surrendered Leases, the Surrendered Premises or the Properties of which any Surrendered Premises form a part or the condition thereof save and only to the extent expressly provided in this Agreement.

The provisions of this Section 2.2 shall survive and shall not merge on Closing.

ARTICLE 3 CONSIDERATION

3.1 Surrender Consideration

The aggregate consideration (the "**Consideration**") payable by the Landlord Entities to the Tenant for the surrender of all of the Leases and related Real Property Interests, exclusive of all

Taxes, shall be \$ [REDACTED]. In addition, in respect of the portion of the Consideration allocated to the Quebec Surrendered Lease, the Quebec Landlord Entity shall pay to the Tenant GST and QST applicable thereto, as provided in Section 6.5(d) (the “**GST/QST Amount**”). The actual amount of the Consideration payable by the Landlord Entities to the Tenant on Closing shall be the aggregate of the amounts allocated to each Surrendered Lease as set forth on Schedule “D”, exclusive of all Taxes (the “**Surrender Consideration**”). Subject only to adjustment in accordance with this Agreement, the Surrender Consideration shall be paid to the Tenant as follows:

- (a) as to an amount equal to 10% of the Surrender Consideration for each Surrendered Lease as set forth on Schedule “D” (the “**Deposit**”), by wire transfer of immediately available funds from any of the five largest (by asset size) Canadian Schedule I chartered banks pursuant to the Large Value Transfer System as administered by the Canadian Payments Association payable to or to the order of the Monitor, in trust, on or prior to 3:00 p.m. (Toronto time) on the second Business Day following the Acceptance Date, to be held in trust by the Monitor as a deposit and invested in accordance with the provisions of Section 3.2 below pending the completion or other termination of this Agreement;
- (b) by deducting from the Surrender Consideration payable by the Landlord Entities for each Surrendered Lease, the Lease Termination Fee payable by the Tenant pursuant to Section 4.5 for such Surrendered Lease as set forth on Schedule “D”; and
- (c) as to the balance of the Surrender Consideration, plus or minus the net amount of adjustments to be made in accordance with this Agreement (the “**Balance**”), by wire transfer of immediately available funds from any of the five largest (by asset size) Schedule I Canadian chartered banks pursuant to the Large Value Transfer System as administered by the Canadian Payments Association payable to the Monitor in trust or as it may direct in writing on the Closing Date.

In respect of any Consideration that is subject to GST/HST and/or QST, the Tenant shall issue to the applicable Landlord Entity an invoice containing the information as prescribed in the *Input Tax Credit (GST/HST) Regulations* and the ARQST equivalent.

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 with or issued by one of the five largest (by asset size) Canadian Schedule I Canadian chartered banks 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 in good faith.

- (b) If the Transaction is completed, the Deposit shall be paid to the Tenant forthwith on Closing and applied to the Surrender Consideration. 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 CFCL on behalf of the Landlord Entities within five Business Days of Closing.
- (c) If the Transaction is terminated or not completed by reason of a breach by any of the Landlord Entities of its representations, warranties or covenants or other default of any of the Landlord Entities under this Agreement, the full amount of the Deposit, together with all accrued interest earned thereon, if any, shall become the absolute property of, and may be retained by, the Tenant as liquidated damages (and not as a penalty) to compensate the Tenant 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 Tenant to receive and retain the Deposit together with all accrued interest earned thereon, if any, in such circumstances shall not limit the Tenant's right to exercise any other rights or remedies which the Tenant may have against the Landlord Entities in respect of such breach or default. If the Transaction is terminated or not completed for any other reason, the Deposit together with all interest accrued thereon, if any, shall be thereupon returned to CFCL on behalf of the Landlord Entities. The provisions of this Section 3.2(c) shall survive the termination of this Agreement or if the Transaction is not successfully completed for any reason.
- (d) 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 this Section 3.2 as evidenced by a joint direction in writing executed by the Tenant and CFCL on behalf of the Landlord Entities (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.

- (e) The Monitor shall not, under any circumstances, be required to verify or determine the validity of the Joint Direction 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 in good faith.
- (f) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Tenant and the Landlord Entities 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 Sections 7.6 and 7.7; and (ii) the Monitor is acting solely in its capacity as the Court-appointed monitor of the Tenant 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.
- (g) 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.
- (h) The provisions of this Section 3.2 shall survive the termination of this Agreement or non-completion of the Transaction.

3.3 Surrender Consideration Allocation

- (a) The Tenant and the Landlord Entities agree that the Surrender Consideration is allocated among each of the Leases as set out on Schedule "D" and the Tenant and the Landlord Entities shall adopt such allocation for the purposes of all tax returns and filings made by them or on their behalf.
- (b) On or prior to the Closing Date, the Landlord Entities and the Tenant, each acting reasonably, shall attempt to agree as to the allocation of the Surrender Consideration as between the Surrendered Real Property Interests for each Surrendered Lease. If the Landlord Entities and the Tenant agree on such allocations on or prior to the Closing Date, they shall adopt such allocations for the purposes of all tax returns, elections and filings respectively made by them or on their behalf; provided that if the Parties cannot agree upon such an allocation, on or prior to the Closing Date, the Agreement shall still constitute a binding agreement and the Transaction shall proceed and each Party shall be entitled to use its own allocation.
- (c) Notwithstanding the allocation of the Surrender Consideration referred to in Section 3.3(a), or any other provision of this Agreement, it is agreed that the Tenant's agreement to surrender to the Landlord Entities, and the Landlord Entities' agreement to accept a surrender from the Tenant, of the Leases and the related Real Property Interests extends to the Leases and the related Real Property Interests in their entirety, and does not constitute separate or severable agreements

of surrender in respect of discrete or separate Leases and/or Real Property Interests independently of other Leases and/or Real Property Interests.

(d) This Section 3.3 shall survive and shall not merge on Closing.

3.4 Surrender of Leases

The Tenant and the Landlord Entities shall execute and deliver on the Closing Date a Lease Amendment and Surrender Agreement for each Surrendered Lease and the Real Property Interests under each such Surrendered Lease, effective as of 11:59 p.m. on the day immediately preceding the Closing Date. For greater certainty, no surrender of a Surrendered Lease shall take effect unless and until Closing occurs.

3.5 No Assumed Liabilities

The Landlord Entities shall not assume any obligations or liabilities of the Tenant to third parties with respect to the Surrendered Premises or the Surrendered Real Property Interests, whether in respect of the period on, before or after the Closing Date, or otherwise arising, incurred or accrued on or after the Closing Date whether in respect of the period on, before or after the Closing Date. The foregoing shall be further incorporated in each Lease Amendment and Surrender Agreement. The provisions of this Section 3.5 shall survive and shall not merge upon Closing.

3.6 Property Claims

On Closing, the Landlord Entities shall execute and deliver to the Tenant the Release of Property Claims.

3.7 Tenant Claims

On Closing, the Tenant shall execute and deliver to the Landlord Entities the Release of Tenant Claims.

3.8 Trade-Marks

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Landlord Entities acknowledge and agree 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 Landlord Entities pursuant to the Transaction; and (b) all right, title and interest of the Tenant 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 Transaction. This Section 3.8 shall survive and shall not merge on Closing.

**ARTICLE 4
ADJUSTMENTS**

4.1 Statement of Adjustments and Absence of Post-Closing Adjustments

- (a) The Landlord Entities have prepared and deliver herewith to the Tenant a statement of adjustments on a leased location by leased location basis in accordance with the Leases and based on a Closing Date of October 9, 2017, which statement is attached as Schedule “N” (the “SOA”), provided that the Landlord Entities and the Tenant shall work in good faith and co-operatively to determine the amount of realty taxes to be adjusted for on the Closing Date. The Landlord Entities and the Tenant shall co-operate and provide any supporting documentation, particulars and information necessary for verifying the SOA. If the Closing Date occurs on a date other than October 9, 2017, the Landlord Entities shall prepare and deliver to the Tenant a revised SOA with supporting documentation for Tenant’s review and approval, acting reasonably, no later than two Business Days prior to the Closing Date.
- (b) 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 CFCL, on behalf of the Landlord Entities, and the Tenant, 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.
- (c) There shall be no further adjustments or readjustments after Closing of any amounts adjusted or intended to be adjusted on the SOA pursuant to this Agreement, subject to Section 4.1(a) and the amounts set out on the SOA shall be final.
- (d) This Section 4.1 shall survive and shall not merge on Closing.

4.2 Items of Adjustments Under the Surrendered Leases

- (a) On Closing, the Tenant and the Landlord Entities shall adjust the rent (including basic or minimum rent and additional rent) and other amounts payable under each of the Surrendered Leases for any period prior to the Closing Date as well as the month in which the Closing Date occurs, with the Closing Date itself to be allocated to the Landlord Entities, as provided for in the SOA. The Tenant shall be responsible for all third party expenses incurred by or on behalf of the Tenant relating to the Surrendered Premises for the period ending on the day before the Closing Date (other than those that are the responsibility of a Landlord Entity pursuant to the Leases), and the Landlord Entities shall be responsible for all expenses relating to the Properties wherein the Surrendered Premises are situated for the period from and including the Closing Date.

- (b) Without limiting the generality of the foregoing, the Tenant and the Landlord Entities shall as of the Closing Date adjust between themselves the following amounts in respect of each of the Surrendered Leases:
 - (i) basic or minimum rent;
 - (ii) reconciliations of CAM, operating expenses, realty taxes and other additional rent payable by the Tenant to the Landlord Entities pursuant to the Surrendered Leases, including any utilities invoiced by the Landlord Entities to or paid by the Tenant to the Landlord Entities as part of additional rent for 2016 and the stub period in 2017 up to but excluding the Closing Date, based on actual or estimated amounts agreed to by the Tenant and the Landlord Entities, each acting reasonably. For greater certainty, there shall be no reconciliations for prior years;
 - (iii) in favour of the Landlord Entities, an amount equal to the GST/HST and/or QST deemed to be included in the Lease Termination Fee pursuant to section 182 of the *Excise Tax Act* and/or section 318 of the ARQST; and
 - (iv) those other adjustments, if any, set out in the SOA attached as Schedule "N".
- (c) The Landlord Entities shall be responsible for and pay all applicable Taxes payable in connection with the surrender of the Surrendered Leases and the related Surrendered Real Property Interests, other than Taxes relating to the Lease Termination Fee.
- (d) Each of the Landlord Entities hereby waives any fees or charges payable to it under any of the Surrendered Leases in respect of the Transaction, including, without limitation, any fees, penalties, or charges payable to any Landlord Entity in respect of the surrender of a Surrendered Lease and any obligation in respect of the payment of accelerated and/or increased rent which arises solely as a result of the surrender of a Surrendered Lease.
- (e) This Section 4.2 shall survive and shall not merge on Closing.

4.3 Realty Tax Appeals

- (a) The Tenant and the Landlord Entities acknowledge that with respect to the Surrendered Premises the Tenant may have instituted certain appeals and/or claims in respect of realty taxes or assessments for certain periods prior to the Closing Date and possibly including the tax year in which the Closing Date occurs (all such appeals, claims and any associated reassessments are hereinafter collectively referred to as the "**Realty Tax Appeals**").
- (b) On Closing, for no additional cost or consideration, the Parties shall execute and deliver the Assignment of Realty Tax Appeals and Realty Tax Refunds.

- (c) From and after the Closing Date, the Landlord may, at its sole cost and expense but without any obligation to do so, assume or retain the carriage of the Realty Tax Appeals and continue as the appellant in the Realty Tax Appeals. At the request of the Landlord and at the Landlord's sole cost and expense, the Tenant agrees to co-operate with the Landlord with respect to the Realty Tax Appeals and to provide the Landlord with access to any reasonably necessary documents or materials required to continue any Realty Tax Appeals. If the Realty Tax Appeals may only be prosecuted in the name of the Tenant, at the request of the Landlord, the Tenant shall cooperate with the Landlord, including granting such authorizations as may be reasonably required, to enable the Landlord to pursue and prosecute such Realty Tax Appeals, at the Landlord's sole cost and expense. If Closing occurs and the Tenant thereafter receives any Realty Tax Refunds, such Realty Tax Refunds shall be held in trust and forthwith paid over to the applicable Landlord Entity or as it may direct.
- (d) This Section 4.3 shall survive and shall not merge on Closing.

4.4 Utilities

- (a) The Landlord Entities shall not assume any contracts or agreements entered into by or on behalf of the Tenant for the supply of any utilities (including electricity, gas, water, fuel, telephone service, internet services, security and surveillance services or otherwise) at the Surrendered Premises. On or before the Closing Date, the Tenant shall terminate all of its contracts and agreements for the supply of any utilities to the Surrendered Premises. For the avoidance of doubt, except for adjustments to be made under the Surrendered Leases as specifically provided in Section 4.2, there shall be no adjustment at Closing in respect of the payment of any utilities at the Surrendered Premises, provided that the Tenant shall be responsible for all charges for utilities used at the Surrendered Premises for the period prior to the Closing Date. The provisions of this Section 4.4(a) shall survive and shall not merge on Closing.
- (b) Any and all utility charges and other related fees payable for any of the Surrendered Premises for the period from and after the Closing Date, pursuant to any invoice or statement issued on or after the Closing Date, shall be the sole responsibility of the Landlord Entities and there shall be no adjustments between the Tenant and the Landlord Entities of any utility charges or related fees paid by the Landlord Entities pursuant to any such invoice or statement issued on or after the Closing Date.

4.5 Lease Termination Compensation Payment

On Closing Tenant shall pay by way of any adjustment in favour of the Landlord Entities on Closing, the sum of \$ [REDACTED] as is allocated to the Surrendered Leases as shown on Schedule "D" hereto as compensation for loss of rent under the Surrendered Leases for the period from October 9, 2017 to October 31, 2017 (the "**Lease Termination Fee**"). In the event that the Closing Date occurs later than October 9, 2017, the Lease Termination Fee shall be

adjusted to reflect the rent payable under the Surrendered Leases for the period from the Closing Date to October 31, 2017.

ARTICLE 5 INTERIM PERIOD & LEASE MATTERS

5.1 Interim Period and Post-Closing Access Period

- (a) During the Interim Period: (i) the Landlord Entities and the Tenant shall comply with each and every term and condition of the Leases as currently applicable in the CCAA Proceedings, subject only to the provisions of the Initial Order, the SISP Order, the Liquidation Sale Approval Order, and the provisions of this Section 5.1; and (ii) except as otherwise provided in this Agreement, the Landlord Entities' rights and remedies in respect of the Leases shall be subject to the provisions of the Initial Order.

- (b) During the Interim Period and the Post-Closing Access Period:
 - (i) in accordance with the Liquidation Sale Approval Order, the Tenant by itself or through any agent authorized by the Liquidation Sale Approval Order or any other liquidation sale approval order approved by the Court (collectively, the "Accessing Parties") shall be entitled to, but is not obligated to: (A) conduct a Sale (as defined in the Liquidation Sale Approval Order) in the Premises; and (B) sell any FF&E from the Premises during such Sale; and

 - (ii) the Tenant shall, in accordance with the terms of this Agreement and, to the extent not provided in this Agreement, in accordance with the terms of the Surrendered Leases or in accordance with the Liquidation Sale Approval Order, at its expense, remove all chattels, personal or movable property, Inventory, FF&E and any other Excluded Assets, and all of its signs and other identification from the Surrendered Premises and other parts of the shopping centres in which the Surrendered Premises are located, and the Tenant shall promptly repair at its expense any damage caused to the Surrendered Premises or any other portion of the shopping centres in which the Surrendered Premises are located, as the case may be, which may occur as a result of the installation or removal of such items; provided that such obligation shall not include the obligation, and the Tenant shall not be required, to repair or restore any "shadowing" or discolouration as a result of the long-term installation of such items.

Notwithstanding the foregoing or any other provision of this Agreement, in no event shall the Tenant sell from the Premises or remove from the Premises: (I) any property or assets owned by any of the Landlord Entities or an owner of any Property, (II) any items listed in Schedule "G"; or (III) any other chattels, personal or movable property, furniture, fixture or equipment that it is prohibited from selling or removing pursuant to the Liquidation Sale Approval Order. Upon

the expiry of the Post-Closing Access Period, the Premises shall be in the condition required pursuant to this Section 5.1(b) and the Liquidation Sale Approval Order and otherwise in a "broom-swept" clean condition.

- (c) For a period from the Closing Date to December 15, 2017 (the "**Post-Closing Access Period**"), the Tenant and any Accessing Parties shall have access to the Surrendered Premises to occupy the Surrendered Premises in order to carry out the activities described in Section 5.1(b) on the following terms and conditions:
 - (i) notwithstanding the surrender and termination of the Surrendered Leases on Closing, during the Post-Closing Access Period the Tenant shall be bound by all the provisions of Surrendered Leases, saving those requiring the payment of basic rent, common area costs, property tax and additional rent thereunder, provided that the Tenant shall however be responsible during the Post-Closing Access Period for the payment of utilities consumed and the cost of the Tenant's insurance set out therein; and
 - (ii) the Tenant shall comply with Liquidation Sale Approval Order and the relevant terms of this Agreement applicable to such activities.
- (d) All references to the Liquidation Sale Approval Order in this Agreement shall mean those provisions of the Liquidation and Sale Approval Order applicable to Sales (as defined therein), provided that: all references to a "Store" therein shall be deemed to refer to the Surrendered Premises; all references to the lease in respect of a Store therein, or "Lease" shall be deemed to refer to the Surrendered Lease; all references therein to a disclaimer of such lease shall be deemed to be a surrender or termination thereof; and the reference to the "Sale Termination Date" or "Vacate Date" therein shall be deemed to refer to December 15, 2017.
- (e) Notwithstanding any provision of the Leases:
 - (i) the Tenant shall have no obligation to operate in any of the Premises during the Interim Period;
 - (ii) subject to the Tenant complying with the provisions of Section 5.1(b) hereof, the Tenant shall not be required to carry out any repairs or replacements to or in the Premises during the Interim Period or the Post-Closing Access Period other than routine maintenance and cleaning and those repairs necessary to enable the Tenant to continue to operate its business in the Premises in accordance with all applicable laws and in accordance with the requirements of the insurers of the Surrendered Premises and the shopping centre in which the Surrendered Premises are located, respectively, and in a safe and reasonable manner; and
 - (iii) as provided in the Liquidation Sale Approval Order, any Excluded Assets left on the Surrendered Premises, including any Inventory and FF&E, at the expiry of the Post-Closing Access Period shall become the property of

the Landlord Entities without a bill of sale, deed of transfer, representation, warranty or other title document.

- (f) In the event that prior to the Closing Date all or a part of the Surrendered Premises is expropriated or notice of expropriation or intent to expropriate all or a part of the Surrendered Premises is issued by any Governmental Authority, the Landlord Entities or the Tenant, as the case may be, shall immediately advise the other thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Landlord Entities shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Surrender Consideration and all compensation for expropriation shall be payable to the Landlord Entities of the Surrendered Premises affected by such expropriation and all right and claim of the Tenant to such amounts, if any, shall be assigned to the Landlord Entities on a without recourse basis.
- (g) The Surrendered Premises shall be and remain until Closing at the risk of the Tenant. In the event of material damage by fire or other hazard to the Surrendered Premises or any part thereof occurring before the Closing Date, the Tenant shall immediately advise the Landlord Entities thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Landlord Entities shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Surrender Consideration and the proceeds of any insurance available or actually paid or payable to the Tenant shall be paid and/or assigned to the applicable Landlord Entities of the Surrendered Premises affected by such damage on a without recourse basis. The Tenant shall maintain its existing insurance coverage (including any self-insurance if currently existing) on the Premises until the Closing Date.
- (h) The provisions of this Section 5.1 shall survive and shall not merge on Closing.

5.2 Contracts

The Tenant covenants to terminate at its sole cost and expense effective as of the Closing Date, at its sole cost and expense, all Contracts insofar as they relate to the Surrendered Premises.

5.3 Approval and Vesting Order and other Orders

The Tenant and the Landlord Entities shall use their commercially reasonable efforts to seek as part of the Approval and Vesting Order the provisions contained in Section 9 thereof as set out in Schedule "E".

5.4 Lease Matters

The Tenant shall terminate, prior to the expiry of the Post-Closing Access Period, any sublease, licence or other agreement granted by Tenant in favour of any Person and providing for a right of occupancy in all or any portion of the Surrendered Premises.

ARTICLE 6
REPRESENTATIONS, WARRANTIES & COVENANTS

6.1 Tenant's Representations and Warranties

The Tenant represents and warrants to and in favour of each Landlord Entity, as of the Acceptance Date and as of Closing as to the following and acknowledges and confirms that the Landlord Entities are relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) the Tenant has been duly incorporated and is validly subsisting under the Laws of the jurisdiction of its incorporation, and, subject to any applicable Orders of the Court (including the Initial Order), 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;
- (b) the execution, delivery and performance by the Tenant of this Agreement has been duly authorized by all necessary corporate action on the part of the Tenant subject to the Approval and Vesting Order and authorization as is required by the Court;
- (c) the Tenant is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (d) the Tenant is duly registered under the *Excise Tax Act* with respect to the GST/HST and under the ARQST with respect to the QST, these registrations are in full force and effect and not have been cancelled or revoked, and its tax numbers are listed as follows:
 - (i) GST/HST: 104765698 RT0001; and
 - (ii) QST: 1000520183 TQ0001;
- (e) this Agreement will constitute a valid and binding obligation of the Tenant enforceable against it in accordance with its terms;
- (f) the Tenant is not party to, bound or affected by or subject to any material: (i) indenture, mortgage, hypothec, lease, agreement, obligation or instrument, (ii) charter or by-law provision, or (iii) Laws, which in each case would be violated, breached by, or under which default would occur as a result of its execution and delivery of, or the performance of its obligations under, this Agreement;
- (g) as at the Acceptance Date, the Tenant is not aware of any Person intending to oppose or object to the Tenants' motion for the Approval and Vesting Order;
- (h) as at the Closing Date, the Tenant is not aware of any appeals, or motions for leave to appeal, variation or dismissal or motions or proceedings of similar effect pending or filed by any Person in respect of the Approval and Vesting Order; and

- (i) the Financial Advisor is the only real estate agent or broker that the Tenant has used in connection with the Transaction.

6.2 Landlord Entities' Representations and Warranties

Subject to Section 8.1, each Landlord Entity represents and warrants on behalf of itself only, as of the Offer Date and as of Closing, as to the following and acknowledges and confirms that the Tenant is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) the Landlord Entity 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 Landlord Entity is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Landlord Entity is a registrant for the purposes of GST/HST and, in the case of the Quebec Landlord Entity, for the purposes of QST;
- (d) the execution, delivery and performance by the Landlord Entity of this Agreement:
 - (i) has been duly authorized by all necessary corporate action on the part of the Landlord Entity;
 - (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, including any consent or approval from a mortgagee, hypothecary creditor or lender or its respective agent, servicer or hypothecary representative or such other creditor to the Landlord Entity or its Affiliates with security on all or part of a Property; and
 - (iii) will not result in the violation of any Laws;
- (e) the Landlord Entity is the registered and beneficial head tenant of the Property set out opposite to its name in Schedule "A" and the registered and beneficial lessor under the Lease of the Premises which form part of such Property as set out in Schedule "A";
- (f) this Agreement has been duly executed and delivered by the Landlord Entity and constitutes legal, valid and binding obligations of the Landlord Entity, 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;

- (g) the Landlord Entity has reviewed and is familiar with all of the terms and conditions of its Leases; and
- (h) the Landlord Entities will have at Closing, all funds on hand necessary to pay the Balance.

6.3 Landlord Entities' Covenants

- (a) The Landlord Entities shall take all commercially reasonable actions as are within their respective power or control, and shall use commercially reasonable efforts to cause other actions to be taken which are not within their respective power or control, so as to fulfill each of the conditions set forth in Article 7 which are for the benefit of the Tenant or the mutual benefit of the Parties.
- (b) The Landlord Entities will promptly notify the Tenant and the Tenant will promptly notify the Landlord Entities 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 Transaction; 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 the Transaction if consummated.

6.4 Tenant's Covenants

Except to the extent prohibited by the Initial Order, the SISP Order or the Approval and Vesting Order, the Tenant shall take all commercially reasonable actions as are within its power or control, and shall use commercially reasonable efforts to cause other actions to be taken which are not within its power or control, so as to ensure compliance with each of the conditions and covenants set forth in Article 5 and to fulfill the conditions set forth in Article 7 which are for the benefit of the Landlord Entities or the mutual benefit of the Parties.

6.5 Tax Matters

In addition to the representations and warranties set forth in Section 6.2, each Landlord Entity, on behalf of itself only, further warrants, represents and covenants to the Tenant, and

acknowledges and confirms that the Tenant is relying on such representations and warranties, indemnities and covenants in connection with the entering into of this Agreement, that:

- (a) it is duly registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* with respect to the GST/HST and, in the case of the Quebec Landlord Entity, under Division I of Chapter VIII of Title I of the ARQST with respect to the QST, each of which registrations are and shall remain in full force and effect and shall not have been cancelled or revoked on the Closing Date, and its tax numbers are:
 - (i) the Quebec Landlord Entity:
 - (A) GST - 12159 7272 RT0001;
 - (B) QST - 10092 68126 TQ0001; and
 - (ii) the Non-Quebec Landlord Entity:
 - (A) HST - 10173 0091 RT0001;
- (b) the Non-Quebec Landlord Entity shall warrant and represent in its Tax Certificate, Undertaking and Indemnity that it is accepting a surrender of the Surrendered Assets of which it holds the beneficial interest as Landlord 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) in accordance with subsections 221(2) and 228(4) of the *Excise Tax Act*, the Non-Quebec Landlord Entity shall self-assess and remit directly to the appropriate Governmental Authority any GST/HST imposed under the *Excise Tax Act* payable in connection with the surrender of its Surrendered Leases and Surrendered Real Property Interests;
- (d) on Closing, it will pay, in addition to the Surrender Consideration, and the Tenant will collect, any GST/HST imposed under the *Excise Tax Act* and any QST imposed under the ARQST exigible on its Transaction (other than GST/HST and/or QST relating to the Lease Termination Fee), except, in the case of the Non-Quebec Landlord Entity, to the extent that such Landlord Entity is required under subsections 221(2) and 228(4) of the *Excise Tax Act* to self-assess and remit such GST/HST directly to the appropriate Governmental Authority, and the Non-Quebec Landlord Entity shall have executed and delivered a certificate, undertaking and indemnity which includes a certification of all appropriate registration numbers issued under the *Excise Tax Act* and incorporates the provisions of this Section 6.5 applicable to the Non-Quebec Landlord Entity (a **“Tax Certificate, Undertaking and Indemnity”**);
- (e) the Non-Quebec Landlord Entity shall make and file all required return(s) in accordance with the requirements of subsection 228(4) of the *Excise Tax Act*; and

- (f) except to the extent of the Tenant's failure to remit the Taxes collected on Closing, if any, to the applicable Governmental Authority within the applicable deadlines, its shall indemnify and save the Tenant harmless from and against any and all transfer taxes and net GST/HST, as the case may be, imposed under the *Excise Tax Act*, penalties, costs and/or interest which may become payable by or assessed against the Tenant as a result of any failure by the Tenant to collect and remit any GST/HST payable under the *Excise Tax Act* in connection with its Transaction, or as a result of any inaccuracy, misstatement or misrepresentation made by such Landlord Entity on the Closing Date in connection with any matter raised in this Section 6.5 or, in the case of the Non-Quebec Landlord Entity, contained in its Tax Certificate, Undertaking and Indemnity or any failure by such Landlord Entity to comply with the provisions of this Section 6.5 or, in the case of the Non-Quebec Landlord Entity, its Tax Certificate, Undertaking and Indemnity.

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

6.6 Survival of Covenants, Representations and Warranties

Except as otherwise expressly provided in this Agreement to the contrary, no representations, warranties, covenants or agreements of the Tenant or the Landlord Entities set forth in this Agreement shall survive the Closing.

ARTICLE 7 CLOSING

7.1 Conditions of Closing for the Benefit of the Landlord Entities

The Landlord Entities' obligation to complete the Transaction 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 Landlord Entities and may be waived, in whole or in part, by the Landlord Entities in their sole discretion:

- (a) the representations and warranties of the Tenant 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 and the Landlord Entities shall have received a certificate from an officer of the Tenant confirming, to his or her knowledge, without personal liability the truth and correctness of such representations and warranties;
- (b) the Tenant 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 Landlord Entities at Closing all the Closing Documents contemplated or required to be so executed and delivered in this Agreement; and
- (c) the following Encumbrances shall have been vacated or discharged on or before the Closing Date:

- (i) the Encumbrances listed on Schedule "M" hereto; and
- (ii) all Encumbrances arising as a result of work completed by or on behalf of the Tenant that have been registered on or prior to the Closing Date against the real or immovable property listed on Schedule "O" hereto.

7.2 Conditions of Closing for the Benefit of the Tenant

The Tenant's obligation to complete the Transaction 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 Tenant and may be waived, in whole or in part, by the Tenant in its sole discretion:

- (a) the representations and warranties of each Landlord Entity 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 and the Tenant shall have received a certificate from an officer of each Landlord Entity confirming, to his or her knowledge, without personal liability the truth and correctness of such representations and warranties; and
- (b) the Landlord Entities shall have paid the Balance and the GST/QST Amount in its entirety to the Monitor, in trust, and shall have performed and complied with all of the other terms and conditions in this Agreement on their 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 Tenant at Closing all the Closing Documents contemplated or required to be so executed and delivered in this Agreement.

7.3 Conditions of Closing for the Mutual Benefit of the Parties

The obligations of each of the Tenant and the Landlord Entities to complete the Transaction 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:

- (a) the Approval and Vesting Order, substantially in the form attached hereto as Schedule "E" (other than paragraph 9 thereof), shall have been issued and entered by the Court on or before the date that is three (3) Business Days prior to the Outside Date, or such other date as may be agreed upon in writing by the Parties, and the Approval and Vesting Order shall not be subject to a stay;
- (b) the Monitor shall have delivered the Monitor's Certificate; and
- (c) no Order shall have been issued which restricts or prevents the completion of the Transaction.

7.4 Closing Documents

On or before Closing, subject to the provisions of this Agreement, the Tenant and the Landlord Entities shall, execute or cause to be executed and shall deliver or cause to be delivered into escrow as provided for in Section 7.7 (in a sufficient number of copies or counterparts for each Landlord Entity and the Tenant and, where applicable, in registerable form), the following, which shall be in form and substance reasonably satisfactory to the Landlord Entities and the Tenant and their respective solicitors:

- (a) By the Tenant and the Landlord Entities:
 - (i) the Lease Amendment and Surrender Agreement for each of the Surrendered Leases;
 - (ii) the Assignment of Realty Tax Appeals and Realty Tax Refunds; and
 - (iii) such other documents as each Party or each Party's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.

- (b) By the Tenant:
 - (i) the Approval and Vesting Order;
 - (ii) all master keys and duplicate keys relating to the Surrendered Premises, if any, all security cards and access cards relating to the Surrendered Premises, if any, and all combinations and passwords to vaults and combination locks and other security features located in the Surrendered Premises, if any, in each case, to the extent in the possession of the Tenant, provided that such keys and such other information may be retained by the Tenant during the Post-Closing Access Period;
 - (iii) the Release of Tenant Claims required pursuant to Section 3.7;
 - (iv) registrable discharges of all Encumbrances that are not Permitted Encumbrances;
 - (v) evidence that all Encumbrances referred to in Section 7.1(c) have been vacated or discharged on or before Closing;
 - (vi) if requested by Landlord Entities, duly executed discharges, in registerable form, of each and every notice of Lease or similar notice, memorandum or other deed or document of record or registered against title to any of the properties on which the Surrendered Premises are located, which shall be prepared by the solicitors of the Landlord Entities at the sole cost and expense of the Landlord Entities and approved by the Tenant's solicitors acting reasonably; and

- (vii) such other documents as the Landlord Entities or the Landlord Entities' solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (c) By the Landlord Entities:
 - (i) the Balance plus the GST/QST Amount, if any;
 - (ii) the final SOA evidencing the adjustments made at Closing;
 - (iii) each Tax Certificate, Undertaking and Indemnity required pursuant to Section 6.5;
 - (iv) the Release of Property Claims required pursuant to Section 3.6; and
 - (v) such other documents as the Tenant or the Tenant'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 and issuance of the Approval and Vesting Order, the completion of the Transaction (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 Tenant and the Landlord 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 Landlord Entities will pay or satisfy the Surrender Consideration in accordance with Section 3.1, and the Closing of the Transaction will take effect, pursuant to the Approval and Vesting Order, upon delivery of the Monitor's Certificate. The Closing shall be deemed to be effective as of the date and time set out on 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 this Article 7, the Parties or their respective solicitors shall confirm to the Monitor the satisfaction of all conditions to Closing, whereupon the Monitor shall execute and deliver copies of the Monitor's Certificate to the Parties hereto and release the Deposit and the Balance and the GST/QST Amount and following Closing forthwith file the Monitor's Certificate with the Court.

7.7 Escrow Closing

- (a) Subject always to Section 3.2, the Deposit and the Balance 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 in good faith.
- (c) On or before Closing, the Parties' respective solicitors shall exchange the Closing Documents in escrow and the Balance, as well as the GST/QST Amount, shall be delivered to or paid to the order of the Monitor, in trust, and the Deposit and the Balance, and the GST/QST Amount, shall remain in escrow with the Monitor until the Monitor has delivered the Monitor's Certificate to the Tenant and the Landlord Entities, 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 the GST/QST Amount, shall be forthwith released to the Tenant 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 Tenant and the Landlord Entities.
- (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 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 Tenant and the Landlord Entities, 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 Transaction 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 Tenant and the Landlord Entities 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 Tenant or the Landlord Entities, 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 the Monitor's Certificate to the Parties and file same with the Court, without independent investigation, upon receiving written confirmation from the Tenant and the Landlord Entities or their respective solicitors that all conditions of Closing have been satisfied or waived and setting out the amount of the Balance and GST/QST Amount, and the Monitor shall have no liability to the Tenant or the Landlord Entities or any other Person as a result of filing the Monitor's Certificate. The Monitor shall execute and deliver the Monitor's Certificate to the Parties upon the Landlord Entities and the Tenant or their respective solicitors confirming to the Monitor that the conditions to Closing have been satisfied or waived.

7.9 Court Matters

- (a) The Tenant shall consult and co-ordinate with the Landlord Entities and their respective legal advisors regarding the parties upon whom the motion seeking the Approval and Vesting Order will be served, and the contents of the final form of Approval and Vesting Order presented to the Court for Approval.
- (b) The Landlord Entities shall provide such information and take such actions as may be reasonably requested by the Tenant to assist the Tenant in obtaining the Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the Transaction.
- (c) Notwithstanding anything else contained in this Agreement or elsewhere, the Landlord Entities acknowledge and agree that the Tenant 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. From the Acceptance Date until the earlier of the Closing or termination of this Agreement, the Tenant shall not solicit or approach another party or enter into or participate in any negotiations or discussions with another party, or invite another party to submit any offer, regarding any transaction for all or part of the Surrendered Leases.

7.10 Termination

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

- (a) by mutual consent of the Landlord and Tenant (in respect of which the Tenant shall require the consent of the DIP Lenders and Monitor to provide its consent) or on further order of the Court;
- (b) by CFCL on behalf of the Landlord Entities if any of the conditions in Section 7.1 have not been satisfied on or before the time ascribed for the satisfaction of such condition and the Landlord Entities have not waived such condition;
- (c) by the Tenant 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 time ascribed for the satisfaction of such condition and the Tenant has not waived such condition; or
- (d) by the Tenant or CFCL on behalf of the Landlord Entities if
 - (i) any of the conditions in Section 7.3 have not been satisfied on or before the time ascribed for the satisfaction of such condition and the parties have not waived such condition; or
 - (ii) if Closing has not occurred on or before the Outside Date, or on or before such later date as the parties agree to in writing, provided that a Party may not terminate this Agreement pursuant to this Section 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 Landlord Entities

- (a) Each Landlord Entity is entering into this Agreement and delivering the documents in connection with the Closing as an individual party on its own behalf, and not on behalf of any other Landlord Entity (as to the respective interest of such Landlord Entity in the Leases and the Properties).
- (b) Notwithstanding anything to the contrary contained herein or elsewhere, each of the Landlord Entities shall be jointly and severally liable until Closing in respect of any representations or warranties or any covenants, liabilities, obligations or indemnities made or incurred by any other Landlord Entity in or pursuant to this Agreement.
- (c) In the event of any conflict, inconsistency or ambiguity between the provisions of this Section 8.1 and any other provisions of this Agreement and/or any of the documents delivered in connection with the Closing, the provisions of this Section 8.1 shall prevail.

8.2 Confidentiality

The Tenant shall be entitled to disclose this Agreement and all information provided by the Landlord Entities in connection herewith, to the Court (any such required Court filing shall be redacted and filed under seal in order to preserve Landlord Entities' commercially sensitive information contained herein), the Monitor, the DIP Lenders and parties in interest to the CCAA Proceedings provided that, with respect to any bidders in the SISP, only to those bidders proposing a Transaction (as such term is defined in the SISP Order) that would maintain ongoing operations at the Premises of a substantially similar nature to that of the Tenant (whether such Transaction contemplates ongoing operations at each Premises or any one of them). For greater certainty, the Tenant and the Sale Advisor (as defined in the SISP Order) shall not be entitled to and shall not disclose this Agreement or the contents thereof with either (i) any Person who is engaged in any business as a commercial landlord or a third party retailer; and (ii) any Person who is a bidder in the SISP where the proposed Transaction(s) do(es) not contemplate the ongoing operation of a business at the applicable Premises of substantially the same nature as the Tenant's. This Section shall survive and not merge on Closing.

8.3 Leasehold Interest

Notwithstanding any provision of this Agreement to the contrary, for purposes of this Agreement and each Closing Document: (i) all references to a "Lease" include any sublease or agreement to sublease made by or with a Landlord Entity (as sublandlord) pursuant to which the Tenant (as subtenant) holds its interest in, and/or right to occupy the related Premises, (ii) for the Premises which are subject to a sublease or agreement to sublease (rather than a lease) made by a Landlord Entity in favour of the Tenant, all references to the Tenant's "leasehold" interest or the Tenant's rights and obligations as tenant of such Premises shall mean the Tenant's "subleasehold" interest or the Tenant's rights and obligations as subtenant, where applicable, in such Premises, any reference to "Landlord" shall mean the sublandlord under the applicable sublease or agreement to sublease pursuant to which the Tenant (as subtenant) holds its interest in, and/or right to occupy such Premises, and any reference to "Sublease" shall mean a sub-sublease in such Premises in favour of the Tenant, and (iii) all other similar references relating to the Leases and Premises shall be interpreted and construed in a similar manner. For greater certainty, the provisions of this Section 8.3 do not apply to any subleases or sub-subleases or agreements to sublease or sub-sublease made by the Tenant (as sublandlord) in favour of any other Person (as subtenant), all of which shall be terminated by the Tenant on or before Closing in accordance with Section 5.3.

8.4 Québec Interpretation Clause

For the purposes of the laws of the Province of Québec in respect of any Lease relating to immovable property situated in the Province of Québec, all references herein to (i) a "surrender" of the Lease shall include a "resiliation" of such Lease, (ii) a "surrender" of any Real Property Interests (other than the rights under the Lease) shall include a "transfer" of such Real Property Interests.

8.5 Time of the Essence

Time shall be of the essence of this Agreement.

8.6 Entire Agreement

This Agreement constitutes 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.

8.7 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 Tenant or any of the Landlord Entities 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.

8.8 Further Assurances

Each of the parties covenants and agrees to do such things, and to execute such further surrenders, releases, conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively surrender the Surrendered Leases and the Surrendered Real Property Interests to the Landlord Entities and carry out the terms and conditions of this Agreement in accordance with their true intent. The provisions of this Section 8.8 shall survive and shall not merge on Closing.

8.9 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.

8.10 Governing Law

Notwithstanding anything to the contrary in the Leases, this Agreement and, except as hereinafter provided, all Closing Documents shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable

therein. The Lease Amendment and Surrender Agreements shall be governed by the Laws of the applicable Province in which the Surrendered Premises are located and to which such agreements relate. Each Party irrevocably and unconditionally submits to the jurisdiction of the courts of the Province of Ontario with respect to any action or proceeding arising out of or relating to this Agreement or the Transaction, and 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.

8.11 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.*

8.12 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.

8.13 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.

8.14 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.

8.15 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.

8.16 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.

8.17 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.

8.18 Notice

Notwithstanding anything to the contrary contained in any Lease, any notice, consent or approval required or permitted to be given in connection with this Agreement or the Leases (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 Tenant 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 Landlord Entities at:

c/o The Cadillac Fairview Corporation Limited
20 Queen Street West
Toronto, Ontario M5H 3R4

Attention: Louie DiNunzio & Ellen Williamson
Email: louie.dinunzio@cadillacfairview.com &
ellen.williamson@cadillacfairview.com

with a copy to:

c/o Ivanhoé Cambridge Inc.
1001 Square Victoria, Suite C500
Montréal, Québec H2Z 2B5

Attention: Nathalie Rousseau & Isabelle Durand
Email: nathalie.rousseau@ivanhoecambridge.com &
isabelle.durand@ivanhoecambridge.com

with a copy to:

Davies Ward Phillips Vineberg LLP
155 Wellington Street West
Toronto ON M5V 3J7

Attention: Steven Martin, Natasha MacParland & Robin Schwill
Email: smartin@dwpv.com, nmacparland@dwpv.com &
rschwill@dwpv.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 sent by email before 5:00 p.m. (local time in the place of receipt) on a Business Day, on the same Business Day and otherwise on the next Business Day following the date of sending. 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 8.20, 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.

8.19 Subdivision Control Legislation

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

8.20 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 Landlord Entities' solicitors on behalf of the Landlord Entities and by the Tenant's solicitors on behalf of the Tenant and any tender of Closing Documents may be made upon the Tenant's solicitors and the Landlord Entities' solicitors, as the case may be.

8.21 No Registration of Agreement

Each of the Parties hereto 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 Properties 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 Properties and/or any part thereof and the Landlord Entities or the Tenant, as the case may be, shall be deemed to be in material default under this Agreement if either Party makes, or causes or permits, any registration to be made on title to the Properties and/or any part thereof prior to the successful completion of the Transaction contemplated herein on the Closing Date.

8.22 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 Landlord Entities shall be solely responsible for and shall pay, in addition to the Surrender Consideration, any land transfer taxes payable (if applicable) in connection with the Transaction, all registration fees and other costs payable in respect of registration of any documents to be registered by the Landlord Entities at Closing. The Tenant shall be solely responsible for and shall pay all fees, expenses and commissions payable to the Monitor and the Financial Advisor in respect of the Transaction pursuant to this Agreement. This Section 8.22 shall survive the Closing or the termination of this Agreement.

8.23 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.

8.24 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.

8.25 Enurement

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

8.26 Assignment

Except for assignments by any Landlord Entity to its Affiliate, in each case where such Affiliate has executed and delivered a written covenant in favour of the Tenant to assume and be jointly and severally responsible (within the meaning of the laws of the Province of Ontario) or solidarily liable (within the meaning of the laws of the Province of Québec) with the Landlord Entities for any and all covenants, obligations and liabilities of the Landlord Entities under this Agreement in respect of such interest assigned, neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either Party without the consent of the other Party. In the event of an assignment by any Landlord Entity, the assignor Landlord Entity shall also execute and deliver the Release of Property Claims.

8.27 Amendments

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Tenant and the Landlord, 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 Tenant or the Tenant's solicitors on one hand and the Landlord or the Landlord's solicitors on the other.


8.28 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 counterparts and transmitted by telecopier or e-mail (PDF) and that the reproduction of signatures in counterpart by way of telecopier or e-mail (PDF) will be treated as though such reproduction were executed originals.

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IN WITNESS WHEREOF the Landlord Entities have executed this Offer on the Offer Date.


FAIRMALL LEASEHOLDS INC.

By: 
Name: **Duncan Osborne**
Title: **Authorized Signing Officer**

By: 
Name: **Ellen Williamson**
Title: **Authorized Signing Officer**

**FAIRVIEW POINTE-CLAIRE
LEASEHOLDS INC.**


By: 
Name: **Duncan Osborne**
Title: **Authorized Signing Officer**

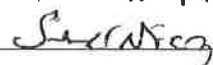
By: 
Name: **Ellen Williamson**
Title: **Authorized Signing Officer**

The Tenant hereby accepts this Offer and agrees to surrender to the Landlord Entities all of the Tenant's right, title and interest in and to each of the Leases, the Real Property Interests and the Premises on the terms and conditions set out herein.

Dated this 23 day of September 2017.

SEARS CANADA INC.

By: 
Name: **P. M. WRIGHT**
Title: **ASST**

By: 
Name:
Title:

SCHEDULE "A"
PREMISES

Location	Address	Postal Code	City	Prov	Landlord Entity(ies) / Registered Holder(s)
CF Fairview Pointe Claire	6801, route Transcanadienne	H9R 5J2	Pointe-Claire	QC	Fairview Pointe-Claire Leaseholds Inc. (registered and beneficial landlord)
CF Fairview Mall	1800 Sheppard Avenue East, Suite 330	M2J 5A7	Willowdale	ON	Fairmall Leaseholds Inc. (registered and beneficial landlord)

SCHEDULE "B"
LEASE PARTICULARS

Store ID	Named Landlord on Lease	List of All Leasing and Related Documents
CF Fairview Pointe Claire Pointe-Claire Québec	Fairview Pointe- Claire Leaseholds Inc.	Lease dated July 28, 2000 Letter Agreement dated March 14, 2000 re: Property Tax Letter Agreement dated August 8, 2001 re: commencement date of Initial Term Lease Amending Agreement dated August 10, 2009
CF Fairview Mall Willowdale Ontario	Fairmall Leaseholds Inc.	Lease (dated November 4, 1987) among Fairmall Leaseholds Inc. (as Landlord), Simpsons Limited (as Tenant), Woodbine-Sheppard Shopping Centre Limited, Markborough Properties Limited (as Head Tenants) and The Cadillac Fairview Corporation Limited (as Owner) Assignment and Assumption of Lease (dated July 17, 1991) among Simpsons Limited (as Assignor), Sears Canada Inc. (as Assignee), Fairmall Leaseholds Inc. (as Landlord), Woodbine-Sheppard Shopping Centre Limited, Markborough Properties Limited (as Head Tenants) and The Cadillac Fairview Corporation Limited (as Owner) Consent to Assignment of Lease dated (July 17, 1991) from The Cadillac Fairview Corporation Limited, Fairmall Leaseholds Inc. and Markborough Properties Inc. and acknowledged by Simpsons Limited, Sears Canada Inc. and Hudson's Bay Company Consent to Trade Name Change (dated July 17, 1991) from The Cadillac Fairview Corporation Limited and acknowledged by Simpsons Limited and Hudson's Bay Company Financing Documentation: i) Estoppel Certificates from Sears Canada Inc. (dated December 20, 1996 and June 30, 1997) and; ii) a Non-Disturbance Agreement (dated July 10, 1997) between Sears Canada Inc. and CIBC Mellon Trust Company Section 30 (Expropriations Act) Agreement (dated January 9, 1998) between Sears Canada Inc. and The City of Toronto regarding construction of the TTC Sheppard Subway Letter Agreements re: Property Tax (dated January 7, 1998 and March 14, 2000) Lease Amending Agreements (dated May 15, 1998 and August 25, 2000) among Fairmall Leaseholds Inc. (as Landlord), Sears Canada Inc. (as Tenant), The Cadillac Fairview Corporation Limited, Cambridge Shopping Centres Limited (as Head Tenants), The Cadillac Fairview Corporation Limited (as Owner) and CF/Realty Holdings Inc. (as Nominee) Letter exercising option to renew dated September 6, 2016

SCHEDULE "C"
EXCLUDED ASSETS

1. All intellectual property or proprietary rights, whether registered or not, and any intangible property, owned, used or held by the Tenant;
2. All items, materials and signs bearing the logo, trade-mark, trade-name or business name or other mark or design of the Tenant;
3. All Inventory;
4. all FF&E which, by virtue of the terms and provisions of the applicable Lease, is not, or does not become, the property of the applicable Landlord upon the surrender of such Lease and which has been removed from the Premises by or on behalf of the Tenant prior to expiry of the Post-Closing Access Period;
5. Any property belonging to the subtenants, franchisees or licensees of the Tenant or other occupants of the Premises;
6. All insurance policies of the Tenant;
7. Any and all assets not located at a Premises or any asset not used directly and exclusively at the Premises; and
8. All rights and interest in trade-marks, trade-names, logos, commercial symbols and business names containing "Sears" or any other proprietary wording or intellectual property rights of the Tenant or any of its Affiliates (including, the websites).

SCHEDULE "D"
SURRENDER CONSIDERATION ALLOCATION

Premises/Location	Amount of Consideration	Amount of Deposit	Lease Termination Fee
CF Fairview Pointe Claire	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
CF Fairview Mall	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

**SCHEDULE “E”
APPROVAL AND VESTING ORDER**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ●)	●, THE ● TH
)	
JUSTICE ●)	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 – LEASE SURRENDER AGREEMENT – CF
FAIRVIEW POINTE-CLAIRE AND CF FAIRVIEW MALL (STORES #1305 AND
#1322)**

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 lease surrender and resiliation transaction (the “**Transaction**”) contemplated by a Lease Surrender Agreement between Sears Canada Inc. (“**Sears Canada**”), as Tenant, and ● (the “**Landlord Entities**”) as Landlord dated ●, 2017 (the “**Lease Surrender Agreement**”) 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 ●, 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 Landlord, 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 Lease Surrender Agreement, as applicable.

APPROVAL OF THE LEASE SURRENDER AGREEMENT

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 Lease Surrender Agreement 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 Landlord Entities may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the surrender by Sears Canada of its right, title and interest in and to the Surrendered Leases and the Surrendered Real Property Interests and the Surrendered Premises (each as defined in the Lease Surrender Agreement) (collectively, the “**Surrendered Assets**”) to the applicable Landlord Entities and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Lease Surrender Agreement and this Order, and shall not incur any liability as a result thereof. The legal descriptions with respect to the Surrendered Assets are as set out on Schedule “B-1” hereto.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Landlord Entities 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 Surrendered Assets shall be surrendered to the Landlord (with the Leases being resiliated) free and clear of and from any and all Encumbrances (as defined in the Lease Surrender Agreement), security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens (whether contractual, statutory or otherwise), leases, notices of lease, subleases, licenses, levies, restrictions, rights of retention, judgments, notices of sale, contractual rights, options, rights of first refusal, renewals, extensions, liabilities (direct, indirect, absolute or contingent), obligations, 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 Surrendered 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) those Encumbrances listed on Schedule "B-2"; and
- (c) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (●) or any other personal property registry system;

(all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted Encumbrances listed on Schedule "C" hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Surrendered Assets are hereby expunged and discharged as against the Surrendered Assets.

5. THIS COURT ORDERS that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office,

the applicable land registrar, as set out in Schedule “B-2”, is hereby directed to specifically discharge, cancel, delete, vacate and expunge from title to the applicable real or immovable property described in Schedule “B-2” all of the Encumbrances listed in Schedule “B-2” hereto. **[NTD: to be conformed to language acceptable to the applicable land registry office.]**

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 Surrendered 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 Surrendered 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 Lease Surrender Agreement.

8. THIS COURT ORDERS that notwithstanding anything else contained in the Lease Surrender Agreement or the Closing of the Transaction, the Landlord Entities shall be bound by and benefit from the Initial Order until the earlier of (a) six months from the date of this Order, and (b) the duration of the period during which any other owners, operators, managers or landlords of commercial shopping centres or other commercial properties in which there is a store, office or warehouse owned or operated by the Tenant, is bound by or obtains any benefit from same. Without limiting the generality of the foregoing, during such period, the Landlord Entities shall benefit from the stay of proceedings provision provided for at paragraph 18 of the Initial Order.

GENERAL PROVISIONS

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 surrender of the Surrendered Assets to the applicable Landlord Entities and the resiliation of the Surrendered Leases 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.

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

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

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 Lease Surrender Agreement between Sears Canada Inc. (“**Sears Canada**”), as Tenant, and ● (the “**Landlord Entities**”) as Landlord dated ●, 2017 (the “**Lease Surrender Agreement**”), a copy of which is attached as Exhibit ● to the Affidavit of Stephen Champion dated ●, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the Lease Surrender Agreement and provided for the surrender to the Landlord of Sears Canada’s right, title and interest in and to the Surrendered Leases, the Surrendered Real Property Interests and the Surrendered Premises (as defined in the Lease Surrender Agreement), which surrender is to be effective with respect to the Surrendered Leases, the Surrendered Real Property Interests and the Surrendered Premises upon the delivery by the Monitor to the Landlord Entities and Sears

Canada of a certificate confirming that (i) the conditions to Closing set out in sections 7.1, 7.2 and 7.3 of the Lease Surrender Agreement have been satisfied or waived by the Landlord Entities and Sears Canada, as applicable, and (ii) the Surrender Consideration (as defined in the Lease Surrender Agreement), subject to the adjustments in accordance with the Lease Surrender Agreement, and any GST/QST Amount has been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing set out in sections 7.1, 7.2 and 7.3 of the Lease Surrender Agreement have been satisfied or waived by the Landlord Entities and Sears Canada, as applicable; and
2. The Surrender Consideration, subject to the adjustments in accordance with the Lease Surrender Agreement, and any GST/QST Amount, has 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 capacity

Per: _____

Name:

Title:

**SCHEDULE “B-1” to Approval and Vesting Order
LEGAL DESCRIPTIONS OF SURRENDERED ASSETS**

No.	Location/ Address	Legal Description
1.	CF Fairview Pointe Claire / 6801, route Transcanadienne Pointe-Claire, Québec	Those parcels of land known and designated as Lot number 2 530 450 of the Cadastre of Quebec, Registration Division of Montreal, Province of Quebec
2.	CF Fairview Mall / 1800 Sheppard Avenue East, Suite 330, Willowdale, Ontario	<p>FIRSTLY - FREEHOLD LANDS: PIN 10048-0078(LT)</p> <p>Firstly: Parts of Lots 16 and 17, Concession 3, East of Yonge Street, designated as Part 4 on Plan R-3563, save and except those portions of said Lots 16 and 17, Concession 3, East of Yonge Street, designated as Parts 5, 6 and 7 on Plan 66R-13970. Plan BA-658 registered as D293 confirms part of the boundaries of this land - See No. A501297; Secondly: Part of Lot 1, Expropriation Plan MX41 designated as Parts 2 and 3 on Plan 66R-13970. Plan BA-2408 registered as D948 confirms part of the boundaries of this land - See No. C522526; SAVE AND EXCEPT Part of Lot 16, Concession 3, East of Yonge Street, designated as Parts 1, 2, 3, 4, 6, 8, 14, 16, 17, 20, 23, 24, 27, 28, 34, 35, 50 and 66 on Plan 66R-17954, City of Toronto, being the whole of the PIN.</p> <p>SECONDLY - LEASEHOLD LANDS: PIN 10048-0080(LT)</p> <p>Firstly: Parts of Lots 16 and 17, Concession 3, East of Yonge Street, designated as Part 4 on Plan R-3563, save and except those portions of said Lots 16 and 17, Concession 3, East of Yonge Street, designated as Parts 5, 6 and 7 on Plan 66R-13970. Plan BA-658 registered as D293 confirms part of the boundaries of this land - See No. A501297; Secondly: Part of Lot 1, Expropriation Plan MX41 designated as Parts 2 and 3 on Plan 66R-13970. Plan BA-2408 registered as D948 confirms part of the boundaries of this land - See No. C522526; SAVE AND EXCEPT Part of Lot 16, Concession 3, East of Yonge Street, designated as Parts 1, 2, 3, 4, 6, 8, 14, 16, 17, 20, 23, 24, 27, 28, 34, 35, 50 and 66 on Plan 66R-17954, City of Toronto, being the whole of the PIN.</p>

**SCHEDULE "B-2" to Approval and Vesting Order
ENCUMBRANCES TO BE EXPUNGED/DELETED**

No.	Location/ Address	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
1.	CF Fairview Pointe Claire / 6801, route Transcanadie nne, Pointe- Claire, Québec	Land Registry Office for the Registration Division of Montreal	See Schedule "B-1"	Nil
2.	CF Fairview Mall / 1800 Sheppard Avenue East, Suite 330, Willowdale, Ontario	Toronto (No. 64)	See Schedule "B-1"	<p>Construction lien in favour of Tag Electric Ltd. in the amount of \$197,845.21 registered as Instrument No. AT4643425 on August 1, 2017 against CF Fairview Mall.</p> <p>Construction lien in favour of Abbarch Architecture Inc. in the amount of \$106,032 registered as Instrument No. AT4623149 on July 10, 2017 against CF Fairview Mall.</p> <p>Construction lien in favour of APM Construction Services Inc. in the amount of \$1,589,521 registered as Instrument No. AT4629454 on July 17, 2017 against Fairview Mall.</p> <p>Certificate of Action in favour of APM Construction Services Inc. registered as Instrument No. AT4653888 against CF Fairview Mall regarding the Construction Lien registered as Instrument No. AT4629454.</p> <p>Construction lien in favour of Sterling Concrete Sawing & Drilling Ltd. in the amount of \$94,184 registered as Instrument No. AT4645580 on August 2, 2017 against CF Fairview Mall.</p> <p>Construction lien in favour of Belmont Concrete Services Inc. in the amount of \$164,438 registered as Instrument No. AT4644554 on August 1, 2017 against CF Fairview Mall.</p> <p>Construction lien in favour of Citymark Construction and Drywall Ltd. in the amount of \$151,742 registered as Instrument No. WR1047113 on July 11, 2017 against CF Fairview Mall.</p>
3.	CF Fairview Park Mall / 200 Fairway Road South, Kitchener,	Waterloo (No. 58)	Firstly: PIN 22590 - 0183 LT PTLT10, 14 PL 961 KITCHENER PT 7, 8, 9,	Construction lien in favour of Traugott Building Contractors Inc. in the amount of \$2,226,971.77 registered as Instrument No. WR10472010 on July 12, 2017 against CF

No.	Location/ Address	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
	Ontario		<p>10, 11, 16, 20, 34,36, 37&38, 58R1539; S/T 338769; T/W 342719; S/T 338768;</p> <p>Secondly: PIN 22590- 0184 LT</p> <p>PT LT 10 PL 961 KITCHENER; PT LT 4 PL 962 KITCHENER PTS 14, 17, 27 TO 32, 58R1539; T/W 342719; S/T & T/W 338769; T/W 282046 AS AMENDED BY 379264; S/T 383182; T/W 338768</p>	<p>Fairview Park.</p> <p>Construction lien in favour of Toronto Concrete Floors Ltd. in the amount of \$276,413.82 registered as Instrument No. WR1047088 on July 11, 2017 against Fairview Park Mall.</p> <p>Construction lien in favour of Sean Teperman Consulting Corp. in the amount of \$199,295.34 registered as Instrument No. WR1050899 on July 26,2017 against CF Fairview Park.</p> <p>Construction lien in favour of C3 Buildings and Infrastructure Inc. in the amount of \$81,300.11 registered as Instrument No. WR1050296 on July 24, 2017 against CF Fairview Park.</p> <p>Construction lien in favour of Petroff Partnership Architects in the amount of \$130,638 registered as Instrument No. WR1045740 on July 6, 2017 against CF Fairview Park.</p> <p>Construction lien in favour of Scandinavian Building Services Inc. in the amount of \$7,825 registered as Instrument No. WR1054180 on August 4, 2016against CF Fairview Park.</p>
4.	CF Lime Ridge / 999 Upper Wentworth Street, Hamilton, Ontario	Wentworth (No. 62)	<p>PIN 16977-0034(LT)</p> <p>THOSE PARTS OF LOT 10, CONCESSION 6, formerly in the Township of Barton, in the County of Wentworth, now in the City of Hamilton, in the Regional Municipality of Hamilton-Wentworth designated as Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 21, 23 and 25 on a Plan of Survey of record filed in the Land Registry Office (No. 62) Land Titles Division of Wentworth at Hamilton as 62R-6822.</p> <p>SUBJECT TO AN EASEMENT in favour of The Regional Municipality of Hamilton-Wentworth over, along, and upon Part 6 as shown on said Plan 62R-6822, subject to the provisions and covenants and for the purpose as therein set out in</p>	<p>Construction lien in favour of 152610 Canada Inc. in the amount of \$1,059,649 registered as Instrument No. WE1219488 on July 6, 2017 against CF Lime Ridge.</p> <p>Construction lien in favour of Citymark Construction and Drywall Ltd. in the amount of \$111,689 registered as Instrument No. WE1218818 on July 4, 2017 against CF Lime Ridge.</p> <p>Construction lien in favour of Nelnor Construction, A Division of Décor Craft Inc. in the amount of \$111,982 registered as Instrument No. WE11220411 on July 10, 2017 against CF Lime Ridge.</p> <p>Construction lien in favour of Lancor Electric (1996) Ltd. in the amount of \$198,323 registered as Instrument No. WE1222435on July 18, 2017 against CF Lime Ridge.</p> <p>LT170327 – is a Notice of Lease registered on December 24, 1985 made between The Cadillac Fairview Corporation Limited and Confederation Life Insurance Company, as landlord, and Sears Canada Inc., as tenant</p>

No.	Location/ Address	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
			<p>249843CD.</p> <p>SUBJECT TO AN EASEMENT in favour of Union Gas Limited over, along and upon Parts 4, 7, 8, 21, 23 and 25 as shown on said Plan 62R-6822, subject to the provisions and covenants and for the purpose as therein set out in 121505LT.</p> <p>SUBJECT TO AN EASEMENT in favour of Union Gas Limited over, along and upon Parts 1, 2, 3, 5 and 6 as shown on Plan 62R-8575, subject to the provisions and covenants and for the purpose as therein set out in 196575LT.</p> <p>Being designated as the whole of Parcel 10-11 in the Register for Bar-6(c). PIN 16977-0033(LT)</p> <p>THOSE PARTS OF LOT 10, CONCESSION 6, formerly in the Township of Barton in the County of Wentworth, now in the City of Hamilton in the Regional Municipality of Hamilton-Wentworth, designated as Parts 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22 and 24 on a Plan of Survey of record filed in the Land Registry Office (No. 62) – Land Titles Division of Wentworth at Hamilton as 62R-6822.</p> <p>SUBJECT TO AN EASEMENT in favour of The Regional Municipality of Hamilton-Wentworth over, along and upon Part 16 as shown on said Plan 62R-6822 subject to the provisions and covenants and for the purpose as therein set out in 249843</p>	

No.	Location/ Address	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
			<p>CD.</p> <p>SUBJECT TO AN EASEMENT in favour of Union Gas Limited over, along and upon Parts 14, 17, 18, 22 and 24 as shown on said Plan 62R-6822 subject to the provisions and covenants and for the purposes as therein set out in 121505LT.</p> <p>Being designated as the whole of Parcel 10-10 in the Register for Bar-6(c).</p>	
5.	Mapleview Centre / 900 Maple Avenue, Burlington, Ontario	Halton (No. 20)	<p>PIN 07087-0082(LT)</p> <p>PCL BLOCK 7-1 , SEC 20M273 ; BLK 7, PL 20M273 ; PCL BLOCK 8-1 , SEC 20M273 ; BLK 8, PL 20M273 ; PCL 30-1 , SEC H99 ; PT LT 30 , RCP PL99 , PT 1, 20R5866 ; PCL 40-1 , SEC H99 ; PT MAPLE AV , RCP PL99 , CLOSED BY BYLAW 559766 ; PT LTS 40, 41 & 43 , RCP PL99 , PT 1, 20R9323 ; S/T H188475E,H421049,H520 972 BURLINGTON.</p> <p>Being the whole of the said PIN.</p>	<p>Construction Lien in favour of APM Construction Services Inc. in the amount of \$109,630.73 registered as Instrument No. HR1472837 on July 17, 2017 against Mapleview Centre.</p> <p>Certificate of Action registered by APM Construction Services Inc. as Instrument No. HR1480704 on August 14, 2017 against Mapleview Centre for the preceding lien.</p> <p>Construction Lien in favour of Hanson + Jung Architects Inc. in the amount of \$14,786.71 registered as Instrument No. HR1478188 on August 3, 2017 against Mapleview Centre.</p> <p>Certificate of Action registered by Hanson + Jung Architects Inc. as Instrument No. HR1489892 on September 18, 2017 against Mapleview Centre for the preceding lien.</p>
6.	Oshawa Centre / 419-507 King Street West, Oshawa, Ontario	Durham (No. 40)	<p>PIN 16357-0001(LT)</p> <p>PT LT 14 CON 1 EAST WHITBY PTS 1, 2, 8, 9 & 10 40R11724 T/W D304666; S/T D532267, OS126782; CITY OF OSHAWA.</p> <p>Being the whole of the said PIN.</p>	<p>Construction Lien in favour of APM Construction Services Inc. in the amount of \$134,295.54 registered as Instrument No. DR1617122 on July 17, 2017 against Oshawa Centre.</p> <p>Certificate of Action registered by APM Construction Services Inc. as Instrument No. DR1626682 on August 14, 2017 against Oshawa Centre for the preceding lien.</p>

[NTD: To add such other Encumbrances as may be required to be vacated or discharged pursuant to Section 7.1(c)(ii) of the Lease Surrender Agreement.]

SCHEDULE “C” to Approval and Vesting Order
PERMITTED ENCUMBRANCES

“Permitted Encumbrances” means, collectively: (a) any Encumbrances encumbering the freehold or other ownership interest in the Properties or any other interest in the Properties of the Landlord Entities, but excludes any Encumbrances solely encumbering the Tenant’s leasehold interest (or the rights of the Tenant as lessee) in and to any Properties situated outside of the Province of Québec on which any Surrendered Premises are located or the rights of the Tenant as lessee under the Leases; (b) Encumbrances resulting from any Landlord Entity’s actions or omissions; and (c) the items identified in Schedule “J” of the Lease Surrender Agreement. In no event shall an Encumbrance arising as a result of work completed by or on behalf of the Tenant in respect of any Premises constitute a Permitted Encumbrance.

SCHEDULE "F"
TAX CERTIFICATE, UNDERTAKING AND INDEMNITY

[NTD: to be revised as applicable]

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

RE: Lease Surrender Agreement dated ●, 2017, made between the Tenant, as Tenant, and, among others, ●, as Landlord, (the "Landlord") (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "Lease Surrender Agreement") for the surrender and termination of the Leases (as such terms are defined in the Lease Surrender Agreement)

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

- a) the Leases and the Real Property Interests with respect to the Premises at ■ (the "Surrendered Leases" and "Surrendered Real Property Interests", respectively) are being surrendered to the Landlord as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of or for another Person;
- b) the Landlord is registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) (the "*Excise Tax Act*") for the collection and remittance of goods and services tax and harmonized sales tax ("GST/HST") and its registration number is 10173 0091 RT0001; and such registration is in good standing and has not been varied, cancelled or revoked;
- c) the Landlord 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 surrender and termination of the Surrendered Leases and the Surrendered Real Property Interests, all in accordance with the *Excise Tax Act*;
- d) except to the extent of the Tenant's failure to remit any taxes collected on closing, if any, to the applicable governmental authority, the Landlord shall indemnify and save harmless the Tenant from and against any and all GST/HST, penalties, interest and/or other costs which may become payable by or be assessed against the Tenant as a result of any failure by the Tenant to collect and remit any GST/HST applicable on the surrender and termination of the Surrendered Leases and the Surrendered Real Property Interests by the Tenant to the Landlord or as a result of any inaccuracy, misstatement or misrepresentation by the Landlord in this Tax Certificate, Undertaking and Indemnity or any failure by the Landlord to comply with the provisions of this Tax Certificate, Undertaking and Indemnity; and
- e) this Tax Certificate, Undertaking and Indemnity shall survive and not merge upon closing of the above-noted transaction.

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

DATED _____, 2017.

[NON-QUEBEC LANDLORD ENTITY]

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE "G"
LIST OF ITEMS WHICH SHALL NOT BE REMOVED FROM THE PREMISES

1. Elevators and related systems and equipment.
2. Escalators and related systems and equipment.
3. Any HVAC systems and equipment.
4. Ceiling lights and tiles.
5. Flooring.
6. All washrooms (sinks, toilets, urinals & stall partition) and fixtures.
7. All doors and related hardware – exterior, interior and loading.
8. All roofing systems.
9. Fire safety systems and equipment (other than removable fire extinguishers).
10. Any Mechanical, electrical and plumbing systems and equipment.
11. All generators, balers and trash compactors.
12. Property and assets owned by any of the Landlord Entities or an owner of any Property but excluding items listed on Schedules "C".
13. Any CCTV systems including cameras, monitors, and programs associated.
14. Any building automation systems that control devices including HVAC and lighting, and associated programs and monitors.
15. If available, any operational manuals and maintenance logs for major equipment components including travelling devices, HVAC, fire systems, roofing, environmental, mechanical electrical and plumbing, generators and compactors.
16. Lifting platforms and related systems and equipment.
17. Traffic Counter equipment at all access doors.
18. Any as-built drawings.

SCHEDULE "H"
FORM OF AMENDMENT, TERMINATION AND SURRENDER OF LEASE

THIS AGREEMENT is made as of the _____ day of _____, 2017 (the "**Effective Date**")

B E T W E E N:

SEARS CANADA INC.
(the "**Tenant**")

- and -

●
(the "**Landlord**")

RECITALS:

- A. Pursuant to a lease dated ●, as same is assigned, amended, restated, renewed or supplemented from time to time, including but not limited to those documents listed in Schedule "A" attached hereto (collectively, the "**Lease**"), the Landlord leased to the Tenant certain premises at ● in the City of ●, in the Province of ● as more particularly described in the Lease (the "**Premises**").
- B. The Tenant and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- C. The Tenant and the Landlord and others entered into a lease surrender agreement dated ●, 2017 (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "**Lease Surrender Agreement**") whereby, among other things, the Tenant agreed to surrender to the Landlord, and the Landlord agreed to accept a surrender of, all of the Tenant's right, title and interest in and to the Lease and the resiliation of the Lease.
- D. The Lease Surrender Agreement was approved by the Court pursuant to an Order dated ■ (the "**Approval and Vesting Order**").
- E. The Tenant and the Landlord are entering into this Agreement to provide for the surrender and resiliation of the Lease by the Tenant to the Landlord in accordance with the Lease Surrender Agreement and the Approval and Vesting Order.
- F. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Lease Surrender Agreement, or if no meaning is given in the Lease Surrender Agreement, in the Lease.

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

**ARTICLE 1
TERMINATION AND SURRENDER**

[Note: As contemplated in the Lease Surrender Agreement, the Landlord Entities and Tenant may enter into a separate agreement prior to this Agreement to cancel options to renew/extend]

1.1 Amendment and Early Termination of Lease

The Lease is hereby amended and the Landlord and the Tenant hereby agree that the Lease has expired and is terminated, as of 11:59 p.m. on the day immediately preceding the Effective Date (the "**Termination Date**"), and neither the Tenant nor the Landlord shall have any further liabilities or obligations under the Lease, financial or otherwise, as of and as from the Termination Date.

1.2 Surrender by Tenant

The Tenant hereby surrenders to the Landlord, as of the Termination Date, and the Landlord hereby accepts such surrender from the Tenant, the Lease, the Premises demised by the Lease, and the Real Property Interests relating thereto and all the Tenant's rights, title and interest thereunder, with the intent that the unexpired residue of the term of the Lease including, without limitation, any rights or options to renew or extend hereby merge and are extinguished in the reversion expectant thereon, on the terms and conditions set out in the Lease Surrender Agreement. **[NTD: if this Agreement relates to a Quebec Lease replace the foregoing provision with the following: The Tenant hereby surrenders to the Landlord, as of the Termination Date, the Premises on the terms and conditions set out in the Lease Surrender Agreement.]**

1.3 Adjustments

All adjustments under the Lease shall be dealt with in accordance with the Lease Surrender Agreement.

1.4 Paramountcy

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

**ARTICLE 2
GENERAL**

2.1 Time of the Essence

Time shall be of the essence of this Agreement.

2.2 Enurement

This Agreement shall become effective when executed and delivered by the Tenant and the Landlord and after that time shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

2.3 Entire Agreement

This Agreement and the Lease Surrender Agreement constitute the entire agreement between the parties with respect to the surrender and termination of the Lease contemplated in the Lease Surrender Agreement 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, or in the Lease Surrender Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement and the Lease Surrender Agreement.

2.4 Waiver

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

2.5 Further Assurances

Each of the parties covenants and agrees to do such things, and to execute such further surrenders, releases, conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effect the surrender and termination of the Lease to the Landlord and carry out the terms and conditions of this Agreement in accordance with their true intent.

2.6 Severability

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

2.7 Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Province in which the Premises are located and the federal laws of Canada applicable therein.

2.8 CCAA Proceedings

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

2.9 English Language

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

2.10 Statute References

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

2.11 Headings

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

2.12 References

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

2.13 Number and Gender

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

2.14 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day

must be made or taken by no later than 4:30 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

2.15 Notice

Notwithstanding anything to the contrary in the Lease, any notice, consent or approval required or permitted to be given in connection with this Agreement or the Lease (a “**Notice**”) shall be in writing and shall be sufficiently given if delivered in accordance with the Lease Surrender Agreement.

2.16 Counterparts and Delivery

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

[Signature pages follow.]

IN WITNESS WHEREOF the Tenant has executed this Agreement.

SEARS CANADA INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

IN WITNESS WHEREOF the Landlord has executed this Agreement.



By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE "A" – LEASE PARTICULARS

SCHEDULE "I"
FORM OF ASSIGNMENT OF REALTY TAX APPEALS AND REALTY TAX
REFUNDS

THIS AGREEMENT is made as of the _____ day of _____, 2017 (the "Effective Date")

B E T W E E N:

SEARS CANADA INC.
(the "Tenant")

- and -

●
(the "Landlord")

RECITALS:

- A. Pursuant to a lease dated ●, as same is assigned, amended, restated, renewed or supplemented from time to time, including but not limited to those documents listed in Schedule "A" attached hereto (collectively, the "Lease"), the Landlord leased to the Tenant certain premises at ● in the City of ●, in the Province of ● as more particularly described in the Lease (the "Premises"). [NTD: insert applicable Leases]
- B. The Tenant and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- C. The Tenant and the Landlord and others entered into a lease surrender agreement dated ●, 2017 (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "Lease Surrender Agreement") whereby, among other things, the Tenant agreed to surrender to the Landlord, and the Landlord agreed to accept a surrender of, all of the Tenant's right, title and interest in and to the Lease.
- D. The Lease Surrender Agreement was approved by the Court pursuant to the Order dated ● (the "Approval and Vesting Order").
- E. The Tenant and the Landlord are entering into this Agreement to provide for the assignment of the Realty Tax Appeals and Realty Tax Refunds in respect of the Leases by the Tenant to the Landlord in accordance with the Lease Surrender Agreement and the Approval and Vesting Order.
- F. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Lease Surrender Agreement, or if no meaning is given in the Lease Surrender Agreement, in the Lease.

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

**ARTICLE 1
ASSIGNMENT**

1.1 Assignment

Subject to the terms and conditions contained herein, effective as of the Effective Date, the Tenant hereby assigns, transfers and sets over unto the Landlord all of the Tenant's right, title and interest, if any, in and to the Realty Tax Appeals and the Realty Tax Refunds.

1.2 Carriage of Realty Tax Appeals

From and after the Closing Date, the Landlord may, at its sole cost and expense but without any obligation to do so, assume or retain the carriage of the Realty Tax Appeals and continue as the appellant in the Realty Tax Appeals. At the request of the Landlord and at the Landlord's sole cost and expense, the Tenant agrees to co-operate with the Landlord with respect to the Realty Tax Appeals and to provide the Landlord with access to any reasonably necessary documents or materials required to continue any Realty Tax Appeals. If the Realty Tax Appeals may only be prosecuted in the name of the Tenant, at the request of the Landlord, the Tenant shall cooperate with the Landlord, including granting such authorizations as may be reasonably required, to enable the Landlord to pursue and prosecute such Realty Tax Appeals, at the Landlord's sole cost and expense. If Closing occurs and the Tenant thereafter receives any Realty Tax Refunds, such Realty Tax Refunds shall be held in trust and forthwith paid over to the applicable Landlord Entity or as it may direct.

1.3 Authorization and Direction

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

1.4 Paramountcy

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

**ARTICLE 2
GENERAL**

2.1 Time of the Essence

Time shall be of the essence of this Agreement.

2.2 Enurement

This Agreement shall become effective when executed and delivered by the Tenant and the Landlord and after that time shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

2.3 Entire Agreement

This Agreement and the Lease Surrender Agreement constitute the entire agreement between the parties with respect to the assignment of the Realty Tax Appeals and Realty Tax Refunds contemplated in the Lease Surrender Agreement 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 or in the Lease Surrender Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement and the Lease Surrender Agreement.

2.4 Waiver

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

2.5 Further Assurances

Each of the parties covenants and agrees to do such things, and to execute such further surrenders, releases, conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effect the assign the Realty Tax Appeals and the Realty Tax Refunds to the Landlord and carry out the terms and conditions of this Agreement in accordance with their true intent.

2.6 Severability

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

2.7 Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Province in which the Premises are located and the federal laws of Canada applicable therein.

2.8 CCAA Proceedings

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

2.9 English Language

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

2.10 Statute References

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

2.11 Headings

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

2.12 References

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

2.13 Number and Gender

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

2.14 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day

must be made or taken by no later than 4:30 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

2.15 Currency and Payment Obligations

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

2.16 Notice

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

2.17 Counterparts and Delivery

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

[Signature pages follow.]

IN WITNESS WHEREOF the Tenant has executed this Agreement.

SEARS CANADA INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

IN WITNESS WHEREOF the Landlord has executed this Agreement.



By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE "A" – LEASE PARTICULARS

SCHEDULE "J"
PERMITTED ENCUMBRANCES

NIL

SCHEDULE "K"
FORM OF RELEASE OF PROPERTY CLAIMS

TO: SEARS CANADA INC. (the "Tenant")

AND TO: ALL PREDECESSORS IN INTEREST TO THE TENANT UNDER ANY OF THE LEASES (the "Predecessors")

FROM: ● (the "Landlord")

RE: Lease Surrender Agreement between the Tenant and the Landlord dated ●, 2017 (as amended, modified, restated and/or supplemented from time to time, the "Lease Surrender Agreement")

WHEREAS:

- A. The Tenant and certain of its affiliates and subsidiaries (collectively, the "Sears Group") applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- B. The Tenant and the Landlord Entities entered into a lease termination and surrender agreement dated ●, 2017 (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "Lease Surrender Agreement") whereby, among other things, the Tenant agreed to surrender to the Landlord, and the Landlord Entities agreed to accept a surrender of, all of the Tenant's right, title and interest in and to the Surrendered Leases.
- C. On ●, 2017, the Court issued an Approval and Vesting Order approving the Lease Surrender Agreement, pursuant to which the Tenant shall surrender to the Landlord Entities the Surrendered Leases on the terms and conditions set out in the Lease Surrender Agreement.
- D. The Lease Surrender Agreement contemplates that each of the Landlord Entities shall execute and deliver a release on the Closing Date to the Tenant pursuant to which the Landlord Entities will release and forever discharge the Tenant from all claims in respect of each of the Surrendered Leases, the Surrendered Premises and the Properties of which any of the Surrendered Premises forms a part in respect of each of the Surrendered Leases.
- E. The Tenant has surrendered to the Landlord Entities all of its right, title and interest in and to the Surrendered Leases and, accordingly, the Landlord Entities desire to execute and deliver this Release to the Tenant in satisfaction of the foregoing obligation.
- F. Unless otherwise provided for herein, all capitalized terms used in this Release have the meaning ascribed to them in the Lease Surrender Agreement.

NOW THEREFORE in consideration of the payment of TEN DOLLARS (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. Each Landlord Entity, on its own behalf and on behalf of Affiliates that own or owned a direct or indirect interest in the Properties of which any of the Surrendered Premises form a part and all of their respective successors and assigns (collectively the “**Releasors**”, and individually, a “**Releasor**”), hereby forever fully and unconditionally remises, releases, acquits, waives and forever discharges each of the Tenant, the Sears Group, and the Predecessors and each of their respective Affiliates and each of their respective members, partners, directors, officers, employees, agents, shareholders, successors and permitted assigns (collectively, the “**Releasees**” and individually, a “**Releasee**”) from any and all actual or potential claims, demands, complaints, grievances, actions, applications, proceedings, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, dues, accounts, bonds, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, 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 (collectively, the “**Claims**”), whether known or unknown, howsoever arising of every nature and kind whatsoever that the Releasors ever had, now have or hereafter can, shall or may have against any of the Releasees in any way relating to or arising from any of Surrendered Leases, Surrendered Premises or the Properties of which the Surrendered Premises form a part, but excluding Claims in any way relating to or arising from: (i) the Tenant’s obligations or liabilities under the Lease Surrender Agreement which are expressly stated to survive the Closing; or (ii) any other Closing Documents. Without limiting the generality of the foregoing, the Releasors shall not have any Claims in the CCAA Proceedings or in any subsequent bankruptcy proceeding under the *Bankruptcy and Insolvency Act* (Canada) in connection with the Claims.
2. Each of the Releasors covenants and agrees not to make any Claims against any Person which might Claim over against any of the Releasees, or who might claim contribution or indemnity from any of the Releasees in connection with the matters which are herein released. In the event that any of the Releasors hereafter makes any Claims against any of the Releasees or against any Person who may Claim over or claim contribution or indemnity against any of the Releasees with respect to any of the matters herein released then:
 - (i) such Releasor shall immediately discontinue such Claim upon receipt of written notice from a Releasee;
 - (ii) such Releasor shall be liable for all legal and related costs and expenses incurred by the affected Releasee on a full indemnity basis; and
 - (iii) this Release:

- (A) shall operate conclusively as an estoppel and complete bar to any such Claim; and
 - (B) may be pleaded as a complete defence and reply in the event of such Claim; and
 - (C) may be relied upon in any proceeding to dismiss such Claim and no objection will be raised by the party which commenced such Claim to the effect that the other parties to such Claim are not parties to this Release.
3. Each of the Releasors acknowledges and declares that: (a) it has had an adequate opportunity to read and consider this Release and to obtain such advice in regard to it as it should consider advisable; (b) it fully understands the nature and effect of this Release; and (c) this Release has been duly and voluntarily authorized, executed and delivered and it has the capacity and authority to execute and deliver it.
 4. This Release shall not be deemed to be any admission of liability on the part of the Releasees and liability is specifically denied by each of them.
 5. Each of the Releasors covenants and agrees to do such things, and to execute such further surrenders, releases, conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively carry out the terms and conditions of this Release in accordance with their true intent.
 6. If any provision of this Release shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Release and the remaining provisions shall continue in full force and effect.
 7. This Release shall enure to the benefit of each of the Releasees and their respective heirs, attorneys, guardians, estate trustees, executors, successors, assigns and representatives and be binding upon each of the Releasors and their respective heirs, attorneys, guardians, estate trustees, executors, successors, assigns and representatives.
 8. This Release shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.
 9. The terms of this Release constitute the entire agreement between the parties relating to the subject matter hereof.
 10. This Release may be executed by the parties in counterparts and may be executed and delivered by facsimile or electronic transmission and all such counterparts and facsimiles or electronic transmissions shall together constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS OF WHICH the parties have duly executed this Release this ____ day of ●,
2017.

[LANDLORD]

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE "L"
FORM OF RELEASE OF TENANT CLAIMS

TO: ■ (collectively, the "Landlord Entities", and individually, a "Landlord Entity")

FROM: SEARS CANADA INC. (the "Tenant")

RE: **Lease Surrender Agreement between the Tenant and the Landlord Entities dated ●, 2017 (as amended, modified, restated and/or supplemented from time to time, the "Lease Surrender Agreement")**

WHEREAS:

- A. The Tenant and certain of its Affiliates (collectively, the "Sears Group") applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- B. The Tenant and the Landlord Entities entered into a lease termination and surrender agreement dated ●, 2017 (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "**Lease Surrender Agreement**") whereby, among other things, the Tenant agreed to surrender to the Landlord Entities, and the Landlord Entities agreed to accept a surrender of, all of the Tenant's right, title and interest in and to the Surrendered Leases.
- C. On ●, 2017, the Court issued an Approval and Vesting Order approving the Lease Surrender Agreement, pursuant to which the Tenant shall surrender to the Landlord Entities the Surrendered Leases on the terms and conditions set out in the Lease Surrender Agreement.
- D. The Lease Surrender Agreement contemplates that the Tenant shall execute and deliver a release on the Closing Date to the Landlord Entities pursuant to which the Tenant will release and forever discharge the Landlord Entities from all claims in respect of each of the Surrendered Leases, the Surrendered Premises and the Properties of which any of the Surrendered Premises forms a part.
- E. The Tenant has surrendered to the Landlord Entities all of its right, title and interest in and to the Surrendered Leases and, accordingly, the Tenant desires to execute and deliver this Release to the Landlord Entities in satisfaction of the foregoing obligation.
- F. Unless otherwise provided for herein, all capitalized terms used in this Release have the meaning ascribed to them in the Lease Surrender Agreement.

NOW THEREFORE in consideration of the payment of TEN DOLLARS (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. The Tenant, on its own behalf and on behalf of its Affiliates and all of their respective successors and assigns (collectively the “**Releasors**”, and individually, a “**Releasor**”), hereby forever fully and unconditionally remises, releases, acquits, waives and forever discharges each of the Landlord Entities and each of their respective Affiliates and each of their respective members, partners, directors, officers, employees, agents, shareholders, successors and permitted assigns (collectively, the “**Releasees**” and individually, a “**Releasee**”) from any and all actual or potential claims, demands, complaints, grievances, actions, applications, proceedings, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, dues, accounts, bonds, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, 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 (collectively, the “**Claims**”), whether known or unknown, howsoever arising of every nature and kind whatsoever that the Releasors ever had, now have or hereafter can, shall or may have against any of the Releasees in any way relating to or arising from any of Surrendered Leases, Surrendered Premises or the Properties of which the Surrendered Premises form a part, but excluding Claims in any way relating to or arising from: (i) the Landlord Entities’ obligations or liabilities under the Lease Surrender Agreement which are expressly stated to survive the Closing; or (ii) any other Closing Documents.

2. Each of the Releasors covenants and agrees not to make any Claims against any Person which might Claim over against any of the Releasees, or who might claim contribution or indemnity from any of the Releasees in connection with the matters which are herein released. In the event that any of the Releasors hereafter makes any Claims against any of the Releasees or against any Person who may Claim over or claim contribution or indemnity against any of the Releasees with respect to any of the matters herein released then:
 - (i) such Releasor shall immediately discontinue such Claim upon receipt of written notice from a Releasee;
 - (ii) such Releasor shall be liable for all legal and related costs and expenses incurred by the affected Releasee on a full indemnity basis; and
 - (iii) this Release:
 - (A) shall operate conclusively as an estoppel and complete bar to any such Claim; and
 - (B) may be pleaded as a complete defence and reply in the event of such Claim; and
 - (C) may be relied upon in any proceeding to dismiss such Claim and no objection will be raised by the party which commenced such Claim to the effect that the other parties to such Claim are not parties to this Release.

3. Each of the Releasors acknowledges and declares that: (a) it has had an adequate opportunity to read and consider this Release and to obtain such advice in regard to it as it should consider advisable; (b) it fully understands the nature and effect of this Release; and (c) this Release has been duly and voluntarily authorized, executed and delivered and it has the capacity and authority to execute and deliver it.
4. This Release shall not be deemed to be any admission of liability on the part of the Releasees and liability is specifically denied by each of them.
5. Each of the Releasors covenants and agrees to do such things, and to execute such further surrenders, releases, conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively carry out the terms and conditions of this Release in accordance with their true intent.
6. If any provision of this Release shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Release and the remaining provisions shall continue in full force and effect.
7. This Release shall enure to the benefit of each of the Releasees and their respective heirs, attorneys, guardians, estate trustees, executors, successors, assigns and representatives and be binding upon each of the Releasors and their respective heirs, attorneys, guardians, estate trustees, executors, successors, assigns and representatives.
8. This Release shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.
9. The terms of this Release constitute the entire agreement between the parties relating to the subject matter hereof.
10. This Release may be executed by the parties in counterparts and may be executed and delivered by facsimile or electronic transmission and all such counterparts and facsimiles or electronic transmissions shall together constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS OF WHICH the Tenant has duly executed this Release this ____ day of ●, 2017.

[LANDLORD]

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE "M"
CERTAIN ENCUMBRANCES TO BE VACATED OR DISCHARGED

CF Fairview Mall

1. Construction lien in favour of Tag Electric Ltd. in the amount of \$197,845.21 registered as Instrument No. AT4643425 on August 1, 2017 against CF Fairview Mall.
2. Construction lien in favour of Abbarch Architecture Inc. in the amount of \$106,032 registered as Instrument No. AT4623149 on July 10, 2017 against CF Fairview Mall.
3. Construction lien in favour of APM Construction Services Inc. in the amount of \$1,589,521 registered as Instrument No. AT4629454 on July 17, 2017 against Fairview Mall.
4. Certificate of Action in favour of APM Construction Services Inc. registered as Instrument No. AT4653888 against CF Fairview Mall regarding the Construction Lien registered as Instrument No. AT4629454.
5. Construction lien in favour of Sterling Concrete Sawing & Drilling Ltd. in the amount of \$94,184 registered as Instrument No. AT4645580 on August 2, 2017 against CF Fairview Mall.
6. Construction lien in favour of Belmont Concrete Services Inc. in the amount of \$164,438 registered as Instrument No. AT4644554 on August 1, 2017 against CF Fairview Mall.
7. Construction lien in favour of Citymark Construction and Drywall Ltd. in the amount of \$151,742 registered as Instrument No. WR1047113 on July 11, 2017 against CF Fairview Mall.

CF Fairview Park

1. Construction lien in favour of Traugott Building Contractors Inc. in the amount of \$2,226,971.77 registered as Instrument No. WR10472010 on July 12, 2017 against CF Fairview Park.
2. Construction lien in favour of Toronto Concrete Floors Ltd. in the amount of \$276,413.82 registered as Instrument No. WR1047088 on July 11, 2017 against CF Fairview Park.
3. Construction lien in favour of Sean Teperman Consulting Corp. in the amount of \$199,295.34 registered as Instrument No. WR1050899 on July 26, 2017 against CF Fairview Park.
4. Construction lien in favour of C3 Buildings and Infrastructure Inc. in the amount of \$81,300.11 registered as Instrument No. WR1050296 on July 24, 2017 against CF Fairview Park.
5. Construction lien in favour of Petroff Partnership Architects in the amount of \$130,638 registered as Instrument No. WR1045740 on July 6, 2017 against CF Fairview Park.

6. Construction lien in favour of Scandinavian Building Services Inc. in the amount of \$7,825 registered as Instrument No. WR1054180 on August 4, 2017 against CF Fairview Park.

CF Lime Ridge

1. Construction lien in favour of 152610 Canada Inc. in the amount of \$1,059,649 registered as Instrument No. WE1219488 on July 6, 2017 against CF Lime Ridge.
2. Construction lien in favour of Citymark Construction and Drywall Ltd. in the amount of \$111,689 registered as Instrument No. WE1218818 on July 4, 2017 against CF Lime Ridge.
3. Construction lien in favour of Nelnor Construction, A Division of Decor Craft Inc. in the amount of \$111,982 registered as Instrument No. WE1220411 on July 10, 2017 against CF Lime Ridge.
4. Construction lien in favour of Lancor Electric (1996) Ltd. in the amount of \$198,323 registered as Instrument No. WE1222435 on July 18, 2017 against CF Lime Ridge.

Mapleview Centre

1. Construction Lien in favour of APM Construction Services Inc. in the amount of \$109,630.73 registered as Instrument No. HR1472837 on July 17, 2017 against Mapleview Centre.
2. Certificate of Action registered by APM Construction Services Inc. as Instrument No. HR1480704 on August 14, 2017 against Mapleview Centre for the preceding lien.
3. Construction Lien in favour of Hanson + Jung Architects Inc. in the amount of \$14,786.71 registered as Instrument No. HR1478188 on August 3, 2017 against Mapleview Centre.
4. Certificate of Action registered by Hanson + Jung Architects Inc. as Instrument No. HR1489892 on September 18, 2017 against Mapleview Centre for the preceding lien.

Oshawa Centre

1. Construction Lien in favour of APM Construction Services Inc. in the amount of \$134,295.54 registered as Instrument No. DR1617122 on July 17, 2017 against Oshawa Centre.
2. Certificate of Action registered by APM Construction Services Inc. as Instrument No. DR1626682 on August 14, 2017 against Oshawa Centre for the preceding lien.

SCHEDULE "N"
SOA

CF Fairview Pointe Claire

Table with multiple rows and columns, containing redacted data represented by black bars. The table appears to be a schedule or summary table. The redaction covers the majority of the content in each row, leaving only a few cells visible.

**SCHEDULE “O”
CERTAIN PROPERTIES**

CF Champlain	477 Paul St., Dieppe (Moncton), New Brunswick
CF Promenades St. Bruno	1 Boulevard des Promenades, J3V 5J5, Saint-Bruno-de-Montarville, Québec
CF Galeries D'Anjou	7999 Boulevard Les Galeries d'Anjou, Ville d'Anjou, Québec
CF Carrefour Laval	3003 Boulevard Le Carrefour, Laval, Québec
CF Fairview Pointe Claire	6801 Transcanada Highway, Pointe-Claire, Québec
CF Fairview Mall	1800 Sheppard Avenue East, Suite 330, M2J 5A7, Willowdale (Toronto), Ontario
CF Toronto Eaton Centre	220 Yonge Street, Toronto, Ontario
CF Lime Ridge Mall	999 Upper Wentworth Street, Hamilton, Ontario
CF Fairview Park	2960 Kingsway Drive, Kitchener, Ontario
CF Polo Park	66Q-1485 Portage Avenue, Winnipeg, Manitoba
Laurier Quebec (Ste-Foye)	2700, Boulevard Laurier, Québec, Québec
Carrefour de l'Estrie	3050 Boulevard de Portland, Sherbrooke, Québec
Oshawa Centre	419 King Street West, Oshawa, Ontario
Mapleview Shopping Centre	900 Maple Avenue, Burlington, Ontario
Southgate Centre	5015 111 St NW, Edmonton, Alberta
Guildford Town Centre	10355 152 St, Surrey, British Columbia

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEL ELECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CO RP., 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 Lease Surrender Agreement with
Fairmall Leaseholds Inc.
and Fairview Pointe-Claire Leaseholds Inc.
CF Fairview Pointe-Claire and CF Fairview Mall (Stores
#1305 and 1322))

OSLER, HOSKIN & HARCOURT, LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M
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Tel: 416.862.5949
Fax: 416.862.6666

Lawyers for the Applicants

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 – LEASE SURRENDER AGREEMENT – CF
FAIRVIEW POINTE-CLAIRE AND CF FAIRVIEW MALL (STORES #1305 AND
#1322)**

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 lease surrender and resiliation transaction (the “**Transaction**”) contemplated by a Lease Surrender Agreement between Sears Canada Inc. (“**Sears Canada**”), as Tenant, and Fairmall Leaseholds Inc. and Fairview Pointe-Claire Leaseholds Inc. (the “**Landlord Entities**”) as Landlords dated September 27, 2017 (the “**Lease Surrender Agreement**”) 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 Landlord Entities, 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 Lease Surrender Agreement, as applicable.

APPROVAL OF THE LEASE SURRENDER AGREEMENT

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 Lease Surrender Agreement 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 Landlord Entities may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the surrender by Sears Canada of its right, title and interest in and to the Surrendered Leases and the Surrendered Real Property Interests and the Surrendered Premises (each as defined in the Lease Surrender Agreement) (collectively, the “**Surrendered Assets**”) to the applicable Landlord Entities and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Lease Surrender Agreement and this Order, and shall not incur any liability as a result thereof. The legal descriptions with respect to the Surrendered Assets are as set out on Schedule “B-1” hereto.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Landlord Entities 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 Surrendered

Assets shall be surrendered to the Landlord Entities (with the Leases being resiliated) 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 (whether contractual, statutory or otherwise), leases, notices of lease, subleases, licenses, levies, restrictions, rights of retention, judgments, notices of sale, contractual rights, options, liabilities (direct, indirect, absolute or contingent), obligations, 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 Surrendered 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) those Claims listed on Schedule “B-2”; and
- (c) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Register of Personal and Movable Real Rights* or any other personal property registry system;

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

5. THIS COURT ORDERS that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar, as set out in Schedule “B-2”, is hereby directed to specifically discharge, cancel, delete, vacate and expunge from title to the applicable real or immovable property described in Schedule “B-2” all of the Encumbrances listed in Schedule “B-2” hereto.

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 Surrendered 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, subject to the Construction Lien Claim Reserve (as defined below) to the DIP ABL Agent or the DIP Term Agent, as applicable, 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 the Monitor shall hold back from any distributions of proceeds as permitted hereunder, \$2,152,019.57, being the aggregate amounts claimed by the holders of the construction liens listed on Schedule "B-2" (the "**Construction Lien Claim Reserve**"). The Construction Lien Claim Reserve shall only be distributed on further Order of this Court. For greater certainty, the creation of the Construction Lien Claim Reserve does not in itself create, enhance, affect or impair any rights of persons or parties in such funds.

11. 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, subject to the Construction Lien Claim Reserve, on behalf of the Applicants to be dealt with by further Order of the Court.

12. 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 Lease Surrender Agreement.

13. THIS COURT ORDERS that notwithstanding anything else contained in the Lease Surrender Agreement or the Closing of the Transaction, the Landlord Entities shall be bound by and benefit from the Initial Order until the earlier of (a) six months from the date of this Order, and (b) the duration of the period during which any other owners, operators, managers or landlords of commercial shopping centres or other commercial properties in which there is a store, office or warehouse owned or operated by the Tenant, is bound by or obtains any benefit from same. Without limiting the generality of the foregoing, during such period, the Landlord Entities shall benefit from the stay of proceedings provision provided for at paragraph 18 of the Initial Order.

SEALING

14. THIS COURT ORDERS that Confidential Appendix "●" to the ● Report or 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

15. 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 surrender of the Surrendered Assets to the applicable Landlord Entities and the resiliation of the Surrendered Leases 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.

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

17. 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 Lease Surrender Agreement between Sears Canada Inc. ("**Sears Canada**"), as Tenant, and Fairmall Leaseholds Inc. and Fairview Pointe-Claire Leaseholds Inc. (the "**Landlord Entities**") as Landlords dated September 27, 2017 (the "**Lease Surrender Agreement**"), 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 Lease Surrender Agreement and provided for the surrender to the Landlord Entities of Sears Canada's right, title and interest in and to the Surrendered Leases, the Surrendered Real Property Interests and the Surrendered Premises (as defined in the Lease Surrender Agreement), which surrender is to be effective with respect to the Surrendered Leases, the Surrendered Real Property Interests and the

Surrendered Premises upon the delivery by the Monitor to the Landlord Entities and Sears Canada of a certificate confirming that (i) the conditions to Closing set out in sections 7.1, 7.2 and 7.3 of the Lease Surrender Agreement have been satisfied or waived by the Landlord Entities and Sears Canada, as applicable, and (ii) the Surrender Consideration (as defined in the Lease Surrender Agreement), subject to the adjustments in accordance with the Lease Surrender Agreement, and any GST/QST Amount has been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing set out in sections 7.1, 7.2 and 7.3 of the Lease Surrender Agreement have been satisfied or waived by the Landlord Entities and Sears Canada, as applicable; and
2. The Surrender Consideration, subject to the adjustments in accordance with the Lease Surrender Agreement, and any GST/QST Amount, has 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-1" to Approval and Vesting Order
LEGAL DESCRIPTIONS OF SURRENDERED ASSETS**

No.	Location/ Address	Legal Description
1.	CF Fairview Pointe Claire / 6801, route Transcanadienne Pointe-Claire, Québec	Those parcels of land known and designated as Lot number 2 530 450 of the Cadastre of Quebec, Registration Division of Montreal, Province of Quebec
2.	CF Fairview Mall / 1800 Sheppard Avenue East, Suite 330, Willowdale, Ontario	<p>FIRSTLY - FREEHOLD LANDS:</p> <p>PIN 10048-0078(LT)</p> <p>Firstly: Parts of Lots 16 and 17, Concession 3, East of Yonge Street, designated as Part 4 on Plan R-3563, save and except those portions of said Lots 16 and 17, Concession 3, East of Yonge Street, designated as Parts 5, 6 and 7 on Plan 66R-13970. Plan BA-658 registered as D293 confirms part of the boundaries of this land - See No. A501297; Secondly: Part of Lot 1, Expropriation Plan MX41 designated as Parts 2 and 3 on Plan 66R-13970. Plan BA-2408 registered as D948 confirms part of the boundaries of this land - See No. C522526; SAVE AND EXCEPT Part of Lot 16, Concession 3, East of Yonge Street, designated as Parts 1, 2, 3, 4, 6, 8, 14, 16, 17, 20, 23, 24, 27, 28, 34, 35, 50 and 66 on Plan 66R-17954, City of Toronto, being the whole of the PIN.</p> <p>SECONDLY - LEASEHOLD LANDS:</p> <p>PIN 10048-0080(LT)</p> <p>Firstly: Parts of Lots 16 and 17, Concession 3, East of Yonge Street, designated as Part 4 on Plan R-3563, save and except those portions of said Lots 16 and 17, Concession 3, East of Yonge Street, designated as Parts 5, 6 and 7 on Plan 66R-13970. Plan BA-658 registered as D293 confirms part of the boundaries of this land - See No. A501297; Secondly: Part of Lot 1, Expropriation Plan MX41 designated as Parts 2 and 3 on Plan 66R-13970. Plan BA-2408 registered as D948 confirms part of the boundaries of this land - See No. C522526; SAVE AND EXCEPT Part of Lot 16, Concession 3, East of Yonge Street, designated as Parts 1, 2, 3, 4, 6, 8, 14, 16, 17, 20, 23, 24, 27, 28, 34, 35, 50 and 66 on Plan 66R-17954, City of Toronto, being the whole of the PIN.</p>

**SCHEDULE "B-2" to Approval and Vesting Order
ENCUMBRANCES TO BE EXPUNGED/DELETED**

No.	Location/ Address	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
1.	CF Fairview Pointe Claire / 6801, route Transcanadie nne, Pointe- Claire, Québec	Land Registry Office for the Registration Division of Montreal	See Schedule "B-1"	Nil
2.	CF Fairview Mall / 1800 Sheppard Avenue East, Suite 330, Willowdale, Ontario	Toronto (No. 64)	See Schedule "B-1"	<p>Construction lien in favour of Tag Electric Ltd. in the amount of \$197,845.21 registered as Instrument No. AT4643425 on August 1, 2017 against CF Fairview Mall.</p> <p>Construction lien in favour of Abbarch Architecture Inc. in the amount of \$106,032 registered as Instrument No. AT4623149 on July 10, 2017 against CF Fairview Mall.</p> <p>Construction lien in favour of APM Construction Services Inc. in the amount of \$1,589,521 registered as Instrument No. AT4629454 on July 17, 2017 against Fairview Mall.</p> <p>Certificate of Action in favour of APM Construction Services Inc. registered as Instrument No. AT4653888 against CF Fairview Mall regarding the Construction Lien registered as Instrument No. AT4629454.</p> <p>Construction lien in favour of Sterling Concrete Sawing & Drilling Ltd. in the amount of \$94,184 registered as Instrument No. AT4645580 on August 2, 2017 against CF Fairview Mall.</p> <p>Construction lien in favour of Belmont Concrete Services Inc. in the amount of \$164,438 registered as Instrument No. AT4644554 on August 1, 2017 against CF Fairview Mall.</p> <p>Certificate of Action in favour of Abbarch Architecture Inc. registered as Instrument No. AT4681134 against CF Fairview Mall regarding the Construction Lien registered as Instrument No. AT4623149.</p> <p>Certificate of Action in favour of Sterling Concrete Sawing & Drilling Ltd. registered as Instrument No. AT4681232 against CF Fairview Mall regarding the Construction Lien registered as Instrument No. AT4645580.</p>

No.	Location/ Address	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
				Instrument No. A310935 registered February 24, 1971 being a Notice of Lease in favour of Simpsons Limited partially determined by Instrument No. C312649

**SCHEDULE "C" to Approval and Vesting Order
PERMITTED ENCUMBRANCES**

"Permitted Encumbrances" means, collectively: (a) any Encumbrances encumbering the freehold or other ownership interest in the Properties or any other interest in the Properties of the Landlord Entities, but excludes any Encumbrances solely encumbering the Tenant's leasehold interest (or the rights of the Tenant as lessee) in and to any Properties situated outside of the Province of Québec on which any Surrendered Premises are located or the rights of the Tenant as lessee under the Leases; (b) Encumbrances resulting from any Landlord Entity's actions or omissions; and (c) the items identified in Schedule "J" of the Lease Surrender Agreement. In no event shall an Encumbrance arising as a result of work completed by or on behalf of the Tenant in respect of any Premises constitute a Permitted Encumbrance.

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 Lease Surrender Agreement with Fairmall Leaseholds Inc. and Fairview Pointe-Claire Leaseholds Inc. Fairview Mall (Store #1322) and Pointe Claire (Store #1305) returnable October 4, 2017)

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