

**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 Agreement of Purchase and Sale with  
Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc.  
(Store #1345 – Newmarket Home Store) returnable October 27, 2017)**

October 23, 2017

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

Marc Wasserman LSUC# 44066M  
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R  
Tel: 416.862.4923

Tracy Sandler LSUC# 32443N  
Tel: 416.862.5890

Karin Sachar LSUC# 59944E  
Tel: 416.862.5949

Lawyers for the Applicants

**TO: SERVICE LIST**

**AND TO: SUPPLEMENTAL SERVICE LIST**

**REGIONAL SHOPPING CENTRES  
LIMITED by its solicitors, MCLEAN &  
KERR LLP**  
Suite 300, 95 Wellington Street West Toronto,  
ON M5J 2R2

**OMERS REALTY CORPORATION**  
Suite 2200, 161 Bay Street  
Toronto, ON M5J 2S1

**CAMBRIDGE LEASEHOLDS LIMITED**  
Suite 300, 95 Wellington Street West Toronto,  
ON M5J 2R2

**CORPORATION OF THE TOWN OF  
NEWMARKET**  
Attn: Town Clerk  
395 Mulock Drive  
Newmarket, ON L3Y 4X7

## TABLE OF CONTENTS

<b>Tab</b>	<b>Document</b>
1	Notice of Motion dated October 23, 2017
2	Affidavit of Billy Wong, sworn October 23, 2017
	Exhibit "A" Redacted copy of APS
	Exhibit "B" Redacted copy of Serruya APS
	Exhibit "C" Redacted copy of ROFR Notice
	Exhibit "D" Redacted copy of ROFR Exercise
3	Draft Approval and Vesting Order – Store #1345 – Newmarket Home

**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  
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

**NOTICE OF MOTION**  
**(Motion for Approval of Agreement of Purchase and Sale with**  
**Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc.**  
**(Store #1345 – Newmarket Home Store))**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on October 27, 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 Agreement of Purchase and Sale (the “**APS**”) entered into as of October 19, 2017 between Sears Canada Inc. (“**Sears Canada**”) and Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (the “**Purchaser**”) and vesting Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the Approval and Vesting Order) in the Purchaser; and
  - (c) sealing from the public record certain commercially-sensitive information and documents (as described below).
2. Such further and other relief as this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

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

**Approval and Vesting Order**

3. On July 13, 2017, the Court approved a process (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 October 4, 2017, Sears Canada entered into an Agreement of Purchase and Sale with Serruya Private Equity Inc. (the “**Serruya APS**”) in which Serruya would purchase the property commonly known as Newmarket Home Store (Store #1345), located in Newmarket, Ontario (the “**Property**”), in accordance with the terms and conditions set out in the Serruya APS;

5. The Serruya APS provided for a termination fee (the “**Termination Payment**”) payable to Serruya in the amount of approximately 8% of the Purchase Price in the event the Serruya APS was terminated as a result of the Purchaser – being the registered owner of the neighbouring lands to the Property – exercising a right of first refusal, option to purchase or similar right held in respect of the Property (“**ROFR**”) pursuant to an Operating Agreement. The Monitor is currently holding the Termination Payment in trust and it is proposed that the Monitor will pay the Termination Payment to Serruya should the APS be approved.
6. On October 4, 2017, following the execution of the Serruya APS and pursuant to the Operating Agreement with the Purchaser, Sears Canada provided the Purchaser with the option to exercise the ROFR at the price and upon the terms and conditions contained in the Serruya APS (the “**ROFR Notice**”);
7. On October 19, 2017, the Purchaser provided Sears Canada with notice of their election to exercise the ROFR (the “**ROFR Exercise**”), and Sears Canada entered into the APS with the Purchaser, in which the Purchaser will purchase the Property, in accordance with the terms and conditions set out in the APS;
8. The DIP Term Credit Agreement requires that the Net Proceeds of any Disposition (both as defined in the DIP Term Credit Agreement) 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 Term Credit Agreement) in the priority provided for in the DIP Term Credit Agreement;
9. The consideration to be received in the transaction is fair and reasonable;
10. The process leading to the APS was fair and reasonable in the circumstances and was approved by the Monitor;
11. The APS is in the best interests of the creditors and other stakeholders of the Applicants;
12. The relief sought on this motion is supported by the Monitor and the Sale Advisor;

### **Sealing Order**

13. The Confidential Appendix to the Monitor's Report filed in connection with this motion contains confidential and commercially sensitive information which, if made public, would be materially prejudicial to Sears Canada and detrimental to the SISP if the proposed transaction is not completed and the property must be the subject of further marketing efforts;
14. There are no reasonable alternative measures to sealing this information from the public record;
15. The salutary effects of sealing this information outweigh the deleterious effects of doing so;
16. The provisions of the CCAA, including section 36, and the inherent and equitable jurisdiction of this Honourable Court;
17. 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
18. 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 October 23, 2017 and the exhibits attached thereto;
3. The Third and Sixth Reports of the Monitor; and
4. Such further and other evidence as counsel may advise and this Court may permit.



October 23, 2017

**OSLER, HOSKIN & HARCOURT LLP**

Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman (LSUC# 44066M)  
Jeremy Dacks (LSUC# 41851R)  
Tracy Sandler (LSUC# 32443N)  
Karin Sachar (LSUC# 59944E)

Tel: (416) 362-2111

Fax: (416) 862-6666

Lawyers for the Applicants

**TO: SERVICE LIST**

**AND TO: SUPPLEMENTAL SERVICE LIST**

**REGIONAL SHOPPING CENTRES  
LIMITED by its solicitors, MCLEAN &  
KERR LLP**

Suite 300, 95 Wellington Street West Toronto,  
ON M5J 2R2

**CAMBRIDGE LEASEHOLDS LIMITED**

Suite 300, 95 Wellington Street West Toronto,  
ON M5J 2R2

**OMERS REALTY CORPORATION**

Suite 2200, 161 Bay Street  
Toronto, ON M5J 2S1

**CORPORATION OF THE TOWN OF  
NEWMARKET**

Attn: Town Clerk  
395 Mulock Drive  
Newmarket, ON L3Y 4X7

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., CORBEL 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 Agreement of Purchase and Sale with  
Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc.  
(Store #1345))

**OSLER, HOSKIN & HARCOURT, LLP**

P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M  
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R  
Tel: 416.862.4923

Tracy Sandler LSUC# 32443N  
Tel: 416.862.5890

Karin Sachar LSUC# 59944E  
Tel: 416.862.5949  
Fax: 416.862.6666

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

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

APPLICANTS

**AFFIDAVIT OF BILLY WONG  
(Sworn October 23, 2017)**

**(Motion for Approval of Agreement of Purchase and Sale with  
Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc.  
(Store #1345 – Newmarket Home Store))**

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 Agreement of Purchase and Sale dated October 19, 2017 (the “**APS**”) between Sears Canada and Oxford Properties Retail Holdings II Inc. (“**Oxford**”) and CPPIB Upper Canada Mall Inc. (“**CPPIB**”) (collectively, the “**Purchaser**”) relating to the Subject Assets (as defined in the APS), which include all of the right, title and interest of Sears Canada in and to the property commonly known as Newmarket Home Store (Store #1345), located in Newmarket, Ontario (the “**Property**”), the details of which are summarized in the following chart:

Store No.	Property	Province	Address	Land Registry Office	Legal Description
1345	Newmarket Home Store	Ontario	17700 Yonge Street	LRO #65 York (Aurora)	PIN: 03554-0076 (LT)  PT LT 96 CON 1 W YONGE ST EAST GWILLIMBURY: PT LT 97 CON 1 W YONGE ST EAST GWILLIMBURY PT 1, 65R19397, T/W R719694; S/T EG15326,EG15329,EG15610,EG20073 NEWMARKET

3. Together, Oxford and CPPIB are the registered owners of the neighbouring lands to the Property subject to the APS, comprising the regional shopping centre known as Upper Canada Mall, 17600 Yonge Street, Newmarket, Ontario. As described below, the Purchaser held a right of first refusal (“**ROFR**”) in respect of the Property and has elected to exercise that right in connection with the purchase of the Subject Assets.

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

5. 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 ultimately in the APS which is the subject of this motion.

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

7. The Applicants and the Sale Advisor believe that this transaction is in the best interests of the Applicants and their stakeholders, and that the consideration to be paid in respect of the transaction is fair and reasonable. 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.

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

## **Background**

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

10. The purpose of the SISP was to seek out proposals for the acquisition of, or an investment in the Applicants' 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 the Applicants' stakeholders.

11. 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 Subject Assets which are subject to the APS.

12. On August 30, 2017, Serruya Private Equity Inc. ("**Serruya**") submitted a non-binding letter of intent (the "**LOI**") in respect of the Subject Assets, in which Serruya expressed interest in purchasing the Subject Assets on the terms and conditions set out in the LOI. After consultation with the Sale Advisor, the Monitor and the DIP Lenders, the Special Committee determined that it would continue to pursue the transaction.

13. I am advised by Mr. Caiger and believe that negotiations ensued with Serruya in respect of the financial and legal aspects of the LOI, draft documents were exchanged by the parties, and follow up discussions were held. As a result of those negotiations, and after considering Serruya's offer and alternatives available, the Sale Advisor recommended to the Special Committee, and the Special Committee subsequently recommended to the Board, that Sears Canada execute a purchase agreement with Serruya for the Subject Assets.

14. After carefully considering Serruya's offer, including being satisfied that the Purchase Price being offered was fair and reasonable, the Board determined that Serruya's offer was in the best interests of the Applicants and their stakeholders and Sears Canada entered into an Agreement of Purchase and Sale in respect of the Subject Assets with Serruya on October 4, 2017 (the "**Serruya APS**"). Attached as Exhibit "B" to this Affidavit is a copy of the Serruya APS, which has been redacted to protect the confidential information.

### **The Right of First Refusal**

15. As set out in the Caiger Affidavit, certain of Sears Canada's lease agreements and operating agreements provide a right of first refusal, option to purchase or similar right ("**ROFR**") to the counterparty to such lease or operating agreement.

16. The Purchaser is a party to one such operating agreement (the "**Operating Agreement**") with Sears Canada in respect of the Property.

17. It was a condition of Closing under the Serruya APS that all options to purchase, rights of first refusal to purchase, or similar rights with respect to the Property or any part thereof in favour of the Purchaser would have validly expired or would have been waived by the



Purchaser in writing, and that Sears Canada would provide Serruya with commercially reasonable evidence to substantiate the foregoing.

18. In the event that the Serruya APS was terminated as a result of the Purchaser exercising the ROFR provisions in the Operating Agreement, Sears Canada agreed under the Serruya APS to pay Serruya a termination fee of approximately 8% of the Purchase Price (the “**Termination Payment**”) in consideration of the lost opportunity to Serruya. In accordance with the terms of the Serruya APS, following execution of the Serruya APS, Sears Canada wired the Termination Payment to the Monitor to be held in trust. It is proposed that the Monitor pay the Termination Payment to Serruya should the APS be approved.

19. Section 6.4(c) of the Serruya APS provided that, except as provided by any Order of the Court, Sears Canada would comply in all material respects with the ROFR provisions in the Operating Agreement as they related to that transaction, including by providing notice of the transaction to the Purchaser and by providing an offer to purchase the Property to the Purchaser at the Serruya APS Purchase Price and upon the same terms and conditions contained in the Serruya APS in all substantial respects.

20. Pursuant to Section 8.1 of the Serruya APS, Sears Canada was entitled to disclose the Serruya APS, including the Serruya APS Purchase Price, and all information provided by Serruya in connection with the Serruya APS to the Purchaser.

21. Accordingly, on October 4, 2017, following the execution of the Serruya APS, Sears Canada contacted the Purchaser to notify it of the transaction, and provided the Purchaser with a copy of the Serruya APS (the “**ROFR Notice**”). Attached as Exhibit “C” to this Affidavit

is a copy of the ROFR Notice dated October 4, 2017, which has been redacted to protect the confidential information.

22. Pursuant to the Operating Agreement, the Purchaser had the option to exercise the ROFR at a price and upon the terms and conditions contained in the Serruya APS, by written notice to Sears Canada within 15 days of receipt of the ROFR Notice.

23. On October 19, 2017, the Purchaser advised Sears Canada that it was electing to exercise the ROFR (the “**ROFR Exercise**”) and provided Sears Canada with an executed copy of the APS, on substantially the same terms as the Serruya APS. Attached as Exhibit “D” to this Affidavit is a copy of the ROFR Exercise dated October 19, 2017, which has been redacted to protect the confidential information.

### **The Agreement of Purchase and Sale**

24. Sears Canada and the Purchaser entered into the APS dated as of October 19, 2017, a redacted copy of which is attached as Exhibit “A”. The APS provides for, among other things, the following:

- (a) Subject to the Initial Order and the SISP Order, Sears Canada agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase and assume from Sears Canada, the Subject Assets on the Closing Date in accordance with the terms and conditions set out in the APS.
- (b) The Purchaser will pay the Purchase Price, plus all applicable taxes. The Purchaser will pay the Deposit, which is ten percent of the Purchase Price, by

wire transfer of immediately available funds to the Monitor, in trust, on or prior to the Business Day following the Execution Date. I am advised by the Monitor that the Deposit has been received. The Purchaser will pay the balance of the Purchase Price by wire transfer of immediately available funds to the Monitor on the Closing Date. The Purchase Price is subject to certain closing adjustments as set out in the APS, including realty taxes, which adjustments will be final and not subject to readjustment. This allows for final settlement of all of Sears Canada's obligations relating to the Subject Assets, giving certainty of result.

- (c) The APS and the Transaction contemplated therein are subject to the Court issuing the proposed Approval and Vesting Order and the Monitor delivering the Monitor's Certificate.
- (d) Closing will take place on the Business Day 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 Purchaser in writing, provided that the Closing Date shall be no later than October 25, 2017 or such later date (which shall not be later than 60 days following October 25, 2017 without the further consent of the Purchaser) as agreed to in writing by Sears Canada (with the consent of the DIP Lenders and the Monitor) or as otherwise ordered by the Court. Sears Canada has provided notice that the Closing Date has been extended to November 1, 2017.

- (e) Subject to the terms of the APS and the Approval and Vesting Order, the Purchaser is purchasing the Subject Assets on an “as is, where is” basis.
- (f) There are no financing conditions to the APS.
- (g) During the Interim Period between the Execution Date and the Closing Date, Sears Canada by itself or through its agent will be entitled to remove and sell, or permit any other Persons to remove and sell, any and all Inventory and FF&E and any other Excluded Assets, from the Property Sears Canada deems appropriate subject to the APS, the Access Agreement (a form of which is attached as Schedule “I” to the APS), the Initial Order, the SISP Order and any other Order of the Court.
- (h) In addition, Sears Canada and its agents and their respective representatives will have access to the Property during the Post-Closing Access Period (*i.e.*, for a period that is the earlier of 15 weeks following the Closing Date, and the date determined by Sears Canada on ten Business Days’ notice to the Purchaser) in order to conduct a liquidation sale of the Inventory and/or FF&E and/or to remove any of the Inventory, the FF&E, and/or the Excluded Assets in accordance with the Access Agreement, the form of which is attached as Schedule “I” to the APS.
- (i) If the Transaction is not completed by any reason other than the default of the Purchaser, the full amount of the Deposit together with interest shall be paid to the Purchaser as full and final settlement and the Purchaser shall have no

further recourse provided that if the Transaction is not completed solely by reason of a default of the Vendor, the Vendor shall reimburse the Purchaser for its reasonable out-of-pocket expenses incurred following the Execution Date to a maximum amount of \$25,000.

### **Proposed Distribution of Proceeds of Transaction**

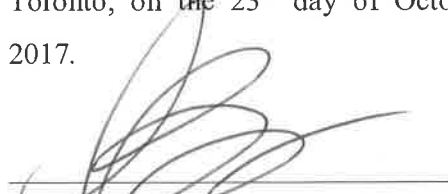
25. The proposed Approval and Vesting Order provides that the Monitor will distribute any net proceeds from the Transaction (“**Net Proceeds**”) to repay amounts owing under the DIP Term Credit Agreement after filing the Monitor’s Certificate (a “**Distribution**”). Any Distribution will be made free and clear of all Claims and Encumbrances. If all amounts owing under the DIP Term Credit Agreement have been repaid, the Monitor will retain any Net Proceeds remaining on behalf of the Applicants pending further Order of the Court. In addition, the Monitor will provide the Termination Payment to Serruya.

### **Conclusion**


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

SWORN BEFORE ME at the City of  
Toronto, on the 23<sup>rd</sup> day of October,  
2017.

Commissioner for taking Affidavits



Lia Bruschetta  
LSVC #600410



Billy Wong

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., CORBELL ELECTRIQUE INC., S.I.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 Agreement of Purchase and Sale with Oxford Properties Retail Holding II Inc. and CPPIB Upper Canada Mall Inc. (Store #1345 – Newmarket Home Store))

**OSLER, HOSKIN & HARCOURT, LLP**

P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M

Tel: 416.862.4908

Tracy Sandler LSUC# 32443N

Tel: 416.862.5890

Jeremy Daeks LSUC# 41851R

Tel: 416.862.4923

Karin Sachar LSUC# 59944E

Tel: 416.862.5949

Fax: 416.862.6666

Lawyers for the Applicants

TAB A

THIS IS EXHIBIT "A" REFERRED TO IN  
THE AFFIDAVIT OF BILLY WONG,  
SWORN BEFORE ME ON THIS 23<sup>rd</sup> DAY OF OCTOBER, 2017.



---

A Commissioner for Taking Affidavits.

Lia Bruechetta  
LSUC #600410



**AGREEMENT OF PURCHASE AND SALE**

**SEARS CANADA INC.**  
as the Vendor

- and -

**OXFORD PROPERTIES RETAIL HOLDINGS II INC.**  
**and CPPIB UPPER CANADA MALL INC.**  
as the Purchaser

## TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	2
1.1    Definitions.....	2
ARTICLE 2 SALE TRANSACTION .....	8
2.1    Offer and Acceptance .....	8
2.2    As Is, Where Is.....	9
ARTICLE 3 PURCHASE PRICE .....	11
3.1    Purchase Price.....	11
3.2    Deposit .....	12
3.3    Purchase Price Allocation .....	13
3.4    Letters of Credit and Deposits .....	14
3.5    Trade-Marks.....	14
ARTICLE 4 ADJUSTMENTS .....	15
4.1    Statement of Adjustments and Absence of Post-Closing Adjustments .....	15
4.2    General Adjustments.....	15
4.3    Realty Tax Appeals.....	15
4.4    Utilities.....	16
ARTICLE 5 INTERIM PERIOD.....	16
5.1    Interim Period .....	16
5.2    Contracts .....	17
5.3    Permitted Encumbrances and Assumed Contracts .....	17
ARTICLE 6 REPRESENTATIONS, WARRANTIES & COVENANTS.....	18
6.1    Vendor’s Representations and Warranties.....	18
6.2    Purchaser’s Representations and Warranties .....	19
6.3    Purchaser’s Covenants .....	20
6.4    Vendor’s Covenants.....	21
6.5    Tax Matters .....	21
6.6    Intentionally Deleted.....	22
6.7    Survival of Covenants,.....	22
ARTICLE 7 CLOSING .....	22
7.1    Conditions of Closing for the Benefit of the Purchaser .....	22
7.2    Conditions of Closing for the Benefit of the Vendor.....	23

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
7.3	Conditions of Closing for the Mutual Benefit of the Parties ..... 23
7.4	Closing Documents ..... 24
7.5	Closing Date..... 25
7.6	Confirmation of Satisfaction of Conditions ..... 25
7.7	Closing ..... 26
7.8	Filings and Authorizations ..... 27
7.9	Court Matters ..... 27
7.10	Termination..... 28
7.11	Leaseback..... 28
ARTICLE 8 OTHER PROVISIONS.....	29
8.1	Confidentiality ..... 29
8.2	Time of the Essence ..... 29
8.3	Entire Agreement ..... 29
8.4	Waiver..... 29
8.5	Further Assurances..... 30
8.6	Severability ..... 30
8.7	Governing Law ..... 30
8.8	English Language..... 30
8.9	Statute References..... 30
8.10	Headings ..... 30
8.11	References..... 31
8.12	Number and Gender..... 31
8.13	Business Days ..... 31
8.14	Currency and Payment Obligations ..... 31
8.15	Notice..... 31
8.16	Subdivision Control Legislation ..... 33
8.17	Solicitors as Agent and Tender ..... 33
8.18	No Registration of Agreement..... 33
8.19	Third Party Costs ..... 34
8.20	Interpretation..... 34
8.21	No Third Party Beneficiaries ..... 34
8.22	Enurement ..... 34
8.23	Amendments ..... 35
8.24	Title Insurance ..... 35
8.25	Non Solicit ..... 35
8.26	Counterparts and Delivery ..... 35
SCHEDULE "A" LANDS.....	1
SCHEDULE "B" EXCLUDED ASSETS .....	1
SCHEDULE "C" INTENTIONALLY DELETED .....	1

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
SCHEDULE “D” FORM OF APPROVAL AND VESTING ORDER .....	- 1 -
SCHEDULE “E” PURCHASER’S GST/HST CERTIFICATE, UNDERTAKING AND INDEMNITY .....	1
SCHEDULE “F” FORM OF ASSIGNMENT AND ASSUMPTION OF ASSUMED CONTRACTS AND PERMITTED ENCUMBRANCES.....	1
SCHEDULE “G” FORM OF ASSIGNMENT AND ASSUMPTION OF REALTY TAX APPEALS .....	1
SCHEDULE “H” PERMITTED ENCUMBRANCES.....	1

**THIS AGREEMENT OF PURCHASE AND SALE** dated with effect as of October 19, 2017

**BETWEEN:**

**SEARS CANADA INC. (the “Vendor”)**

OF THE FIRST PART,

- and -

**OXFORD PROPERTIES RETAIL HOLDINGS II INC.  
and  
CPPIB UPPER CANADA MALL INC. (collectively, the  
“Purchaser”)**

OF THE SECOND PART,

**RECITALS:**

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

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

## ARTICLE 1 DEFINITIONS

### 1.1 Definitions

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

**“Access Agreement”** means an access agreement between the Vendor and the Purchaser, whereby the Vendor, its agents and their respective representatives shall have access to the Property during the Post-Closing Access Period to conduct a liquidation sale of the Inventory and/or the FF&E and/or to remove any of the Excluded Assets, and shall be in substantially the form attached as Schedule “F”.

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

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

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

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

**“Assumed Contracts”** means the Contracts listed on Schedule “K”.

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

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

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

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

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

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

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

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, information 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 Vendor (with the consent of the DIP Lenders and the Monitor) may advise the Purchaser in writing; provided that the Closing Date shall be no later than October 25, 2017 or such later date (which shall not be later than sixty (60) days following October 25, 2017 without the further consent of the Purchaser) as agreed to in writing by the Vendor (with the consent of the DIP Lenders and the Monitor) or as otherwise ordered by the Court.

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

“**Contract and/or PE Assumption Agreements**” has the meaning ascribed thereto in Section 5.3.

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

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

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

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

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

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

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

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

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

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

**“FF&E”** includes all tools, signs, furniture, machinery, equipment, personal or moveable property, chattels, furnishings and fixtures including shelves, video cameras and equipment, security systems, point-of-sales systems and related appurtenances, telecommunications systems and related appurtenances, and Trade Fixtures, in each case to the extent owned, leased or licensed by the Vendor, if any. For greater certainty, FF&E does not include any Remaining Fixtures.

**“Filing Date”** means June 22, 2017.

**“Financial Advisor”** means BMO Nesbitt Burns Inc.

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

**“GST/HST Certificate, Undertaking and Indemnity”** mean the Purchaser’s certificate to be in substantially the form set out in Schedule “E”.

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



“**Holders**” has the meaning ascribed thereto in Section 5.3.

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

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

“**Inventory**” includes all inventory, stock, supplies and all other similar items owned by the Vendor and located at the Property. For greater certainty Inventory does not include any Remaining Fixtures.

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

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

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

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

“**Mall Owners**” means CPPIB Upper Canada Mall Inc. and Oxford Properties Retail Holdings II Inc., the registered owners of the neighbouring lands comprising the regional shopping centre known as Upper Canada Mall 17600 Yonge Street, Newmarket, Ontario in their capacity as counter parties to the Operating Agreement.

“**Matching Security**” has the meaning ascribed thereto in Section 4.

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

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

“**Notice**” has the meaning ascribed thereto in Section 8.14.

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

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

“**Operating Agreement**” means, collectively:

- (i) Operating Agreement dated July 25, 1973 among Regional Shopping Centres Limited and the Vendor (then known as Simpson-Sears Properties Limited and Simpson-Sears Limited);
- (ii) Supplement to the Operating Agreement, December 24, 1987 among Regional Shopping Centres Limited and the Vendor (then known as Sears Properties Inc. and Sears Canada Inc.);
- (iii) Second Supplement to the Operating Agreement, January 21, 1994 among Regional Shopping Centres Limited, OMERS Realty Corporation, the Vendor, Cambridge Leaseholds Limited, The Prudential Insurance Company of America, the Canada Life Assurance Company and London Life Insurance Company;
- (iv) Letter agreement dated March 12, 1997 between Cambridge Leaseholds Limited and the Vendor;
- (v) Third Supplement to the Operating Agreement dated April 9, 1998 among Regional Shopping Centres Limited, OMERS Realty Corporation, the Vendor, Cambridge Leaseholds Limited, The Prudential Insurance Company of America, The Canada Life Assurance Company and London Life Insurance Company;
- (vi) Restrictive covenant agreement dated 1998 among Regional Shopping Centres Limited, OMERS Realty Corporation and the Vendor; and
- (vii) Fourth Supplement to the Operating Agreement dated 1998 among Regional Shopping Centres Limited, OMERS Realty Corporation, the Vendor, Cambridge Leaseholds Limited, The Prudential Insurance Company of America, The Canada Life Assurance Company and London Life Insurance Company.

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

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

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

“**Plans**” means all documentation in the Vendor’s possession and located on the Property on the Closing Date or located on the Execution Date in the electronic data room and monitored by the Financial Advisor relevant to the construction of the Buildings including, working drawings, detail drawings, shop drawings, approved municipal plans, structural, mechanical, electrical and engineering plans, site plans, other documentation prepared to illustrate or define a particular

aspect of the Buildings, consultants' contracts, construction contracts, and plans submitted with all building permits issued for the Property.

“**Post-Closing Access Period**” has the meaning ascribed thereto in Section 6.3(e).

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

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

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

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

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

“**Remaining Fixtures**” means any personal property, fixtures, equipment, or leasehold improvements affixed or attached to, or installed in, the Property in such a manner that the installation or removal of such items would cause material damage or any destruction to the Property and includes plumbing, heating, ventilation and air conditioning, or base building equipment and facilities, compressors, chillers, ductwork, drywall partitions, lighting fixtures, carpeting, tile or other floor coverings, electrical switches and outlets, doors, windows, ceiling systems and facilities, utility connections and services, metering systems and equipment, millwork, wall coverings, stonework, or other similar fixtures, equipment and leasehold improvements, and replacements thereof.

“**Removal Activities**” has the meaning ascribed thereto in Section 2.2(f).

“**Restoration Obligation**” means the following obligations of the Vendor to be completed at the Vendor’s sole cost and expense as soon as reasonably possible, in a good and workmanlike manner, in compliance with all applicable Laws: (A) repair any material damage to the Property arising from any Removal Activities, and (B) otherwise restore the Property to the condition existing in all material respects immediately prior to commencement of such Removal Activities (other than replacing the Inventory, FF&E and any other Excluded Assets removed from the Property or matters not caused in connection with the Removal Activities).

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

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

“**SISP Order Date**” means July 13, 2017.

“**Subject Assets**” means all of the right, title and interest of the Vendor in and to: (a) the Property; (b) the Realty Tax Appeals; (c) the Assumed Contracts; and (d) the Warranties, but

excludes, the Vendor's right, title and interest in and to each of the Excluded Assets and any and all other assets of the Vendor relating to the Property not included in the foregoing.

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

“**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other similar charges imposed by any Governmental Authority under applicable Laws, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, registration, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, and all licence, franchise and registration fees. Notwithstanding the foregoing, Taxes exclude all income taxes or similar taxes, profit taxes, corporation taxes, capital gains tax, capital tax, large corporations tax, and other tax personal to the Vendor resulting from the Transaction.

“**Trade Fixtures**” means the fixtures, shelves, counters, equipment, and other improvements used in connection with the operation of the Subject Assets, in each case to the extent owned, leased or licensed by the Vendor. For greater certainty, trade fixtures do not include Remaining Fixtures.

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

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

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

## **ARTICLE 2 SALE TRANSACTION**

### **2.1 Offer and Acceptance**

- (a) Subject to the Initial Order and the SISP Order, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase and assume from the Vendor, the Subject Assets on the Closing Date in accordance with the terms and conditions of this Agreement.
- (b) The Offer shall be irrevocable by the Purchaser until 5:00 p.m. on October 23, 2017.
- (c) Upon acceptance of this Offer by the Vendor, this Offer shall constitute a binding agreement to acquire the Subject Assets, on the terms of this Agreement.

## 2.2 As Is, Where Is

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

- (a) the Purchaser is purchasing the Subject Assets (including the state of title thereto and/or the state of any Encumbrances and Permitted Encumbrances) and accepting and assuming the Subject Assets on an “as is, where is” basis, without any written or oral statements, representations, warranties, promises or guaranties of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), as to the condition of any of the Subject Assets, the Permitted Encumbrances, the rentable area of the Buildings, the existence of any default on the part of the Vendor, the physical, environmental or other condition of, in, on, under or in the vicinity of the Property, the use permitted at the Property, the existence of any Encumbrance and/or Off-Title Compliance Matters affecting the Subject Assets, or any other aspects of any of the Subject Assets and the Permitted Encumbrances, the structural integrity or any other aspect of the physical condition of any Subject Assets, the conformity of any Building to any Plans or specifications (including, but not limited to, any Plans and specifications that may have been or which may be provided to the Purchaser), compliance with Environmental Laws, the conformity of the Property to past, current or future applicable zoning or building code requirements or other applicable Laws, the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the Lands, or any Building situated on or as part of the Property, the sufficiency of any drainage, whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, the existence or non-existence of underground and/or above ground storage tanks, the availability of public utilities, access, parking and/or services for the Property, the fitness or suitability of the Property for occupancy or any intended use (including matters relating to health and safety), the potential for further development of the Property, the existence of land use, zoning or building entitlements affecting the Property, the presence, release or use of wastes of any nature, Hazardous Substances, pollutants, contaminants or other regulated substances in, under, on or about the Property or any neighbouring lands; and without limiting the foregoing, any and all conditions or warranties expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation in other jurisdictions will not apply and are hereby waived by the Purchaser;
- (b) any disclosure in respect of any of the Subject Assets was made available to the Purchaser solely as a courtesy but the Purchaser is not entitled to rely on such disclosure, and it is expressly acknowledged by the Purchaser that no written or oral statement, representation, warranty, promise or guarantee of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), is made by the Vendor and/or the Monitor and/or their respective legal counsel, the Financial Advisor or other advisors or representatives as to the accuracy, currency or completeness of any such

disclosure, and each of them expressly disclaims any and all liabilities with respect to such disclosure and any and all errors therein or omissions therefrom;

- (c) the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Purchaser might have against the Vendor pursuant to any warranty, legal or conventional, express or implied, of any kind or type relating to the Subject Assets or any other assets or any other aspect of the Transaction. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects, whether or not discoverable, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights;
- (d) the Purchaser conducted its own independent review, inspection, diligence and investigations and forming its own independent opinions and conclusions in respect of the Subject Assets. The Purchaser's decision to make this Offer and enter into this Agreement was made of its own accord without reference to or reliance upon any disclosure in respect of any of the Subject Assets. The Purchaser acknowledges having been given a reasonable and adequate opportunity to conduct its own independent diligence prior to entering in this Agreement;
- (e) the Vendor shall not be responsible for making any repairs, replacements, renovations, alterations, improvements or upgrades or undertaking any remediation to address a Release in or to the Property or any part thereof, and it shall be the sole responsibility of the Purchaser to make, at the Purchaser's sole cost, any repairs, replacements, renovations, alterations, improvements and upgrades in or to the Property following Closing as may be required by the Purchaser to make the Property suitable for its purposes and to undertake any required, necessary, or desired remediation to address a Release at, on, under or migrating from the Property or any part thereof;
- (f) during the Interim Period and the Post-Closing Access Period in accordance with the Access Agreement, and subject to complying with the Restoration Obligations the Vendor shall be entitled to, but is not obligated to, remove any and all Inventory, FF&E and any other Excluded Assets from the Property (the "**Removal Activities**");
- (g) the Subject Assets may be subject to certain Off-Title Compliance Matters, municipal requirements, including building or zoning by-laws and regulations, easements or servitudes for hydro, gas, telephone affecting the Subject Assets, and like services to the Property, and restrictions and covenants which run with the land, including but not limited to the Permitted Encumbrances. Without limiting the foregoing, the Vendor shall not be responsible for rectification of any matters disclosed by any Governmental Authority or quasi-governmental

authority having jurisdiction and the Purchaser shall accept the Subject Assets subject to such matters;

- (h) the Purchaser shall accept full responsibility for all conditions related to the Property, including all orders relating to the condition of the Property issued by any competent Governmental Authority, including without limitation, any non-compliance with Environmental Laws or relating to the existence of any Hazardous Substance
- (i) if any non-material, statement, error or omission shall be found in the particulars of the legal and/or the Subject Assets' description, the same shall not annul the sale or entitle the Purchaser to be relieved of any obligation hereunder, nor shall any compensation be allowed to the Purchaser in respect thereof.

The Vendor has no and shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Subject Assets or the condition thereof save and only to the extent expressly provided in this Agreement or the Closing Documents. The Purchaser shall be responsible for and hereby indemnifies and saves harmless the Vendor and its employees, directors, officers, appointees and agents from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgments, awards, including awards of costs, that may arise as a result of any matters that occurred following Closing in connection with each of the following: the condition of the Property, any order issued by any competent Governmental Authority in connection with the condition of the Property, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property including, without limitation, non-compliance with Environmental Laws or the existence of any Hazardous Substances. Notwithstanding the foregoing provisions of this Section 2.2, the provisions of this Section 2.2: (i) are not intended to be a positive obligation on the Purchaser to indemnify, guarantee, defend or exonerate the Vendor in any manner whatsoever following Closing, except as otherwise specifically set out in this Agreement or the Closing Documents; (ii) do not prohibit the Purchaser from defending itself against third party Claims which arise following Closing, in connection with matters that occurred prior to Closing, provided that the Purchaser shall not make a Claim against the Vendor as part of such defence; (iii) do not in any manner limit the Purchaser's condition in Section 7.1; and (iv) are without limitation to the representation and warranties of the Vendor in this Agreement, and any terms and conditions set out in any Closing Documents. This Section 2.2 shall survive and not merge on Closing and all Closing Documents shall incorporate this Section 2.2 by reference.

### **ARTICLE 3 PURCHASE PRICE**

#### **3.1 Purchase Price**

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

- (a) as to the sum of [REDACTED] (the “**Deposit**”), by wire transfer of immediately available funds payable to or to the order of the Monitor, in trust, or as it may otherwise direct in writing, on or prior to 3:00 p.m. (Toronto time) on the Business Day following the Execution Date, to be held in trust as a deposit and invested in accordance with the provisions of Section 3.2 below pending the completion or other termination of this Agreement; and
- (b) as to the balance of the Purchase Price (the “**Balance**”), subject only to the adjustments made in accordance with this Agreement, by wire transfer of immediately available funds payable to the Monitor or as it may direct on the Closing Date.

### 3.2 Deposit

- (a) Following receipt, the Deposit shall be invested by the Monitor, in trust, in an interest bearing account or term deposit or guaranteed investment certificate pending completion of the Transaction or earlier termination or non-completion of this Agreement. In holding and dealing with the Deposit and any interest earned thereon pursuant to this Agreement, the Monitor is not bound in any way by any agreement other than this Section 3.2, and the Monitor shall not and shall not be considered to assume any duty, liability or responsibility other than to hold the Deposit, and any interest earned thereon, in accordance with the provisions of this Section 3.2, and to pay the Deposit, and any interest earned thereon, to the Person becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the Parties as to entitlement to the Deposit. In the case of such dispute, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by any of the Parties, pay the Deposit and any and all interest earned thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit or any interest earned thereon. The Monitor shall not, under any circumstances, be required to verify or determine the validity of any notice or other document whatsoever delivered to the Monitor and the Monitor is hereby relieved of any liability or responsibility for any Claims which may arise as a result of the acceptance by the Monitor of any such notice or other document.
- (b) If the Transaction is completed, the Deposit shall be paid to the Vendor forthwith on Closing and applied to the Purchase Price. Interest on the Deposit shall accrue from the date of deposit with the Monitor until the Closing or other termination or non-completion of this Agreement. If the Transaction is successfully, completed, all interest earned on the Deposit until Closing shall be paid to the Purchaser following Closing.
- (c) If the Transaction is not completed by reason of a default of the Purchaser, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Vendor as liquidated damages (and not as a penalty) to compensate the Vendor for the expenses incurred and the delay caused and opportunities foregone as a result of the failure of the Transaction to close. The entitlement of the Vendor to receive and retain the Deposit together with all accrued interest earned thereon,



if any, in such circumstances shall not limit the Vendor's right to exercise any other rights or remedies which the Vendor may have against the Purchaser in respect of such breach or default.

- (d) If the Transaction is not completed by any reason other than the default of the Purchaser, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Purchaser as full and final settlement and the Purchaser shall have no further recourse, provided that if the Transaction is not completed solely by reason of a default of the Vendor, the Vendor shall reimburse the Purchaser for its reasonable out-of-pocket expenses incurred following the Execution Date to a maximum amount of \$25,000.
- (e) In holding and dealing with the Deposit and any interest earned thereon pursuant to this Agreement, the Monitor shall release the Deposit and any interest earned thereon to the Persons becoming entitled thereto in accordance with the provisions of (i) Section 7.7(c); or (ii) this Section 3.2 as evidenced by a joint direction in writing executed by the Vendor and the Purchaser (the "**Joint Direction**") except in the event of a dispute between the Parties as to entitlement to the Deposit and any interest earned thereon in which event the Monitor may, in its sole, unfettered and unreviewable discretion, pay the Deposit and any interest earned thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit and any interest earned thereon or otherwise hereunder.
- (f) The Monitor shall not, under any circumstances, be required to verify or determine the validity of the Joint Direction or any written confirmation received pursuant to Section 7.8(b) and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as the result of the acceptance by the Monitor of the Joint Direction.
- (g) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Vendor and the Purchaser acknowledges and agrees that: (i) the Monitor's obligations hereunder are and shall remain limited to those specifically set out in this Section 3.2; and (ii) FTI Consulting Canada Inc. is acting solely in its capacity as the Court-appointed Monitor of the Vendor in the CCAA Proceedings and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise.
- (h) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 3.2 notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 3.2 shall survive the termination or non-completion of the Transaction.

### **3.3 Purchase Price Allocation**

The allocation of the Purchase Price as between the Subject Assets shall be made on a basis which is mutually agreeable to the Purchaser and the Vendor on or before Closing. Failure to agree on the allocation shall not result in termination of this Agreement and each party shall be

free to make its allocation. If an allocation is mutually acceptable, the Vendor and the Purchaser shall adopt such allocations for the purposes of all tax returns, elections and filings respectively made by them or on their behalf.

### **3.4 Letters of Credit and Deposits**

On the Closing Date, the Purchaser shall issue replacement letters of credit and/or security deposits for the Letters of Credit and the Vendor shall use its best commercial efforts to cause the Letters of Credit to be released and returned to the Vendor without any further drawings thereunder. Provided that to the extent that the Vendor is unable to cause all of the Letters of Credit to be released and returned to the Vendor, without any further drawings thereunder, in lieu of issuing the replacement letters of credit and/or security deposits referred to above, the Purchaser shall cause matching, unconditional and irrevocable letters of credit and/or security deposits in form, and from an issuer, satisfactory to the Vendor, in favour of the Vendor to be provided to the Vendor on the Closing Date (collectively, the “**Matching Security**”) which Matching Security may be drawn upon by the Vendor and its successors and assigns if and to the extent that the Vendor’s Letters of Credit are drawn upon from time to time, and the Purchaser shall reimburse the Vendor for any direct incremental costs incurred and indemnify and hold the Vendor harmless from and against all Claims, incurred or asserted, as a result of any Letters of Credit which are not so released and returned to the Vendor.

### **3.5 Trade-Marks**

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees that: (a) no signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “Sears” are conveyed or intended to be conveyed to the Purchaser as part of the Subject Assets; and (b) all right, title and interest of the Vendor in and to all of its existing signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “Sears” or containing the words “Sears” are hereby specifically reserved and excluded from the Subject Assets. This Section shall survive and not merge on Closing.

### **3.5 Access**

During the Interim Period, the Vendor hereby authorizes the Purchaser and any persons designated by the Purchaser upon a minimum of 24 hours prior notice to carry out, at the Purchaser’s sole costs, risk and expense and without liability to the Vendor, such tests (including but not limited to soil tests and environmental audits including Phase I and Phase II site assessments), surveys and inspections of the Property as the Purchaser may deem necessary. The Purchaser agrees to repair any damage caused by any such tests and to indemnify and save harmless the Vendor with respect thereto and any resulting damages the Vendor may suffer or incur as a result thereof. The provisions of this Section 3.5 shall survive and not merge on Closing.

## **ARTICLE 4 ADJUSTMENTS**

### **4.1 Statement of Adjustments and Absence of Post-Closing Adjustments**

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

### **4.2 General Adjustments**

- (a) The adjustments shall include realty taxes, local improvement rates and charges and, except as set out in this Agreement, other adjustments established by usual practice in the municipality in which the Property is located for the purchase and sale of similar retail properties. In addition, the adjustments shall include the other matters referred to in this Agreement which are stated to be the subject of adjustment and shall exclude the other matters in this Agreement which are stated not to be the subject of adjustment.
- (b) From and after the Closing Date, the Purchaser shall be responsible for all expenses and shall be entitled to all revenue from the Subject Assets. The Vendor shall be responsible for all expenses and entitled to all revenue from the Subject Assets for that period prior to the Closing Date.
- (c) The Purchaser shall be responsible for and pay all applicable Taxes payable in connection with the transfer of any of the Subject Assets by the Vendor to the Purchaser.
- (d) If on Closing there are any outstanding realty tax arrears in respect of the Property, or any utility arrears which will bind the Property following Closing, there shall be an adjustment on Closing in favour of the Purchaser in the full amount of all such arrears, and any related penalties and interest, in an amount sufficient to allow the Purchaser to fully repay such arrears, penalties and interest on the 2<sup>nd</sup> Business Day following Closing.

### **4.3 Realty Tax Appeals**

- (a) The Vendor and the Purchaser acknowledge that with respect to the Property the Vendor may have instituted certain appeals and/or claims in respect of realty taxes or assessments for certain periods prior to the Closing Date and possibly including the tax year in which the Closing Date occurs (all such appeals and any

associated reassessments are hereinafter collectively referred to as the “**Realty Tax Appeals**”).

- (b) From and after the Closing Date, the Purchaser may, at its sole cost and expense but without any obligation to do so, assume or retain the carriage of the Realty Tax Appeals and continue as the appellant in the Realty Tax Appeals. At the request of the Purchaser and at the Purchaser’s sole cost and expense, the Vendor agrees to co-operate with the Purchaser with respect to the Realty Tax Appeals and to provide the Purchaser 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 Vendor, at the request of the Purchaser, the Vendor shall cooperate with the Purchaser, including granting such authorizations as may be reasonably required, to enable the Purchaser to pursue and prosecute such Realty Tax Appeals, at the Purchaser’s sole cost and expense.

This Section 4.3 shall survive and not merge on Closing.

#### **4.4 Utilities**

- (a) The Purchaser shall not assume any contracts or agreements entered into by or on behalf of the Vendor for the supply of any utilities (including electricity, gas, water, fuel, telephone service, internet services, security and surveillance services or otherwise) at the Property. On or before the Closing Date, the Vendor shall terminate all of its contracts and agreements for the supply of any utilities to the Property. For the avoidance of doubt, there shall be no adjustment at Closing in respect of the payment of any utilities. The provisions of this Section 4.4(a) shall survive and not merge on Closing.
- (b) From and after the Closing Date, or, at Vendor’s option but subject to the provisions of the Access Agreement, the Post-Closing Access Period, any and all utility charges and other related fees payable for any of the Property, pursuant to any invoice or statement issued after the Closing Date, or Post-Closing Access Period, in connection with the period following Closing or Post-Closing Access Period, shall be the sole responsibility of the Purchaser, and there shall be no adjustments between the Vendor and the Purchaser of any utility charges or related fees paid by the Purchaser pursuant to any such invoice or statement issued after the Closing Date or Post-Closing Access Period in connection with the period following Closing or Post-Closing Access Period.

### **ARTICLE 5 INTERIM PERIOD**

#### **5.1 Interim Period**

- (a) Subject to the Restoration Obligation, during the Interim Period and the Post-Closing Access Period in accordance with the Access Agreement, the Vendor by itself or through its agent shall be entitled to remove and sell, or permit any other Persons to remove and sell, any and all Inventory and FF&E and any other Excluded Assets, from the Property in the manner deemed appropriate by the

Vendor subject to this Agreement, the Access Agreement, the Initial Order, the SISP Order and any other Order of the Court. For greater certainty no Remaining Fixtures may be removed pursuant to this Section 5.1(a)

- (b) In the event that prior to the Closing Date all or a part of the Lands is expropriated or notice of expropriation or intent to expropriate all or a part of the Lands is issued by any Governmental Authority, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Vendor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis.
- (c) The Subject Assets shall be and remain until Closing at the risk of the Vendor. In the event of material damage by fire or other hazard to the Subject Assets or any part thereof occurring before the Closing Date, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall have 10 days from receipt of such Notice to elect to terminate this Agreement where such damages exceeds 10% of the Purchase Price, failing which, and in all other circumstances the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and the proceeds of any insurance available or actually paid or payable to the Vendor shall be paid and/or assigned to the Purchaser.

## 5.2 Contracts

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

## 5.3 Permitted Encumbrances and Assumed Contracts

The Purchaser shall provide such commercially reasonable financial, business, organizational, managerial and other information and enter into such commercially reasonable assumption agreements or deeds of re-hypothecation as the relevant party to an Assumed Contract or Permitted Encumbrance (the relevant party being a “**Holder**”) shall require (and which is approved by the Purchaser acting reasonably) effect the assumption of the Assumed Contracts or the Permitted Encumbrances, as applicable, by the Purchaser (collectively, the “**Contract and/or PE Assumption Agreements**”). The Purchaser agrees to provide an assumption agreement to the Mall Owners in accordance with the terms of the Operating Agreement. The Purchaser shall use reasonable efforts to assist the Vendor and shall co-operate with the Vendor, as reasonably requested (at no cost or expense to the Purchaser other than any *de minimis* cost or expense or any cost or expense which the Vendor agrees in writing to reimburse prior to Closing) to obtain from third parties a full release of the Vendor’s obligations under the Assumed Contracts and Permitted Encumbrances, and shall provide such commercially reasonable financial and other information and enter into such assumption agreements as such third parties may reasonably require, in form and substance acceptable to each of the parties thereto acting reasonably and without delay.

**ARTICLE 6**  
**REPRESENTATIONS, WARRANTIES & COVENANTS**

**6.1 Vendor's Representations and Warranties**

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

- (a) the execution, delivery and performance by the Vendor of this Agreement has been duly authorized by all necessary corporate action on the part of the Vendor subject to the Approval and Vesting Order and authorization as is required by the Court;
- (b) the Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Vendor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*.
- (d) there are no employees employed in connection with the Property in respect of which the Purchaser, will incur any liabilities whatsoever as a result of the Transaction and the Vendor, is not a party to any collective bargaining or trade union agreement involving the Property which will bind the Property following Closing;
- (e) it has not received written notice of any condemnation or expropriation proceedings relating to the Property or any part thereof from any Governmental Authority;
- (f) the entire registered and beneficial interest in the Property is owned by the Vendor;
- (g) there will be no Contracts, leases or other occupancy agreements in effect in respect of the Property that will bind the Purchaser or the Property after Closing (save and except for Permitted Encumbrances and Assumed Contracts);
- (h) except as contained in the Operating Agreement, there are no existing options or rights of first refusal or first opportunity to lease, purchase, or otherwise acquire all or part of the Property; and
- (i) there is no broker or investment banker (other than the Financial Advisor) acting on behalf of the Vendor or under its or their authority that will be entitled to claim any broker's or finder's fee or any other commission or similar fee directly or indirectly in connection with the transactions from the Purchaser.

The Vendor's representations and warranties shall survive Closing for a period of 6 months thereafter. This Section shall survive and not merge on Closing.

## 6.2 Purchaser's Representations and Warranties

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

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

The Purchaser's representations and warranties shall survive Closing for a period of 6 months thereafter. This Section shall survive and not merge on Closing.

### 6.3 Purchaser's Covenants

- (a) The Purchaser shall use commercially reasonable efforts to take all such actions as are within its power or control, and to cause other actions to be taken which are not within its power or control, so as to ensure compliance with each of the conditions and covenants set forth in Article 7 which are for the benefit of any other Party.
- (b) The Purchaser shall (at no cost or expense to the Purchaser other than any *de minimis* cost or expense or any cost or expense which the Vendor agrees in writing to reimburse prior to Closing) take any and all steps in order to avoid the filing of an application for, or the issuance of any interim Order or other Order which would have the effect of delaying or preventing the Closing, and if any such interim Order or other Order is issued, the Purchaser shall (at no cost or expense to the Purchaser other than any *de minimis* cost or expense or any cost or expense which the Vendor agrees in writing to reimburse prior to Closing) take any and all steps to have it rescinded, revoked or set aside as soon as possible. For greater certainty, "any and all steps" shall include, committing to or effecting undertakings, a consent agreement, a hold separate arrangement, a consent Order, a hold separate Order, a sale, a divestiture, a disposition or other action, in any such case without any reduction of the Purchase Price.
- (c) The Purchaser will promptly notify the Vendor and the Vendor will promptly notify the Purchaser upon:
  - (i) becoming aware of any Order or any complaint requesting an Order restraining or enjoining the execution of this Agreement or the consummation of the Transactions; or
  - (ii) receiving any notice from any Governmental Authority of its intention:
    - (A) to institute a suit or proceeding to restrain or enjoin the execution of this Agreement or the consummation of the Transaction; or
    - (B) to nullify or render ineffective this Agreement or such Transaction.
- (d) For a period from the Closing Date to the date that is the earlier of (i) fifteen (15) weeks from the Closing Date, and (ii) the date determined by the Vendor on ten (10) Business Days' notice to the Purchaser (the "**Post-Closing Access Period**"), the Vendor and its agents and their respective representatives (collectively, the "**Accessing Parties**") shall have access to the Property to occupy the Property in order for one or more of the Accessing Parties to conduct a liquidation sale of the Inventory and/or the FF&E and/or to remove any of the Inventory, the FF&E and/or the Excluded Assets, in accordance with the Access Agreement. The Vendor shall not be obligated to remove any Inventory, FF&E or Excluded Assets or subject to Restoration Obligation repair the Property. Any Inventory, FF&E or Excluded Assets left on the Property at the expiry of the Post-Closing Access Period shall become the property of the Purchaser without a bill of sale,



representation, warranty or other title documentation. This Section shall survive and not merge on Closing.

#### **6.4 Vendor's Covenants**

- (a) The Vendor agrees, that subject to the Initial Order, the SISP Order and the Approval and Vesting Order, to thereafter take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to fulfill the conditions set forth in Article 7 which are for the benefit of the Vendor or the mutual benefit of the Parties.
- (b) During the Interim Period the Vendor will not terminate, amend, or any manner alter, any Permitted Encumbrance, or any Assumed Contract; or enter into any new contract, lease or other occupancy agreement relating to the Property which will bind the Property on Closing.

#### **6.5 Tax Matters**

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

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

extent that the Purchaser is permitted under subsection 221(2) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation to self-assess and remit such Taxes directly to the appropriate Governmental Authority, and the Purchaser shall have executed and delivered a certificate, undertaking and indemnity which includes its certification of its registration number issued under the *Excise Tax Act*, and incorporates the provisions of this Section 6.4 (the “**GST/HST Certificate, Undertaking and Indemnity**”);

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

The provisions of this Section 6.4 shall survive and not merge on Closing.

## **6.6 Intentionally Deleted**

## **6.7 Survival of Covenants,**

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

## **ARTICLE 7 CLOSING**

### **7.1 Conditions of Closing for the Benefit of the Purchaser**

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

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

## **7.2 Conditions of Closing for the Benefit of the Vendor**

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

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

## **7.3 Conditions of Closing for the Mutual Benefit of the Parties**

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

- (a) Intentionally Deleted;
- (b) the Approval and Vesting Order, substantially in the form attached hereto as Schedule "D", shall have been issued and entered by the Court; and
- (c) the Monitor shall have delivered the Monitor's Certificate.

## 7.4 Closing Documents

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

- (a) By the Vendor and the Purchaser:
  - (i) the Assignment and Assumption of Realty Tax Appeals;
  - (ii) the Assignment and Assumption of Assumed Contracts and Permitted Encumbrances;
  - (iii) the Access Agreement; and
  - (iv) 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, provided that none of such documents shall contain covenants, indemnities, representations or warranties, which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement or which are inconsistent or in conflict with this Agreement.
  
- (b) By the Vendor:
  - (i) the Approval and Vesting Order.
  - (ii) the statement of adjustments evidencing the adjustments made at Closing;
  - (iii) an assignment of Warranties, to the extent there are any and are in the Vendor's possession and located on the Property and to the further extent that they are assignable without cost or consent;
  - (iv) all master keys relating to the Buildings, if any, all security cards and access cards relating to the Buildings, if any, and all combinations and passwords to vaults and combination locks and other security features located in the Buildings, if any, in each case, to the extent in the possession of the Vendor, provided that duplicate copies of such keys and such other information may be retained by the Vendor during the Post-Closing Access Period; and
  - (v) such other documents as the Purchaser or the Purchaser's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws provided that none of such documents shall contain covenants, indemnities, representations or warranties, which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement or which are inconsistent or in conflict with this Agreement.

- (c) By the Purchaser:
- (i) the Balance plus all Taxes thereon which are not subject to self-assessment;
  - (ii) GST/HST Certificate, Undertaking and Indemnity;
  - (iii) the Matching Security, if applicable;
  - (iv) an assumption agreement in favour of the Mall Owners and the Vendor (as owner of the Sears Store (as defined in the Operating Agreement)) in accordance with the Operating Agreement whereby the Purchaser assumes the obligations under the Operating Agreement as owner of the Property;
  - (v) the Contract and/or PE Assumption Agreements along with any deliveries to the Holders required in respect of and in accordance with the Assumed Contracts or Permitted Encumbrances;
  - (vi) a certificate of the Vendor certifying that all of the representations and warranties of the Vendor contained in this Agreement are true and correct in all material respects as if made as of the Closing Date, or identifying any such circumstances or other matters that have caused such representations and warranties to not be true and correct in all material respects as if made as of the Closing Date; and
  - (vii) a bill of sale in connection with any Subject Assets that are personal property; and
  - (viii) such other documents as the Vendor or the Vendor's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.

## **7.5 Closing Date**

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

## **7.6 Confirmation of Satisfaction of Conditions**

- (a) On the Closing Date, subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of Closing in its favour contained in Article 7, the parties or their respective solicitors shall confirm to the Monitor the

satisfaction of all conditions to Closing and upon the Monitor receiving the Balance, the Monitor shall deliver copies of the Monitor's Certificate to the Parties hereto and release the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser to the Vendor and following Closing file the Monitor's Certificate with the Court.

- (b) The Party with the benefit of a condition in Section 7.1 and/or 7.2 (“**Waiving Party**”) may, by Notice notify the Party that such condition(s) are satisfied or that it is waiving same or that such condition(s) are not satisfied. If no such Notice is delivered on or before the applicable date referred to above, the Waiving Party will be deemed to not have satisfied itself and this Agreement shall thereupon terminate and the Deposit and accrued interest thereon shall be dealt with in accordance with Section 3.2.

## 7.7 Closing

- (a) Subject always to Section 3.2 hereof, the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be held by the Monitor, in trust in a separate interest bearing account, pending completion of the Transaction or earlier termination of this Agreement. In holding and dealing with the funds paid to the Monitor in trust and any interest earned thereon pursuant to this Agreement, the Monitor is not bound in any way by any agreement other than Section 3.2 and this Section 7.7 and the Monitor shall not assume or be deemed to assume any duty, liability or responsibility other than to hold the trust funds and any interest earned thereon in accordance with the provisions of this Section 7.7 and to pay the funds, and any interest earned thereon, to the Party becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the parties as to entitlement to the trust funds, of which the Monitor has been given notice in writing, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by either of the parties, pay the trust funds and any and all interest earned thereon into court, whereupon the Monitor shall have no further obligations relating to the trust funds or any interest earned thereon or otherwise hereunder.
- (b) The Monitor shall not, under any circumstances, be required to verify or determine the validity of any written notice or other document whatsoever delivered to the Monitor in connection with the trust funds and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as a result of the acceptance by the Monitor of any such written notice or other document.
- (c) On or before Closing, the parties' respective solicitors shall exchange the Closing Documents in escrow and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be delivered to or paid to the order of the Monitor, in trust, and the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall remain in escrow with the Monitor until the Monitor has delivered the Monitor's Certificate to the Vendor and the Purchaser, upon the occurrence of

which the escrow shall be lifted, the Closing Documents shall take effect as of the date and time set out in the Monitor's Certificate, the entire amount of the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be forthwith released to the Vendor and the Closing shall be deemed to have occurred as of such date and time set out in the Monitor's Certificate and fully signed Closing Documents shall be released to each of the Vendor and Purchaser.

- (d) The parties acknowledge that, notwithstanding that the Monitor is not a party to this Agreement, the Monitor may rely upon the provisions of Section 3.2 hereof and this Section 7.7.
- (e) This Section 7.7 shall survive the Closing or termination of this Agreement.

## **7.8 Filings and Authorizations**

- (a) Each of the Vendor and the Purchaser, as promptly as practicable after the execution of this Agreement, will make, or cause to be made, all such filings and submissions under all applicable Laws applicable to it, as may be required for it to consummate the purchase and sale of the Subject Assets in accordance with the terms of this Agreement (other than the motion seeking approval of the Transaction and the issuance of the Approval and Vesting Order). The Vendor and the Purchaser shall co-ordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing including, providing each other with all notices and information supplied to or filed with any Governmental Authority (except for notices and information which the Vendor or the Purchaser, in each case acting reasonably, considers highly confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any Governmental Authority. This Section 7.8(a) shall survive and not merge on Closing.
- (b) The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the parties and file the Monitor's Certificate with the Court, without independent investigation, upon receiving written confirmation from the Vendor and the Purchaser or their respective solicitors that all conditions of Closing have been satisfied or waived and upon receipt of the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser, and the Monitor shall have no liability to the Vendor or the Purchaser or any other Person as a result of filing the Monitor's Certificate.

## **7.9 Court Matters**

- (a) The Vendor shall consult and co-ordinate with the Purchaser and their respective legal advisors regarding the parties upon whom the motion seeking the Approval and Vesting Order will be served.
- (b) The Purchaser shall provide such information and take such actions as may be reasonably requested by the Vendor to assist the Vendor in obtaining the

Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the transactions contemplated by this Agreement, including, any Court ordered assignment of the Contracts.

- (c) Notwithstanding anything else contained in this Agreement or elsewhere, the Purchaser acknowledges and agrees that the Vendor cannot guarantee that it will obtain the Approval and Vesting Order and the Approval and Vesting Order may or may not be granted by the Court.

## 7.10 Termination

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

- (a) by mutual consent of the Purchaser and the Vendor (in respect of which the Vendor shall require the consent of the DIP Lenders and Monitor to provide its consent) or on further order of the Court;
- (b) by the Purchaser if any of the conditions in Section 7.1 have not been satisfied on or before the Closing Date and the Purchaser has not waived such condition;
- (c) by the Vendor with the consent of the DIP Lenders and the Monitor if any of the conditions in Section 7.2 have not been satisfied on or before the Closing Date and the Vendor has not waived such condition; or
- (d) by either Party if any of the conditions precedent in Section 7.3 have not been satisfied on or before the Closing Date and the parties have not waived such condition; or
- (e) by the Purchaser, or the Vendor (with the consent of the DIP Lenders and the Monitor) if Closing has not occurred on or before the Closing Date, provided that the Vendor and Purchaser may not terminate this Agreement pursuant to this Section 7.10(e) if it has failed to perform any one or more of its obligations or covenants under this Agreement and the Closing has not occurred because of such failure.

## 7.11 Leaseback.

On Notice to be delivered any time before the 10<sup>th</sup> day prior to the Closing Date, the Vendor may elect, in its sole and absolute discretion for there to be a lease back of the entire Property on Closing (the “**Leaseback Notice**”), wherein the Purchaser as landlord, agrees to lease to the Vendor (or its successor) as tenant, the entire Property, which lease will include among other matters the following key terms: (i) a five (5) year term; (ii) standard triple net lease to the landlord; (iii) a net basic rent of \$550,000 per year; and (iv) no free rent periods or other tenant inducements provided by the landlord (the “**Leaseback**”). If the Leaseback Notice is delivered within the above specified period, the following shall occur:

- (a) the Parties acting reasonably and in good faith shall negotiate a form of lease for the Leaseback based on the foregoing provisions (the “**Lease Form**”);



- (b) if the Lease Form has not be settled by proposed Closing Date, the Vendor or Purchaser may elect, in its sole and absolute discretion to extend the Closing Date by up to 10 days to attempt to settle the Lease Form;
- (c) If the Lease Form has not been settled by the Closing Date, (as extended) the Vendor or Purchaser may elect, in its sole and absolute discretion for the Leaseback Notice to be retracted, following which without any further act or formality there shall be no requirement for the Leaseback to occur.
- (d) If the Lease Form has been settled by the Closing Date then: (i) the settled Lease Form shall be executed and delivered as a Closing Document; and (ii) notwithstanding the other provisions of this Agreement, the Access Agreement shall not be a Closing Document and there shall be no Post-Closing Access Period or other access granted to the Vendor following Closing under this Agreement, except for access in accordance with the Leaseback.

## **ARTICLE 8 OTHER PROVISIONS**

### **8.1 Confidentiality**

The Vendor shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the Court, the Monitor, Serruya Private Equity Inc. and parties in interest to the CCAA Proceedings.

### **8.2 Time of the Essence**

Time shall be of the essence of this Agreement.

### **8.3 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.

### **8.4 Waiver**

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

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

### **8.5 Further Assurances**

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

### **8.6 Severability**

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

### **8.7 Governing Law**

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

### **8.8 English Language**

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

### **8.9 Statute References**

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

### **8.10 Headings**

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

### **8.11 References**

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

### **8.12 Number and Gender**

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

### **8.13 Business Days**

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

### **8.14 Currency and Payment Obligations**

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

### **8.15 Notice**

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

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

Sears Canada Inc.  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Attn:  
Email:

With a copy to:

Osler, Hoskin & Harcourt LLP  
100 King Street West

1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto, ON M5X 1B8

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

With a copy to:

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

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

With a copy to:

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

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

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

c/o Oxford Properties Group  
900 -100 Adelaide St W  
Toronto, ON M5H 0E2

Attention: Eric Plesman & Andrea Fellows  
Email: eplesman@oxfordproperties.com  
afellows@oxfordproperties.com

With a copy to:

Canada Pension Plan Investment Board  
c/o Real Estate Investments  
One Queen Street West, Suite 2600  
Toronto, Ontario M5C 2W5

Attention: Marco Ding & Sharm Powell  
Email: mding@cppib.ca  
spowell.@cppib.ca

With a copy to:

Thornton Grout Finnigan LLP  
Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329,  
Toronto-Dominion Centre, Toronto, Ontario M5K 1K7

Attention: D.J. Miller  
Email: djmiller@tgf.ca

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

#### **8.16 Subdivision Control Legislation**

This Agreement and the Transaction are subject to compliance by the Vendor at its sole cost and expense with the applicable subdivision control legislation to the extent applicable, including the *Planning Act* (Ontario).

#### **8.17 Solicitors as Agent and Tender**

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

#### **8.18 No Registration of Agreement**

The Purchaser covenants and agrees not to register or cause or permit to be registered this Agreement or any notice of this Agreement on title to any of the Subject Assets and that no reference to or notice of it or any caution, certificate of pending litigation or other similar court process in respect thereof shall be registered on title to the Subject Assets and/or any part thereof and the Purchaser shall be deemed to be in material default under this Agreement if it makes, or causes or permits, any registration to be made on title to the Subject Assets and/or any part thereof prior to the successful completion of the Transaction contemplated herein on the Closing Date. The Purchaser shall indemnify and save the Vendor harmless from and against any and all

Claims whatsoever arising from or with respect to any such registration, including, all the legal fees, on a full indemnity basis, including those incurred by the Vendor with respect to obtaining the removal of such registration. This indemnity shall survive and not merge on the expiration, non-completion and/or termination of this Agreement for any reason.

### **8.19 Third Party Costs**

Each of the Parties hereto shall be responsible for the costs of their own solicitors, respectively, in respect of the Transaction. The Purchaser shall be solely responsible for and shall pay, in addition to the Purchase Price, all fees and expenses in respect of all necessary applications pursuant to the *Competition Act*, the *Investment Canada Act*, any land transfer taxes and transfer duties payable on the transfer of the Subject Assets, all registration taxes, fees and other costs payable in respect of registration of any documents to be registered by the Purchaser at Closing and all federal and provincial sales and other taxes payable upon or in connection with the conveyance or transfer of the Subject Assets, including, goods and services tax, harmonized sales tax or other similar value added or multi-staged tax imposed by any applicable provincial or territorial legislation, as the case may be, and any other provincial sales taxes. This Section 8.19 shall survive the Closing or the termination of this Agreement.

### **8.20 Interpretation**

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

### **8.21 No Third Party Beneficiaries**

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

### **8.22 Enurement**

This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. The Purchaser has and shall have no right to assign, convey and/or transfer its rights and/or obligations hereunder or to direct title to any of the Subject Assets to any other Person or to effect a "change of control" so as to indirectly effect the foregoing, without in each case first obtaining the prior written consent of the Vendor, which consent may be arbitrarily and unreasonably withheld by the Vendor. Notwithstanding the foregoing, on or before Closing the Purchaser: (i) may direct registered (but not beneficial) title to the Property to a nominee that is an affiliate of the

Purchaser; and (ii) may assign this Agreement, without the consent of the Vendor but on written notice to the Vendor given not less than five (5) Business Days prior to the Closing Date, to an affiliate of the Purchaser, provided in the case of such assignment the assignee executes and delivers an agreement in favour of the Vendor (in a form approved by Vendor acting reasonably) agreeing to be bound by all obligations of the Purchaser hereunder and the original Purchaser shall not be relieved of its obligations hereunder, until the occurrence of Closing.

### **8.23 Amendments**

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

### **8.24 Title Insurance**

The Purchaser may prior to Closing, elect to acquire owner's and/or lender's title insurance with respect to Property at the Purchaser's sole cost and expense. In order to facilitate the timely delivery of such title insurance policy on or before the Closing Date in a cost effective manner, the Vendor agrees to co-operate with the Purchaser, at the Purchaser's sole cost and expense, and the title insurer as is reasonably required, provided that the Vendor shall not be obligated to provide any officer certificate or statutory declaration. For greater certainty, in no event shall the Purchaser's acquisition of title insurance with respect to the Property be interpreted as a condition to the obligations of the Purchaser to complete the Closing.

### **8.25 Non Solicit**

The Vendor hereby covenants that it shall not offer for sale or lease in any manner, or otherwise negotiate with any other party for any interest in all or part of Property while this Agreement remains in effect (except in connection with the potential Leaseback and as otherwise permitted by this Agreement, including Section 6.4(c)). This Section 8.25 shall survive the Closing or the termination of this Agreement.

### **8.26 Counterparts and Delivery**

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

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF the parties have executed this Agreement.

SEARS CANADA INC.

By: P. M. [Signature]  
Name: P. M. [Signature]  
Title: SECRETARY  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OXFORD PROPERTIES RETAIL HOLDINGS II INC.

By: [Signature]  
Name: Eric J. Plesman  
Title: Senior Vice President, Investments  
By: [Signature]  
Name: ANDREA FELLOWS-PAPARIZOS  
Title: VICE-PRESIDENT

CPPIB UPPER CANADA MALL INC.

By: [Signature]  
Name: Peter Bakon  
Title: Authorized Signatory  
By: [Signature]  
Name: Marco Ding  
Title: Authorized Signatory



**SCHEDULE "A"**  
**LANDS**

**PIN 03554-0076 (LT)**

PT LT 96 CON 1 W YONGE ST EAST GWILLIMBURY; PT LT 97 CON 1 W YONGE ST  
EAST GWILLIMBURY PT 1, 65R19397, T/W R719694; S/T EG15326, EG15329, EG15610,  
EG20073 NEWMARKET

**SCHEDULE “B”  
EXCLUDED ASSETS**

1. All intellectual property or proprietary rights, whether registered or not, and any intangible property, owned, used or held by the Vendor;
2. All items, materials and signs bearing the logo, trade-mark, trade-name or business name or other mark or design of the Vendor;
3. All FF&E and Inventory which have been removed from the Property by or on behalf of the Vendor or its agents or their respective representatives prior to the expiry of the Post-Closing Access Period;
4. All insurance policies of the Vendor;
5. All rights and interests in trade-marks, trade-names, logos, commercial symbols and business names containing “Sears” or any other proprietary wording or intellectual property rights of the Vendor or any of its affiliates (including, the websites).
6. All rights of the Vendor against the Purchaser pursuant to this Agreement.

**SCHEDULE "C"**  
**INTENTIONALLY DELETED**

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )  
JUSTICE HAINEY )  
 )  
 )

●, THE ●<sup>TH</sup>  
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 – NEWMARKET HOME (STORE #1345)**

THIS MOTION, made by the Applicants, pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: the sale of lands and buildings located at ●, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (collectively, the “**Purchaser**”) as purchaser dated ●, 2017 (the “**APA**”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn on ●, 2017 including the exhibits thereto, and the ● Report of FTI Consulting Canada

Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2017, filed:

## **SERVICE AND DEFINITIONS**

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

## **APPROVAL OF THE APA**

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

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

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

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

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

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

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

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

9. THIS COURT ORDERS that, notwithstanding:

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

the distribution permitted by paragraph 7 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

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

## **SEALING**

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

## **GENERAL PROVISIONS**

13. THIS COURT ORDERS that, notwithstanding:

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

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

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

15. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such



assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

---

## SCHEDULE "A"

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

### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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

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

### MONITOR'S CERTIFICATE

#### RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2017 (the "**Approval and Vesting Order**") approving the Agreement of Purchase and Sale between Sears Canada Inc. ("**Sears Canada**"), as vendor, and Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (collectively, the "**Purchaser**") as purchaser dated ●, 2017 (the "**APA**"), a copy of which is attached as Exhibit ● to the Affidavit of Billy Wong dated ●, 2017.

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

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

THE MONITOR CERTIFIES the following:

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

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

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

Per: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE "B"

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
Section	●	●	●	●	[NIL]

**SCHEDULE “C”  
PERMITTED ENCUMBRANCES**

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

**SCHEDULE “E”**  
**PURCHASER’S GST/HST CERTIFICATE, UNDERTAKING AND INDEMNITY**

TO: Sears Canada Inc. (the “Vendor”)

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

RE: Agreement of Purchase and Sale dated ●, 2017, made between the Vendor, as Vendor, and ●, as Purchaser, (the “Purchaser”), as amended from time to time (the “Purchase Agreement”), for the purchase and sale of the Property and other Subject Assets (as such terms are defined in the Purchase Agreement)

---

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

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

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

DATED \_\_\_\_\_, 2017.

**[PURCHASER]**

By: \_\_\_\_\_

Name: ●

Title: ●

By: \_\_\_\_\_

Name: ●

Title: ●

**SCHEDULE "F"**

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

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

**B E T W E E N:**

**SEARS CANADA INC.**

(the "Vendor")

- and -

●

(the "Purchaser")

**RECITALS:**

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

B. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2017 (the "Purchase Agreement"), whereby, among other things, the Vendor agreed to assign to the Purchaser all of the Vendor's right, title and interest in and to the Permitted Encumbrances.

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

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

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

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



## **ARTICLE 1 ASSIGNMENT**

### **1.1 Assignment by Vendor**

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

### **1.2 Assumption by Purchaser**

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

### **1.3 Indemnity**

The Purchaser hereby covenants with the Vendor, as of and from the Closing Date to indemnify and save the Vendor harmless from any and all Claims arising from, relating to or in connection with any non-payment of amounts payable on the part of the Purchaser to be paid from time to time under the Assumed Contracts and the Permitted Encumbrances, or any non-observance or non-performance of any of the terms, agreements, covenants, obligations and conditions on the part of the Purchaser under the Assumed Contracts and the Permitted Encumbrances to be paid, observed or performed from time to time, in respect of the period on or after the Closing Date, or otherwise arising, incurred or accrued in respect of the period after the Closing Date. Notwithstanding the foregoing the provisions of this Section 1.3: (i) are not intended to be a positive obligation on the Purchaser to indemnify, guarantee, defend or exonerate the Vendor in any manner whatsoever following Closing in respect of any matter that arose prior to the Closing Date; and (ii) do not prohibit the Purchaser from defending itself against third party Claims which arise following Closing, in connection with matters that occurred prior to Closing, provided that Purchaser shall not make a Claim against the Vendor as part of such defence.

### **1.4 Paramourncy**

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

## **ARTICLE 2 GENERAL**

### **2.1 Time of the Essence**

Time shall be of the essence of this Agreement.

## **2.2 Enurement**

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

## **2.3 Entire Agreement**

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

## **2.4 Waiver**

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

## **2.5 Further Assurances**

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

## **2.6 Severability**

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

## **2.7 Governing Law**

This Agreement shall be governed by and interpreted and enforced in accordance with the laws

of the Province in which the Property is located and the federal laws of Canada applicable therein.

## **2.8 CCAA Proceedings**

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

## **2.9 English Language**

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

## **2.10 Statute References**

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

## **2.11 Headings**

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

## **2.12 References**

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

## **2.13 Number and Gender**

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

## **2.14 Business Days**

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

Business Day.

## **2.15 Notice**

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

## **2.16 Counterparts and Delivery**

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

***[Signature pages follow.]***

**IN WITNESS WHEREOF** the Vendor has executed this Agreement.

**SEARS CANADA INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**IN WITNESS WHEREOF** the Purchaser has executed this Agreement.

●

By: \_\_\_\_\_  
Name: ●  
Title: ●

By: \_\_\_\_\_  
Name: ●  
Title: ●

**SCHEDULE “G”  
FORM OF ASSIGNMENT AND ASSUMPTION OF REALTY TAX APPEALS**

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the “**Effective Date**”)

**B E T W E E N:**

**SEARS CANADA INC.**

(the “**Vendor**”)

- and -

●

(the “**Purchaser**”)

**RECITALS:**

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

B. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2017 (the “**Purchase Agreement**”), whereby, among other things, the Vendor agreed to assign to the Purchaser all of the Vendor’s right, title and interest in and to the Property.

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

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

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

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

## **ARTICLE 1 ASSIGNMENT**

### **1.1 Assignment and Assumption**

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

### **1.2 Carriage of Realty Tax Appeals**

From and after the Closing Date, the Purchaser may, at its sole cost and expense but without any obligation to do so, assume or retain the carriage of the Realty Tax Appeals and continue as the appellant in the Realty Tax Appeals. At the request of the Purchaser and at the Purchaser's sole cost and expense, the Vendor agrees to co-operate with the Purchaser with respect to the Realty Tax Appeals and to provide the Purchaser 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 Vendor, at the request of the Purchaser, the Vendor shall cooperate with the Purchaser, including granting such authorizations as may be reasonably required, to enable the Purchaser to pursue and prosecute such Realty Tax Appeals, at the Purchaser's sole cost and expense.

### **1.3 Authorization and Direction**

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

### **1.4 Paramountcy**

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

## **ARTICLE 2 GENERAL**

### **2.1 Time of the Essence**

Time shall be of the essence of this Agreement.

### **2.2 Enurement**

This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. Neither this



Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

### **2.3 Entire Agreement**

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

### **2.4 Waiver**

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

### **2.5 Further Assurances**

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

### **2.6 Severability**

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

### **2.7 Governing Law**

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

## **2.8 CCAA Proceedings**

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

## **2.9 Statute References**

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

## **2.10 Headings**

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

## **2.11 References**

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

## **2.12 Number and Gender**

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

## **2.13 Business Days**

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

## **2.14 English Language**

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

## **2.15 Currency and Payment Obligations**

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

## **2.16 Notice**

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

## **2.17 Counterparts and Delivery**

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

***[Signature pages follow.]***

**IN WITNESS WHEREOF** the Vendor has executed this Agreement.

**SEARS CANADA INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**IN WITNESS WHEREOF** the Purchaser has executed this Agreement.

●

By: \_\_\_\_\_  
Name: ●  
Title: ●

By: \_\_\_\_\_  
Name: ●  
Title: ●

## SCHEDULE "H"

### PERMITTED ENCUMBRANCES

#### GENERAL ENCUMBRANCES

- (a) The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any royalties, mines and minerals in the Crown or in any other person.
- (b) Subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements with Governmental Authorities or private or public utilities affecting the development or use of any Property.
- (c) Rail siding agreements or facility, cost sharing, servicing, reciprocal use or other similar agreements.
- (d) Any easements, servitudes, or rights-of-way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner.
- (e) Any unregistered easements, servitudes, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property which do not materially impair the current use, operation or marketability of the Property.
- (f) Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable Law.
- (g) Encumbrances for real or immovable property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
- (h) Restrictive covenants, private deed restrictions and other similar land use control agreements which do not materially impair the current use, operation or marketability of the Property.
- (i) Minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners in each case, which do not materially impair the current use, operation or marketability of the Property.

- (j) The provisions of all applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property.
- (k) The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) (other than paragraphs 3, 4, 5, 6, 11 and 14).
- (l) Security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Property in the ordinary course of business, including, without limitation, the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property.
- (m) Any minor, title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Property which would be disclosed by an up-to-date plan of survey, real property report, certificate of location, or technical description.
- (n) Permits, licenses, agreements, servitudes, easements, (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, rights-of-way, public ways, rights in the nature of an easement or servitude and other similar rights in land granted to or reserved by other persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) (other than those described in paragraph (d) and (e) of this Schedule) which do not materially impair the current use, operation or marketability of the Property.
- (o) Undetermined or inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Property or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Lien Act* (Ontario) or similar legislation, and in respect of any of the foregoing cases, the Vendor has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts and any such holdback is either paid in to court or provided to the Purchaser as a credit on the statement of adjustments at Closing.
- (p) Any reference plans or plans registered pursuant to the *Boundaries Act* (Ontario).
- (q) All Off-Title Compliance Matters.
- (r) Any unregistered interests in the Property of which the Purchaser has actual notice.
- (s) All rights of first refusal, option to purchase or similar rights relating to the Property contained in the Operating Agreement.

- (t) The Operating Agreement.
- (u) All instruments which are registered against title to a Property: (i) as of the date that is one (1) Business Days prior to the Execution Date; or (ii) otherwise agreed to by the Purchaser; or (iii) permitted by this Agreement, except for those Encumbrances to be vested off pursuant to the Approval and Vesting Order.

**SPECIFIC ENCUMBRANCES**

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



## SCHEDULE "I"

### FORM OF ACCESS AGREEMENT

THIS AGREEMENT dated as of the \_\_\_\_ day of \_\_\_\_\_, 2017,

**B E T W E E N:**

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

- and -

● (the "Purchaser")

#### RECITALS:

- A. The Vendor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- B. 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.
- C. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2017 (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "**Purchase Agreement**") whereby, among other things, the Vendor agreed to transfer to the Purchaser, and the Purchaser agreed to purchase, all of the Vendor's right, title and interest in and to the Property (being the property commonly known as ● and municipally known as ●).
- D. The Purchase Agreement was approved by the Court pursuant to the Order dated ● (the "**Approval and Vesting Order**").
- E. The Vendor and the Purchaser are entering into this Agreement to provide for the Vendor to have access to the Property to remove and sell any and all Inventory and FF&E located on the Property in accordance with the terms hereof.
- 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 Purchase Agreement.

**NOW THEREFORE IN CONSIDERATION OF** the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged by each of the Vendor and the

Purchaser (collectively, the “**Parties**”, and individually, a “**Party**”), the Parties hereby covenant and agree as follows:

1. The Vendor may at its sole risk and expense maintain the FF&E and/or Inventory in the Property and the Purchaser shall not cause any damage to such FF&E and/or Inventory. The Vendor shall have no obligation to remove any of the FF&E or Inventory that remains on the Property following the expiry of the Post-Closing Access Period and shall have no liability for any removal or destruction costs relating thereto.
2. The Purchaser hereby grants to Vendor and its agents and representatives (collectively, the “**Accessing Parties**”) the uninterrupted and undisturbed right to possess, access, use, occupy and enjoy the Property on an exclusive basis for 24 hours a day and seven days a week commencing on the Closing Date and ending on the date that is the earlier of (i) fifteen (15) weeks from the Closing Date, and (ii) the date determined by the Vendor on ten (10) Business Days’ notice to the Purchaser (the “**Post-Closing Access Period**”) at no charge to the Vendor, except as specifically set out in this Agreement. The Accessing Parties shall be entitled to use the Property as they are currently being used, to remove any Excluded Assets and to conduct a liquidation sale of the Inventory and/or FF&E and for any other use permitted by Order of the Court. For greater certainty, the Accessing Parties shall be entitled to advertise and sell the Inventory and FF&E on a “final sale” and “as is” basis and may advertise such liquidation sale as a “everything on sale”, “everything must go”, “store closing” or similar themed sale and may use exterior banners and signs, provided that the Accessing Parties shall not use neon or day-glow signs, such exterior signs and banners shall be professionally hung and the Accessing Parties shall remove all such signage and repair any damage caused by the hanging or removal of such exterior signs and banners prior to the expiration of Post-Closing Period. The Purchaser shall not interfere with the Accessing Parties use and enjoyment of the Property as permitted hereunder. Any Excluded Assets left on the Property, including any Inventory and FF&E at the expiry of the Post-Closing Access Period shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. For greater certainty there shall be no right of renewal under this Agreement and Vendor shall have no right to overhold or otherwise remain on any part of the Property following expiration of the Post-Closing Access Period. Subject to the expressed provisions of this Agreement, the Vendor acknowledges and agrees that it has occupied the Property on an "as-is, where is" basis. Vendor shall not permit any part of the Property to be used or occupied by any entity other than Accessing Parties.
3. None of Accessing Parties shall be responsible for making any repairs, replacements, renovations, alterations, improvements or upgrades in or to the Property or any part thereof, provided that the Vendor shall maintain the Property in a broom-swept and clean condition and remain subject to the Restoration Obligation.
4. The Purchaser shall maintain, repair and replace the Property (except for the obligation of the Vendor to maintain the Property in a clean and broom-swept condition and comply with the Restoration Obligation) and the Property in good repair. The foregoing shall be deemed to be satisfied by the Purchaser, provided that the Property is being maintained in

the same state of repair and condition as it was in immediately prior to Closing reasonable wear and tear excepted.

5. The Vendor and the Accessing Parties may access and use water, gas, sewage, electrical power services and all other utilities as may exist at the Property(the “**Utilities**”). The Vendor shall pay for at its sole cost and expense and maintain in the name the Vendor, all charges and accounts for Utilities for the Property. The payment for such Utilities are to be paid directly to the applicable Utility provider by the Vendor and the Vendor shall provide evidence of such payment to the Purchaser. The Purchaser shall have no liability for any Utilities that are not provided as a result of the acts or omissions of the applicable Utility provider.
6. During the Post-Closing Access Period, the Accessing Parties shall maintain commercial general liability insurance in an amount and with such coverage as is customary and commercially reasonable taking into account the value of the assets and the nature of the activities to be conducted with the Purchaser named as an additional insured. Notwithstanding foregoing, prior to being granted any rights of access under this Agreement, the Vendor shall obtain or cause its consultants to obtain, at its sole cost and expense, and at no cost or expense to the Purchaser a policy of commercial general liability insurance covering any and all liability of the Vendor and the Purchaser under this Agreement. Such policy of insurance shall be kept and maintained in force during the remainder of the term of this Agreement to cover any Claims resulting from any acts or omissions of the Vendor or the those whom it is in law responsible. Such policy of insurance shall have liability limits of not less than Ten Million Dollars (\$10,000,000.00) per occurrence for bodily injury, personal injury and property damage liability. Such policy shall name the Purchaser as an additional insured and provide for cross-liability and severability of interests. All the policies of insurance required to be maintained by the Vendor shall be primary to and non-contributory unless loss or damage results directly from the negligence or willful misconduct of the Purchaser, its directors, officers, partners, employees and agents and those for whom in law it is responsible.
7. This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns. Except as expressly set out herein, 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, provided that notwithstanding the foregoing, the Vendor shall be entitled to assign this Agreement without consent of, but on notice to, the Purchaser, to any agent conducting a sale of the Inventory and/or FF&E of the Vendor pursuant to an agency agreement or similar agreement approved by the Court. Upon any such assignment by the Vendor, the Vendor shall cause the assignee to enter into an agreement with the Purchaser agreeing to be bound by the terms of this Agreement and the Vendor shall not thereupon be released from all of its liabilities and obligations hereunder. Upon a transfer of the Property or any portion thereof (which for greater certainty does not require the consent of the Vendor), the Purchaser shall obtain an agreement executed by the Purchaser and such transferee in favour of the Vendor, in form satisfactory to the Vendor, whereby the

transferee agrees to be bound by the terms of this Agreement and the Purchaser and the transferee shall be jointly and severally liable for the Purchaser's obligations hereunder.

8. During the Post-Closing Access Period, the Vendor shall permit the Purchaser and/or its authorized agents, employees and contractors, to enter the Property for the purpose of: (a) inspection or for making repairs, alterations, removals or improvement to all or any part of the Property including utilities and service facilities therein; and (b) showing the Property to any mortgagees, prospective mortgagees, purchaser and prospective purchaser and prospective tenants/occupants. In carrying out such rights the Purchaser shall use reasonable efforts to minimize interference with the Vendor's use and enjoyment of the Property. The Purchaser shall whenever possible give reasonable Notice to the Vendor prior to such entry, but no such entry shall constitute a re-entry by the Purchaser or an eviction. In addition to the foregoing, the Purchaser shall be permitted to place sign(s) on the exterior of the Building indicating, without limitation, that all or part of the Building is available for lease, and undertake any other form print or on-line advising in connection with the future leasing of space in the Building.
9. Notwithstanding any other provision of this Agreement, the Vendor agrees to return the Property to the Purchaser upon expiry of the Post-Closing Access Period in a similar condition in which they were received on the Closing Date, subject to the rights of Vendor set out in Section 2 of this Agreement and reasonable wear and tear excepted.
10. The Vendor shall not cause any lien under the *Construction Lien Act* (Ontario) (a "**Construction Lien**") to be filed or registered against all or any part of the Property as a result of work undertaken by or on behalf of the Vendor during the Post-Closing Access Period. If such a Construction Lien is filed or registered against all or any part of the Property, the Vendor will procure registration of a discharge or vacating of such Construction Lien within 30 days after the Vendor becomes aware of the filing or registration of such Construction Lien.
11. In connection with the period commencing on the 5<sup>th</sup> week of the Post-Closing Occupancy Period, the Vendor shall pay to the Purchaser a monthly occupancy fee of \$15,000 (the "**Occupancy Fee**"), payable on the first day of each month of the Post-Closing Access Period, provided that for any partial month, the Occupancy Fee shall be computed on a per diem basis, and if the Post-Closing Access Period is terminated prior to the end of the month, the Purchaser shall reimburse the Vendor for the per diem amount of the Occupancy Fee paid. The Occupancy Fee shall be paid in full without any set off, abatement, compensation and/or deduction of any kind, and without notice or demand. For greater certainty no Occupancy Fee shall be payable in connection with the first 4 weeks of the Post-Closing Access Period.
12. Vendor will not permit to be carried on upon the Property any activity or bring or keep anything upon the Property which will cancel or conflict with or increase the cost of any policy of insurance of Vendor on the Property.
13. The Vendor hereby indemnifies, defends and holds harmless the Purchaser, its directors, officers, shareholders, partners, employees and agents from any and all Claims, arising

out of the Vendor's use of or operations in the Property, except where the damage or injury arises out of the negligence or willful misconduct of the Purchaser, its directors, officers, partners, employees and agents and those for whom in law it is responsible.

14. The Vendor hereby releases the Purchaser and its directors, officers, shareholders, partners, employees and agents from any and all liability for loss or claim, including all resulting consequential and indirect losses, as a result of loss, damage or injury to the property of the Vendor and those for whom it is in law responsible relating to activities conducted by the Vendor or the Accessing Parties during the Post-Closing Access Period.
15. The Vendor shall: (a) use the Property only for the uses specifically set out in Section 1 and 2 of this Agreement, and for no other use whatsoever; (b) not undertake any material alterations, additions and/or renovations to any Property (including as applicable, the installation of any material fixtures or leasehold improvements) without the Purchaser's prior written approval; and (c) subject to the terms of any liquidation sales approval Order, not to do any act or omit to do any act, which results in a breach of any of the Permitted Encumbrances; and (d) cause the Property to be used and occupied by it and the Accessing Parties in compliance with all applicable Laws.
16. If the Vendor fails to observe, perform and keep any other of the covenants, agreements, provisions, stipulations and conditions herein to be observed, performed and kept by Vendor, and same remains unremedied for a period of 10 days following Notice by the Purchaser, it may terminate this Agreement by giving Notice of termination to Vendor, and in such event Vendor will forthwith vacate and surrender the Property. The foregoing is with limitation to any or all of the rights and remedies available to the Purchaser under this Agreement or under applicable Laws.
17. No amendment to or waiver of this Agreement shall be effective unless evidenced in writing and executed by all the Parties.
18. Each of the parties covenants and agrees to do such things and to execute such further 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 Agreement in accordance with their true intent.
19. 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.
20. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province where the Property is located and the federal laws of Canada applicable therein.
21. Each Party submits to the exclusive jurisdiction of the Court in any action, application, reference or other proceeding arising out of or related to this 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.

22. This Agreement shall enure to the benefit and be binding on the Parties and their respective successors and assigns.
23. Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered or transmitted in accordance with the Purchase Agreement.
24. All Parties agree that this Agreement may be executed in counterpart and transmitted by facsimile or e-mail (PDF) and that the reproduction of signatures in counterpart by way of facsimile or e-mail (PDF) will be treated as though such reproduction were executed originals.

***[Signature pages follow.]***

**IN WITNESS WHEREOF** the Vendor has executed this Agreement.

**SEARS CANADA INC.**

By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF** the Purchaser has executed this Agreement.



By: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE "J"**  
**ASSUMED CONTRACTS**

Nil.

TAB B

THIS IS EXHIBIT "B" REFERRED TO IN  
THE AFFIDAVIT OF BILLY WONG,  
SWORN BEFORE ME ON THIS 23<sup>rd</sup> DAY OF OCTOBER, 2017.



---

A Commissioner for Taking Affidavits.

Lia Bornechetta  
LSJC #600410

**AGREEMENT OF PURCHASE AND SALE**

**SEARS CANADA INC.**  
as the Vendor

- and -

**SERRUYA PRIVATE EQUITY INC.**  
as the Purchaser

# TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	1
1.1    Definitions.....	1
ARTICLE 2 SALE TRANSACTION .....	8
2.1    Offer and Acceptance .....	8
2.2    As Is, Where Is.....	8
ARTICLE 3 PURCHASE PRICE .....	11
3.1    Purchase Price.....	11
3.2    Deposit .....	11
3.3    Purchase Price Allocation.....	13
3.4    Letters of Credit and Deposits .....	13
3.5    Trade-Marks.....	14
ARTICLE 4 ADJUSTMENTS .....	14
4.1    Statement of Adjustments and Absence of Post-Closing Adjustments .....	14
4.2    General Adjustments.....	14
4.3    Realty Tax Appeals.....	15
4.4    Utilities.....	15
ARTICLE 5 INTERIM PERIOD.....	16
5.1    Interim Period .....	16
5.2    Contracts .....	17
5.3    Permitted Encumbrances and Assumed Contracts .....	17
ARTICLE 6 REPRESENTATIONS, WARRANTIES & COVENANTS.....	17
6.1    Vendor’s Representations and Warranties.....	17
6.2    Purchaser’s Representations and Warranties .....	18
6.3    Purchaser’s Covenants .....	19
6.4    Vendor’s Covenants.....	20
6.5    Tax Matters .....	20
6.6    Termination Payment.....	22
6.7    Survival of Covenants.....	23
ARTICLE 7 CLOSING .....	23
7.1    Conditions of Closing for the Benefit of the Purchaser.....	23
7.2    Conditions of Closing for the Benefit of the Vendor.....	23

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
7.3 Conditions of Closing for the Mutual Benefit of the Parties .....	24
7.4 Closing Documents .....	24
7.5 Closing Date.....	26
7.6 Confirmation of Satisfaction of Conditions.....	26
7.7 Closing .....	26
7.8 Filings and Authorizations .....	27
7.9 Court Matters .....	28
7.10 Termination.....	28
7.11 Leaseback.....	29
ARTICLE 8 OTHER PROVISIONS.....	29
8.1 Confidentiality .....	29
8.2 Time of the Essence .....	29
8.3 Entire Agreement .....	30
8.4 Waiver.....	30
8.5 Further Assurances.....	30
8.6 Severability .....	30
8.7 Governing Law .....	30
8.8 English Language.....	31
8.9 Statute References.....	31
8.10 Headings .....	31
8.11 References.....	31
8.12 Number and Gender.....	31
8.13 Business Days .....	31
8.14 Currency and Payment Obligations .....	31
8.15 Notice.....	31
8.16 Subdivision Control Legislation .....	33
8.17 Solicitors as Agent and Tender .....	33
8.18 No Registration of Agreement.....	33
8.19 Third Party Costs .....	33
8.20 Interpretation.....	34
8.21 No Third Party Beneficiaries .....	34
8.22 Enurement .....	34
8.23 Amendments .....	35
8.24 Title Insurance .....	35
8.25 Non Solicit .....	35
8.26 Counterparts and Delivery .....	35
SCHEDULE “A” LANDS.....	1
SCHEDULE “B” EXCLUDED ASSETS .....	1
SCHEDULE “C” INTENTIONALLY DELETED .....	1

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
SCHEDULE "D" FORM OF APPROVAL AND VESTING ORDER .....	- 1 -
SCHEDULE "E" PURCHASER'S GST/HST CERTIFICATE, UNDERTAKING AND INDEMNITY .....	1
SCHEDULE "F" FORM OF ASSIGNMENT AND ASSUMPTION OF ASSUMED CONTRACTS AND PERMITTED ENCUMBRANCES .....	1
SCHEDULE "G" FORM OF ASSIGNMENT AND ASSUMPTION OF REALTY TAX APPEALS .....	1
SCHEDULE "H" PERMITTED ENCUMBRANCES .....	1

**THIS AGREEMENT OF PURCHASE AND SALE** dated with effect as of October 4, 2017

**BETWEEN:**

**SEARS CANADA INC.** (the “**Vendor**”)

OF THE FIRST PART,

- and -

**SERRUYA PRIVATE EQUITY INC.** (the “**Purchaser**”)

OF THE SECOND PART,

**RECITALS:**

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

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

## **ARTICLE 1 DEFINITIONS**

### **1.1 Definitions**

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



“**Access Agreement**” means an access agreement between the Vendor and the Purchaser, whereby the Vendor, its agents and their respective representatives shall have access to the Property during the Post-Closing Access Period to conduct a liquidation sale of the Inventory and/or the FF&E and/or to remove any of the Excluded Assets, and shall be in substantially the form attached as Schedule “I”.

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

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

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

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

“**Assumed Contracts**” means the Contracts listed on Schedule “K”.

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

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

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

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

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

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

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

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, information 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 Vendor (with the consent of the DIP Lenders and the Monitor) may advise the Purchaser in writing; provided that the Closing Date shall be no later than October 25, 2017 or such later date (which shall not be later than sixty (60) days following October 25, 2017 without the further consent of the Purchaser) as agreed to in writing by the Vendor (with the consent of the DIP Lenders and the Monitor) or as otherwise ordered by the Court.

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

“**Contract and/or PE Assumption Agreements**” has the meaning ascribed thereto in Section 5.3.

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

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

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

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

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

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

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

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

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

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

“**FF&E**” includes all tools, signs, furniture, machinery, equipment, personal or moveable property, chattels, furnishings and fixtures including shelves, video cameras and equipment, security systems, point-of-sales systems and related appurtenances, telecommunications systems and related appurtenances, and Trade Fixtures, in each case to the extent owned, leased or licensed by the Vendor, if any. For greater certainty, FF&E does not include any Remaining Fixtures.

“**Filing Date**” means June 22, 2017.

“**Financial Advisor**” means BMO Nesbitt Burns Inc.

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

“**GST/HST Certificate, Undertaking and Indemnity**” mean the Purchaser’s certificate to be in substantially the form set out in Schedule “E”.

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

“ **Holders**” has the meaning ascribed thereto in Section 5.3.

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

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

“**Inventory**” includes all inventory, stock, supplies and all other similar items owned by the Vendor and located at the Property. For greater certainty Inventory does not include any Remaining Fixtures.

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

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

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

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

“**Mall Owners**” means CPPIB Upper Canada Mall Inc. and Oxford Properties Retail Holdings II Inc., the registered owners of the neighbouring lands comprising the regional shopping centre known as Upper Canada Mall 17600 Yonge Street, Newmarket, Ontario in their capacity as counter parties to the Operating Agreement.

“**Matching Security**” has the meaning ascribed thereto in Section 4.

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

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

“**NDA**” means the confidentiality, non-disclosure and non-use agreement between the Vendor and the Purchaser dated August 9, 2017, as amended or supplemented in writing from time to time.

“**Notice**” has the meaning ascribed thereto in Section 8.14.

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

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

“**Operating Agreement**” means, collectively:

- (i) Operating Agreement dated July 25, 1973 among Regional Shopping Centres Limited and the Vendor (then known as Simpson-Sears Properties Limited and Simpson-Sears Limited);

- (ii) Supplement to the Operating Agreement, December 24, 1987 among Regional Shopping Centres Limited and the Vendor (then known as Sears Properties Inc. and Sears Canada Inc.);
- (iii) Second Supplement to the Operating Agreement, January 21, 1994 among Regional Shopping Centres Limited, OMERS Realty Corporation, the Vendor, Cambridge Leaseholds Limited, The Prudential Insurance Company of America, the Canada Life Assurance Company and London Life Insurance Company;
- (iv) Letter agreement dated March 12, 1997 between Cambridge Leaseholds Limited and the Vendor;
- (v) Third Supplement to the Operating Agreement dated April 9, 1998 among Regional Shopping Centres Limited, OMERS Realty Corporation, the Vendor, Cambridge Leaseholds Limited, The Prudential Insurance Company of America, The Canada Life Assurance Company and London Life Insurance Company;
- (vi) Restrictive covenant agreement dated 1998 among Regional Shopping Centres Limited, OMERS Realty Corporation and the Vendor; and
- (vii) Fourth Supplement to the Operating Agreement dated 1998 among Regional Shopping Centres Limited, OMERS Realty Corporation, the Vendor, Cambridge Leaseholds Limited, The Prudential Insurance Company of America, The Canada Life Assurance Company and London Life Insurance Company.

**“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.

**“Outstanding Options”** has the meaning ascribed thereto in Section 7.3(a).

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

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

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

**“Post-Closing Access Period”** has the meaning ascribed thereto in Section 6.3(e).

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

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

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

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

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

“**Remaining Fixtures**” means any personal property, fixtures, equipment, or leasehold improvements affixed or attached to, or installed in, the Property in such a manner that the installation or removal of such items would cause material damage or any destruction to the Property and includes plumbing, heating, ventilation and air conditioning, or base building equipment and facilities, compressors, chillers, ductwork, drywall partitions, lighting fixtures, carpeting, tile or other floor coverings, electrical switches and outlets, doors, windows, ceiling systems and facilities, utility connections and services, metering systems and equipment, millwork, wall coverings, stonework, or other similar fixtures, equipment and leasehold improvements, and replacements thereof.

“**Removal Activities**” has the meaning ascribed thereto in Section 2.2(f).

“**Restoration Obligation**” means the following obligations of the Vendor to be completed at the Vendor’s sole cost and expense as soon as reasonably possible, in a good and workmanlike manner, in compliance with all applicable Laws: (A) repair any material damage to the Property arising from any Removal Activities, and (B) otherwise restore the Property to the condition existing in all material respects immediately prior to commencement of such Removal Activities (other than replacing the Inventory, FF&E and any other Excluded Assets removed from the Property or matters not caused in connection with the Removal Activities).

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

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

“**SISP Order Date**” means July 13, 2017.

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

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

“**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other similar charges imposed by any Governmental Authority under applicable Laws, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental

Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, registration, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, and all licence, franchise and registration fees. Notwithstanding the foregoing, Taxes exclude all income taxes or similar taxes, profit taxes, corporation taxes, capital gains tax, capital tax, large corporations tax, and other tax personal to the Vendor resulting from the Transaction.

“**Trade Fixtures**” means the fixtures, shelves, counters, equipment, and other improvements used in connection with the operation of the Subject Assets, in each case to the extent owned, leased or licensed by the Vendor. For greater certainty, trade fixtures do not include Remaining Fixtures.

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

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

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

## **ARTICLE 2 SALE TRANSACTION**

### **2.1 Offer and Acceptance**

- (a) Subject to the Initial Order and the SISP Order, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase and assume from the Vendor, the Subject Assets on the Closing Date in accordance with the terms and conditions of this Agreement.
- (b) The Offer shall be irrevocable by the Purchaser until 5:00 p.m. on October 6, 2017.
- (c) Upon acceptance of this Offer by the Vendor, this Offer shall constitute a binding agreement to acquire the Subject Assets, on the terms of this Agreement.

### **2.2 As Is, Where Is**

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

- (a) the Purchaser is purchasing the Subject Assets (including the state of title thereto and/or the state of any Encumbrances and Permitted Encumbrances) and accepting and assuming the Subject Assets on an “as is, where is” basis, without any written or oral statements, representations, warranties, promises or guaranties of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), as to the condition of any of the Subject Assets, the Permitted Encumbrances, the rentable area of the Buildings, the existence of any default on

the part of the Vendor, the physical, environmental or other condition of, in, on, under or in the vicinity of the Property, the use permitted at the Property, the existence of any Encumbrance and/or Off-Title Compliance Matters affecting the Subject Assets, or any other aspects of any of the Subject Assets and the Permitted Encumbrances, the structural integrity or any other aspect of the physical condition of any Subject Assets, the conformity of any Building to any Plans or specifications (including, but not limited to, any Plans and specifications that may have been or which may be provided to the Purchaser), compliance with Environmental Laws, the conformity of the Property to past, current or future applicable zoning or building code requirements or other applicable Laws, the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the Lands, or any Building situated on or as part of the Property, the sufficiency of any drainage, whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, the existence or non-existence of underground and/or above ground storage tanks, the availability of public utilities, access, parking and/or services for the Property, the fitness or suitability of the Property for occupancy or any intended use (including matters relating to health and safety), the potential for further development of the Property, the existence of land use, zoning or building entitlements affecting the Property, the presence, release or use of wastes of any nature, Hazardous Substances, pollutants, contaminants or other regulated substances in, under, on or about the Property or any neighbouring lands; and without limiting the foregoing, any and all conditions or warranties expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation in other jurisdictions will not apply and are hereby waived by the Purchaser;

- (b) any disclosure in respect of any of the Subject Assets was made available to the Purchaser solely as a courtesy but the Purchaser is not entitled to rely on such disclosure, and it is expressly acknowledged by the Purchaser that no written or oral statement, representation, warranty, promise or guarantee of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), is made by the Vendor and/or the Monitor and/or their respective legal counsel, the Financial Advisor or other advisors or representatives as to the accuracy, currency or completeness of any such disclosure, and each of them expressly disclaims any and all liabilities with respect to such disclosure and any and all errors therein or omissions therefrom;
- (c) the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Purchaser might have against the Vendor pursuant to any warranty, legal or conventional, express or implied, of any kind or type relating to the Subject Assets or any other assets or any other aspect of the Transaction. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects, whether or not discoverable, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights;



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

The Vendor has no and shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Subject Assets or the condition thereof save and only to the extent expressly provided in this Agreement or the Closing Documents. The Purchaser shall be responsible for and hereby indemnifies and saves

harmless the Vendor and its employees, directors, officers, appointees and agents from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgments, awards, including awards of costs, that may arise as a result of any matters that occurred following Closing in connection with each of the following: the condition of the Property, any order issued by any competent Governmental Authority in connection with the condition of the Property, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property including, without limitation, non-compliance with Environmental Laws or the existence of any Hazardous Substances. Notwithstanding the foregoing provisions of this Section 2.2, the provisions of this Section 2.2: (i) are not intended to be a positive obligation on the Purchaser to indemnify, guarantee, defend or exonerate the Vendor in any manner whatsoever following Closing, except as otherwise specifically set out in this Agreement or the Closing Documents; (ii) do not prohibit the Purchaser from defending itself against third party Claims which arise following Closing, in connection with matters that occurred prior to Closing, provided that the Purchaser shall not make a Claim against the Vendor as part of such defence; (iii) do not in any manner limit the Purchaser's condition in Section 7.1; and (iv) are without limitation to the representation and warranties of the Vendor in this Agreement, and any terms and conditions set out in any Closing Documents. This Section 2.2 shall survive and not merge on Closing and all Closing Documents shall incorporate this Section 2.2 by reference.

### ARTICLE 3 PURCHASE PRICE

#### 3.1 Purchase Price

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

- (a) as to the sum of [REDACTED] (the "**Deposit**"), by wire transfer of immediately available funds payable to or to the order of the Monitor, in trust, or as it may otherwise direct in writing, on or prior to 3:00 p.m. (Toronto time) on the Business Day following the Execution Date, to be held in trust as a deposit and invested in accordance with the provisions of Section 3.2 below pending the completion or other termination of this Agreement; and
- (b) as to the balance of the Purchase Price (the "**Balance**"), subject only to the adjustments made in accordance with this Agreement, by wire transfer of immediately available funds payable to the Monitor or as it may direct on the Closing Date.

#### 3.2 Deposit

- (a) Following receipt, the Deposit shall be invested by the Monitor, in trust, in an interest bearing account or term deposit or guaranteed investment certificate pending completion of the Transaction or earlier termination or non-completion of

this Agreement. In holding and dealing with the Deposit and any interest earned thereon pursuant to this Agreement, the Monitor is not bound in any way by any agreement other than this Section 3.2, and the Monitor shall not and shall not be considered to assume any duty, liability or responsibility other than to hold the Deposit, and any interest earned thereon, in accordance with the provisions of this Section 3.2, and to pay the Deposit, and any interest earned thereon, to the Person becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the Parties as to entitlement to the Deposit. In the case of such dispute, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by any of the Parties, pay the Deposit and any and all interest earned thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit or any interest earned thereon. The Monitor shall not, under any circumstances, be required to verify or determine the validity of any notice or other document whatsoever delivered to the Monitor and the Monitor is hereby relieved of any liability or responsibility for any Claims which may arise as a result of the acceptance by the Monitor of any such notice or other document.

- (b) If the Transaction is completed, the Deposit shall be paid to the Vendor forthwith on Closing and applied to the Purchase Price. Interest on the Deposit shall accrue from the date of deposit with the Monitor until the Closing or other termination or non-completion of this Agreement. If the Transaction is successfully completed, all interest earned on the Deposit until Closing shall be paid to the Purchaser following Closing.
- (c) If the Transaction is not completed by reason of a default of the Purchaser, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Vendor as liquidated damages (and not as a penalty) to compensate the Vendor for the expenses incurred and the delay caused and opportunities foregone as a result of the failure of the Transaction to close. The entitlement of the Vendor to receive and retain the Deposit together with all accrued interest earned thereon, if any, in such circumstances shall not limit the Vendor's right to exercise any other rights or remedies which the Vendor may have against the Purchaser in respect of such breach or default.
- (d) If the Transaction is not completed by any reason other than the default of the Purchaser, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Purchaser as full and final settlement and the Purchaser shall have no further recourse, provided that if the Transaction is not completed solely by reason of a default of the Vendor, the Vendor shall reimburse the Purchaser for its reasonable out-of-pocket expenses incurred following the Execution Date to a maximum amount of \$25,000.
- (e) In holding and dealing with the Deposit and any interest earned thereon pursuant to this Agreement, the Monitor shall release the Deposit and any interest earned thereon to the Persons becoming entitled thereto in accordance with the provisions of (i) Section 7.7(c); or (ii) this Section 3.2 as evidenced by a joint direction in writing executed by the Vendor and the Purchaser (the "**Joint Direction**") except in the event of a dispute between the Parties as to entitlement to the Deposit and any interest earned thereon in which event the Monitor may, in its sole, unfettered

and unreviewable discretion, pay the Deposit and any interest earned thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit and any interest earned thereon or otherwise hereunder.

- (f) The Monitor shall not, under any circumstances, be required to verify or determine the validity of the Joint Direction or any written confirmation received pursuant to Section 7.8(b) and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as the result of the acceptance by the Monitor of the Joint Direction.
- (g) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Vendor and the Purchaser acknowledges and agrees that: (i) the Monitor's obligations hereunder are and shall remain limited to those specifically set out in this Section 3.2; and (ii) FTI Consulting Canada Inc. is acting solely in its capacity as the Court-appointed Monitor of the Vendor in the CCAA Proceedings and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise.
- (h) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 3.2 notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 3.2 shall survive the termination or non-completion of the Transaction.

### **3.3 Purchase Price Allocation**

The allocation of the Purchase Price as between the Subject Assets shall be made on a basis which is mutually agreeable to the Purchaser and the Vendor on or before Closing. Failure to agree on the allocation shall not result in termination of this Agreement and each party shall be free to make its allocation. If an allocation is mutually acceptable, the Vendor and the Purchaser shall adopt such allocations for the purposes of all tax returns, elections and filings respectively made by them or on their behalf.

### **3.4 Letters of Credit and Deposits**

On the Closing Date, the Purchaser shall issue replacement letters of credit and/or security deposits for the Letters of Credit and the Vendor shall use its best commercial efforts to cause the Letters of Credit to be released and returned to the Vendor without any further drawings thereunder. Provided that to the extent that the Vendor is unable to cause all of the Letters of Credit to be released and returned to the Vendor, without any further drawings thereunder, in lieu of issuing the replacement letters of credit and/or security deposits referred to above, the Purchaser shall cause matching, unconditional and irrevocable letters of credit and/or security deposits in form, and from an issuer, satisfactory to the Vendor, in favour of the Vendor to be provided to the Vendor on the Closing Date (collectively, the "**Matching Security**") which Matching Security may be drawn upon by the Vendor and its successors and assigns if and to the extent that the Vendor's Letters of Credit are drawn upon from time to time, and the Purchaser shall reimburse the Vendor for any direct incremental costs incurred and indemnify and hold the Vendor harmless from and against all Claims, incurred or asserted, as a result of any Letters of Credit which are not so released and returned to the Vendor.

### **3.5 Trade-Marks**

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees that: (a) no signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “Sears” are conveyed or intended to be conveyed to the Purchaser as part of the Subject Assets; and (b) all right, title and interest of the Vendor in and to all of its existing signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “Sears” or containing the words “Sears” are hereby specifically reserved and excluded from the Subject Assets. This Section shall survive and not merge on Closing.

### **3.5 Access**

During the Interim Period, the Vendor hereby authorizes the Purchaser and any persons designated by the Purchaser upon a minimum of 24 hours prior notice to carry out, at the Purchaser’s sole costs, risk and expense and without liability to the Vendor, such tests (including but not limited to soil tests and environmental audits including Phase I and Phase II site assessments), surveys and inspections of the Property as the Purchaser may deem necessary. The Purchaser agrees to repair any damage caused by any such tests and to indemnify and save harmless the Vendor with respect thereto and any resulting damages the Vendor may suffer or incur as a result thereof. The provisions of this Section 3.5 shall survive and not merge on Closing.

## **ARTICLE 4 ADJUSTMENTS**

### **4.1 Statement of Adjustments and Absence of Post-Closing Adjustments**

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

### **4.2 General Adjustments**

- (a) The adjustments shall include realty taxes, local improvement rates and charges and, except as set out in this Agreement, other adjustments established by usual practice in the municipality in which the Property is located for the purchase and sale of similar retail properties. In addition, the adjustments shall include the other matters referred to in this Agreement which are stated to be the subject of

adjustment and shall exclude the other matters in this Agreement which are stated not to be the subject of adjustment.

- (b) From and after the Closing Date, the Purchaser shall be responsible for all expenses and shall be entitled to all revenue from the Subject Assets. The Vendor shall be responsible for all expenses and entitled to all revenue from the Subject Assets for that period prior to the Closing Date.
- (c) The Purchaser shall be responsible for and pay all applicable Taxes payable in connection with the transfer of any of the Subject Assets by the Vendor to the Purchaser.
- (d) If on Closing there are any outstanding realty tax arrears in respect of the Property, or any utility arrears which will bind the Property following Closing, there shall be an adjustment on Closing in favour of the Purchaser in the full amount of all such arrears, and any related penalties and interest, in an amount sufficient to allow the Purchaser to fully repay such arrears, penalties and interest on the 2<sup>nd</sup> Business Day following Closing.

#### **4.3 Realty Tax Appeals**

- (a) The Vendor and the Purchaser acknowledge that with respect to the Property the Vendor may have instituted certain appeals and/or claims in respect of realty taxes or assessments for certain periods prior to the Closing Date and possibly including the tax year in which the Closing Date occurs (all such appeals and any associated reassessments are hereinafter collectively referred to as the “**Realty Tax Appeals**”).
- (b) From and after the Closing Date, the Purchaser may, at its sole cost and expense but without any obligation to do so, assume or retain the carriage of the Realty Tax Appeals and continue as the appellant in the Realty Tax Appeals. At the request of the Purchaser and at the Purchaser’s sole cost and expense, the Vendor agrees to co-operate with the Purchaser with respect to the Realty Tax Appeals and to provide the Purchaser 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 Vendor, at the request of the Purchaser, the Vendor shall cooperate with the Purchaser, including granting such authorizations as may be reasonably required, to enable the Purchaser to pursue and prosecute such Realty Tax Appeals, at the Purchaser’s sole cost and expense.

This Section 4.3 shall survive and not merge on Closing.

#### **4.4 Utilities**

- (a) The Purchaser shall not assume any contracts or agreements entered into by or on behalf of the Vendor for the supply of any utilities (including electricity, gas, water, fuel, telephone service, internet services, security and surveillance services or otherwise) at the Property. On or before the Closing Date, the Vendor shall terminate all of its contracts and agreements for the supply of any utilities to the

Property. For the avoidance of doubt, there shall be no adjustment at Closing in respect of the payment of any utilities. The provisions of this Section 4.4(a) shall survive and not merge on Closing.

- (b) From and after the Closing Date, or, at Vendor's option but subject to the provisions of the Access Agreement, the Post-Closing Access Period, any and all utility charges and other related fees payable for any of the Property, pursuant to any invoice or statement issued after the Closing Date, or Post-Closing Access Period, in connection with the period following Closing or Post-Closing Access Period, shall be the sole responsibility of the Purchaser, and there shall be no adjustments between the Vendor and the Purchaser of any utility charges or related fees paid by the Purchaser pursuant to any such invoice or statement issued after the Closing Date or Post-Closing Access Period in connection with the period following Closing or Post-Closing Access Period.

## **ARTICLE 5 INTERIM PERIOD**

### **5.1 Interim Period**

- (a) Subject to the Restoration Obligation, during the Interim Period and the Post-Closing Access Period in accordance with the Access Agreement, the Vendor by itself or through its agent shall be entitled to remove and sell, or permit any other Persons to remove and sell, any and all Inventory and FF&E and any other Excluded Assets, from the Property in the manner deemed appropriate by the Vendor subject to this Agreement, the Access Agreement, the Initial Order, the SISP Order and any other Order of the Court. For greater certainty no Remaining Fixtures may be removed pursuant to this Section 5.1(a)
- (b) In the event that prior to the Closing Date all or a part of the Lands is expropriated or notice of expropriation or intent to expropriate all or a part of the Lands is issued by any Governmental Authority, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Vendor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis.
- (c) The Subject Assets shall be and remain until Closing at the risk of the Vendor. In the event of material damage by fire or other hazard to the Subject Assets or any part thereof occurring before the Closing Date, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall have 10 days from receipt of such Notice to elect to terminate this Agreement where such damages exceeds 10% of the Purchase Price, failing which, and in all other circumstances the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and the proceeds of any insurance available

or actually paid or payable to the Vendor shall be paid and/or assigned to the Purchaser.

## 5.2 Contracts

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

## 5.3 Permitted Encumbrances and Assumed Contracts

The Purchaser shall provide such commercially reasonable financial, business, organizational, managerial and other information and enter into such commercially reasonable assumption agreements or deeds of re-hypothecation as the relevant party to an Assumed Contract or Permitted Encumbrance (the relevant party being a “**Holder**”) shall require (and which is approved by the Purchaser acting reasonably) effect the assumption of the Assumed Contracts or the Permitted Encumbrances, as applicable, by the Purchaser (collectively, the “**Contract and/or PE Assumption Agreements**”). The Purchaser agrees to provide an assumption agreement to the Mall Owners in accordance with the terms of the Operating Agreement. The Purchaser shall use reasonable efforts to assist the Vendor and shall co-operate with the Vendor, as reasonably requested (at no cost or expense to the Purchaser other than any *de minimis* cost or expense or any cost or expense which the Vendor agrees in writing to reimburse prior to Closing) to obtain from third parties a full release of the Vendor’s obligations under the Assumed Contracts and Permitted Encumbrances, and shall provide such commercially reasonable financial and other information and enter into such assumption agreements as such third parties may reasonably require, in form and substance acceptable to each of the parties thereto acting reasonably and without delay.

# ARTICLE 6 REPRESENTATIONS, WARRANTIES & COVENANTS

## 6.1 Vendor’s Representations and Warranties

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

- (a) the execution, delivery and performance by the Vendor of this Agreement has been duly authorized by all necessary corporate action on the part of the Vendor subject to the Approval and Vesting Order and authorization as is required by the Court;
- (b) the Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Vendor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*.
- (d) there are no employees employed in connection with the Property in respect of which the Purchaser, will incur any liabilities whatsoever as a result of the Transaction and the Vendor, is not a party to any collective bargaining or trade



union agreement involving the Property which will bind the Property following Closing;

- (e) it has not received written notice of any condemnation or expropriation proceedings relating to the Property or any part thereof from any Governmental Authority;
- (f) the entire registered and beneficial interest in the Property is owned by the Vendor;
- (g) there will be no Contracts, leases or other occupancy agreements in effect in respect of the Property that will bind the Purchaser or the Property after Closing (save and except for Permitted Encumbrances and Assumed Contracts);
- (h) except as contained in the Operating Agreement, there are no existing options or rights of first refusal or first opportunity to lease, purchase, or otherwise acquire all or part of the Property; and
- (i) there is no broker or investment banker (other than the Financial Advisor) acting on behalf of the Vendor or under its or their authority that will be entitled to claim any broker's or finder's fee or any other commission or similar fee directly or indirectly in connection with the transactions from the Purchaser.

The Vendor's representations and warranties shall survive Closing for a period of 6 months thereafter. This Section shall survive and not merge on Closing.

## **6.2 Purchaser's Representations and Warranties**

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

- (a) the Purchaser has been duly incorporated and is validly subsisting under the Laws of the jurisdiction of its incorporation, and has all requisite corporate capacity, power and authority to carry on its business as now conducted by it and to own its properties and assets and is qualified to carry on business under the Laws of the jurisdictions where it carries on a material portion of its business;
- (b) the Purchaser is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Purchaser is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*;
- (d) the execution, delivery and performance by the Purchaser of this Agreement:
  - (i) has been duly authorized by all necessary corporate action on the part of the Purchaser;
  - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms

or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and

- (iii) will not result in the violation of any Laws;
- (e) this Agreement has been duly executed and delivered by the Purchaser and constitutes legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with their respective terms subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction; and
- (f) the Purchaser has, and will have at Closing, all funds on hand necessary to pay the Purchase Price and any Taxes payable and that are not self-assessed and remitted by the Purchaser.

The Purchaser's representations and warranties shall survive Closing for a period of 6 months thereafter. This Section shall survive and not merge on Closing.

### **6.3 Purchaser's Covenants**

- (a) The Purchaser shall use commercially reasonable efforts to take all such actions as are within its power or control, and to cause other actions to be taken which are not within its power or control, so as to ensure compliance with each of the conditions and covenants set forth in Article 7 which are for the benefit of any other Party.
- (b) The Purchaser shall (at no cost or expense to the Purchaser other than any *de minimis* cost or expense or any cost or expense which the Vendor agrees in writing to reimburse prior to Closing) take any and all steps in order to avoid the filing of an application for, or the issuance of any interim Order or other Order which would have the effect of delaying or preventing the Closing, and if any such interim Order or other Order is issued, the Purchaser shall (at no cost or expense to the Purchaser other than any *de minimis* cost or expense or any cost or expense which the Vendor agrees in writing to reimburse prior to Closing) take any and all steps to have it rescinded, revoked or set aside as soon as possible. For greater certainty, "any and all steps" shall include, committing to or effecting undertakings, a consent agreement, a hold separate arrangement, a consent Order, a hold separate Order, a sale, a divestiture, a disposition or other action, in any such case without any reduction of the Purchase Price.
- (c) The Purchaser will promptly notify the Vendor and the Vendor will promptly notify the Purchaser upon:
  - (i) becoming aware of any Order or any complaint requesting an Order restraining or enjoining the execution of this Agreement or the consummation of the Transactions; or

- (ii) receiving any notice from any Governmental Authority of its intention:
  - (A) to institute a suit or proceeding to restrain or enjoin the execution of this Agreement or the consummation of the Transaction; or
  - (B) to nullify or render ineffective this Agreement or such Transaction.
- (d) For a period from the Closing Date to the date that is the earlier of (i) fifteen (15) weeks from the Closing Date, and (ii) the date determined by the Vendor on ten (10) Business Days' notice to the Purchaser (the "**Post-Closing Access Period**"), the Vendor and its agents and their respective representatives (collectively, the "**Accessing Parties**") shall have access to the Property to occupy the Property in order for one or more of the Accessing Parties to conduct a liquidation sale of the Inventory and/or the FF&E and/or to remove any of the Inventory, the FF&E and/or the Excluded Assets, in accordance with the Access Agreement. The Vendor shall not be obligated to remove any Inventory, FF&E or Excluded Assets or subject to Restoration Obligation repair the Property. Any Inventory, FF&E or Excluded Assets left on the Property at the expiry of the Post-Closing Access Period shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. This Section shall survive and not merge on Closing.

#### **6.4 Vendor's Covenants**

- (a) The Vendor agrees, that subject to the Initial Order, the SISP Order and the Approval and Vesting Order, to thereafter take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to fulfill the conditions set forth in Article 7 which are for the benefit of the Vendor or the mutual benefit of the Parties.
- (b) During the Interim Period the Vendor will not terminate, amend, or any manner alter, any Permitted Encumbrance, or any Assumed Contract; or enter into any new contract, lease or other occupancy agreement relating to the Property which will bind the Property on Closing.
- (c) Except as provided by any Order of the Court, or as otherwise ordered by the Court, the Vendor shall forthwith comply in all material respects with the Outstanding Option provisions of the Operating Agreement as it relates to this Transaction including providing notice of this Transaction to the Mall Owners providing an offer to purchase the Property to the Mall Owners at the Purchase Price and upon the same terms and conditions contained in this Agreement in all substantial respects.

#### **6.5 Tax Matters**

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

- (a) the Purchaser is duly registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* with respect to the goods and services tax and harmonized sales tax, which registration shall be in full force and effect and shall not have been cancelled or revoked on the Closing Date;
- (b) the Purchaser has entered into this Agreement and is purchasing the Subject Assets on the Closing Date, as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of another Person;
- (c) to the extent permitted under subsection 221(2) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation, the Purchaser shall self-assess and remit directly to the appropriate Governmental Authority any Taxes including goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax imposed by any applicable provincial or territorial legislation payable in connection with the purchase and sale transaction of the Subject Assets, including the transfer of the Vendor's real or immovable property interests in the corresponding Subject Assets;
- (d) on Closing, the Purchaser will pay, in addition to the Purchase Price, and the Vendor will collect, any Taxes including transfer taxes as well as goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax exigible on the purchase and sale transaction of the Subject Assets, except to the extent that the Purchaser is permitted under subsection 221(2) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation to self-assess and remit such Taxes directly to the appropriate Governmental Authority, and the Purchaser shall have executed and delivered a certificate, undertaking and indemnity which includes its certification of its registration number issued under the *Excise Tax Act*, and incorporates the provisions of this Section 6.4 (the “**GST/HST Certificate, Undertaking and Indemnity**”);
- (e) the Purchaser shall make and file all required return(s) in accordance with the requirements of subsection 228(4) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation; and
- (f) the Purchaser shall indemnify and save the Vendor harmless from and against any and all transfer taxes and goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of any failure by the Vendor to collect and remit any goods and services tax or harmonized sales tax payable under the *Excise Tax Act* and applicable on the sale and conveyance of the Subject Assets by the Vendor to the Purchaser or as a result of any inaccuracy, misstatement, or misrepresentation made by the Purchaser in connection with any matter raised in this Section 6.5 or in the GST/HST Certificate, Undertaking and

Indemnity or any failure by the Purchaser to comply with the provisions of this Section 6.5 or the GST/HST Certificate, Undertaking and Indemnity.

The provisions of this Section 6.4 shall survive and not merge on Closing.

## 6.6 Termination Payment

- (a) If this Agreement is terminated, as a result of (i) the condition in Section 7.3(a) not being satisfied, whereby the Mall Owners have exercised an Outstanding Option to purchase the Property under the Operating Agreement as a result the Transaction; or (ii) a default of the Vendor under this Agreement and at any time during the period commencing on the Effective Date and ending 3 months following such termination of this Agreement, an agreement or other arrangement is entered into with the Mall Owners whereby the Mall Owners (other than a result of the Mall Owners exercise of an Outstanding Option) acquire the Property (each a “**Trigger Event**”), then the Vendor hereby covenants and agrees to pay the Purchaser a termination fee of [REDACTED] (“**Termination Payment**”) in consideration of the lost opportunity to the Purchaser. Such Termination Payment is to be paid by the Vendor within 2 Business Days of the termination of this Agreement pursuant to the Triggering Event.
- (b) The Vendor shall wire transfer an amount equal to the Termination Payment (the “**Termination Deposit**”) of immediately available funds payable to or to the order of the Monitor, in trust, on or prior to 3:00 p.m. (Toronto time) one Business Day following the acceptance of this Agreement by the Vendor, to be held in trust as a deposit in accordance with this Section 6.6 and invested in accordance with the provisions of Section 3.2.
- (c) The full amount of the Termination Deposit together with all accrued interest earned thereon shall be paid to the Vendor: (i) on Closing if the Transaction is completed on Closing; or (ii) five (5) Business Days following the termination of the Transaction if the Trigger Event has not occurred by such date.
- (d) If the Trigger Event has occurred, the full amount of the Termination Deposit together with all accrued interest earned thereon shall be paid to the Purchaser forthwith upon the occurrence of such Trigger Event in full satisfaction of the Vendor’s obligations in Section 6.6(a). For greater certainty, the Monitor shall release the Termination Deposit and any interest accrued thereon to the person becoming entitled thereto in accordance with the provisions of this Section 6.6 as evidenced by a Joint Direction, except in the event of a dispute between the Parties as to entitlement to the Termination Deposit and any such interest, in which event the Monitor may, in its sole unfettered and unreviewable discretion, pay the Termination Deposit and any interest accrued thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit and any interest earned thereon or otherwise hereunder.
- (e) Sections 3.2(e) to (g) inclusive shall apply *mutatis mutandis* to the Termination Deposit, except where in conflict with this Section 6.6.

- (f) The provisions of this Section 6.6 shall survive the termination or non-completion of the Transaction.

## **6.7 Survival of Covenants,**

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

## **ARTICLE 7 CLOSING**

### **7.1 Conditions of Closing for the Benefit of the Purchaser**

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

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

### **7.2 Conditions of Closing for the Benefit of the Vendor**

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

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

- (c) the Vendor shall have received the Closing Documents.

### **7.3 Conditions of Closing for the Mutual Benefit of the Parties**

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

- (a) all options to purchase, rights of first refusal to purchase, or similar rights, with respect to the Property or any part thereof in favour of the Mall Owners (“**Outstanding Options**”) shall have validly expired in accordance with the terms of the Operating Agreement or as ordered by the Court or been waived by the Mall Owners in writing and the Vendor has provided the Purchaser with commercially reasonable evidence to substantiate the foregoing;
- (b) the Approval and Vesting Order, substantially in the form attached hereto as Schedule “D”, shall have been issued and entered by the Court; and
- (c) the Monitor shall have delivered the Monitor’s Certificate.

### **7.4 Closing Documents**

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

- (a) By the Vendor and the Purchaser:
  - (i) the Assignment and Assumption of Realty Tax Appeals;
  - (ii) the Assignment and Assumption of Assumed Contracts and Permitted Encumbrances;
  - (iii) the Access Agreement; and
  - (iv) 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, provided that none of such documents shall contain covenants, indemnities, representations or warranties, which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement or which are inconsistent or in conflict with this Agreement.
- (b) By the Vendor:
  - (i) the Approval and Vesting Order.

- (ii) the statement of adjustments evidencing the adjustments made at Closing;
  - (iii) an assignment of Warranties, to the extent there are any and are in the Vendor's possession and located on the Property and to the further extent that they are assignable without cost or consent;
  - (iv) all master keys relating to the Buildings, if any, all security cards and access cards relating to the Buildings, if any, and all combinations and passwords to vaults and combination locks and other security features located in the Buildings, if any, in each case, to the extent in the possession of the Vendor, provided that duplicate copies of such keys and such other information may be retained by the Vendor during the Post-Closing Access Period; and
  - (v) such other documents as the Purchaser or the Purchaser's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws provided that none of such documents shall contain covenants, indemnities, representations or warranties, which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement or which are inconsistent or in conflict with this Agreement.
- (c) By the Purchaser:
- (i) the Balance plus all Taxes thereon which are not subject to self-assessment;
  - (ii) GST/HST Certificate, Undertaking and Indemnity;
  - (iii) the Matching Security, if applicable;
  - (iv) an assumption agreement in favour of the Mall Owners and the Vendor (as owner of the Sears Store (as defined in the Operating Agreement)) in accordance with the Operating Agreement whereby the Purchaser assumes the obligations under the Operating Agreement as owner of the Property;
  - (v) the Contract and/or PE Assumption Agreements along with any deliveries to the Holders required in respect of and in accordance with the Assumed Contracts or Permitted Encumbrances;
  - (vi) a certificate of the Vendor certifying that all of the representations and warranties of the Vendor contained in this Agreement are true and correct in all material respects as if made as of the Closing Date, or identifying any such circumstances or other matters that have caused such representations and warranties to not be true and correct in all material respects as if made as of the Closing Date; and
  - (vii) a bill of sale in connection with any Subject Assets that are personal property; and



- (viii) such other documents as the Vendor or the Vendor's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.

## 7.5 Closing Date

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

## 7.6 Confirmation of Satisfaction of Conditions

- (a) On the Closing Date, subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of Closing in its favour contained in Article 7, the parties or their respective solicitors shall confirm to the Monitor the satisfaction of all conditions to Closing and upon the Monitor receiving the Balance, the Monitor shall deliver copies of the Monitor's Certificate to the Parties hereto and release the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser to the Vendor and following Closing file the Monitor's Certificate with the Court.
- (b) The Party with the benefit of a condition in Section 7.1 and/or 7.2 ("**Waiving Party**") may, by Notice notify the Party that such condition(s) are satisfied or that it is waiving same or that such condition(s) are not satisfied. If no such Notice is delivered on or before the applicable date referred to above, the Waiving Party will be deemed to not have satisfied itself and this Agreement shall thereupon terminate and the Deposit and accrued interest thereon shall be dealt with in accordance with Section 3.2.

## 7.7 Closing

- (a) Subject always to Section 3.2 hereof, the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be held by the Monitor, in trust in a separate interest bearing account, pending completion of the Transaction or earlier termination of this Agreement. In holding and dealing with the funds paid to the Monitor in trust and any interest earned thereon pursuant to this Agreement, the Monitor is not bound in any way by any agreement other than Section 3.2 and this Section 7.7 and the Monitor shall not assume or be deemed to assume any duty, liability or responsibility other than to hold the trust funds and any interest earned thereon in accordance with the provisions of this Section 7.7 and to pay the funds, and any interest earned thereon, to the Party becoming entitled thereto in accordance with the terms of this

Agreement, except in the event of a dispute between the parties as to entitlement to the trust funds, of which the Monitor has been given notice in writing, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by either of the parties, pay the trust funds and any and all interest earned thereon into court, whereupon the Monitor shall have no further obligations relating to the trust funds or any interest earned thereon or otherwise hereunder.

- (b) The Monitor shall not, under any circumstances, be required to verify or determine the validity of any written notice or other document whatsoever delivered to the Monitor in connection with the trust funds and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as a result of the acceptance by the Monitor of any such written notice or other document.
- (c) On or before Closing, the parties' respective solicitors shall exchange the Closing Documents in escrow and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be delivered to or paid to the order of the Monitor, in trust, and the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall remain in escrow with the Monitor until the Monitor has delivered the Monitor's Certificate to the Vendor and the Purchaser, upon the occurrence of which the escrow shall be lifted, the Closing Documents shall take effect as of the date and time set out in the Monitor's Certificate, the entire amount of the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be forthwith released to the Vendor and the Closing shall be deemed to have occurred as of such date and time set out in the Monitor's Certificate and fully signed Closing Documents shall be released to each of the Vendor and Purchaser.
- (d) The parties acknowledge that, notwithstanding that the Monitor is not a party to this Agreement, the Monitor may rely upon the provisions of Section 3.2 hereof and this Section 7.7.
- (e) This Section 7.7 shall survive the Closing or termination of this Agreement.

## **7.8 Filings and Authorizations**

- (a) Each of the Vendor and the Purchaser, as promptly as practicable after the execution of this Agreement, will make, or cause to be made, all such filings and submissions under all applicable Laws applicable to it, as may be required for it to consummate the purchase and sale of the Subject Assets in accordance with the terms of this Agreement (other than the motion seeking approval of the Transaction and the issuance of the Approval and Vesting Order). The Vendor and the Purchaser shall co-ordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing including, providing each other with all notices and information supplied to or filed with any Governmental Authority (except for notices and information which the Vendor or the Purchaser, in each case acting reasonably, considers highly confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any

Governmental Authority. This Section 7.8(a) shall survive and not merge on Closing.

- (b) The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the parties and file the Monitor's Certificate with the Court, without independent investigation, upon receiving written confirmation from the Vendor and the Purchaser or their respective solicitors that all conditions of Closing have been satisfied or waived and upon receipt of the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser, and the Monitor shall have no liability to the Vendor or the Purchaser or any other Person as a result of filing the Monitor's Certificate.

## **7.9 Court Matters**

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

## **7.10 Termination**

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

- (a) by mutual consent of the Purchaser and the Vendor (in respect of which the Vendor shall require the consent of the DIP Lenders and Monitor to provide its consent) or on further order of the Court;
- (b) by the Purchaser if any of the conditions in Section 7.1 have not been satisfied on or before the Closing Date and the Purchaser has not waived such condition;
- (c) by the Vendor with the consent of the DIP Lenders and the Monitor if any of the conditions in Section 7.2 have not been satisfied on or before the Closing Date and the Vendor has not waived such condition; or
- (d) by either Party if any of the conditions precedent in Section 7.3 have not been satisfied on or before the Closing Date and the parties have not waived such condition; or
- (e) by the Purchaser, or the Vendor (with the consent of the DIP Lenders and the Monitor) if Closing has not occurred on or before the Closing Date, provided that

the Vendor and Purchaser may not terminate this Agreement pursuant to this Section 7.10(e) if it has failed to perform any one or more of its obligations or covenants under this Agreement and the Closing has not occurred because of such failure.

### **7.11 Leaseback.**

On Notice to be delivered any time before the 10<sup>th</sup> day prior to the Closing Date, the Vendor may elect, in its sole and absolute discretion for there to be a lease back of the entire Property on Closing (the “**Leaseback Notice**”), wherein the Purchaser as landlord, agrees to lease to the Vendor (or its successor) as tenant, the entire Property, which lease will include among other matters the following key terms: (i) a five (5) year term; (ii) standard triple net lease to the landlord; (iii) a net basic rent of \$550,000 per year; and (iv) no free rent periods or other tenant inducements provided by the landlord (the “**Leaseback**”). If the Leaseback Notice is delivered within the above specified period, the following shall occur:

- (a) the Parties acting reasonably and in good faith shall negotiate a form of lease for the Leaseback based on the foregoing provisions (the “**Lease Form**”);
- (b) if the Lease Form has not be settled by proposed Closing Date, the Vendor or Purchaser may elect, in its sole and absolute discretion to extend the Closing Date by up to 10 days to attempt to settle the Lease Form;
- (c) If the Lease Form has not been settled by the Closing Date, (as extended) the Vendor or Purchaser may elect, in its sole and absolute discretion for the Leaseback Notice to be retracted, following which without any further act or formality there shall be no requirement for the Leaseback to occur.
- (d) If the Lease Form has been settled by the Closing Date then: (i) the settled Lease Form shall be executed and delivered as a Closing Document; and (ii) notwithstanding the other provisions of this Agreement, the Access Agreement shall not be a Closing Document and there shall be no Post-Closing Access Period or other access granted to the Vendor following Closing under this Agreement, except for access in accordance with the Leaseback.

## **ARTICLE 8 OTHER PROVISIONS**

### **8.1 Confidentiality**

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

### **8.2 Time of the Essence**

Time shall be of the essence of this Agreement.

### **8.3 Entire Agreement**

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

### **8.4 Waiver**

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

### **8.5 Further Assurances**

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

### **8.6 Severability**

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

### **8.7 Governing Law**

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

## **8.8 English Language**

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

## **8.9 Statute References**

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

## **8.10 Headings**

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

## **8.11 References**

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

## **8.12 Number and Gender**

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

## **8.13 Business Days**

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

## **8.14 Currency and Payment Obligations**

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

## **8.15 Notice**

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

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

Sears Canada Inc.  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3

Attn:  
Email:

With a copy to:

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

Attn: Marc Wasserman & Tracy Sandler  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com) & [tsandler@osler.com](mailto: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](mailto: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](mailto:orestes.pasparakis@nortonrosefulbright.com) &  
[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)

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

210 Shields Court  
Markham, ON L3R 8V2

Attn: Gurion De Zwirek  
Facsimile: 905-470-5235  
Email: [gurion@serruyaequity.com](mailto:gurion@serruyaequity.com)

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

#### **8.16 Subdivision Control Legislation**

This Agreement and the Transaction are subject to compliance by the Vendor at its sole cost and expense with the applicable subdivision control legislation to the extent applicable, including the *Planning Act* (Ontario).

#### **8.17 Solicitors as Agent and Tender**

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

#### **8.18 No Registration of Agreement**

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

#### **8.19 Third Party Costs**

Each of the Parties hereto shall be responsible for the costs of their own solicitors, respectively, in respect of the Transaction. The Purchaser shall be solely responsible for and shall pay, in addition



to the Purchase Price, all fees and expenses in respect of all necessary applications pursuant to the *Competition Act*, the *Investment Canada Act*, any land transfer taxes and transfer duties payable on the transfer of the Subject Assets, all registration taxes, fees and other costs payable in respect of registration of any documents to be registered by the Purchaser at Closing and all federal and provincial sales and other taxes payable upon or in connection with the conveyance or transfer of the Subject Assets, including, goods and services tax, harmonized sales tax or other similar value added or multi-staged tax imposed by any applicable provincial or territorial legislation, as the case may be, and any other provincial sales taxes. This Section 8.19 shall survive the Closing or the termination of this Agreement.

## **8.20 Interpretation**

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

## **8.21 No Third Party Beneficiaries**

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

## **8.22 Enurement**

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

### **8.23 Amendments**

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

### **8.24 Title Insurance**

The Purchaser may prior to Closing, elect to acquire owner's and/or lender's title insurance with respect to Property at the Purchaser's sole cost and expense. In order to facilitate the timely delivery of such title insurance policy on or before the Closing Date in a cost effective manner, the Vendor agrees to co-operate with the Purchaser, at the Purchaser's sole cost and expense, and the title insurer as is reasonably required, provided that the Vendor shall not be obligated to provide any officer certificate or statutory declaration. For greater certainty, in no event shall the Purchaser's acquisition of title insurance with respect to the Property be interpreted as a condition to the obligations of the Purchaser to complete the Closing.

### **8.25 Non Solicit**

The Vendor hereby covenants that it shall not offer for sale or lease in any manner, or otherwise negotiate with any other party for any interest in all or part of Property while this Agreement remains in effect (except to the Mall Owners as required to comply with the Operating Agreement, in connection with the potential Leaseback and as otherwise permitted by this Agreement, including Section 6.4(c)). This Section 8.25 shall survive the Closing or the termination of this Agreement.

### **8.26 Counterparts and Delivery**

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

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF the parties have executed this Agreement.

**SEARS CANADA INC.**

By: P. MONTANI  
Name: P. MONTANI  
Title: Secretary  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SERRUYA PRIVATE EQUITY INC.**

By: [Signature]  
Name: Michel Serruya  
Title: Director  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE "A"**  
**LANDS**

**PIN 03554-0076 (LT)**

PT LT 96 CON 1 W YONGE ST EAST GWILLIMBURY; PT LT 97 CON 1 W YONGE ST  
EAST GWILLIMBURY PT 1, 65R19397, T/W R719694; S/T EG15326, EG15329, EG15610,  
EG20073 NEWMARKET

**SCHEDULE “B”  
EXCLUDED ASSETS**

1. All intellectual property or proprietary rights, whether registered or not, and any intangible property, owned, used or held by the Vendor;
2. All items, materials and signs bearing the logo, trade-mark, trade-name or business name or other mark or design of the Vendor;
3. All FF&E and Inventory which have been removed from the Property by or on behalf of the Vendor or its agents or their respective representatives prior to the expiry of the Post-Closing Access Period;
4. All insurance policies of the Vendor;
5. All rights and interests in trade-marks, trade-names, logos, commercial symbols and business names containing “Sears” or any other proprietary wording or intellectual property rights of the Vendor or any of its affiliates (including, the websites).
6. All rights of the Vendor against the Purchaser pursuant to this Agreement.

**SCHEDULE "C"**  
**INTENTIONALLY DELETED**

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	●, THE ● <sup>TH</sup>
	)	
JUSTICE HAINEY	)	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 – NEWMARKET HOME (STORE #1345)**

THIS MOTION, made by the Applicants, pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: the sale of lands and buildings located at ●, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and Serruya Private Equity Inc. (the “**Purchaser**”) as purchaser dated ●, 2017 (the “**APA**”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn on ●, 2017 including the exhibits thereto, and the ● Report of FTI Consulting Canada Inc., in its

capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2017, filed:

## **SERVICE AND DEFINITIONS**

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

## **APPROVAL OF THE APA**

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



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

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

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

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

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

7. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, the Monitor be and is

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

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

9. THIS COURT ORDERS that, notwithstanding:

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

the distribution permitted by paragraph 7 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

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

## **SEALING**

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

## **GENERAL PROVISIONS**

13. THIS COURT ORDERS that, notwithstanding:

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

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

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

15. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the

Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

---

## SCHEDULE “A”

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

### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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

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

### MONITOR’S CERTIFICATE

#### RECITALS

A. All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2017 (the “**Approval and Vesting Order**”) approving the Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and Serruya Private Equity Inc. (the “**Purchaser**”) as purchaser dated ●, 2017 (the “**APA**”), a copy of which is attached as Exhibit ● to the Affidavit of Billy Wong dated ●, 2017.

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

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

THE MONITOR CERTIFIES the following:

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

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

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

Per: \_\_\_\_\_

Name:

Title:

## SCHEDULE "B"

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
Sectic	●	●	●	●	[NIL]

**SCHEDULE “C”**  
**PERMITTED ENCUMBRANCES**

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



**SCHEDULE “E”**  
**PURCHASER’S GST/HST CERTIFICATE, UNDERTAKING AND INDEMNITY**

TO: Sears Canada Inc. (the “**Vendor**”)

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

RE: Agreement of Purchase and Sale dated ●, 2017, made between the Vendor, as Vendor, and ●, as Purchaser, (the “**Purchaser**”), as amended from time to time (the “**Purchase Agreement**”), for the purchase and sale of the Property and other Subject Assets (as such terms are defined in the Purchase Agreement)

---

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

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

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

DATED \_\_\_\_\_, 2017.

**[PURCHASER]**

By: \_\_\_\_\_

Name: ●

Title: ●

By: \_\_\_\_\_

Name: ●

Title: ●

**SCHEDULE “F”**

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

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the “**Effective Date**”)

**B E T W E E N:**

**SEARS CANADA INC.**

(the “**Vendor**”)

- and -

●

(the “**Purchaser**”)

**RECITALS:**

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

B. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2017 (the “**Purchase Agreement**”), whereby, among other things, the Vendor agreed to assign to the Purchaser all of the Vendor’s right, title and interest in and to the Permitted Encumbrances.

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

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

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

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

## **ARTICLE 1 ASSIGNMENT**

### **1.1 Assignment by Vendor**

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

### **1.2 Assumption by Purchaser**

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

### **1.3 Indemnity**

The Purchaser hereby covenants with the Vendor, as of and from the Closing Date to indemnify and save the Vendor harmless from any and all Claims arising from, relating to or in connection with any non-payment of amounts payable on the part of the Purchaser to be paid from time to time under the Assumed Contracts and the Permitted Encumbrances, or any non-observance or non-performance of any of the terms, agreements, covenants, obligations and conditions on the part of the Purchaser under the Assumed Contracts and the Permitted Encumbrances to be paid, observed or performed from time to time, in respect of the period on or after the Closing Date, or otherwise arising, incurred or accrued in respect of the period after the Closing Date. Notwithstanding the foregoing the provisions of this Section 1.3: (i) are not intended to be a positive obligation on the Purchaser to indemnify, guarantee, defend or exonerate the Vendor in any manner whatsoever following Closing in respect of any matter that arose prior to the Closing Date; and (ii) do not prohibit the Purchaser from defending itself against third party Claims which arise following Closing, in connection with matters that occurred prior to Closing, provided that Purchaser shall not make a Claim against the Vendor as part of such defence.

### **1.4 Paramourncy**

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

## **ARTICLE 2 GENERAL**

### **2.1 Time of the Essence**

Time shall be of the essence of this Agreement.

## **2.2 Enurement**

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

## **2.3 Entire Agreement**

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

## **2.4 Waiver**

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

## **2.5 Further Assurances**

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

## **2.6 Severability**

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

## **2.7 Governing Law**

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

## **2.8 CCAA Proceedings**

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

## **2.9 English Language**

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

## **2.10 Statute References**

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

## **2.11 Headings**

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

## **2.12 References**

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

## **2.13 Number and Gender**

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

## **2.14 Business Days**

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

## **2.15 Notice**

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

transmitted in accordance with the Purchase Agreement.

## **2.16 Counterparts and Delivery**

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

*[Signature pages follow.]*

**IN WITNESS WHEREOF** the Vendor has executed this Agreement.

**SEARS CANADA INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



**IN WITNESS WHEREOF** the Purchaser has executed this Agreement.

●

By: \_\_\_\_\_  
Name: ●  
Title: ●

By: \_\_\_\_\_  
Name: ●  
Title: ●

**SCHEDULE “G”  
FORM OF ASSIGNMENT AND ASSUMPTION OF REALTY TAX APPEALS**

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the “**Effective Date**”)

**B E T W E E N:**

**SEARS CANADA INC.**

(the “**Vendor**”)

- and -

●

(the “**Purchaser**”)

**RECITALS:**

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

B. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2017 (the “**Purchase Agreement**”), whereby, among other things, the Vendor agreed to assign to the Purchaser all of the Vendor’s right, title and interest in and to the Property.

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

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

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

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

## **ARTICLE 1 ASSIGNMENT**

### **1.1 Assignment and Assumption**

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

### **1.2 Carriage of Realty Tax Appeals**

From and after the Closing Date, the Purchaser may, at its sole cost and expense but without any obligation to do so, assume or retain the carriage of the Realty Tax Appeals and continue as the appellant in the Realty Tax Appeals. At the request of the Purchaser and at the Purchaser's sole cost and expense, the Vendor agrees to co-operate with the Purchaser with respect to the Realty Tax Appeals and to provide the Purchaser 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 Vendor, at the request of the Purchaser, the Vendor shall cooperate with the Purchaser, including granting such authorizations as may be reasonably required, to enable the Purchaser to pursue and prosecute such Realty Tax Appeals, at the Purchaser's sole cost and expense.

### **1.3 Authorization and Direction**

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

### **1.4 Paramountcy**

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

## **ARTICLE 2 GENERAL**

### **2.1 Time of the Essence**

Time shall be of the essence of this Agreement.

### **2.2 Enurement**

This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or

transferable by either party without the consent of the other party.

### **2.3 Entire Agreement**

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

### **2.4 Waiver**

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

### **2.5 Further Assurances**

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

### **2.6 Severability**

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

### **2.7 Governing Law**

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

### **2.8 CCAA Proceedings**

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

## **2.9 Statute References**

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

## **2.10 Headings**

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

## **2.11 References**

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

## **2.12 Number and Gender**

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

## **2.13 Business Days**

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

## **2.14 English Language**

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

## **2.15 Currency and Payment Obligations**

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

## **2.16 Notice**

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

## **2.17 Counterparts and Delivery**

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

*[Signature pages follow.]*

**IN WITNESS WHEREOF** the Vendor has executed this Agreement.

**SEARS CANADA INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF** the Purchaser has executed this Agreement.

●

By: \_\_\_\_\_  
Name: ●  
Title: ●

By: \_\_\_\_\_  
Name: ●  
Title: ●



## **SCHEDULE “H”**

### **PERMITTED ENCUMBRANCES**

#### **GENERAL ENCUMBRANCES**

- (a) The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any royalties, mines and minerals in the Crown or in any other person.
- (b) Subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements with Governmental Authorities or private or public utilities affecting the development or use of any Property.
- (c) Rail siding agreements or facility, cost sharing, servicing, reciprocal use or other similar agreements.
- (d) Any easements, servitudes, or rights-of-way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner.
- (e) Any unregistered easements, servitudes, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property which do not materially impair the current use, operation or marketability of the Property.
- (f) Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable Law.
- (g) Encumbrances for real or immovable property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
- (h) Restrictive covenants, private deed restrictions and other similar land use control agreements which do not materially impair the current use, operation or marketability of the Property.
- (i) Minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners in each case, which do not materially impair the current use, operation or marketability of the Property.
- (j) The provisions of all applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property.

- (k) The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) (other than paragraphs 3, 4, 5, 6, 11 and 14).
- (l) Security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Property in the ordinary course of business, including, without limitation, the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property.
- (m) Any minor, title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Property which would be disclosed by an up-to-date plan of survey, real property report, certificate of location, or technical description.
- (n) Permits, licenses, agreements, servitudes, easements, (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, rights-of-way, public ways, rights in the nature of an easement or servitude and other similar rights in land granted to or reserved by other persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) (other than those described in paragraph (d) and (e) of this Schedule) which do not materially impair the current use, operation or marketability of the Property.
- (o) Undetermined or inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Property or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Lien Act* (Ontario) or similar legislation, and in respect of any of the foregoing cases, the Vendor has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts and any such holdback is either paid in to court or provided to the Purchaser as a credit on the statement of adjustments at Closing.
- (p) Any reference plans or plans registered pursuant to the *Boundaries Act* (Ontario).
- (q) All Off-Title Compliance Matters.
- (r) Any unregistered interests in the Property of which the Purchaser has actual notice.
- (s) All rights of first refusal, option to purchase or similar rights relating to the Property contained in the Operating Agreement
- (t) The Operating Agreement.
- (u) All instruments which are registered against title to a Property: (i) as of the date that is one (1) Business Days prior to the Execution Date; or (ii) otherwise agreed

to by the Purchaser; or (iii) permitted by this Agreement, except for those Encumbrances to be vested off pursuant to the Approval and Vesting Order.

**SPECIFIC ENCUMBRANCES**

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

## SCHEDULE "T"

### FORM OF ACCESS AGREEMENT

THIS AGREEMENT dated as of the \_\_\_\_ day of \_\_\_\_\_, 2017,

**B E T W E E N:**

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

- and -

● (the "Purchaser")

#### RECITALS:

- A. The Vendor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- B. 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.
- C. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2017 (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "**Purchase Agreement**") whereby, among other things, the Vendor agreed to transfer to the Purchaser, and the Purchaser agreed to purchase, all of the Vendor's right, title and interest in and to the Property (being the property commonly known as ● and municipally known as ●).
- D. The Purchase Agreement was approved by the Court pursuant to the Order dated ● (the "**Approval and Vesting Order**").
- E. The Vendor and the Purchaser are entering into this Agreement to provide for the Vendor to have access to the Property to remove and sell any and all Inventory and FF&E located on the Property in accordance with the terms hereof.
- 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 Purchase Agreement.

**NOW THEREFORE IN CONSIDERATION OF** the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged by each of the Vendor and the Purchaser

(collectively, the “**Parties**”, and individually, a “**Party**”), the Parties hereby covenant and agree as follows:

1. The Vendor may at its sole risk and expense maintain the FF&E and/or Inventory in the Property and the Purchaser shall not cause any damage to such FF&E and/or Inventory. The Vendor shall have no obligation to remove any of the FF&E or Inventory that remains on the Property following the expiry of the Post-Closing Access Period and shall have no liability for any removal or destruction costs relating thereto.
2. The Purchaser hereby grants to Vendor and its agents and representatives (collectively, the “**Accessing Parties**”) the uninterrupted and undisturbed right to possess, access, use, occupy and enjoy the Property on an exclusive basis for 24 hours a day and seven days a week commencing on the Closing Date and ending on the date that is the earlier of (i) fifteen (15) weeks from the Closing Date, and (ii) the date determined by the Vendor on ten (10) Business Days’ notice to the Purchaser (the “**Post-Closing Access Period**”) at no charge to the Vendor, except as specifically set out in this Agreement. The Accessing Parties shall be entitled to use the Property as they are currently being used, to remove any Excluded Assets and to conduct a liquidation sale of the Inventory and/or FF&E and for any other use permitted by Order of the Court. For greater certainty, the Accessing Parties shall be entitled to advertise and sell the Inventory and FF&E on a “final sale” and “as is” basis and may advertise such liquidation sale as a “everything on sale”, “everything must go”, “store closing” or similar themed sale and may use exterior banners and signs, provided that the Accessing Parties shall not use neon or day-glow signs, such exterior signs and banners shall be professionally hung and the Accessing Parties shall remove all such signage and repair any damage caused by the hanging or removal of such exterior signs and banners prior to the expiration of Post-Closing Period. The Purchaser shall not interfere with the Accessing Parties use and enjoyment of the Property as permitted hereunder. Any Excluded Assets left on the Property, including any Inventory and FF&E at the expiry of the Post-Closing Access Period shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. For greater certainty there shall be no right of renewal under this Agreement and Vendor shall have no right to overhold or otherwise remain on any part of the Property following expiration of the Post-Closing Access Period. Subject to the expressed provisions of this Agreement, the Vendor acknowledges and agrees that it has occupied the Property on an "as-is, where is" basis. Vendor shall not permit any part of the Property to be used or occupied by any entity other than Accessing Parties.
3. None of Accessing Parties shall be responsible for making any repairs, replacements, renovations, alterations, improvements or upgrades in or to the Property or any part thereof, provided that the Vendor shall maintain the Property in a broom-swept and clean condition and remain subject to the Restoration Obligation.
4. The Purchaser shall maintain, repair and replace the Property (except for the obligation of the Vendor to maintain the Property in a clean and broom-swept condition and comply with the Restoration Obligation) and the Property in good repair. The foregoing shall be deemed to be satisfied by the Purchaser, provided that the Property is being maintained in

the same state of repair and condition as it was in immediately prior to Closing reasonable wear and tear excepted.

5. The Vendor and the Accessing Parties may access and use water, gas, sewage, electrical power services and all other utilities as may exist at the Property(the “**Utilities**”). The Vendor shall pay for at its sole cost and expense and maintain in the name the Vendor, all charges and accounts for Utilities for the Property. The payment for such Utilities are to be paid directly to the applicable Utility provider by the Vendor and the Vendor shall provide evidence of such payment to the Purchaser. The Purchaser shall have no liability for any Utilities that are not provided as a result of the acts or omissions of the applicable Utility provider.
6. During the Post-Closing Access Period, the Accessing Parties shall maintain commercial general liability insurance in an amount and with such coverage as is customary and commercially reasonable taking into account the value of the assets and the nature of the activities to be conducted with the Purchaser named as an additional insured. Notwithstanding foregoing, prior to being granted any rights of access under this Agreement, the Vendor shall obtain or cause its consultants to obtain, at its sole cost and expense, and at no cost or expense to the Purchaser a policy of commercial general liability insurance covering any and all liability of the Vendor and the Purchaser under this Agreement. Such policy of insurance shall be kept and maintained in force during the remainder of the term of this Agreement to cover any Claims resulting from any acts or omissions of the Vendor or the those whom it is in law responsible. Such policy of insurance shall have liability limits of not less than Ten Million Dollars (\$10,000,000.00) per occurrence for bodily injury, personal injury and property damage liability. Such policy shall name the Purchaser as an additional insured and provide for cross-liability and severability of interests. All the policies of insurance required to be maintained by the Vendor shall be primary to and non-contributory unless loss or damage results directly from the negligence or willful misconduct of the Purchaser, its directors, officers, partners, employees and agents and those for whom in law it is responsible.
7. This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns. Except as expressly set out herein, 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, provided that notwithstanding the foregoing, the Vendor shall be entitled to assign this Agreement without consent of, but on notice to, the Purchaser, to any agent conducting a sale of the Inventory and/or FF&E of the Vendor pursuant to an agency agreement or similar agreement approved by the Court. Upon any such assignment by the Vendor, the Vendor shall cause the assignee to enter into an agreement with the Purchaser agreeing to be bound by the terms of this Agreement and the Vendor shall not thereupon be released from all of its liabilities and obligations hereunder. Upon a transfer of the Property or any portion thereof (which for greater certainty does not require the consent of the Vendor), the Purchaser shall obtain an agreement executed by the Purchaser and such transferee in favour of the Vendor, in form satisfactory to the Vendor, whereby the transferee agrees to

be bound by the terms of this Agreement and the Purchaser and the transferee shall be jointly and severally liable for the Purchaser's obligations hereunder.

8. During the Post-Closing Access Period, the Vendor shall permit the Purchaser and/or its authorized agents, employees and contractors, to enter the Property for the purpose of: (a) inspection or for making repairs, alterations, removals or improvement to all or any part of the Property including utilities and service facilities therein; and (b) showing the Property to any mortgagees, prospective mortgagees, purchaser and prospective purchaser and prospective tenants/occupants. In carrying out such rights the Purchaser shall use reasonable efforts to minimize interference with the Vendor's use and enjoyment of the Property. The Purchaser shall whenever possible give reasonable Notice to the Vendor prior to such entry, but no such entry shall constitute a re-entry by the Purchaser or an eviction. In addition to the foregoing, the Purchaser shall be permitted to place sign(s) on the exterior of the Building indicating, without limitation, that all or part of the Building is available for lease, and undertake any other form print or on-line advising in connection with the future leasing of space in the Building.
9. Notwithstanding any other provision of this Agreement, the Vendor agrees to return the Property to the Purchaser upon expiry of the Post-Closing Access Period in a similar condition in which they were received on the Closing Date, subject to the rights of Vendor set out in Section 2 of this Agreement and reasonable wear and tear excepted.
10. The Vendor shall not cause any lien under the *Construction Lien Act* (Ontario) (a "**Construction Lien**") to be filed or registered against all or any part of the Property as a result of work undertaken by or on behalf of the Vendor during the Post-Closing Access Period. If such a Construction Lien is filed or registered against all or any part of the Property, the Vendor will procure registration of a discharge or vacating of such Construction Lien within 30 days after the Vendor becomes aware of the filing or registration of such Construction Lien.
11. In connection with the period commencing on the 5<sup>th</sup> week of the Post-Closing Occupancy Period, the Vendor shall pay to the Purchaser a monthly occupancy fee of \$15,000 (the "**Occupancy Fee**"), payable on the first day of each month of the Post-Closing Access Period, provided that for any partial month, the Occupancy Fee shall be computed on a per diem basis, and if the Post-Closing Access Period is terminated prior to the end of the month, the Purchaser shall reimburse the Vendor for the per diem amount of the Occupancy Fee paid. The Occupancy Fee shall be paid in full without any set off, abatement, compensation and/or deduction of any kind, and without notice or demand. For greater certainty no Occupancy Fee shall be payable in connection with the first 4 weeks of the Post-Closing Access Period.
12. Vendor will not permit to be carried on upon the Property any activity or bring or keep anything upon the Property which will cancel or conflict with or increase the cost of any policy of insurance of Vendor on the Property.
13. The Vendor hereby indemnifies, defends and holds harmless the Purchaser, its directors, officers, shareholders, partners, employees and agents from any and all Claims, arising out

of the Vendor's use of or operations in the Property, except where the damage or injury arises out of the negligence or willful misconduct of the Purchaser, its directors, officers, partners, employees and agents and those for whom in law it is responsible.

14. The Vendor hereby releases the Purchaser and its directors, officers, shareholders, partners, employees and agents from any and all liability for loss or claim, including all resulting consequential and indirect losses, as a result of loss, damage or injury to the property of the Vendor and those for whom it is in law responsible relating to activities conducted by the Vendor or the Accessing Parties during the Post-Closing Access Period.
15. The Vendor shall: (a) use the Property only for the uses specifically set out in Section 1 and 2 of this Agreement, and for no other use whatsoever; (b) not undertake any material alterations, additions and/or renovations to any Property (including as applicable, the installation of any material fixtures or leasehold improvements) without the Purchaser's prior written approval; and (c) subject to the terms of any liquidation sales approval Order, not to do any act or omit to do any act, which results in a breach of any of the Permitted Encumbrances; and (d) cause the Property to be used and occupied by it and the Accessing Parties in compliance with all applicable Laws.
16. If the Vendor fails to observe, perform and keep any other of the covenants, agreements, provisions, stipulations and conditions herein to be observed, performed and kept by Vendor, and same remains unremedied for a period of 10 days following Notice by the Purchaser, it may terminate this Agreement by giving Notice of termination to Vendor, and in such event Vendor will forthwith vacate and surrender the Property. The foregoing is with limitation to any or all of the rights and remedies available to the Purchaser under this Agreement or under applicable Laws.
17. No amendment to or waiver of this Agreement shall be effective unless evidenced in writing and executed by all the Parties.
18. Each of the parties covenants and agrees to do such things and to execute such further 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 Agreement in accordance with their true intent.
19. 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.
20. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province where the Property is located and the federal laws of Canada applicable therein.
21. Each Party submits to the exclusive jurisdiction of the Court in any action, application, reference or other proceeding arising out of or related to this 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.



22. This Agreement shall enure to the benefit and be binding on the Parties and their respective successors and assigns.
23. Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered or transmitted in accordance with the Purchase Agreement.
24. All Parties agree that this Agreement may be executed in counterpart and transmitted by facsimile or e-mail (PDF) and that the reproduction of signatures in counterpart by way of facsimile or e-mail (PDF) will be treated as though such reproduction were executed originals.

*[Signature pages follow.]*

**IN WITNESS WHEREOF** the Vendor has executed this Agreement.

**SEARS CANADA INC.**

By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF** the Purchaser has executed this Agreement.



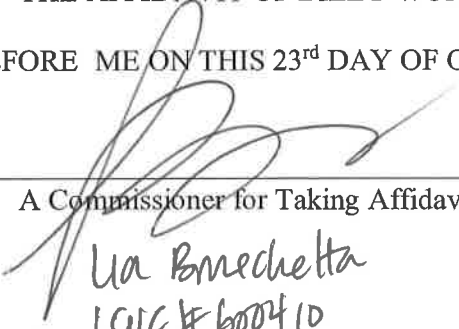
By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "J"**  
**ASSUMED CONTRACTS**

Nil.

TAB C

THIS IS EXHIBIT "C" REFERRED TO IN  
THE AFFIDAVIT OF BILLY WONG,  
SWORN BEFORE ME ON THIS 23<sup>rd</sup> DAY OF OCTOBER, 2017.



---

A Commissioner for Taking Affidavits.

Lia Bmedetta  
LSUC # 600410

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8  
416.362.2111 MAIN  
416.862.6666 FACSIMILE

OSLER

Toronto

October 4, 2017

Tracy C. Sandler  
Direct Dial: 416.862.5890  
tsandler@osler.com  
Our Matter Number: 1179649

Montréal

Calgary

**Sent By Electronic Mail**

Ottawa

Thornton Grout Finnigan LLP  
Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON M5K 1K7

Oxford Properties Retail Holdings II Inc. and  
CPPIB Upper Canada Mall Inc.

Vancouver

New York

Attention: D.J. Miller

Dear D.J.:

**RE: CCAA Proceedings of Sears Canada Inc. (“SCI”) *et al.***

**AND RE: Operating Agreement dated July 25, 1973 between Regional Shopping Centres Limited, Simpsons-Sears Properties Limited and Simpsons-Sears Limited, as amended by the Supplement to the Operating Agreement dated December 24, 1987 between SCI, Sears Properties Inc. and Regional Shopping Centres Limited, the Second Supplement to the Operating Agreement dated January 21, 1994 between Regional Shopping Centres Limited, OMERS Realty Corporation, SCI, Cambridge Leaseholds Limited, The Prudential Insurance Company of America, The Canada Life Assurance Company and London Life Insurance Company, the Third Supplement to Operating Agreement (the “Third Supplement”) dated April 9, 1998 between Regional Shopping Centres Limited, OMERS Realty Corporation, SCI, Cambridge Leaseholds Limited and The Prudential Insurance Company of America, The Canada Life Assurance Company and London Life Insurance Company, and the Fourth Supplement to the Operating Agreement dated 1998 between Regional Shopping Centres Limited, OMERS Realty Corporation, SCI, Cambridge Leaseholds Limited and The Prudential Insurance Company of America, The Canada Life Assurance Company and London Life Insurance Company (collectively, the “Operating Agreement”)**

**AND RE: ROFR Notice with respect to the property commonly known as Newmarket Home and municipally known as 17700 Yonge Street, Newmarket, Ontario (the “Property”)**

# OSLER

As you are aware, SCI and certain of its subsidiaries and affiliates filed for and were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (Canada) and we are counsel to SCI.

We are writing to you, as counsel to Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (collectively, the "**ROFR Holders**"), the counterparties to the Operating Agreement, with respect to the right of first refusal for the Property pursuant to the Operating Agreement (the "**ROFR**"). We hereby give you notice that SCI has accepted a bona fide offer to purchase the Property (the "**Offer**") from Serruya Private Equity Inc. for a purchase price of [REDACTED] on the terms and conditions contained in such Offer, including a mutual condition that the ROFR Holders do not exercise their ROFR. A copy of the Offer is attached hereto as Schedule "A".

Pursuant to the Operating Agreement, the ROFR Holders have the option to exercise their ROFR at the price and upon the terms and conditions contained in the Offer, by written notice to SCI within 15 days of receipt of this letter. Attached hereto as Schedule "B" is an agreement on substantially the same terms as the Offer for the ROFR Holders to execute and deliver to SCI **on or before 15 days of receipt of this letter (being October 19, 2017)** in order for the ROFR Holders to exercise their ROFR (the "**ROFR Exercise**"). We have also attached in Schedule "B" a blackline of such agreement to the Offer.

If the ROFR Holders do not elect to proceed with the ROFR Exercise on or before October 19, 2017, SCI shall be free to complete the sale of the Property pursuant to the Offer, unless such Offer is amended in any substantial respect.

In accordance with the terms of the Operating Agreement, in particular Section 12(b) of the Third Supplement, if the ROFR Holders do not elect to proceed with the ROFR Exercise on or before October 19, 2017 and the sale is completed pursuant to the Offer, provided such Offer is not amended in any substantial respect, the ROFR Holders shall execute and register on title to the Property a release and discharge of the Property from the ROFR.

We look forward to receiving your response. If the ROFR Holders do not intend to deliver the ROFR Exercise, we would appreciate if you could provide us with your confirmation as soon as possible by having the ROFR Holders signing below and returning a copy of this letter to us.

Yours very truly,



Tracy C. Sandler





c: Marc Wasserman, *Osler, Hoskin & Harcourt LLP*  
Phil Mohtadi, *Sears Canada Inc.*  
Orestes Pasparakis, *Norton Rose Fulbright Canada LLP*

The undersigned ROFR Holders hereby confirm that they waive their rights to exercise the ROFR in connection with the Offer and that SCI may proceed to sell the Property in accordance with the Offer, provided such Offer is not amended, in any substantial respect.

**OXFORD PROPERTIES RETAIL HOLDINGS II INC.**

**CPPIB UPPER CANADA MALL INC.**

By: \_\_\_\_\_  
Name:  
Title:

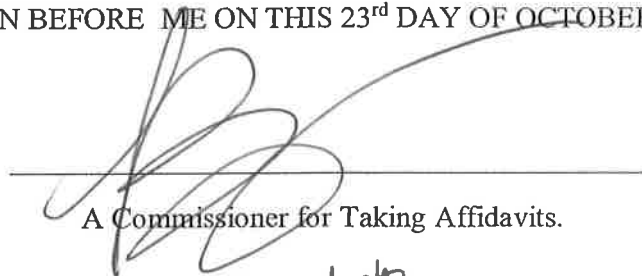
By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

TAB D

THIS IS EXHIBIT "D" REFERRED TO IN  
THE AFFIDAVIT OF BILLY WONG  
SWORN BEFORE ME ON THIS 23<sup>rd</sup> DAY OF OCTOBER, 2017.



A Commissioner for Taking Affidavits.

Lia Bornechetta  
LSUC#600410



Thornton Grout Finnigan LLP  
RESTRUCTURING + LITIGATION

Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON Canada M5K 1K7  
T 416.304.1616 F 416.304.1313

Mudasir Marfatia  
T: 416-304-0559  
E: mmarfatia@tgf.ca  
File No. 1143-010

October 19, 2017

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Sears Canada Inc.  
222 Jarvis Street  
Toronto, ON M5B 2B8

**Attention: Marc Wasserman  
Tracy Sandler**

**Attention: Office of the Secretary**

By email:  
[mwasserman@osler.com](mailto:mwasserman@osler.com) /  
[tsandler@osler.com](mailto:tsandler@osler.com)

By Facsimile: (416)-941-2321

Dear Sir/Madam:

**RE: CCAA proceedings involving Sears Canada Inc. (“Sears”), *et al.***

**AND RE: Operating Agreement dated July 25, 1973 between Regional Shopping Centres Limited, Simpsons-Sears Properties Limited and Simpsons-Sears Limited, as amended by the Supplement to the Operating Agreement dated December 24, 1987 between SCI, Sears Properties Inc. and Regional Shopping Centres Limited, the Second Supplement to the Operating Agreement dated January 21, 1994 between Regional Shopping Centres Limited, OMERS Realty Corporation, SCI, Cambridge Leaseholds Limited, The Prudential Insurance Company of America, The Canada Life Assurance Company and London Life Insurance Company, and the Third Supplement to Operating Agreement (the “Third Supplement”) dated April 9, 1998 between Regional Shopping Centres Limited, OMERS Realty Corporation, SCI, Cambridge Leaseholds Limited and The Prudential Insurance Company of America, The Canada Life Assurance Company and London Life Insurance Company (collectively, the “Operating Agreement”)**

**AND RE: ROFR Notice with respect to the property commonly known as Newmarket Home and municipally known as 17700 Yonge Street, Newmarket, Ontario (the “Property”)**

As you are aware, Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (collectively, the “**ROFR Holders**”) hold a right of first refusal (the “**ROFR**”) in respect of the Property pursuant to the terms of the Operating Agreement. We are in receipt of your letter dated



Thornton Grout Finnigan LLP

2.

October 4, 2017 (the “**ROFR Notice**”) notifying us that SCI has accepted a bona fide offer to purchase the Property (the “**Offer**”) and that, pursuant to the terms of the Operating Agreement and the ROFR, the ROFR Holders have the option to purchase the Property at the price and upon the terms and conditions contained in the Offer, by providing written notice to SCI on or before October 19, 2017.

We hereby give you, as counsel to SCI, notice that the ROFR Holders have elected to exercise their option to purchase the Property (upon substantially the same terms and conditions as the Offer) in accordance with the terms of the ROFR. We have also sent a copy of this letter directly to SCI via fax per the contact information set out in the Operating Agreement.

Please find enclosed: (i) an agreement of purchase and sale, on substantially the same terms as the Offer (the “**APS**”), executed by the ROFR Holders, and (ii) a blackline of the APS against the form of agreement of purchase and sale appended to the ROFR Notice. Our client is contemporaneously initiating a wire transfer in the amount of [REDACTED] to the Monitor’s trust account in respect of the Deposit (as those terms are defined in the APS). We will send an e-mail shortly attaching the wire confirmation number in respect of the Deposit for your convenience.

Please confirm receipt of: (i) this letter, (ii) the Deposit, and (iii) our client’s election to exercise its option to purchase the Property pursuant to the terms of the ROFR, as soon as possible. We look forward to receiving a fully executed copy of the APS from you in the near term.

Yours truly,

**Thornton Grout Finnigan LLP**

Mudasir Marfatia

*cc: Orestes Pasparakis / Virginie Gauthier - Norton Rose Fulbright Canada LLP*

*Encl.*

**TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) FRIDAY, THE 27<sup>TH</sup>  
 )  
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 – NEWMARKET HOME (STORE #1345)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCA**”) for an order, *inter alia*, approving: the sale of lands and buildings located at 17700 Yonge Street, Newmarket, Ontario, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (collectively, the “**Purchaser**”) as purchaser dated October 19, 2017 (the “**APS**”) 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 October 23, 2017 including the exhibits thereto (the “**Newmarket Wong Affidavit**”), and the 6<sup>th</sup> Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and

on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser, the DIP 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 APS, as applicable.

## **APPROVAL OF THE APS**

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

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or



filed and whether secured, unsecured or otherwise in respect of the Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

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

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

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

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

7. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, on the day of filing the Monitor’s Certificate or as soon as

practicable thereafter, the Net Proceeds, in partial repayment of amounts then owing by the Applicants under the DIP Term Credit Agreement (a “**Distribution**”).

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

9. THIS COURT ORDERS that, notwithstanding:

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

the distribution permitted by paragraph 7 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

11. THIS COURT ORDERS AND DIRECTS the Monitor to distribute the Termination Payment (as defined in the Newmarket Wong Affidavit) to Serruya Private Equity Inc. from the funds currently held in trust for that purpose by the Monitor.

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 APS.

13. THIS COURT ORDERS that subject to the terms of the APS nothing herein affects:

- (a) the rights and obligations of Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated October 10, 2017; and
- (b) the terms of the Liquidation Sale Approval Order granted October 13, 2017 including the Sale Guidelines attached as Schedule “A” thereto.

### **SEALING**

14. THIS COURT ORDERS that Confidential Appendix “●” to the 6th Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

### **GENERAL PROVISIONS**

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

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”

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

### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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

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

### MONITOR’S CERTIFICATE

#### RECITALS

A. All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2017 (the “**Approval and Vesting Order**”) approving the Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (collectively, the “**Purchaser**”) as purchaser dated October 19, 2017 (the “**APS**”), a copy of which is attached as Exhibit “A” to the Affidavit of Billy Wong dated October 23, 2017.

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

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

THE MONITOR CERTIFIES the following:

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

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

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

Per: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE "B"

<b>Store No.</b>	<b>Location/ Address</b>	<b>Province</b>	<b>Land Registry Office</b>	<b>Legal Description</b>	<b>Encumbrances to be Expunged/ Deleted</b>
1345	Newmarket Home Store, 17700 Yonge Street, Newmarket, Ontario	ON	LRO #65 York (Aurora)	PIN: 03554-0076 (LT)  PT LT 96 CON 1 W YONGE ST EAST GWILLIMBURY: PT LT 97 CON 1 W YONGE ST EAST GWILLIMBURY PT 1, 65R19397, T/W R719694; S/T EG15326,EG15329,EG15610,EG20073 NEWMARKET	NIL

**SCHEDULE "C"**  
**PERMITTED ENCUMBRANCES**

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



AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEL 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 Agreement of Purchase and Sale with  
Oxford Properties Retail Holding II Inc. and CPPIB Upper Canada Mall Inc.  
(Store #1345 – Newmarket Home Store) returnable October 27, 2017)

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

Marc Wasserman LSUC# 44066M  
Tel: 416.862.4908  
Email: mwasserman@osler.com

Jeremy Dacks LSUC# 41851R  
Tel: 416.862.4923  
Email: jdacks@osler.com

Tracy Sandler LSUC# 32443N  
Tel: 416.862.5890  
Email: tsandler@osler.com

Karin Sachar LSUC# 59944E  
Tel: 416.862.5949  
Email : ksachar@osler.com  
Fax: 416.862.6666

Lawyers for the Applicants