

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

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

**SIXTH SUPPLEMENT TO THE NINETEENTH REPORT OF FTI CONSULTING
CANADA INC., AS MONITOR**

November 14, 2018

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

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

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

APPLICANTS

**SIXTH SUPPLEMENT TO THE NINETEENTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. INTRODUCTION

1. On June 1, 2018, the Monitor filed the Nineteenth Report to the Court (the “**Nineteenth Report**”) in these CCAA Proceedings. The Nineteenth Report included an update on the steps taken by the Applicants and their advisors, in consultation with the Monitor, in connection with the marketing of the Remaining Real Estate Assets.
2. Capitalized terms used herein and not otherwise defined in this Sixth Supplement to the Nineteenth Report (the “**Sixth Supplement**”) have the meanings given to them in the Nineteenth Report.

3. The purpose of this Sixth Supplement is to provide the Court with information on the Monitor's motion for approval of a sale transaction for the former Sears Canada full line store located at the Upper Canada Mall in Newmarket, Ontario (the "**UCM Full Line Property**") and the Monitor's motion for authorization to pay the Liberty Termination Fee (as defined below).
4. This Sixth Supplement should be read in conjunction with the Nineteenth Report. A copy of the Nineteenth Report is attached hereto as **Appendix "A"**.

B. UCM FULL LINE PROPERTY

5. The UCM Full Line Property is located adjacent to the Upper Canada Mall in Newmarket, Ontario.
6. Sears Canada ceased retail operations at the UCM Full Line Property at the end of January, 2018.
7. The purchaser of the UCM Full Line Property is Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. or as it may designate (collectively, "**Oxford**").
8. Oxford is the owner of the neighbouring Upper Canada Mall.
9. The UCM Full Line Property was the subject of a letter agreement dated December 21, 2015, as amended, relating to a possible development of the UCM Full Line Property (the "**Project Management Agreement**"). The Project Management Agreement contained, among other things, a right of first refusal relating to the UCM Full Line Property in favour of the counterparty that would be triggered in certain circumstances after July 24, 2018. On May 29, 2018, Sears Canada, in consultation with the Monitor, notified the counterparty that effective immediately the Project Management Agreement was terminated in accordance with its terms on the basis that certain conditions set out therein had not been satisfied within applicable time periods. The Monitor is not aware of any objection to the termination. A copy of the Project Management Agreement and the notice of termination delivered by Sears Canada is attached hereto as **Confidential Appendix "B"**.

C. THE OPTION

10. The UCM Full Line Property is the subject of an Option Agreement made as of January 21, 1994 between Sears Canada and Regional Shopping Centres Limited (as predecessor to Oxford), as amended, which was registered on title to the UCM Full Line Property as Instrument No 633159 (the "**Option Agreement**"). Pursuant to the Option Agreement, Sears Canada granted Oxford an option to purchase the UCM Full Line Property (the "**Option**"). Oxford had the right to exercise the Option in the event that, at any time prior to July 24, 2018, the Sears Canada store at the UCM Full Line Property was not operated as a department store for a period of 91 consecutive days, excluding non-operation due to Force Majeure and excluding non-operation with Oxford's consent. The Sears Canada store at the UCM Full Line Property has not operated since January, 2018.
11. A copy of the Option Agreement is attached hereto as **Appendix "C"**.
12. Oxford exercised the Option by written notice in accordance with the terms of the Option Agreement on June 29, 2018. Oxford complied with the obligation to deliver a deposit in the amount of \$50,000 in connection with the exercise of the Option.
13. The Option Agreement provides that:

“Upon the valid giving of notice of exercise of the Option by [Oxford] pursuant to clause 10, a binding agreement of purchase and sale of the [UCM Full Line Property] shall be constituted, at a purchase price equal to the Current Value thereof payable in cash, on the basis that [Oxford] shall assume the existing mortgage or other financing secured by or encumbering the [UCM Full Line Property] upon the closing of the purchase of the [UCM Full Line Property], subject to all usual and appropriate adjustments, and less the amount of any other liens, financial encumbrances and work orders which will not be removed on the closing...”
14. “Current Value” is defined in the Option Agreement as follows:

“the most probable price for each of [the UCM Full Line Property] and the Sears (Upper Canada) Reserved Lands valued separately (in each case net after deduction of the outstanding principal and interest allocable to each of the parcels pursuant to any mortgage or other financings secured by or encumbering such lands and

improvements), which the relevant lands and improvements or interests therein should bring in the current market at the time of the determination, if exposed for sale in the open market, allowing for a reasonable period of time to find a buyer, under conditions requisite to a fair and equitable sale between a willing seller and a willing buyer, on the basis that each of the [UCM Full Line Property] and the Sears (Upper Canada) Reserved Lands is capable of independent use provided that such independent use is then viable, and without taking into account any diminution in the value of the Sears Lands caused by the existence of any Sears lease to [Oxford] of any part of the Sears Lands, all as determined by a qualified Accredited Appraiser of the Appraisal Institute of Canada;”

15. The Option Agreement then prescribes a three-step process for determining Current Value:
 - (a) Negotiation: The parties are first required to use the 7 day period after the Option is exercised to attempt to reach an agreement on Current Value. The parties were unable to agree on Current Value through negotiation in this case.
 - (b) Valuation: As a negotiated agreement was not reached, the parties each appointed an appraiser to opine on Current Value. If the two appraisals were within 5 percent of each other the Current Value would be deemed to be the average of the two appraisals. In this case, the two appraisals were not within 5 percent of each other.
 - (c) Arbitration: As a third and final step, the Option Agreement mandates that Current Value be determined by a single arbitrator. The parties were not able to agree on an arbitrator and the Court appointed the Honourable James Farley, Q.C. as arbitrator to determine Current Value.
16. Through arbitration before Justice Farley, the Current Value of the property has been determined. The Current Value as determined by Justice Farley is set out in **Confidential Appendix “D”**.
17. The Option Agreement provides that at Closing, all amounts due by Sears Canada to Oxford or by Oxford to Sears Canada in respect of the UCM Full Line Property shall be

settled and set off as a deduction against Current Value or paid in full. Through negotiation between Oxford and the Monitor, the amount of Oxford's CCAA claims in respect of the UCM Full Line Property have been settled and Oxford, the Monitor and Sears Canada have agreed that such settled CCAA claim amounts will be applied as an adjustment on closing in favour of Oxford against the purchase price under the Option Agreement. The Monitor's agreement to this set off of Oxford's claim against the purchase price for the UCM Full Line Property is the result of an overall negotiated settlement of Oxford's UCM Full Line Property CCAA claim issues and does not represent the Monitor's position on set off issues generally in these proceedings. A copy of correspondence setting out the settlement of these CCAA claim and set off issues is attached as **Confidential Appendix "E"**.

18. With the resolution of Current Value and the resolution of the CCAA claims and the set off of adjustments against the purchase price, Sears Canada and Oxford are now in a position to complete the transaction resulting from the exercise of the Option by Oxford.
19. As the Option Agreement provides that the exercise of the Option creates a binding agreement between Oxford and Sears Canada, no further agreement in respect of Sears Canada's sale of the UCM Full Line Property to Oxford is required. Pursuant to the Option Agreement, Sears Canada shall take all necessary steps to comply with the Planning Act (Ontario) and shall provide Oxford all title documents in its possession relating to the UCM Full Line Property at closing. The Monitor's counsel will work with Oxford's counsel to facilitate any necessary transfer documents for closing.
20. Oxford and Sears Canada intend that the transaction created by the exercise of the Option should close as soon as possible following court approval of the transaction.
21. The Option Agreement provides that certain encumbrances that may be registered on title, including but not limited to liens and work orders, are to be removed on closing failing which an adjustment in such amount in favour of the Purchaser is to be made. The Monitor requests a Vesting Order to clear such encumbrances from title on closing in lieu of any adjustment on closing.

D. MOTION FOR APPROVAL OF THE SALE

22. The Monitor now seeks approval for:

- (a) Sears Canada's entry into and completion of the transaction created through the exercise of the Option by Oxford;
- (b) the payment of the Liberty Termination Fee (as defined below); and
- (c) the sealing of Confidential Appendices "B", "D" and "E" to this Sixth Supplement.

Sale of the UCM Full Line Property

23. Section 36(1) of the CCAA states:

36(1) Restriction on disposition of business assets - A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

24. Section 36(3) of the CCAA states:

(3) Factors to be considered - In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

25. In the unique circumstances of this Motion, the customary evaluation of the sale process undertaken by the Applicants is not applicable. While a sale process for the UCM Full Line Property was completed, the proposed transaction did not result from that process, but instead resulted from the exercise of the Option by Oxford and the arbitration process described above.
26. In the Monitor's view, the appraisal and arbitration process leading to the determination of the Current Value of the property and the ultimate purchase price was reasonable in the circumstances and the Monitor approved of that process. The Monitor notes that the arbitration process was undertaken at the direction of the court.
27. The proposed transaction maximizes value from all options available at this time for the UCM Full Line Property and eliminates ongoing carrying costs of this property, estimated at approximately \$107,000 per month.
28. The Monitor believes that the consideration received for the asset is fair and reasonable taking into account its fair market value. In particular, the Monitor believes that the definition of Current Value as established under the Option Agreement is substantially equivalent to a determination of market value of the UCM Full Line Property and the Monitor believes that such market value has been fairly and reasonably determined through arbitration in accordance with the Option Agreement.
29. The Owned Real Estate Consultation Parties were updated on the Option process and consulted at material stages prior to the arbitration. The determination of Current Value by the arbitrator results in further creditor consultation not being a relevant factor.

Sealing of Confidential Appendices

30. Confidential Appendices "D" and "E" to this Sixth Supplement contain confidential and commercially sensitive information, including information on the Current Value of the UCM Full Line Property. The public disclosure of this information would be harmful to

the integrity of the process to sell the UCM Full Line Property if this property needed to be subject to a further marketing process.

31. The Project Management Agreement attached as Confidential Appendix “B” hereto is subject to a confidentiality provision pursuant to which Sears Canada and the counterparty agreed not to make any public statements or other disclosure concerning the existence or contents of the agreement without the prior approval of the other party.

Termination Fee

32. Prior to the exercise of the Option by Oxford, Sears Canada, with the support of the Monitor, entered into an Agreement of Purchase and Sale for the UCM Full Line Property with 1979353 Ontario Inc. (an affiliate of Liberty Development Corporation) dated June 13, 2018 (the “**Liberty APA**”). A copy of the Liberty APA (excluding appendices), with commercially sensitive financial terms redacted is attached hereto as **Appendix “F”**.
33. The Liberty APA does not reflect the terms of the acquisition of the UCM Full Line Property by the Purchaser. The Liberty APA is attached hereto solely to provide information relevant to the Liberty Termination Fee (as defined below).
34. When entering into the Liberty APA, the parties were aware of the possibility that Oxford may either exercise the Option or exercise its rights under a separate right of first refusal (the “**Oxford ROFR**”), thereby preventing the transaction under the Liberty APA from closing. The parties were also aware that pursuant to the Oxford ROFR, Sears Canada would be required to share the Liberty APA with Oxford to allow Oxford the opportunity to match that transaction.
35. 1979353 Ontario Inc. would only agree to enter into the Liberty APA if: (i) it was a condition of closing that neither the Option nor the Oxford ROFR had been exercised; and (ii) a termination fee was a feature of the agreement such that 1979353 Ontario Inc. would be compensated in the event the Liberty APA could not close as a result of the exercise of the Option or the Oxford ROFR. As a result, Section 6.6 of the Liberty APA provided, among other things, that if the Liberty APA is terminated as a result of the

exercise of the Option and if the closing of the sale to Oxford under the Option occurs, then 1979353 Ontario Inc. would be entitled to a termination payment in the amount of \$1,000,000 (the “**Liberty Termination Fee**”).

36. At the time of the Liberty APA, the Monitor supported the agreement to pay the Liberty Termination Fee as: (i) the transaction proposed by the Liberty APA represented the highest and otherwise best offer for this asset; (ii) in the Monitor’s view, due to the closing risks arising from the Oxford ROFR and the Option, it was highly unlikely that any potential purchaser of the UCM Full Line Property would agree to enter into a value maximizing binding purchase agreement without protections in the form of a termination fee; and (iii) the Liberty Termination Fee was arrived at through good faith negotiation.
37. While the Liberty Termination Fee is at the high end of the range of break fees observed in other CCAA transactions when viewed as a percentage of the purchase price under the transaction, the Monitor notes that in this case 1979353 Ontario Inc. would have no further opportunity to bid for this property once the Oxford ROFR or the Option is engaged and, on an absolute dollar value basis, the Liberty Termination Fee is significantly lower than break fees observed in other transactions. Even after accounting for the Liberty Termination Fee, the Oxford transaction remains the highest available recovery for this asset based upon the results of the SISP.
38. 1979353 Ontario Inc. has relied in good faith on the obligation to pay the Liberty Termination Fee.
39. For the foregoing reasons, the Monitor supports payment of the Liberty Termination Fee.

E. MONITOR’S RECOMMENDATION

40. Based upon the considerations set out above, the Monitor recommends that the sale of the UCM Full Line Property to Oxford be approved on the terms set out in the arbitrator’s award and the agreed amount of the settled CCAA claims. The Monitor, Sears Canada and Oxford have agreed to propose the form of approval and vesting order attached to the Monitor’s Motion Record. The approval and vesting order ensures that sale proceeds can be properly utilized to satisfy encumbrances on title to the UCM Full Line Property.

41. The Monitor further recommends the sealing of Confidential Appendices “B”, “D” and “E” to this Sixth Supplement.
42. The Monitor further recommends that the Court approve payment of the Liberty Termination Fee.

The Monitor respectfully submits to the Court this, its Sixth Supplement to the Nineteenth Report.

Dated this 14th day of November, 2018.

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

A handwritten signature in blue ink that reads "Paul Bishop". The signature is written in a cursive style and is placed on a light yellow rectangular background.

Paul Bishop
Senior Managing Director

A handwritten signature in blue ink that reads "Greg Watson". The signature is written in a cursive style and is placed on a light yellow rectangular background.

Greg Watson
Senior Managing Director

Appendix "A"
Nineteenth Report

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

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

NINETEENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

June 1, 2018

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APPLICANTS

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

A. INTRODUCTION

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

- (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Group (the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted an initial stay of proceedings against the Sears Canada Group until July 22, 2017; and
 - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the stay of proceedings to October 4, 2017. In addition, the following orders were issued:
 - (a) the amended and restated Initial Order;
 - (b) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Group (“**Employee Representative Counsel**”);
 - (c) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Group with respect to pension and post-employment benefit matters (“**Pension and Retiree Representative Counsel**”); and
 - (d) an order approving a sale and investor solicitation process (the “**SISP**”) to solicit interest in potential transactions, including investment and liquidation proposals, involving the business, property, assets and/or leases of the Applicants (the “**SISP Approval Order**”).
4. On July 18, 2017, the Court issued a Liquidation Sale Approval Order, which approved
 - (i) a process for the liquidation of inventory, furniture, fixtures and equipment (“**FF&E**”) at locations scheduled for closure (the “**Liquidation Process**”); and (ii) in connection with that Liquidation Process, an Amended and Restated Agency Agreement and a Consulting Agreement between Sears Canada and the agent and consultant described therein. The Liquidation Process is now completed.

5. On October 13, 2017, the Court issued, among other orders, an order (a) approving an agreement and a process (the “**Second Liquidation Process**”) for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations, which liquidation commenced shortly thereafter and is now completed.
6. On December 8, 2017, the Court issued an Order (the “**Claims Procedure Order**”) approving a claims process for the identification, determination and adjudication of claims of creditors against the Sears Canada Group and their Officers and Directors.
7. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the “**E&R Claims Procedure Order**”) approving a process for the identification, determination and adjudication of claims of employees and retirees of the Sears Canada Entities.
8. The liquidation of assets at Sears Canada’s retail locations is now completed, all retail locations are closed, and leases in respect of such locations have been disclaimed or otherwise dealt with in the CCAA Proceedings. The primary assets of the Sears Canada Group that remain to be realized upon are the Remaining Real Estate Assets (as defined and discussed later in this Report).
9. Since the date of the Comeback Motion, the stay period has been extended a number of times and currently expires on July 31, 2018. A Court-ordered mediation described in greater detail in the Monitor’s Eighteenth Report has been scheduled for June 13-14, 2018.
10. In connection with the CCAA Proceedings, the Monitor has provided eighteen reports and eight supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada/ (the “**Monitor's Website**”).

B. PURPOSE

11. The purpose of this nineteenth report of the Monitor (the “**Nineteenth Report**”) is to provide the Court with updated information, and where appropriate the Monitor’s comments and recommendations, regarding the following:
 - (a) the steps being taken by the Sears Canada Group to market its Remaining Real Estate Assets; and
 - (b) the Sears Canada Group’s motion for approval of a sale transaction for the former Sears Canada store located at the shopping centre commonly referred to as Place Vertu in St. Laurent, Quebec (the “**Place Vertu Property**”).

C. TERMS OF REFERENCE

12. In preparing this Nineteenth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Group, the Sears Canada Group’s books and records, certain financial information and forecasts prepared by the Sears Canada Group, and discussions with various parties, including senior management (“**Management**”) of, and advisors to, Sears Canada (collectively, the “**Information**”).
13. Except as otherwise described in this Nineteenth Report:
 - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Nineteenth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
14. Future-oriented financial information reported in or relied on in preparing this Nineteenth Report is based on Management’s assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.

15. The Monitor has prepared this Nineteenth Report in connection with the hearing on June 5, 2018. The Monitor also anticipates that this Report will be relied upon at future hearings seeking approval of further transactions for the Remaining Real Estate Assets.
16. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
17. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the following documents filed as part of the CCAA Proceedings: (i) the affidavits of Mr. Billy Wong, the Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms. Becky Penrice, Executive Vice-President and Chief Operating Officer of Sears Canada; (iii) the affidavits of Mr. Philip Mohtadi, General Counsel and Corporate Secretary of Sears Canada; (iv) the Affidavit of Mark Caiger, sworn May 29, 2018 (the “**Caiger Affidavit**”) and (v) the Prior Reports.

D. UPDATES ON REAL PROPERTY MARKETING PROCESS

18. Shortly following the approval of the SISP on July 13, 2017, Sears Canada, with the assistance of BMO Nesbitt Burns Inc. as financial advisor to the Sears Canada Group (“**BMO**” or the “**Sale Advisor**”), sought offers for, among other things, the purchase of Sears Canada’s owned real property.
19. As required by the SISP Approval Order, the Monitor and the Special Committee (as defined in the SISP Approval Order) supervised the implementation of the SISP by the Sears Canada Group and its advisors.
20. In particular, the Monitor:
 - (a) ensured that appropriate protections were put in place to preserve the integrity and fairness of the SISP;
 - (b) was consulted on documentation used to implement the SISP;

- (c) participated in extensive meetings, negotiations and discussions with SISP participants interested in all or part of the business and assets of the Sears Canada Group;
 - (d) reviewed and provided feedback to the Sale Advisor, the Sears Canada Group and the Special Committee regarding the bids and expressions of interest received through the SISP; and
 - (e) worked with the Sears Canada Group to provide disclosure of information regarding the progress and results of the SISP to various stakeholder groups in accordance with their access to information rights under the SISP and the term sheet regarding the suspension of special payments under the Sears Canada Pension Plan, certain payments in connection with supplemental pension plans and certain payments under post-retirement benefit plans.
21. The SISP solicited interest in a broad range of transactions to refinance, restructure, sell or reorganize the business and assets, including owned real estate assets, of the Sears Canada Group.
 22. The implementation of the SISP, including steps taken to solicit interest from potential bidders, are described in greater detail in the Caiger Affidavit and the Exhibits thereto.
 23. Expressions of interest were received for Sears Canada's owned real property by the August 31, 2017 bid deadline under the SISP.
 24. Subsequent to the bid deadline, transactions for the sale of the Winnipeg Garden City and the Upper Canada Home Store locations were approved by the Court and completed.
 25. In light of the expressions of interest that were received by the August 31st bid deadline for Sears Canada's remaining real estate assets, Sears Canada, in consultation with BMO, and the Monitor, as well as Pension Representative Counsel, Employee Representative Counsel, the Ontario Superintendent of Financial Services (the "**Superintendent**") and Morneau Shepell Limited, as administrator of the Sears Canada Pension Plan (the "**Plan Administrator**"), and their respective financial and/or real estate advisors, (collectively,

the “**Owned Real Estate Consultation Parties**”¹ determined that additional time should be provided for the completion of further due diligence, including making available further environmental studies and related materials to potential purchasers.

26. Sears Canada currently continues to own the following real estate assets:

- (a) Upper Canada Mall full-line store (Newmarket, ON);
 - (b) Distribution centre (Belleville, ON);
 - (c) Fleur de Lys full-line store (Quebec City, QC);
 - (d) Windsor full-line store (Windsor, ON);
 - (e) Peterborough full-line store (Peterborough, ON);
 - (f) Barrie full-line store (Barrie, ON);
 - (g) Trois-Rivières full-line store (Trois-Rivières, QC);
 - (h) Place Vertu liquidation store (Montréal, QC);
 - (i) Lévis full-line store (Lévis, QC);
 - (j) Charlottetown store (Charlottetown, PEI);
 - (k) Chicoutimi residual land (Chicoutimi, QC);
 - (l) Edmonton residual land (Edmonton, AB); and
 - (m) Sainte-Agathe-des-Monts residual land (Sainte-Agathe-des-Monts, QC),
- (collectively, the “**Remaining Real Estate Assets**”).

¹ The above noted parties were identified as appropriate consultation parties by Sears Canada and the Monitor as they represent a significant portion of the unsecured creditor class and do not have conflicting interests as they would have no interest in acquiring any of the Remaining Real Estate Assets for their own benefit. All of these consultation parties have entered into non-disclosure agreements with Sears Canada.

27. As of February 7, 2018, the additional due diligence information referenced above had been obtained and Sears Canada, in consultation with BMO, the Monitor and the Owned Real Estate Consultation Parties, determined that the sale process for the Remaining Real Estate Assets should continue.
28. On February 7, 2018, BMO delivered an updated sale process letter (the “**Updated Sale Process Letter**”) to those parties who had previously expressed an interest in the Remaining Real Estate Assets under the SISP and parties who had contacted BMO expressing interest subsequent to the original bid deadline. BMO also delivered the Updated Sale Process Letter to other potentially interested parties identified by the real estate advisor to the Superintendent.
29. As noted in the Caiger Affidavit, the Sale Advisor contacted or was contacted by approximately 100 potentially interested parties regarding their interest in Sears Canada’s owned real estate assets. These parties included landlords, institutional real estate investors and parties identified by the real estate advisor to the Superintendent.
30. The Updated Sale Process Letter solicited bids for all of the Remaining Real Estate Assets other than the assets located in Charlottetown, Edmonton, Chicoutimi and Sainte-Agathe-des-Monts (which properties are being marketed by CBRE Limited). The Updated Sale Process Letter provided for a bid deadline of March 7, 2018 at 5:00 p.m. (Eastern).
31. A template transaction document was prepared for the Remaining Real Estate Assets containing the following material provisions:
 - (a) A deposit of 10% of the cash purchase consideration must be submitted by the acquirer to be held in escrow by the Monitor.
 - (b) The purchase consideration would be subject to customary adjustments.
 - (c) Any taxes associated with the closing of these transactions would be paid by the acquirer.

- (d) The acquirer would acquire Sears Canada's interest in any outstanding realty tax appeals and would be entitled to assume and retain carriage of such appeals.
 - (e) Transactions would be completed on an 'as is, where is' basis without representations and warranties other than minimal warranties expressly stated in the transaction documents that are customary for transactions of this type in an insolvency context.
 - (f) Sears Canada would have no obligations to repair or otherwise remediate the applicable property. The acquirer would be responsible for the condition of the property on closing.
 - (g) Closing would be conditional upon court approval.
32. On March 7, 2018, BMO and the Monitor received a number of competing offers to purchase the Remaining Real Estate Assets that were the subject of the Updated Sale Process Letter. Subsequently, the Sears Canada Group, in consultation with the Sale Advisor, the Monitor and the Owned Real Estate Consultation Parties, have reviewed bids received and engaged in extensive discussions with bidders to seek to improve and finalize value maximizing executable transactions. This process is ongoing.
33. The Monitor intends to serve and file supplements to this Nineteenth Report to the Court as transactions for the Remaining Real Estate Assets are finalized and brought for approval by the Court.

E. THE PLACE VERTU PROPERTY

34. The Place Vertu Property is located adjacent to a mall in St. Laurent, Quebec, owned by Place Vertu Nominee Inc. / Fiduciare Place Vertu Inc. (the "**Mall Owner**").
35. Pursuant to an Operating Agreement dated as of June 1, 1975, as amended from time to time (the "**Vertu Operating Agreement**"), the Mall Owner holds a right of first refusal on the Place Vertu Property, providing the Mall Owner with the right to receive notice of any bona fide offers to purchase the Place Vertu Property, following which the Mall

Owner has 15 days to elect whether or not to purchase the Place Vertu Property on those same terms (the “**Vertu ROFR**”).

36. The Vertu Operating Agreement contains certain restrictions on the use of the Place Vertu Property for purposes other than a Sears branded department store. The existence of the Vertu Operating Agreement and the restrictions contained therein as well as the Vertu ROFR would be relevant factors for potential purchasers considering the acquisition of this property.
37. On or about the March 7th bid deadline, Sears Canada received offers for the Place Vertu Property, including an offer from LaSalle Acquisitions Corp. (the “**Place Vertu Purchaser**”), an affiliate of the Mall Owner. A summary of offers received for the Place Vertu Property at the initial August 31, 2017 bid deadline under the SISP and the subsequent March 7, 2018 bid deadline is attached hereto as Confidential Appendix “A”. The Monitor notes that the Place Vertu Purchaser did submit an offer by the initial August 31, 2017 deadline under the SISP.
38. Negotiations ensued with interested parties including the Place Vertu Purchaser in respect of the financial and legal aspects of the offers, draft documents were exchanged by the parties and follow up discussions were held as necessary.
39. Following those discussions and exchanges, Sears Canada determined, in consultation with the Sale Advisor, the Monitor and the Owned Real Estate Consultation Parties, that the transaction proposed by the Place Vertu Purchaser was in the best interests of the Applicants and their stakeholders, and was formally approved by the board of directors of Sears Canada.
40. The Monitor notes that the Owned Real Estate Consultation Parties were consulted throughout the process.
41. The terms of the successful bid by the Place Vertu Purchaser for this property are contained in an Agreement of Purchase and Sale dated May 17, 2018 between the Place Vertu Purchaser and Sears Canada (the “**Place Vertu APS**”). An unredacted copy of the Place Vertu APS is attached hereto as Confidential Appendix “B”.

42. The terms of the Place Vertu APS are substantially similar to the template transaction document described above. Modifications to the template transaction terms include:
- (a) It is a condition of closing that the Approval and Vesting Order granted in connection with the transaction is not stayed, amended, modified, reversed, dismissed or appealed and that all applicable appeal periods have expired.
 - (b) The outside date for completion of the transaction is July 24, 2018.
 - (c) It is a condition of closing that the Vertu ROFR has expired or has been waived. The Monitor notes that the Mall Owner has provided a signed waiver of the Vertu ROFR in connection with this transaction or in connection with any other transaction to the extent the Place Vertu APS does not close solely as a result of a default by the Place Vertu Purchaser under the Place Vertu APS.
 - (d) The Place Vertu Purchaser must deliver an assumption agreement in favour of Sears Canada and the Mall Owner in accordance with the terms of, among other things, the Vertu Operating Agreement in form and substance acceptable to Sears Canada and providing for the Place Vertu Purchaser's assumption of any amounts owing under, among other things, the Vertu Operating Agreement, other than amounts claimed by the Mall Owner under proofs of claim filed by the Mall Owner pursuant to the Claims Procedure Order in the CCAA Proceedings.
 - (e) The Place Vertu Purchaser must deliver a release in favour of Sears Canada from the Mall Owner of all of Sears Canada's obligations under the Vertu Operating Agreement, other than liabilities, if any, set out in proofs of claim filed by the Mall Owner pursuant to the Claims Procedure Order in the CCAA Proceedings.
 - (f) The Place Vertu Purchaser may assign the Place Vertu APS to a corporation, fund or limited partnership (i) owned by investors of LaSalle Investment Management; and (ii) managed by LaSalle Investment Management, the Place Vertu Purchaser or affiliates thereof; provided that any such assignment may include 10338788 Canada Inc. or an affiliate of such entity as to an approximately 10% interest. In

the case of such assignment, the Place Vertu Purchaser is not relieved of its obligations under the Place Vertu APS until closing.

F. SALE APPROVAL MOTION

43. Sears Canada now seeks approval for:

- (a) its entry into and completion of the transactions under the Place Vertu APS; and
- (b) the sealing of Confidential Appendices “A”, “B” and “C” to this Nineteenth Report.

44. Section 36(1) of the CCAA states:

36(1) Restriction on disposition of business assets - A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

45. Section 36(3) of the CCAA states:

(3) Factors to be considered - In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

46. The SISP was approved by the Court on July 13, 2017. The Monitor notes that the SISP was the subject of significant media attention, thereby further increasing the notice to all *bona fide* interested parties about the ongoing SISP.
47. The Place Vertu Property has been marketed extensively for a period of approximately 10 months.
48. The Monitor participated in all stages of the marketing process and is satisfied that the marketing process was carried out in accordance with all orders of the Court, that the opportunity to acquire the asset offered was widely known and that the process that resulted in the Place Vertu APS was fair and reasonable. In the Monitor's view, the Applicants' marketing efforts were appropriate in the circumstances.
49. The Monitor approved the process set out in the SISP and the extended marketing process in early 2018 that led to the transaction for the Place Vertu Property.
50. The Sears Canada Group have consulted extensively with the Owned Real Estate Consultation Parties during the process to market the Place Vertu Property. The Owned Real Estate Consultation Parties were informed of material developments in that marketing process. This consultation included in-person meetings and conference calls regarding the status of the sale process and access to bids received and counter-proposals delivered by Sears Canada through Sears Canada's electronic data room.
51. The Monitor has not been advised of any objection to the transaction by the Owned Real Estate Consultation Parties. On May 19, 2018, BMO advised the Owned Real Estate Consultation Parties, through their financial advisors, of the terms of the Place Vertu APS and sought confirmation of the positions of the Owned Real Estate Consultation Parties on the transaction. The financial advisors for Employee Representative Counsel and Pension and Retiree Representative Counsel advised that their clients were not taking a position on the transaction at that time. The Monitor is not aware of any opposition from the other Owned Real Estate Consultation Parties.

52. The proposed transaction maximizes value from all options available at this time for the Place Vertu Property and eliminates ongoing carrying costs of this property, estimated at approximately \$95,000 per month.
53. The proposed transaction does not negatively affect the Mall Owner's rights under the Vertu Operating Agreement as: (i) the Vertu ROFR has been waived by the Mall Owner and, (ii) the Vertu Operating Agreement will be assumed by the Place Vertu Purchaser.
54. The proposed transaction represent the highest and best executable offer obtained for the Place Vertu Property.
55. The Monitor understands an appraisal of the Place Vertu Property was obtained in May 2017, when the property was still operating as a going concern Sears store. A copy of that appraisal is attached as Confidential Appendix "C".

G. MONITOR'S RECOMMENDATION

56. Based upon the considerations set out above, the Monitor supports the Applicants' motion for approval of the sale of the Place Vertu Property as contemplated in the Place Vertu APS.
57. Confidential Appendices "A", "B" and "C" to this Nineteenth Report contain commercially sensitive information, including information on the bids received for the Place Vertu Property, the purchase price for the Place Vertu Property and the appraisal regarding the Place Vertu Property. The public disclosure of this information would be harmful to the integrity of the process to sell the Place Vertu Property, including if the Place Vertu Property needed to be subject to a further marketing process. The Monitor supports the sealing of Confidential Appendices "A", "B" and "C" to this Nineteenth Report.

The Monitor respectfully submits to the Court this, its Nineteenth Report.

Dated this 1st day of June, 2018.

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

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style and is placed on a light yellow rectangular background.

Paul Bishop
Senior Managing Director

A handwritten signature in blue ink that reads "Greg Watson". The signature is written in a cursive style and is placed on a light yellow rectangular background.

Greg Watson
Senior Managing Director

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., *et al.*

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Orestes Pasparakis, LSUC#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSUC#: 41097D

Tel: +1 416.216.4853

Alan Merskey, LSUC#: 41377I

Tel: +1 416.216.4805

Evan Cobb, LSUC#: 55787N

Tel: +1 416.216.1929

Fax: +1 416.216.3930

orestes.pasparakis@nortonrosefulbright.com

virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

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

Confidential Appendix “B”
Project Management Agreement

Appendix “C”
Option Agreement

Sears/ORC/
~~FOR REGISTRATION PURPOSES~~

UPPER CANADA MALL OPTION TO PURCHASE

THIS OPTION AGREEMENT made as of the 21st day of January, 1994,

B E T W E E N:

SEARS CANADA INC., a corporation
existing under the laws of Canada

(hereinafter called "Sears")

- and -

REGIONAL SHOPPING CENTRES LIMITED,
a corporation incorporated under the laws
of the Province of Ontario

(hereinafter called "RSCL" or the "Owner")

In consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration now paid by the Owner to Sears, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

Definitions

1. The following terms shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:
 - (a) "Upper Canada Operating Agreement" means the Operating Agreement dated July 25, 1973 between RSCL, Simpsons-Sears Properties Limited (subsequently Sears Properties Inc., now Sears Canada Inc.) and Simpsons-Sears Limited (now Sears Canada Inc.), as amended and supplemented to date, which Operating Agreement provides for the integrated operation of the Upper Canada Property and lands now referred to as the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands;
 - (b) "Sears (Upper Canada) Lands" means the lands and all buildings, structures and fixed improvements (including the Sears store) located on, in or under the lands described in Part I of Schedule "A" hereto;
 - (c) "Sears (Upper Canada) Reserved Lands" means the lands and all buildings, structures and fixed improvements located on, in or under the lands described in Part II of Schedule "A" hereto;
 - (d) "Sears Lands" means the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands together, or the remaining balance thereof which Sears (or a third party pursuant to Section 6 hereof) owns at the relevant time;

- (e) "Upper Canada Property" means the lands, and all buildings, structures and fixed improvements located on, in or under the lands owned by the Owner and described in Schedule "B" hereto;
- (f) "Force Majeure" means acts of God, acts or laws of any civil or military authority, strikes, or other labour disturbances, floods, epidemics, war, civil commotion, accidents or disruptions including fires and breakdowns to utilities, plant or machinery, inability on account of causes beyond the reasonable control of the party affected to obtain necessary labour, materials, services or facilities, or any other reason beyond the reasonable control of the party affected, provided that the party affected is using its reasonable efforts to correct the event or events of Force Majeure, and provided that shortage of funds shall not by itself constitute Force Majeure;
- (g) "Current Value" means the most probable price for each of the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands valued separately (in each case net after deduction of the outstanding principal and interest allocable to each of such parcels pursuant to any mortgages or other financings secured by or encumbering such lands and improvements), which the relevant lands and improvements or interest therein should bring in the current market at the time of the determination, if exposed for sale in the open market, allowing for a reasonable period of time to find a buyer, under conditions requisite to a fair and equitable sale between a willing seller and willing buyer, on the basis that each of the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands is capable of independent use provided that such independent use is then viable, and without taking into account any diminution in the value of the Sears Lands caused by the existence of any Sears lease to the Owner of any part of the Sears Lands, all as determined by a qualified Accredited Appraiser of the Appraisal Institute of Canada;
- (h) "Owner" includes any and all owners of the Upper Canada Property at the relevant time, and if there are co-owners from time to time, shall include all such co-owners, and their rights and obligations under this Agreement shall be several (not joint and several) in the same proportionate shares in which such co-owners own the Upper Canada Property; provided however that any Option Notice or other notice or act by co-owners hereunder in order to be valid shall be executed by and on behalf of all co-owners and shall be binding on all of them.

Grant of Option

2. Sears hereby grants to the Owner, subject to the terms and conditions hereinafter set out, an option to purchase both the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands (the "Option") for the purchase price calculated in accordance with Section 11 herein. Subject to Section 6 hereof, the Option may only be exercised with respect to all of the Sears Lands then owned by Sears.

Term and Limitations

3. The Option shall have a term commencing on the date hereof and expiring on July 24, 2018 (the "Option Period"), subject to the specific limitations and provisions contained in this Agreement. Upon the expiry date of the Option Period, in the event the Option has not been validly exercised, the Option shall forthwith expire and terminate and be of no further force or effect whatsoever as to any of the Sears Lands.

4. The Owner shall have the right to exercise the Option in the event that at any time during the Option Period the Sears store on the Sears (Upper Canada) Lands is not operated as a department store for a period of ninety-one (91) consecutive days, excluding non-operation due to Force Majeure, and such non-operation has occurred without the prior written consent of the Owner and is continuing at the time of the exercise of the Option, but the Owner shall have no other right to exercise the Option.

5. The Owner shall not be entitled to exercise the Option if,

- (a) at the time that the Sears store on the Sears (Upper Canada) Lands is not operated as a department store, Upper Canada Mall has also ceased to be operated as a regional shopping centre or;
- (b) during the period from July 24, 2008 to July 24, 2013, the Sears operating covenant in favour of the Owner as provided for in Section 9 of the Second Supplement to the Upper Canada Operating Agreement dated as of even date herewith has been terminated in accordance with Section 9(b)(ii) or (iii) thereof.

6. During the Option Period, so long as the Option has not been exercised, Sears shall have the right to transfer the Sears (Upper Canada) Lands or any portion thereof to a bona fide third party purchaser if the Owner does not exercise the first right of refusal contained in Section 21.01 of the Upper Canada Operating Agreement, provided that the Sears (Upper Canada) Lands shall continue to be subject to this Option and to the Upper Canada Operating Agreement (including the mutual right of first refusal contained in Section 21.01 therein) in accordance with the terms thereof. Upon the expiration of the Option Period, the Owner shall execute and register on title to the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands, a release and discharge of such lands from any purchase option rights under this Agreement.

7. During the Option Period, so long as the Option has not been exercised, and subject to Section 22 of the Upper Canada Operating Agreement so long as such section of such agreement is still in force, Sears shall have the right to transfer the Sears (Upper Canada) Reserved Lands or any portion thereof to a bona fide third party purchaser if the Owner does not exercise the first right of refusal contained in Section 21.01 of the Upper Canada Operating Agreement and, upon such transfer, this Option and the Upper Canada Operating Agreement (including the first

right of refusal contained in Section 21.01 therein) shall terminate and be of no further force or effect with respect only to the Sears (Upper Canada) Reserved Lands or the portion thereof so transferred, and the Owner shall promptly execute and deliver to Sears and its successors in title upon request a discharge and release of this Option in form required for registration on title to the Sears (Upper Canada) Reserved Lands.

8. Sears shall have the right at any time during the Option Period to mortgage or finance all or part of the Sears Lands to a maximum of 75% of the then current fair market value, provided that the provisions of such mortgage or financing permit a discharge or partial discharge of the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands upon request by Sears, or upon payment of an amount equal to the principal and interest reasonably allocable to such lands and improvements subject to such aforesaid 75% maximum and, on any purchase by the Owner pursuant to exercise of the Option, the Owner shall take title subject to such mortgage or financing.

9. The Option is subject to any rights in favour of the Owner of the Upper Canada Property then contained in the Upper Canada Operating Agreement and other agreements pertaining to and registered on title to the Upper Canada Property.

Exercise of Option

10. Subject to compliance with the conditions and limitations in this Agreement and so long as the Option is still in full force and effect hereunder, the Option may be exercised by the Owner by giving notice in writing (the "Option Notice") to Sears signed by the Owner, or if there are co-owners, signed by all co-owners, at any time during the Option Period. The deposit payable by the Owner shall be Fifty Thousand (\$50,000) Dollars payable by certified cheque to a mutually acceptable depository as a deposit to be held by such depository in interest-bearing form with interest to follow the deposit, pending completion or other termination of the purchase agreement arising out of the exercise of the Option, and to be applied against the purchase price on closing. If there are co-owners, such co-owners will pay a proportionate share of such deposit. The deposit shall be returned to the Owner or co-owner who paid it in the event that the purchase fails to close for any reason whatsoever other than default by such Owner or co-owner, without prejudice to any other rights or remedies such Owner or co-owner may have. If the Option is not exercised within the period specified and in accordance with the provisions of this Agreement, the Option shall be null and void and no longer binding on any parties hereto.

Agreement of Purchase

11. Upon the valid giving of notice of exercise of the Option by the Owner pursuant to clause 10, a binding agreement of purchase and sale of the Sears Lands shall be constituted, at a purchase price equal to the Current Value thereof payable in cash, on the basis that the Owner

shall assume the existing mortgage or other financing secured by or encumbering the Sears Lands upon the closing of the purchase of the Sears Lands, subject to all usual and appropriate adjustments, and less the amount of any other liens, financial encumbrances and work orders which will not be removed on the closing, less the amount outstanding under any permitted mortgage or financing being assumed by the Owner under clause 8.

Determination of Current Value

12.(a) Whenever notice exercising the Option has been given and the Current Value of the Sears Lands is to be determined pursuant to this Agreement, Sears and the Owner shall attempt, for a period of seven (7) days after delivery of the Option Notice by the Owner to Sears, to reach agreement as to Current Value of the Sears Lands. If such an agreement cannot be reached within such time period, each of Sears and the Owner shall appoint an appraiser within fourteen (14) days after delivery of the Option Notice. Each appraiser shall be fully accredited under the Appraisal Institute of Canada (or its successor or failing either another equivalent national Canadian real estate appraisal organization) and shall be at arm's length from the party appointing him and shall be generally recognized as a person experienced in appraising and qualified to appraise regional shopping centres in Canada. If only one appraiser is appointed within the aforesaid period, the decision of such appraiser shall be binding on both Sears and the Owner.

(b) The appraiser or appraisers shall have access to all books of account, records, papers and documents of Sears and of the Manager of the Upper Canada Property which relate to the Sears Lands and upon request, the Manager of the Upper Canada Property shall provide to such appraiser on a confidential basis the sales reports and profit and loss statements of the Owner for the Upper Canada Property (as prepared by the Manager) for the then current and preceding two fiscal years. Sears and the Owner shall co-operate with the appraiser or appraisers for such purpose and provide all material information and documents requested by him or them acting reasonably, excluding any internal confidential information of OMERS Realty Corporation. In the determination of Current Value, the appraiser or appraisers shall have regard to all relevant considerations including historic and potential performance and shall make all proper and necessary allowances for contingent or other liabilities but shall make no allowance for goodwill. The outstanding principal and interest under any mortgage or other financing encumbrances allocable to the Sears Lands shall be stated separately by such appraisers.

(c) The appraiser or appraisers shall report his or their determination of Current Value of the Sears Lands, identifying the value for each of the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands separately, in writing to both Sears and the Owner within thirty (30) days after his or their appointment. If an appraiser fails to issue his report within such thirty-day period, the report of the other appraiser shall determine the Current Value of the Sears Lands.

(d) If there is more than one appraiser and if, in their reports, they do not agree on the Current Value of either the Sears (Upper Canada) Lands or the Sears (Upper Canada) Reserved Lands, Sears and the Owner shall, acting in good faith, attempt to agree on the Current Value of such lands over which there is disagreement within ten (10) days after receipt of the reports. If Sears and the Owner are unable to so agree on the Current Value of such lands over which there is disagreement, then the following provisions shall apply:

- (i) if the lower appraisal is within 5% of the higher appraisal, the Current Value shall be the average of the two appraisals;
- (ii) if sub-paragraph (i) is not applicable, then the Current Value shall be determined by arbitration and Sears and the Owner shall appoint a single arbitrator who, acting reasonably in accordance with the provisions hereof and in his sole discretion, shall determine the Current Value of the lands over which there is disagreement which shall in any event be not less than the lower appraisal nor greater than the higher appraisal but need not be an average of them and if Sears and the Owner are unable to agree upon the arbitrator within fifteen (15) days after receipt of the reports, such arbitrator shall be appointed by a judge of the Ontario Court (General Division) upon the application of either Sears or the Owner, and the arbitrator shall render his or her decision no later than twenty (20) days after his or her appointment.

(e) The determination of Current Value pursuant to this clause shall, in the absence of fraud, be final and binding upon Sears and the Owner and all other persons affected thereby and there shall be no appeal therefrom.

(f) The appraiser or appraisers, as the case may be, and the arbitrator, if any, shall be deemed to be acting as experts and not as arbitrators.

(g) Each of Sears and the Owner shall pay the fees and expenses of the appraiser appointed by it and shall each pay one-half of the cost of an arbitrator.

Closing

13.(a) The closing (the "Closing") of any sale of the Sears Lands to the Owner pursuant to this Agreement shall be held at 10:00 a.m. (local time) thirty (30) days after the determination of the Current Value of the Sears Lands, or such earlier or later date as may be mutually agreed upon by the parties to the transaction.

(b) At the Closing a transfer from Sears or its successor in title, if applicable, to the Owner of the Sears Lands, together with such instruments and documents (to be reasonably satisfactory to counsel for the Owner) as may be necessary or desirable to give effect to the sale and transfer of the Sears Lands (the "Transfer Documents") shall be delivered to the Owner. At the Closing,

where the same has been determined in accordance with the provisions hereof, the purchase price in an amount equal to the Current Value, subject to usual adjustments, and less the amount of any other liens, financial encumbrances and work orders which will not be removed on the Closing, less the amount outstanding under any permitted mortgage or financing being assumed by the Owner under clause 8, shall be paid to Sears by the Owner.

(c) The Transfer Documents shall be legally sufficient to convey the Sears Lands to the Owner, and shall be in registerable form. Sears shall take all necessary steps to comply with the Planning Act of Ontario. Sears shall provide to the Owner all title documents in its possession relating to the Sears Lands and shall co-operate reasonably with the Owner in its title investigations and due diligence. If, prior to Closing, the Owner makes any valid objection to title or to any outstanding work order or deficiency notice or to the fact that the present use may not lawfully be continued or to the presence of environmental contamination which Sears is unable or unwilling to remove, remedy or satisfy, the Owner shall have the right to revoke the Option Notice as if such Option Notice had never been given. At the Closing, the Owner shall assume, from and after the Closing, all liabilities and obligations of Sears in connection with the Sears Lands being acquired, and shall indemnify and hereby agree to indemnify Sears in connection therewith. At the Closing, the purchase price shall be subject to the adjustments as described in Section 13(b) hereof and all amounts due by Sears to the co-owners or by the co-owners to Sears in respect of Upper Canada Mall and the Sears Lands shall be settled and set-off or paid in full.

Notice

14. Any notice or other communication (a "Notice") to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery or by telecopier or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

- (a) Sears Canada Inc.
222 Jarvis Street
Toronto, Ontario, M5B 2B8
Attention: Office of the Corporate Secretary
Telecopy: 416 - 941-2321
- (b) Regional Shopping Centres Limited
c/o Cambridge Leascholds Limited
95 Wellington Street West, Suite 300
Toronto, Ontario, M5J 2R2
Attention: Office of the Corporate Secretary
Telecopy: 416 - 369-1328

Any Notice, if personally delivered between the hours of 9:00 a.m. and 5:00 p.m. on any business day, shall be deemed to have been validly and effectively given and received on the

date of such delivery and if sent by telecopier or other electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the business day next following the day it was received.

Applicable Law

15. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

Invalidity

16. If any immaterial covenant, obligation or agreement or part thereof or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement or part thereof to any person or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

Amendment of Agreement

17. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

Successors and Assigns

18. All of the provisions of this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

Time

19. Time shall be of the essence of this Agreement.

Non-Waiver

20. No consent to or waiver of any breach by any party in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach in the performance by such party of the same or any other obligations of such party hereunder.

Further Assurances

21. Upon written request from the Owner after July 24, 1997, Sears shall execute and deliver to the Owner, for execution and registration by the Owner, a further grant of option for a term expiring on July 24, 2018 on the same terms and conditions as this Agreement, bearing the then current date, and duly authorized by Sears, whereupon this Agreement shall be cancelled, null and void. Each of the parties shall execute and do all such further deeds, assurances and things as may be required to more effectually implement the true intent of this Agreement.


- 9 -

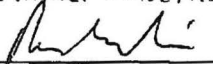
Calculation of Time

22. If any date occurs or any time period ends on a date which is a Saturday, Sunday or statutory holiday in the Province of Ontario, such date or time period shall be extended to 5:00 p.m. on the next business day.

IN WITNESS WHEREOF the parties hereto have executed this Agreement under seal as evidenced by their properly authorized officers in that behalf as of the day and year first above written.


SEARS CANADA INC.


Per:  c/s
Larry E. Ginther - Vice President, Chief Financial Officer and Treasurer

Per:  c/s
Ronald R. Nezer - Vice President, Secretary and General Counsel

We have authority to bind the Corporation.

REGIONAL SHOPPING CENTRES LIMITED

Per:  c/s

Per:  c/s

We have authority to bind the Corporation.

RONALD L. MEIERS
Senior Vice-President
& Chief Operating Officer

WILLIAM W. TREMOUTH
Senior Vice-President
Corporate Planning

Confidential Appendix “D”

Current Value

Confidential Appendix “E”

Email Regarding Claim and Set-Off Resolution

Appendix “F”

Liberty APA (redacted)

AGREEMENT OF PURCHASE AND SALE

SEARS CANADA INC.
as the Vendor

- and -

1979353 ONTARIO INC.
as the Purchaser

THIS AGREEMENT OF PURCHASE AND SALE dated with effect as of June 13, 2018

BETWEEN:

SEARS CANADA INC.
(the "Vendor")

- and -

1979353 ONTARIO INC.
(the "Purchaser")

RECITALS:

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

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

ARTICLE 1 DEFINITIONS

1.1 Definitions

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

"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 Monitor).

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

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

"Assumed Contracts" means the Contracts listed on Schedule "I".

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

"Balance" has the meaning ascribed thereto in Section 3.1(b).

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

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

"CCAA" means the *Companies' Creditors Arrangement Act* (Canada).

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

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

"Closing" has the meaning ascribed thereto in Section 7.5(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 Monitor) may advise the Purchaser in writing, or as otherwise ordered by the Court.

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

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

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

"Court" means the Ontario Superior Court of Justice (Commercial List).

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

"Deposit" has the meaning ascribed thereto in Section 3.1(a).

"Disclosed to the Purchaser" means any information which no later than the date which is one (1) Business Day prior the Execution Date, is either: (a) delivered or made available to the Purchaser on the Data Site; (b) a Permitted Encumbrance that is registered (and/or notice of which is registered) against title to the Property; or (c) delivered to the Purchaser or the Purchaser's solicitors.

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

"Filing Date" means June 22, 2017.

"Financial Advisor" means BMO Nesbitt Burns Inc.

"Governmental Authorities" means governments, regulatory authorities, governmental departments, agencies, agents, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic

or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

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

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

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

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

"Interim Period" means the period between the close of business on the Execution Date and the Closing on the Closing Date.

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

"Joint Direction" has the meaning ascribed thereto in Section 3.2(f).

"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.

"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.

"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 May 18, 2018, as amended or supplemented in writing from time to time.

"Notice" has the meaning ascribed thereto in Section 8.15.

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

"Offer" has the meaning ascribed thereto in Recital D.

"Operating Agreement" means, collectively, the following agreements, as assigned from time to time prior to the Execution Date:

- (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.

"Option" has the meaning ascribed thereto in Section 7.3(b).

"Option Agreement" means the Option of Purchase Agreement dated January 21, 1994 between the Vendor and Regional Shopping Centres Limited, as partially released and assigned from time to time prior to the Execution Date.

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

"Outside Date" means July 27, 2018.

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

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

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

"Property" means, collectively, the Lands and the Buildings.

"Purchase Price" has the meaning ascribed thereto in Section 3.1.

"Purchaser" has the meaning ascribed thereto on page 1 hereof.

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

"Realty Tax Refunds" means any expected credit, refund and/or rebate which may arise from any of the Realty Tax Appeals.

"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.

"ROFR" has the meaning ascribed thereto in Section 7.3(a).

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

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

"SISP Order Date" means July 13, 2017.

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

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

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

"Vendor" has the meaning ascribed thereto on page 1 hereof.

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

ARTICLE 2 SALE TRANSACTION

2.1 Offer and Acceptance

- (a) Subject to the terms of this Agreement, the Initial Order and the SISP Order, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase and assume from the Vendor, the Subject Assets on the Closing Date in accordance with the terms and conditions of this Agreement.

- (b) The Offer shall be irrevocable by the Purchaser until 5:00 p.m. (Toronto time) on June 13, 2018.
- (c) Upon acceptance of this Offer by the Vendor, this Offer shall constitute a binding agreement to acquire the Subject Assets, on the terms of this Agreement.

2.2 As Is, Where Is

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

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

or any other assets or any other aspect of the Transaction. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects, whether or not discoverable, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights;

- (e) the Purchaser conducted its own independent review, inspection, diligence and investigations and forming its own independent opinions and conclusions in respect of the Subject Assets. The Purchaser's decision to make this Offer and enter into this Agreement was made of its own accord without reference to or reliance upon any disclosure in respect of any of the Subject Assets. The Purchaser acknowledges having been given a reasonable and adequate opportunity to conduct its own independent diligence prior to entering in this Agreement;
- (f) the Vendor shall not be responsible for making any repairs, replacements, renovations, alterations, improvements or upgrades or undertaking any remediation to address a Release in or to the Property or any part thereof, and it shall be the sole responsibility of the Purchaser to make, at the Purchaser's sole cost, any repairs, replacements, renovations, alterations, improvements and upgrades in or to the Property following Closing as may be required by the Purchaser to make the Property suitable for its purposes and to undertake any required, necessary, or desired remediation to address a Release at, on, under or migrating from the Property or any part thereof;
- (g) the Subject Assets may be subject to certain Off-Title Compliance Matters, municipal requirements, including building or zoning by-laws and regulations, easements or servitudes for hydro, gas, telephone affecting the Subject Assets, and like services to the Property, and restrictions and covenants which run with the land, including but not limited to the Permitted Encumbrances. Without limiting the foregoing, the Vendor shall not be responsible for rectification of any matters disclosed by any Governmental Authority or quasi-governmental authority having jurisdiction and the Purchaser shall accept the Subject Assets subject to such matters;
- (h) the Purchaser shall accept full responsibility for all conditions related to the Property, and the Purchaser shall comply with all orders relating to the condition of the Property issued by any competent Governmental Authority, including any order issued against the Vendor including without limitation, any non-compliance with Environmental Laws or relating to the existence of any Hazardous Substance; and
- (i) if any 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 may 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, provided that if the Deposit is not delivered to the Monitor, in trust, on or prior to 3:00 p.m. (Toronto time) within one (1) Business Day of the Execution Date, the Vendor may terminate this Agreement by notice to the Purchaser; and
- (b) as to the balance of the Purchase Price (the "Balance"), subject only to the adjustments made in accordance with this Agreement, by wire transfer of immediately available funds payable to the Monitor or as it may direct on the Closing Date.

3.2 Deposit

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

Agreement. If the Transaction is successfully completed, all interest earned on the Deposit until Closing shall be paid to the Purchaser following Closing or applied to the Purchase Price.

- (c) If the Transaction is not completed by reason of a default of the Purchaser, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Vendor as liquidated damages (and not as a penalty) to compensate the Vendor for the expenses incurred and the delay caused and opportunities foregone as a result of the failure of the Transaction to close. The entitlement of the Vendor to receive and retain the Deposit together with all accrued interest earned thereon, if any, in such circumstances shall not limit the Vendor's right to exercise any other rights or remedies which the Vendor may have against the Purchaser in respect of such breach or default.
- (d) If the Transaction is not completed by reason of the default of the Vendor, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Purchaser as full and final settlement and the Purchaser shall have no further recourse against the Vendor, provided that the Vendor shall reimburse the Purchaser for its reasonable out-of-pocket expenses incurred in connection with the Transaction following the execution and delivery of this Agreement by the Vendor to a maximum amount of [REDACTED].
- (e) If the Transaction is not completed for any other reason, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Purchaser.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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 Trade-Marks

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

ARTICLE 4 ADJUSTMENTS

4.1 Statement of Adjustments and Absence of Post-Closing Adjustments

The Vendor shall prepare a statement of adjustments and deliver same with supporting documentation to the Purchaser no later than two (2) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be made by the Vendor 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 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 2nd Business Day following Closing.

- (e) The Vendor shall be responsible for the amount payable by the Vendor (being \$19,962.70) pursuant to the invoice from the Mall Owners dated December 15, 2017 in connection with the dredging of retention ponds.

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, any and all utility charges and other related fees payable for any of the Property, pursuant to any invoice or statement issued on or after the Closing Date, shall be the sole responsibility of the Purchaser, and there shall be no adjustments between the Vendor and the Purchaser of any utility charges or related fees paid by the Purchaser pursuant to any such invoice or statement issued on or after the Closing Date.

ARTICLE 5 INTERIM PERIOD

5.1 Interim Period

- (a) The Vendor shall not be obligated to (i) remove any Inventory, FF&E or Excluded Assets and the Vendor shall have no liability for any removal or destruction costs relating thereto, or (ii) repair, renovate, alter, improve or upgrade the Property in any manner. Any Inventory, FF&E or Excluded Assets left on the Property on the Closing Date shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. This Section shall survive and not merge on Closing.
- (b) 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 [REDACTED], 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. The Vendor shall maintain in full force and effect in all material respects, at its expense, during the Interim Period, its current insurance coverage for the Property.

5.2 Contracts

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

5.3 Permitted Encumbrances 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) except as Disclosed to the Purchaser, 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) except as Disclosed to the Purchaser, 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); and
- (h) 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.

6.2 Purchaser's Representations and Warranties

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

- (a) the Purchaser has been duly formed or incorporated and is validly subsisting under the Laws of the jurisdiction of its formation or incorporation, and has all requisite corporate or other capacity, power and authority to carry on its business as now conducted by it and to own its properties and assets and is qualified to carry on business under the Laws of the jurisdictions where it carries on a material portion of its business;
- (b) the Purchaser is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Purchaser is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*;
- (d) the execution, delivery and performance by the Purchaser of this Agreement:
 - (i) has been duly authorized by all necessary corporate or other action on the part of the Purchaser;
 - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and
 - (iii) will not result in the violation of any Laws;
- (e) this Agreement has been duly executed and delivered by the Purchaser and constitutes legal, valid and binding obligations of the Purchaser, enforceable against it in accordance

with their respective terms subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction; and

- (f) the Purchaser has, and will have at Closing, all funds on hand necessary to pay the Purchase Price and any Taxes payable and that are not self-assessed and remitted by the Purchaser.

The Purchaser's representations and warranties shall survive Closing for a period of 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.

6.4 Vendor's Covenants

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

- (a) 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.

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

added or multi-staged tax or sales tax and applicable on the sale and conveyance of the Subject Assets by the Vendor to the Purchaser or as a result of any inaccuracy, misstatement, or misrepresentation made by the Purchaser in connection with any matter raised in this Section 6.5 or in the GST/HST Certificate, Undertaking and Indemnity or any failure by the Purchaser to comply with the provisions of this Section 6.5 or the GST/HST Certificate, Undertaking and Indemnity.

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

6.6 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 the ROFR 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 Execution 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 acquire the Property; or (iii) the condition in Section 7.3(b) not being satisfied, whereby the Mall Owners have exercised the Option pursuant to the Option Agreement and the closing of the sale of the Property to the Mall Owners pursuant to such exercise of the Option has completed (each a "Trigger Event"), then the Vendor hereby covenants and agrees to pay the Purchaser a termination fee of \$1,000,000.00 ("Termination Payment") in consideration of the lost opportunity to the Purchaser. Such Termination Payment is to be paid by the Vendor within, in the case of the Trigger Event in paragraph (i), within 2 Business Days of the termination of this Agreement pursuant to the Trigger Event, and in the case of the Trigger Events in paragraphs (ii) and (iii), within 2 Business Days of the Trigger 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 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(f) to (l) 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) the right of first refusal to purchase the Property or any part thereof in favour of the Mall Owners contained in the Operating Agreement (the "ROFR") 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 counterparty to the Option Agreement shall not have given notice of the exercise of the option to purchase the Property in accordance with the terms of the Option Agreement (the "Option");
- (c) the Approval and Vesting Order, substantially in the form attached hereto as Schedule "D", shall have been issued and entered by the Court; and
- (d) 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; and
 - (iii) such other documents as each Party or each Party's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (b) By the Vendor:
 - (i) the Approval and Vesting Order;
 - (ii) the statement of adjustments evidencing the adjustments made at Closing;
 - (iii) an assignment of Warranties, to the extent there are any and are in the Vendor's possession and located on the Property and to the further extent that they are assignable without cost or consent;
 - (iv) all master keys relating to the Buildings, if any, all security cards and access cards relating to the Buildings, if any, and all combinations and passwords to vaults and combination locks and other security features located in the Buildings, if any, in each case, to the extent in the possession of the Vendor; and
 - (v) such other documents as the Purchaser or the Purchaser's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (c) By the Purchaser:
 - (i) the Balance plus all Taxes thereon;
 - (ii) GST/HST Certificate, Undertaking and Indemnity;
 - (iii) the Matching Security, if applicable;

- (iv) the Contract and/or PE Assumption Agreements along with any deliveries to the Holders required in respect of the Assumed Contracts or Permitted Encumbrances;
- (v) an assumption agreement in favour of the Vendor and the Mall Owners in accordance with the Operating Agreement and the Option Agreement whereby the Purchaser assumes the obligations of the Vendor under the Operating Agreement and the Option Agreement, each in form and substance acceptable to the Vendor; and
- (vi) a bill of sale in connection with any Subject Assets that are personal property; and
- (vii) 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) 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 and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser, the Monitor shall deliver copies of the Monitor's Certificate to the Parties hereto and release the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser to the Vendor and following Closing file the Monitor's Certificate with the Court.
- (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 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 Monitor to provide its consent) or on further order of the Court;
- (b) by the Purchaser if any of the conditions in Section 7.1 have not been satisfied on or before the Closing Date and the Purchaser has not waived such condition;
- (c) by the Vendor with the consent of the Monitor if any of the conditions in Section 7.2 have not been satisfied on or before the Closing Date and the Vendor has not waived such condition; or
- (d) by either Party if any of the conditions precedent in Section 7.3 have not been satisfied on or before the Closing Date and the parties have not waived such condition; or
- (e) by the Purchaser, or the Vendor (with the consent of the Monitor) if Closing has not occurred on or before the Outside Date, provided that the Vendor or the Purchaser may not terminate this Agreement pursuant to this Section 7.10(e) if it has failed to perform any one or more of its respective obligations or covenants under this Agreement and the Closing has not occurred because of such failure.

ARTICLE 8 OTHER PROVISIONS

8.1 Confidentiality

The Vendor shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the 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: Philip Mohtadi
Email: pmohtad@sears.ca

With a copy to:

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

Attn: Marc Wasserman & Tracy Sandler

Email: mwasserman@osler.com & tsandler@osler.com

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:

Gropper Law
2345 Yonge Street, Suite 302
Toronto ON, M4P 2E5

Attn: Yaakov Eizicovitz
Email: yaakov@gropperlaw.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, 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 scheduled date to appear in Court to obtain the Approval and Vesting Order, 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 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.

IN WITNESS WHEREOF the parties have executed this Agreement.

SEARS CANADA INC.

By: P. Maroni
Name:
Title:
By: _____
Name:
Title:

1979353 ONTARIO INC.

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

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., *et al.*

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SIXTH SUPPLEMENT TO THE NINETEENTH REPORT
TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Orestes Pasparakis, LSO#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSO#: 41097D

Tel: +1 416.216.4853

Alan Merskey, LSO#: 41377I

Tel: +1 416.216.4805

Evan Cobb, LSO#: 55787N

Tel: +1 416.216.1929

Fax: +1 416.216.3930

orestes.pasparakis@nortonrosefulbright.com

virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

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