

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

THE HONOURABLE) **TUESDAY, THE 6th DAY**
)
JUSTICE MESBUR) **OF JUNE, 2006**



**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
R.S.O. 1990, c. B-16, s. 182 AS AMENDED**

- and -

**IN THE MATTER OF AN APPLICATION BY THE T. EATON
COMPANY LIMITED RELATING TO A PROPOSED ARRANGEMENT
INVOLVING THE T. EATON COMPANY LIMITED AND ITS
SECURITYHOLDERS AND 1381052 ONTARIO INC.**

Applicant

ORDER

THIS MOTION, made by RSM Richter Inc. (formerly Richter & Partners Inc.), in its capacity as liquidator (the "Liquidator") of the estate and effects of Distributionco Inc. (formerly 1381052 Ontario Inc.) ("Distributionco") for an Order, *inter alia*, authorizing and directing the Liquidator to establish a holdback from the distribution to be made on June 30, 2006 in accordance with the Administration Agreement between Distributionco and the Liquidator dated as of December 30, 1999 (the "Administration Agreement") was heard this day at 393 University Avenue, Toronto, Ontario;

ON READING the Notice of Motion and the Report of the Liquidator dated May 31, 2006 (the "Liquidator's Report"), filed, and on hearing the submissions of

counsel for the Liquidator, no one else appearing, although duly served as appears from the Affidavit of Service of Sacha Bonekamp sworn May 31, 2006, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged, that the Motion is properly returnable today.

2. **THIS COURT ORDERS** that any capitalized terms not defined herein shall have the meaning ascribed to them in the Liquidator's Report.

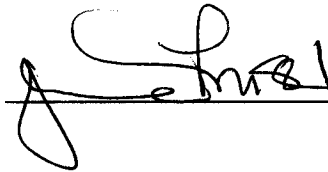
3. **THIS COURT ORDERS** that the Liquidator be and is hereby authorized and directed to cause Distributionco to distribute the amount of \$20,000,0000 from the Certificate Payment Account on June 30, 2006, as set out in the Administration Agreement (the "Initial Distribution"), attached as Exhibit "A".

4. **THIS COURT ORDERS** that the Liquidator be and is hereby authorized and directed to cause Distributionco to make a second distribution (the "Final Distribution") when the Liquidator has obtained clearance certificates and any other confirmations that the Liquidator considers necessary or desirable from the Canada Revenue Agency ("CRA") and its provincial equivalents.

5. **THIS COURT ORDERS** that the Liquidator be and is hereby authorized to cause Distributionco to hold back the balance of the funds in the Certificate Payment Account being approximately \$2.65 million from the Initial Distribution to address any potential tax or tax-related liability of the Liquidator or Distributionco and for the

estimated costs of the Liquidator or Distributionco to be incurred from June 30, 2006 to the date on which the Final Distribution is made.

6. **THIS COURT ORDERS** that the Liquidator be and is hereby authorized and directed to require any Unitholder who requests a replacement of a distribution cheque that is lost or destroyed or becomes stale-dated to pay a fee of \$50.00 to the Liquidator to cover its costs of processing the request.

A handwritten signature in black ink, appearing to be 'J. Schul', is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 09 2006

PER/PAR:

A handwritten signature in black ink, appearing to be 'JA', is written next to the 'PER/PAR:' label.

DISTRIBUTIONCO INC.

- and -

**RICHTER & PARTNERS INC.,
in its capacity as Liquidator and not in its personal capacity**

ADMINISTRATION AGREEMENT

**MADE AS OF DECEMBER 30, 1999
PROVIDING FOR THE ISSUE OF PARTICIPATION UNITS**

**Osler, Hoskin & Harcourt
Barristers & Solicitors
Toronto, Canada**

TABLE OF CONTENTS

Page

ARTICLE 1

INTERPRETATION	1
1.1 Definitions	1
1.2 Meaning of "outstanding" for Certain Purposes	6
1.3 Headings	7
1.4 Extended Meaning	7
1.5 Applicable Law	7
1.6 Language	7
1.7 Currency	7
1.8 Accounting Terms	8
1.9 Actions to be taken by Distributionco	8
1.10 Date for any Action	8
1.11 Schedules	8

ARTICLE 2

THE CERTIFICATES	8
2.1 Limitation of Issue	8
2.2 Form of Certificates	8
2.3 Characterization and Denomination of Certificates	9
2.4 Cancellation Date; No Interest; Certificates	9
2.5 Ranking of Certificates	9
2.6 Signing of Participation Unit Certificates	10
2.7 Certification by Liquidator	10
2.8 Replacement of Certificates	10
2.9 Distributions	11
2.10 Payment Based on Register	11
2.11 Withholding Taxes	12

ARTICLE 3

CERTIFICATES	13
3.1 Designation, Terms and Form of Certificates	13
3.2 Issue of Certificates	13
3.3 Deposits to and Distributions from Certificate Payment Account	13

ARTICLE 4

REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP	15
4.1 Fully Registered Certificates	15
4.2 Exchange of Certificates	15
4.3 Charges for Transfer and Exchange	15
4.4 Closing of Registers	15
4.5 Ownership of Certificates	16

TABLE OF CONTENTS

(continued)

Page

ARTICLE 5

COVENANTS AND REPRESENTATIONS AND WARRANTIES	16
5.1 Covenants of Distributionco.....	16
5.2 Waiver of Certain Covenants	16

ARTICLE 6

SATISFACTION AND DISCHARGE	17
6.1 Cancellation and Destruction	17
6.2 Release from Covenants.....	17

ARTICLE 7

SUPPLEMENTAL ADMINISTRATION AGREEMENTS.....	17
7.1 Supplemental Administration Agreements Without Consent of Holders.....	17
7.2 No Other Supplemental Administration Agreements.....	18
7.3 Execution of Supplemental Administration Agreements.....	18
7.4 Effect of Supplemental Administration Agreements.....	18

ARTICLE 8

ADMINISTRATION	19
8.1 Liquidator and Distributionco May Require Indemnity	19
8.2 Liquidator May Employ Assistants	19
8.3 Liquidator May Act on Opinions or Advice	19
8.4 Liquidator May Rely upon Declarations.....	19
8.5 Liquidator May Act on Instruments Believed Genuine.....	19
8.6 No Person Dealing with Liquidator Need Enquire.....	19
8.7 Investment of Monies	20

ARTICLE 9

THE LIQUIDATOR AND DISTRIBUTIONCO	20
9.1 Liquidator's and Distributionco's Remuneration and Expenses	20
9.2 Liquidator Not Required to Give Security	21
9.3 Protection of Liquidator	21
9.4 Disclaimer of Liability	21
9.5 This Agreement; OBCA; OBCA Sanction Order.....	21

ARTICLE 10

NOTICES	21
10.1 Notice to Distributionco or the Liquidator.....	21
10.2 Notice to Certificateholders.....	22

ARTICLE 11

MEETINGS OF CERTIFICATEHOLDERS	22
11.1 Right to Convene Meeting	22
11.2 Notice	22

TABLE OF CONTENTS
(continued)

	Page
11.3 Chair.....	22
11.4 Quorum	22
11.5 Power to Adjourn.....	23
11.6 Show of Hands.....	23
11.7 Poll.....	23
11.8 Voting.....	23
11.9 Regulations.....	24
11.10 Representation at Meetings	24
11.11 Powers Exercisable by Extraordinary Resolution	24
11.12 Meaning of "Extraordinary Resolution"	25
11.13 Powers Cumulative.....	25
11.14 Minutes.....	26
11.15 Instruments in Writing	26
11.16 Binding Effect of Resolutions	26
 ARTICLE 12	
EXECUTION.....	27
12.1 Counterparts and Formal Date and Effective Date.....	27
 SCHEDULE A	
FORM OF PARTICIPATION UNIT CERTIFICATE AND FORM OF LIQUIDATOR'S CERTIFICATE.....	A-1

THIS ADMINISTRATION AGREEMENT is made as of December 30, 1999,

BETWEEN:

DISTRIBUTIONCO INC., a corporation governed by the
Business Corporations Act (Ontario)

- and -

RICHTER & PARTNERS INC., in its capacity as Liquidator
(defined below) and not in its personal capacity.

WHEREAS:

- A. Distributionco wishes to create and issue the Participation Units (defined below) and, under the laws relating thereto, has the power and authority to create and issue the Participation Units.
- B. All necessary court orders to issue the Participation Units on or after the Plan Implementation Date (defined below) with the benefits and subject to the terms of this Agreement have been or shall be obtained prior to such issue.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the premises and the covenants and agreements herein contained (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Definitions

In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the following meanings respectively:

"Arrangement" means an arrangement under Section 182 of the OBCA on the terms and conditions set out in Exhibit 1 to the Arrangement Agreement, as amended, supplemented or varied from time to time.

"Arrangement Agreement" means the arrangement agreement between Eaton's and Distributionco dated as of November 19, 1999, as amended, supplemented or varied from time to time.

"Authorized Investments" means investments in deposits, bankers' acceptances and treasury bills with or of the financial institutions and the Canadian or provincial governments and their respective agencies or agents listed or referred to below as long as the respective credit rating is maintained at or above the level referred to below:

Entities

Financial Institutions

Schedule I Banks

**Standard & Poor's
"Issuer Credit Rating"**

Bank of Montreal
The Bank of Nova Scotia
Royal Bank of Canada
Canadian Imperial Bank of Commerce
The Toronto-Dominion Bank
National Bank of Canada

AA-
A+
AA-
AA-
AA
A

Schedule II Banks

**Dominion Bond Rating Services
Rating for Short Term Debt**

ABN AMRO Bank Canada
Banque Nationale de Paris (Canada)
Credit Suisse First Boston (Canada)
Deutsche Bank Canada
Dresdner Bank of Canada
HSBC Bank of Canada
Société Générale (Canada)

R1H
R1M
R1M
R1M
R1M
R1M
R1M

No authorized investment in a Schedule II Bank shall exceed at any time \$5,000,000 in the aggregate.

Public Sector

**Standard & Poor's
"Issuer Credit Rating"**

Government of Canada
Province of Alberta
Province of British Columbia
Province of New Brunswick
Province of Ontario

AAA
AA+
AA-
AA-
AA-

Any agency or agent of the Government of Canada or the Provinces of Alberta, British Columbia, New Brunswick or Ontario having a credit rating similar to those specifically noted above.

Other Entities

All other investments in other entities must be fully guaranteed by one of the public sector entities, agencies or agents described above.

"Business Day" means a day, other than a Saturday, Sunday or statutory holiday, on which banks are generally open for business in Toronto, Ontario during normal banking hours.

"CCAA" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended from time to time.

"Cancellation Date", in respect of a Certificate, means the earlier of (i) the date upon which the Maximum Amount distributable to the Certificateholder has been distributed in full pursuant to Section 3.3, and (ii) the date upon which the Termination Order is issued.

"Certificate Payment Account" means the segregated account to be separately identified as the "Distributionco Certificateholder Account" and to be maintained by the Liquidator, on behalf of Distributionco, for the benefit of the Certificateholders and containing, or to contain, all monies comprising any amounts released to the Liquidator or Distributionco from the Escrow Account, which amounts (including any Income thereon), subject to deduction therefrom of any sums payable to the Liquidator or Distributionco pursuant to the OBCA Sanction Order, the Escrow Agreement and/or this Agreement, are to be held for the benefit of the Certificateholders in accordance with, and subject to, the terms of the Plan, the OBCA Sanction Order, the Escrow Agreement and this Administration Agreement.

"Certificateholders" or **"holders"** means the persons whose names are at any given time entered in the registers hereinafter mentioned as holders of the Certificates and **"Certificateholder"** or **"holder"** means any one of them.

"Certificates" means the Common Share Certificates and the Participation Unit Certificates (if any) or all of them, as the context requires, and **"Certificate"** means any one of them.

"Common Share Certificates" means the certificates representing the Common Shares and **"Common Share Certificate"** means any one of them.

"Common Shares" means the issued and outstanding common shares of Eaton's immediately prior to the commencement of the Arrangement.

"Court" means the Superior Court of Justice for the Province of Ontario, Canada and any successor thereto.

"Default Interest" has the meaning given to such term in the Escrow Agreement.

"Distribution Amount" and **"Distribution Notice"** have the respective meanings given to those terms in Section 3.3(b).

"Distribution Date" means any date upon which the Liquidator has determined it shall pay any amounts under the Certificates, on behalf of Distributionco, pursuant to Section 3.3(b).

"Distributionco" means Distributionco Inc. (formerly known as 1381052 Ontario Inc.).

"Distributionco Assumed Liabilities" has the meaning given to such term in the Transfer and Assumption Agreement.

"Distributionco Transferred Assets" has the meaning given to such term in the Transfer and Assumption Agreement.

"Eaton's" means The T. Eaton Company Limited and, from and after the Plan Implementation Date, any successor thereof.

"Eaton's Direction" means the direction given by Eaton's to Sears to pay the Sears Equity Contribution to Distributionco in satisfaction of the Eaton's Note.

"Eaton's Note" means the promissory note in the principal amount of \$60 million (subject to any adjustment of the Sears Equity Contribution which may be required on closing of the Sears Transaction pursuant to the Sears Agreement) to be issued by Eaton's to Distributionco on the Plan Implementation Date in part consideration for the assumption by Distributionco of the Distributionco Assumed Liabilities and the Unsatisfied Unaffected Liabilities.

"Eaton's Tax Losses" means all of the non-capital loss carryforwards of Eaton's for income tax purposes including such tax losses of Eaton's amounting to approximately \$294,300,000 as of January 30, 1999, and additional non-capital loss carryforwards of Eaton's generated from January 30, 1999 to and including the Plan Implementation Date estimated at \$100,000,000, subject to the increase or decrease in such tax losses which may be created by the Sears Transaction, including the Plan, the Arrangement and the transfer of the Distributionco Transferred Assets to Distributionco at fair market value.

"Escrow Account" has the meaning specified in the Escrow Agreement.

"Escrow Agreement" means the escrow agreement among Sears, Distributionco and the Liquidator, dated as of the Plan Implementation Date, as amended, supplemented or varied from time to time.

"Escrowed Funds" has the meaning given to such term in the Escrow Agreement.

"Extraordinary Resolution" has the meaning given to such term in Section 11.12.

"GAAP" means, at any time, accounting principles then generally accepted in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants.

"Governmental Body" means any government (including any federal, provincial, state, municipal, district or local government) or political subdivision or any agency, authority, bureau, central bank, monetary authority, commission, department, crown corporation, or instrumentality thereof, or any board, court or tribunal, or other law, rule or regulation-making entity having or purporting to have jurisdiction on behalf of any nation, province, state, municipality, district or other subdivision thereof.

"including" shall be deemed to be followed by the phrase "without limitation".

"Income" has the meaning given to such term in Section 8.7.

"Interest" has the meaning given to such term in the Escrow Agreement.

"Law" means any law (including common law and equity), constitution, statute, order, treaty, regulation or rule of any Governmental Body.

"Liquidator" means Richter & Partners Inc., in its capacity as the liquidator of the estate and effects of Distributionco, as appointed by the Court under the OBCA Sanction Order, or any successor thereof.

"Maximum Amount" in respect of distributions from the Certificate Payment Account to a Certificateholder, means (i) the product of \$0.818665575 multiplied by the number of Participation Units represented by such holder's Certificate(s), minus (ii) each such Certificateholder's share of any sum payable to the Liquidator and/or Distributionco pursuant to the OBCA Sanction Order, the Escrow Agreement and/or this Agreement (pro rata based on the number of Participation Units held by such Certificateholder in relation to the Participation Units held by all Certificateholders).

"OBCA" means the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended from time to time, and includes any regulations made pursuant to such Act.

"OBCA Proceedings" means the proceedings instituted by Eaton's under Section 182 of the OBCA on September 28, 1999.

"OBCA Sanction Order" means the order of the Court made on November 23, 1999 in the OBCA Proceedings approving the Arrangement, as such order may be amended, varied or modified from time to time.

"Participation Unit" means a unit of participation, allocated to a Shareholder on the basis of one unit per Common Share held by such Shareholder and representing a *pari passu* beneficial ownership interest in the proceeds of the Sears Variable Note and any payment thereof after deducting the costs and expenses of Distributionco, as agent and nominee of the holders of Participation Units, and the costs, expenses and fees of the Liquidator, incurred in administering the Sears Variable Note, including the costs of enforcing the Sears Variable Note.

"Participation Unit Certificates" means the certificates to be issued to persons entitled to receive Participation Units in connection with transfers, assignments or replacements of Certificates, such Participation Unit Certificates to be in the form set out in Schedule A to this Agreement, and **"Participation Unit Certificate"** means any one of them.

"person" means an individual, trust, partnership, government or any department or agency thereof, joint venture, trust, estate, unincorporated organization and the heirs, executors, administrators or other legal representatives of an individual, and pronouns and other words importing persons have a similar extended meaning.

"Plan" means the amended and restated plan of compromise and arrangement dated November 19, 1999 and sanctioned by the Court on November 23, 1999 as such Plan may be amended, amended and restated, varied or supplemented from time to time.

"Plan Implementation Date" means a Business Day selected by Eaton's which is on or before December 31, 1999.

"Record Date" means the tenth Business Day preceding each Distribution Date.

"Sears" means Sears Canada Inc. and, on or following the Plan Implementation Date, any corporation formed by the amalgamation of Sears and Eaton's and any successor of either of them.

"Sears Agreement" means the agreement between Sears and Eaton's dated September 19, 1999, as amended by Addendum No. 1 dated as of September 29, 1999 and Addendum No. 2 dated October 3, 1999, as further amended and supplemented from time to time, pursuant to which Sears will acquire all the issued and outstanding common shares of Eaton's.

"Sears Equity Contribution" means the sum of \$60 million (subject to any adjustment which may be required on the closing of the Sears Transaction pursuant to the Sears Agreement) to be paid to Eaton's on the Plan Implementation Date pursuant to the Sears Agreement for the issue to Sears of common shares of Eaton's, which amount is to be transferred to Distributionco in satisfaction of the Eaton's Note pursuant to the Eaton's Direction.

"Sears Transaction" means the transaction or transactions which are required to be completed pursuant to the Sears Agreement.

"Sears Variable Note" means the promissory note made payable to Distributionco, or to its order, to be issued by Sears on the Plan Implementation Date in the principal amount of up to \$20,000,000 to be paid by Sears only from the use of the Eaton's Tax Losses in accordance with the Sears Agreement.

"Shareholders" means all of the holders of Common Shares as of the date of, and immediately prior to the commencement of the Arrangement and **"Shareholder"** means any one of them.

"Termination Order" means an order of the Court obtained by or on behalf of the Liquidator providing that no further distributions are to be made under or pursuant to the Certificates and that, subject to the terms of such order, all outstanding Certificates are of no further force or effect and are deemed to be cancelled.

"Transfer and Assumption Agreement" means the transfer and assumption agreement made as of December [30], 1999 between Eaton's and Distributionco evidencing the transfer and assignment by Eaton's, and the purchase and assumption by Distributionco, of certain assets and liabilities of Eaton's, as amended, supplemented or varied from time to time.

"Unsatisfied Unaffected Liabilities" has the meaning specified in the Plan.

"Withholding Taxes" has the meaning given to such term in Section 2.11.

1.2 Meaning of "outstanding" for Certain Purposes

Every Common Share Certificate, and every Participation Unit Certificate certified and delivered by the Liquidator on behalf of Distributionco hereunder, shall be deemed to be

outstanding until it is cancelled, deemed to be cancelled or delivered to the Liquidator on behalf of Distributionco hereunder for cancellation, or until money for the payment of all amounts payable in respect thereof has been indefeasibly paid to the holder in immediately available funds, provided that:

- (a) Certificates in respect of which payments have been made which payments, in the aggregate, are less than the Maximum Amount that may be distributed under such Certificates, shall be deemed to be outstanding only to the extent of the unpaid portion of the Maximum Amount relating thereto; and
- (b) if a new Participation Unit Certificate has been issued in substitution for a Certificate that has been mutilated, lost, stolen or destroyed, only one of them shall be counted for the purpose of determining the aggregate amount payable in respect of such Certificate.

1.3 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. "Administration Agreement", "Agreement", "herein", "hereof", "hereunder" and similar expressions mean or refer to this Agreement and any agreement or instrument supplemental or ancillary hereto. The terms "this Administration Agreement", "this Agreement", "herein", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement or instrument supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement, respectively.

1.4 Extended Meaning

Words importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

1.5 Applicable Law

This Agreement and the Certificates shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.6 Language

The parties hereto expressly request and require that this Agreement and any related documents be drawn up solely in the English language. Les parties aux présentes conviennent et exigent que cette entente et tous les documents qui s'y rattachent soient rédigés seulement en anglais.

1.7 Currency

All monetary amounts set forth in this Agreement are expressed in Canadian dollars.

1.8 Accounting Terms

All accounting terms not specifically defined in this Agreement shall be construed in accordance with GAAP.

1.9 Actions to be taken by Distributionco

Where this Agreement contemplates (i) any action being taken by or against Distributionco or (ii) any matter or obligation to be binding on Distributionco, such shall be read to include the Liquidator to the extent necessary to effect such action or for such matter or obligation to be binding on Distributionco.

1.10 Date for any Action

In the event that any day (other than a day the date of which is specifically set out in this Agreement) on which any action is required or permitted to be taken or payment to be made hereunder is not a Business Day, such action shall be required or permitted to be taken or such payment shall be made on the next succeeding Business Day. Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day.

1.11 Schedules

The following Schedule is annexed hereto and incorporated by reference and deemed to be part hereof:

Schedule A - Form of Participation Unit Certificate and
Form of Liquidator's Certificate

ARTICLE 2 **THE CERTIFICATES**

2.1 Limitation of Issue

The aggregate number of Participation Units in respect of which Certificates may be issued hereunder is limited by the provisions of the Plan and the provisions of Article 3. Certificates may be issued only on and subject to the conditions and limitations herein set forth.

2.2 Form of Certificates

On or after the Plan Implementation Date, Common Share Certificates shall represent and shall be deemed to represent Participation Units on the basis that each Common Share represents one Participation Unit.

Participation Unit Certificates may be issued hereunder on or after the Plan Implementation Date in accordance with the provisions and conditions hereof. The Participation Unit Certificates shall be in the form attached as Schedule A to this Agreement, and shall have indicated thereon the date of issue thereof, the place of distributions thereunder, the name of the

payee thereof and shall refer to the provisions hereof concerning the distribution of any amounts thereunder. The forms of all Participation Unit Certificates may contain such appropriate insertions, omissions, substitutions and other variations as may be approved by the Liquidator may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as the Liquidator may approve or as may be required to comply with applicable securities laws, or as may, consistently herewith, be determined by the person or persons executing such Participation Unit Certificates, as evidenced by its or their execution of the Participation Unit Certificates. Any portion of the text of any Participation Unit Certificate may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Participation Unit Certificate.

Participation Unit Certificates shall be typewritten, printed, lithographed or engraved or otherwise produced, all as determined by the person or persons executing such Participation Unit Certificates, as evidenced by its or their execution of such Participation Unit Certificates.

2.3 Characterization and Denomination of Certificates

The Common Share Certificates, and the Participation Unit Certificates issued from time to time hereunder, shall be in registered form and shall entitle the holder thereof to participate in amounts on deposit, if any, in the Certificate Payment Account and distributable to the Certificateholders, in accordance with, and subject to, the terms of the Plan, the OBCA Sanction Order, the Escrow Agreement and this Agreement. The initial register for the Certificates shall be identical to the register of Shareholders as of the date of, and immediately prior to, the Arrangement, as provided by CIBC Mellon Trust Company to the Liquidator on the Plan Implementation Date. Each Participation Unit Certificate shall be issuable in a minimum denomination of one Participation Unit.

2.4 Cancellation Date; No Interest; Certificates

Each Common Share Certificate shall be deemed to be issued on and dated the Plan Implementation Date and each Participation Unit Certificate shall be dated the date of issue. Certificates shall be deemed to be cancelled on the Cancellation Date. Interest shall not accrue or be payable in respect of amounts, if any, distributed under a Certificate. No person other than Distributionco shall have any obligations or liability to the Certificateholders in respect of the Certificates or amounts payable thereunder; provided, however, that the Liquidator shall be obligated to distribute to the Certificateholders, on behalf of Distributionco, such monies as are released to Distributionco from the Escrow Account pursuant to the Escrow Agreement and which are distributable to the Certificateholders under the terms of the Plan, the OBCA Sanction Order, the Escrow Agreement and this Agreement. The Certificates shall not constitute debt obligations of Distributionco.

2.5 Ranking of Certificates

The Common Share Certificates as of the Plan Implementation Date, and the Participation Unit Certificates issued hereunder as soon as such Participation Units are issued and certified by the Liquidator in accordance with this Agreement, shall rank *pari passu* with each other as if all such Certificates had been issued and, if applicable, certified simultaneously.

2.6 Signing of Participation Unit Certificates

Participation Unit Certificates shall be signed by the Liquidator on behalf of Distributionco (either manually or by facsimile signature).

2.7 Certification by Liquidator

- (a) The Liquidator shall certify the Participation Unit Certificates to be issued pursuant to this Agreement.
- (b) No Participation Unit Certificate shall be issued or, if issued, shall be obligatory or entitle the holder to the benefit hereof until it has been certified by the Liquidator substantially in the form of the certificate set out in Schedule A hereto or in some other form approved by the Liquidator. Such certification by the Liquidator on any Participation Unit Certificate shall be conclusive evidence that the Participation Unit Certificate so certified has been duly issued hereunder and that the holder is entitled to the benefit hereof and thereof.
- (c) The certificate of the Liquidator on the Participation Unit Certificates shall not be construed as a representation or warranty by the Liquidator as to the validity of this Agreement or of the Participation Unit Certificates (except the due certification thereof and any other warranties imposed by Law) and the Liquidator shall in no respect be liable or answerable for the use made of the Participation Unit Certificates or any of them or of the proceeds thereof.

2.8 Replacement of Certificates

- (a) In case any Certificate is mutilated or lost, destroyed or stolen, and in the absence of notice to the Liquidator that such Certificate has been acquired by a *bona fide* purchaser (as defined in the OBCA), subject to Section 2.8(b), the Liquidator shall issue, on behalf of Distributionco, and upon payment of the amounts specified in Section 4.3, certify and deliver, a new Participation Unit Certificate, in the case of a Common Share Certificate on the basis that each Common Share represents one Participation Unit, and in the case of Certificates generally of like tenor as the one mutilated, lost, destroyed or stolen in exchange for and upon surrender and cancellation of such mutilated Certificate or in lieu of and in substitution for such lost, destroyed or stolen Certificate, and the new Participation Unit Certificate shall be entitled to the benefit hereof and rank equally in accordance with its terms with all other Certificates. The new Participation Unit Certificate shall be dated the date of the mutilated, lost, destroyed or stolen Certificate.
- (b) The applicant for the issue of a new Participation Unit Certificate pursuant to this Section 2.8 in case of mutilation, loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Liquidator such evidence of ownership and of the mutilation, loss, destruction or theft of the Certificate so lost, destroyed or stolen as is satisfactory to the Liquidator in its discretion and such applicant shall also furnish an indemnity and/or surety bond, in amount and

form, and issued by such surety bonding company, as is reasonably satisfactory to the Liquidator in its discretion.

- (c) For each new Participation Unit Certificate delivered to a Certificateholder pursuant to this Section, the Certificateholder shall pay the Liquidator an administration fee of \$50 per Certificate.

2.9 Distributions

- (a) Except as otherwise provided in Section 2.10(a) and Section 2.11, as amounts become available for distribution under each Certificate, the Liquidator, on behalf of Distributionco, will on the Distribution Date relating thereto send or cause to be sent, by prepaid ordinary mail, a cheque for such amount payable to the holder of each Certificate and addressed to the holder at the holder's last address appearing on the register as of the Record Date in respect of all other Certificates, unless otherwise directed in writing by the holder of a Certificate.
- (b) The forwarding of such cheque will satisfy and discharge the obligation of Distributionco or the Liquidator to make such distribution under such Certificate to the extent of the sum represented thereby unless such cheque is not paid or honoured on presentation at any place where such amount is payable. Notwithstanding the foregoing, in the event of the non-receipt of any such cheque by the holder of such Certificate or the loss, theft or destruction thereof, the Liquidator, upon being furnished with reasonable evidence of such non-receipt, loss, theft or destruction and an indemnity and/or surety bond, in an amount and form, and made by such surety or bonding company as is reasonably satisfactory to the Liquidator, in its discretion, will issue to such holder a replacement cheque for the amount of such cheque.

2.10 Payment Based on Register

- (a) Where Certificates are registered in more than one name, any amount from time to time payable in respect thereof may be paid by cheque payable to the order of all such holders and addressed to the holder named first in the register at such holder's last address appearing on the register for such Certificates on the Record Date for such payment, failing written instructions from them to the contrary, and such payment will be a valid discharge to Distributionco and to the Liquidator, except to the extent any such cheque is not paid or honoured on presentation at any of the places where such amounts are payable.
- (b) The registered holder for the time being of any Certificate shall be entitled to all amounts paid thereunder, free from all equities or rights of set off or counterclaim between Distributionco and the original or any intermediate holder thereof (except any equities of which Distributionco is required to take notice by Law, by statute or by order of a court of competent jurisdiction) and all persons may act accordingly, and the payment to any such holder of any such amount will satisfy and discharge the liability of Distributionco and the Liquidator for the same, and neither Distributionco nor the Liquidator will be bound to enquire into the title of any such holder.

2.11 Withholding Taxes

- (a) In the event that any withholding or deduction from any payment to be made or deemed to be made under the Certificates by Distributionco or the Liquidator to a Certificateholder who is not a resident of Canada is required in respect of any present or future taxes, levies, imposts, deductions, charges or withholdings, and liabilities with respect thereto imposed by Canada or any other jurisdiction (or any other political subdivision or taxing authority thereof or therein) ("Withholding Taxes") pursuant to any applicable Law, rule or regulation or the interpretation thereof by the relevant Governmental Body, then the Liquidator will:
 - (i) withhold or deduct, as applicable, such amount from such payment;
 - (ii) pay or cause to be paid directly to the relevant Governmental Body and within the time required the full amount withheld or deducted; and
 - (iii) promptly when due forward or cause to be forwarded to the Certificateholder an official receipt or other documentation evidencing such payment to such authority.
- (b) In addition to the rights of the Liquidator described in Section 2.11(a) above, the Liquidator is entitled to withhold from any payments made by it to or for the account of a Certificateholder who is not a resident of Canada an amount equal to any Withholding Taxes which the Liquidator was required by Law to withhold from any payments previously made to such Certificateholder (plus any statutory interest and penalties payable by the Liquidator in connection with such Withholding Taxes) to the extent that such withholding was not made by it from such previous payments. The Liquidator will pay or cause to be paid all such withholdings to the relevant Governmental Body and forward or cause to be forwarded to the Certificateholder an official receipt evidencing such payment.
- (c) For greater certainty, the aggregate payments required to be made pursuant to this Agreement to a Certificateholder who is not a resident of Canada shall be net of the withholdings or deductions referred to in this Section.
- (d) The Liquidator will prepare all necessary filings and information returns in respect of interest income on the Sears Variable Note (including Interest thereon, Default Interest, if any, and Income) earned by Certificateholders as well as all other filings and information returns required in respect of the Participation Units.
- (e) Without prejudice to the survival of any other agreement contained herein, the agreements and obligations contained in this Section shall survive the payment of any amounts distributable hereunder and the termination of this Agreement.

ARTICLE 3

CERTIFICATES

3.1 Designation, Terms and Form of Certificates

The Certificates governed by this Agreement shall:

- (a) be comprised of a maximum of 24,430,000 Participation Units in the aggregate; and
- (b) be deemed to be cancelled and of no further force or effect as of the Cancellation Date.

3.2 Issue of Certificates

On or after the Plan Implementation Date, Common Share Certificates shall represent and be deemed to represent Participation Units on the basis that each Common Share represents one Participation Unit with the result that it will not be necessary for Distributionco to issue certificates representing Participation Units to persons entitled to receive Participation Units.

3.3 Deposits to and Distributions from Certificate Payment Account

- (a) Distributionco shall cause any Escrowed Funds released to it, as agent and nominee of the Certificateholders, from the Escrow Account pursuant to the Escrow Agreement, to be directly received by the Liquidator for deposit in the Certificate Payment Account and investment in accordance with Section 8.7; provided that if any such amounts are directly received by Distributionco, Distributionco shall, forthwith upon receipt of same, remit such amounts to the Liquidator for deposit as aforesaid.
- (b) The Liquidator, on behalf of Distributionco, shall cause any amount (a "Distribution Amount") credited or required to be credited to the Certificate Payment Account, together with Income thereon, to be distributed as follows:
 - (i) Firstly, to the Liquidator to pay any amounts for which the Liquidator is entitled to be reimbursed pursuant to the OBCA Sanction Order in respect of this Agreement, including those amounts specified in Section 8.2 and Section 9.1, which have not been deducted previously from the Certificate Payment Account or a Distribution Amount.
 - (ii) Secondly, to Distributionco to pay any amounts for which Distributionco is entitled to be reimbursed pursuant to the OBCA Sanction Order in respect of this Agreement, including those amounts specified in Section 8.2 and Section 9.1, which have not been deducted previously from the Certificate Payment Account or a Distribution Amount; and
 - (iii) Thirdly, after giving effect to paragraphs (i) and (ii) above, to the Certificateholders under the Certificates up to the Maximum Amount distributable under each such Certificate as follows:

- (A) Forthwith and in any event within ten Business Days of the release of any Escrowed Funds to Distributionco, as agent and nominee of the Certificate holders, from the Escrow Account pursuant to the Escrow Agreement, the Liquidator shall cause a notice (a "Distribution Notice") to be sent by facsimile or by any other method provided in Section 10.2 hereof to the Certificateholders indicating the intention of the Liquidator to distribute the remainder of the Distribution Amount. The Distribution Notice shall specify the Record Date and the date, which shall be no more than 15 Business Days following receipt of the Distribution Amount (the "Distribution Date"), on which the Liquidator, on behalf of Distributionco, will cause the remainder of the Distribution Amount to be paid to the Certificateholders.
 - (B) On the Distribution Date, the Liquidator, on behalf of Distributionco, shall cause payment to be made to each Certificateholder of its share, if any, of the remainder of the Distribution Amount up to a maximum of the Maximum Amount payable in respect of each Certificate (pro-rata based on the number of Participation Units held by such Certificateholder in relation to the Participation Units held by all Certificateholders if such amount is insufficient to pay each Certificateholder such amount in full).
 - (C) Until such time as the Certificateholders have been paid an amount equal to the Maximum Amount payable in respect of each Certificate or the amounts credited and required to be credited to the Certificate Payment Account have been applied to the payment of amounts under the Certificates in accordance with the provisions of Section 3.3(a) and Section 3.3(b), such amounts shall be, and shall be deemed to be, held by the Liquidator, separate and apart from the other property of Distributionco for the benefit of the Certificateholders in accordance with the priorities set forth herein.
- (c) All amounts (including any Income thereon) deposited to the Certificate Payment Account and not claimed by and paid or payable as provided in this Agreement to the holders of Certificates within six years after the date on which the payment, if any, was to be made shall, subject to applicable Law, be remitted to Distributionco for its own account. Upon such remittance, the Liquidator and Distributionco shall be released from any further obligation to the Certificateholders in respect of such funds and thereafter the Certificateholders in respect of which such funds were allocated, if any, shall have no rights in respect thereof and the relevant Certificates shall be of no further force or effect and deemed to be cancelled.

ARTICLE 4
REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP

4.1 Fully Registered Certificates

- (a) The Liquidator shall cause to be kept a central register at its principal office in Toronto, or at such other place or places as the Liquidator may designate. The register shall contain all particulars required by Law, including the names and latest known addresses of the holders of Certificates and particulars of the Certificates held by them, of all transfers of such Certificates and of all cancellations or deemed cancellation of such Certificates. The initial register for the Certificates shall be identical to the register of Shareholders as of the date of, and immediately prior to, the Arrangement, as provided by CIBC Mellon Trust Company to the Liquidator on the Plan Implementation Date. The registration of any Participation Unit Certificate shall be certified on such Participation Unit Certificate by the Liquidator.
- (b) No transfer of a Certificate shall be recognized by Distributionco or the Liquidator unless and until made on the register herein provided for by the registered holder or such holder's executors, administrators or other legal representatives or his or their attorney duly appointed by an instrument in writing in form and execution satisfactory to the Liquidator, in its discretion, and upon compliance with such reasonable requirements as the Liquidator may prescribe, and unless the name of the transferee shall have been certified on the Certificate by the Liquidator.

4.2 Exchange of Certificates

- (a) Subject to Section 4.4, Certificates representing any number of Participation Units may be exchanged upon reasonable notice for Certificates of the same aggregate number of Participation Units in any other authorized number.
- (b) Certificates may be exchanged at the principal office of the Liquidator in Toronto or at such other place or places as the Liquidator may designate. Any Certificate tendered for exchange shall be surrendered and cancelled. The Liquidator, on behalf of Distributionco, shall execute and the Liquidator shall certify all Certificates necessary to carry out such exchanges as aforesaid.

4.3 Charges for Transfer and Exchange

For each Certificate exchanged or transferred and subject to any limitation prescribed by Law, the Liquidator may require the payment of any transfer or stamp tax or other governmental charge required to be paid by the party requesting such exchange or transfer as a condition precedent thereto. In addition, the holder requesting such exchange or transfer shall pay the Liquidator an administration fee equal to \$50 per Certificate submitted for exchange or transfer.

4.4 Closing of Registers

Neither Distributionco nor the Liquidator shall be required:

- (a) to make transfers or exchanges of any Certificate on any day from a Record Date to the related Distribution Date (inclusive);
- (b) to make transfers or exchanges of any Certificate in respect of which the Maximum Amount payable has been paid; or
- (c) to make transfers or exchanges of any Certificate on and after the date of the Termination Order.

4.5 Ownership of Certificates

- (a) Unless otherwise required by Law, the person(s) in whose name(s) any Certificate is registered shall for all purposes of this Agreement be deemed to be the owner(s) thereof and payment under such Certificate shall be made only to or upon the order in writing of such registered holder(s) as provided herein.
- (b) Neither Distributionco nor the Liquidator shall be bound to take notice of or see to the performance or observance of any duty owed to a third person, whether under a trust, express, implied, resulting or constructive, in respect of any Certificate or otherwise, by the registered holder or any person whom Distributionco or the Liquidator treats, as permitted or required by Law, as the owner or the registered holder of such Certificate, but shall transfer the same on the direction of the person so treated or registered as the holder thereof, whether named as trustee or otherwise, as though that person were the beneficial owner thereof.
- (c) Distributionco and the Liquidator may treat the registered holder of any Certificate as the owner thereof without actual production of such Certificate for the purpose of any requisition, direction, consent, instrument or other document.

ARTICLE 5

COVENANTS AND REPRESENTATIONS AND WARRANTIES

5.1 Covenants of Distributionco

On or after the Plan Implementation Date, the Liquidator, on behalf of Distributionco, shall perform and observe each of the following covenants:

- (a) **Certificate Payment Account.** The Liquidator, on behalf of Distributionco, shall establish the Certificate Payment Account.
- (b) **Enforcement of the Sears Variable Note and Escrow Agreement.** Subject to the OBCA, the OBCA Sanction Order and Article 8, the Liquidator, on behalf of Distributionco, shall take all actions necessary and available to it to enforce its and Distributionco's rights under the Sears Variable Note and/or the Escrow Agreement.

5.2 Waiver of Certain Covenants

The Liquidator may omit in any particular instance to comply with any term, provision or condition to which the Liquidator is subject with respect to the Certificates if before the time for

such compliance the Liquidator shall have obtained the consent in writing of the Certificateholders by Extraordinary Resolution, but no such consent shall have the effect of amending the Plan or the Sanction Order nor shall it extend to or affect such term, provision or condition except to the extent expressly so consented to, and, until such consent becomes effective, the obligations of the Liquidator and the duties of the Liquidator in respect of any such term, provision or condition shall remain in full force and effect.

ARTICLE 6

SATISFACTION AND DISCHARGE

6.1 Cancellation and Destruction

Each Certificate in respect of which the Maximum Amount has been paid shall, forthwith upon the final payment, be deemed to be of no further force or effect and shall be deemed to have been cancelled with no other action on the part of the Certificateholder, Distributionco or the Liquidator except that the Liquidator shall note, or cause the notation of, the cancellation of such Certificate on the register. Upon the issuance of the Termination Order, all outstanding Certificates shall, forthwith upon the final payment thereunder, if any, pursuant to Section 3.3, be deemed to be of no further force or effect and shall be deemed to have been cancelled with no other action on the part of the Certificateholders, Distributionco or the Liquidator except that the Liquidator shall note, or cause the notation of, the cancellation of all Certificates on the register. Failure of the Liquidator to note, or cause the notation of, the cancellation of the Certificates as required pursuant to this Section 6.1 shall not affect the cancellation of such Certificates.

6.2 Release from Covenants

Upon indefeasible payment of the Maximum Amount payable under each Certificate, or upon receipt of the Termination Order by the Liquidator, and, in each case, upon payment of all costs, charges and expenses properly incurred or claimable by the Liquidator or Distributionco under the OBCA Sanction Order, the Escrow Agreement and/or this Agreement or upon provision satisfactory to the Liquidator and Distributionco being made therefor, each of the Liquidator and Distributionco shall be deemed to be released from its respective obligations and duties hereunder and under the Certificates.

ARTICLE 7

SUPPLEMENTAL ADMINISTRATION AGREEMENTS

7.1 Supplemental Administration Agreements Without Consent of Holders

For so long as there is a Liquidator, Distributionco and the Liquidator may, at any time and from time to time, without the consent of any Certificateholders, enter into one or more administration agreements supplemental hereto, in form satisfactory to the Liquidator, for any of the following purposes:

- (a) to make any additions to, deletions from or alterations of the provisions of this Agreement or the Certificates that are necessary in order to comply with applicable Law provided, however, that such additions, deletions or alterations shall not adversely affect the interests of the holders of Certificates to any greater

extent than required to comply with applicable Law or have the effect of amending the Plan or the OBCA Sanction Order;

- (b) to cure any ambiguity, error or omission, or to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, provided, however, that such action shall not adversely affect the interests of any holder of Certificates or have the effect of amending the Plan or the OBCA Sanction Order; or
- (c) to add to or alter the provisions hereof in respect of the registration and transfer of Certificates solely for the purpose of making provision for the issue of Certificates in forms or denominations other than those herein provided for and for the exchange of Certificates of different forms and denominations or making any modification in the form of the Certificates which does not affect the substance thereof or have the effect of amending the Plan or the OBCA Sanction Order.

Distributionco and the Liquidator may correct any typographical, mathematical or other manifest error in this Administration Agreement, if in the opinion of the Liquidator such corrections will not adversely affect the rights of the Liquidator or the interests of any holder of Certificates or have the effect of amending the Plan or the OBCA Sanction Order, and Distributionco and the Liquidator may execute all such documents, including administration agreements supplemental hereto, as may be necessary to correct such errors.

7.2 No Other Supplemental Administration Agreements

Neither Distributionco nor the Liquidator shall enter into any supplemental administration agreement except for the purposes described in Section 7.1.

7.3 Execution of Supplemental Administration Agreements

In executing any supplemental administration agreement permitted by this Article, the Liquidator shall be entitled to receive, and shall be fully protected in relying upon, an opinion of its legal advisors stating that the execution of such supplemental administration agreement is authorized or permitted by this Agreement. The Liquidator may, but shall not be obligated to, enter into any such supplemental administration agreement which affects the Liquidator's own rights, duties or immunities under this Agreement or otherwise.

7.4 Effect of Supplemental Administration Agreements

Upon the execution of any supplemental administration agreement under this Article, this Agreement shall be modified in accordance therewith, and such supplemental administration agreement shall form a part of this Agreement for all purposes; and every holder of Certificates theretofore or thereafter, in the case of Participation Unit Certificates certified and issued hereunder, and in the case of Common Share Certificates deemed to be issued hereunder, shall be bound thereby.

ARTICLE 8

ADMINISTRATION

8.1 Liquidator and Distributionco May Require Indemnity

Neither the Liquidator nor Distributionco will be obliged to take any measures to enforce this Agreement or any covenant herein contained, including the commencement or continuance of any suit or proceeding to enforce payment of the Sears Variable Note or the Escrow Agreement or the rights of the holders of Participation Units to receive monies thereunder, unless the Liquidator has been provided by or on behalf of one or more of the Certificateholders with (a) funds for that purpose that are considered by the Liquidator to be sufficient and supplied on terms and conditions acceptable to the Liquidator and (b) indemnities acceptable to the Liquidator. In no circumstances shall the Liquidator or Distributionco be required to expend or risk its funds or other assets.

8.2 Liquidator May Employ Assistants

The Liquidator, on its own behalf and on behalf of Distributionco, may employ or retain such agents, legal counsel and other assistants as it may reasonably require for the proper discharge of its duties and determination of its rights hereunder and may pay reasonable remuneration and disbursements for all services performed for the Liquidator or Distributionco, which remuneration and disbursements may be reimbursed from any Distribution Amounts, to the extent of available funds, in the Certificate Payment Account, in accordance with Section 3.3(b).

8.3 Liquidator May Act on Opinions or Advice

Except as otherwise provided herein, the Liquidator, on its own behalf and on behalf of Distributionco may, in relation to this Agreement, act and rely on the opinion or advice of or on information obtained from any legal counsel, notary, valuer, surveyor, engineer, broker, auctioneer, accountant or other expert, whether obtained by the Liquidator or otherwise.

8.4 Liquidator May Rely upon Declarations

In the exercise of its rights and duties, the Liquidator may, if it is acting in good faith, act and rely, as to the truth of the statements and accuracy of the opinions expressed therein, upon a statutory declaration, opinion, report, request, direction, instruction, certificate or other document furnished to the Liquidator in connection with this Agreement where the Liquidator examines the same and determines that it complies with the applicable requirement, if any, of this Agreement.

8.5 Liquidator May Act on Instruments Believed Genuine

The Liquidator will not be bound to act in accordance with any resolution of the Certificateholders until an executed copy of the resolution has been delivered to the Liquidator, and the Liquidator will be empowered to act upon any such instrument purporting to be authenticated and believed by the Liquidator to be genuine.

8.6 No Person Dealing with Liquidator Need Enquire

No person dealing with the Liquidator need be concerned to enquire whether the powers that the Liquidator is purporting to exercise have become exercisable, or whether any money

remains due upon the Certificates, or to see to the application of any money paid to the Liquidator.

8.7 Investment of Monies

Any monies to be held by the Liquidator in the Certificate Payment Account pending the distribution or withdrawal thereof under any provisions of this Agreement shall be invested in Authorized Investments by the Liquidator in the name of Distributionco for the benefit of the Certificateholders. Unless otherwise specifically provided herein, all interest, income, accretions and proceeds accrued or realized and retained by the Liquidator in respect of such deposits and investments ("Income") shall be held for the benefit of the Certificateholders, in accordance with, and subject to, the terms of the Plan, the OBCA Sanction Order, the Escrow Agreement and this Agreement, until distribution thereof. Any securities, documents of title or other instruments that may at any time be held by the Liquidator subject to the provisions hereof may be placed in the deposit vaults of any Canadian chartered bank listed in Schedule I of the *Bank Act* (Canada) or deposited for safekeeping with any such bank.

ARTICLE 9

THE LIQUIDATOR AND DISTRIBUTIONCO

9.1 Liquidator's and Distributionco's Remuneration and Expenses

- (a) With respect to each distribution to the Certificateholders pursuant to Section 3.3, the Liquidator shall be entitled to be paid from the Certificate Payment Account, \$25 in respect to each cheque issued and mailed (inclusive of cheque reconciliation services and exclusive of out-of-pocket expenses) with a minimum fee of \$500 per distribution.
- (b) Distributionco and, in addition to the foregoing, the Liquidator shall be entitled to payment or reimbursement pursuant to the terms hereof, upon its request, for all reasonable expenses and disbursements incurred by the Liquidator or Distributionco, as the case may be, in the administration or execution of this Agreement (including the reasonable fees and disbursements of its counsel and all other advisers and assistants not regularly in its employ) until all duties of the Liquidator or Distributionco, as the case may be, under this Agreement are finally and fully performed, except any such expense, disbursement or advance that arises from negligence or bad faith on the part of the Liquidator or Distributionco, as the case may be.
- (c) Each of Distributionco and the Liquidator shall be entitled to be reimbursed from any Distribution Amounts and, to the extent of available funds, from the Certificate Payment Account, for any amounts relating to expenses and disbursements for which the Liquidator or Distributionco, as the case may be, is entitled to be reimbursed under this Section 9.1, in accordance with Section 3.3(b).

9.2 Liquidator Not Required to Give Security

The Liquidator is not required to give security for its conduct or administration hereunder.

9.3 Protection of Liquidator

It is expressly declared and agreed as follows:

- (a) the Liquidator will not be liable for or by reason of any statements of facts or recitals in this Agreement or in the Certificates (except the representation contained in the certificate of the Liquidator on the Certificates) or be required to verify the same, but all such statements or recitals are deemed to be made by Distributionco;
- (b) nothing herein contained will impose any obligation on the Liquidator to see to or to require evidence of registration or filing (or renewals thereof) of this Agreement or any instrument ancillary or supplemental hereto; and
- (c) the Liquidator will not be bound to give any notice of the execution hereof.

9.4 Disclaimer of Liability

Neither the Liquidator nor Distributionco, nor any of their respective directors, officers, employees or agents, makes or shall be required to make any representation or gives or shall be required to give any warranty with respect to the issuance or ability to transfer the Certificates or as to the existence of a secondary market or the value of the Certificates or the amount, if any, to be paid with respect thereto or the compliance with applicable Law, if any, in the creation, issuance and/or transfer of the Certificates. The Certificateholders shall have no rights of recourse to, and waive any claims they may now or hereafter have against, and this Section 9.4 may be relied upon by, the Liquidator and Distributionco, or any of their respective directors, officers, employees or agents, by way of statute, common law, equity or otherwise, other than to or in respect of payments, if any, paid under the Certificates.

9.5 This Agreement; OBCA; OBCA Sanction Order

Nothing contained in this Agreement shall in any manner limit any of the powers, privileges, rights, remedies, authorities, immunities or protections granted or afforded to the Liquidator under the OBCA, the OBCA Sanction Order or any other order of the Court.

ARTICLE 10 NOTICES

10.1 Notice to Distributionco or the Liquidator

Any notice to Distributionco or the Liquidator under the provisions hereof will be valid and effective if in writing and (i) delivered at 90 Eglinton Avenue East, Suite 700, Toronto, Ontario, M4P 2Y3 to the attention of Robert Harlang, or (ii) sent by facsimile at (416) 932-6200 to the attention of Robert Harlang, and, subject as provided in this Section 10.1, will be deemed to have been given at the time of delivery or sending by facsimile. Any delivery made or

facsimile sent on a day other than a Business Day, or after 4:30 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the next following Business Day.

10.2 Notice to Certificateholders

Any notice under the provisions hereof to the Certificateholders will be valid and effective if delivered in accordance with such instructions as are provided in writing to the Liquidator and where no such instructions are provided, if in writing and delivered, by overnight courier, or sent by facsimile communication, in each case addressed to the Certificateholders at their addresses or facsimile communication numbers, if any, appearing in the register hereinbefore mentioned and, subject as provided in this Section 10.2, will be deemed to have been given at the time of delivery or sending by facsimile. Any notices to joint holders of any definitive Certificate may be given to whichever one of the holders thereof is named first in the register hereinbefore mentioned, and any notice so given shall be sufficient notice to all holders of such Certificate.

ARTICLE 11 MEETINGS OF CERTIFICATEHOLDERS

11.1 Right to Convene Meeting

The Liquidator shall on receipt of a Certificateholders' Request and upon receipt of sufficient funds or being indemnified to its reasonable satisfaction by the Certificateholders signing such Certificateholders' Request, as the case may be, against the costs that may be incurred in connection with the calling and holding of such meeting, convene a meeting of the Certificateholders. Every such meeting will be held in the City of Toronto or at such other place as may be approved or determined by the Liquidator.

11.2 Notice

At least five Business Days' notice of any meeting must be given to the Certificateholders in the manner provided in Article 10. Such notice must state the time when and the place where the meeting is to be held and set out the general nature of the business to be transacted thereat. It is not necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Article 11.

11.3 Chair

An individual, who need not be a Certificateholder, nominated in writing by the Liquidator, will chair the meeting. If no individual is so nominated, or if the individual so nominated is not present within 15 minutes after the time fixed for the holding of the meeting, the Certificateholders present in person or by proxy may choose an individual present to chair the meeting.

11.4 Quorum

Subject to the provisions of Section 11.12:

- (a) at any meeting of Certificateholders, a quorum will consist of at least two Certificateholders present in person or by proxy and representing at least 25% of the Participation Units represented by all outstanding Certificates; and
- (b) if a quorum of the Certificateholders is not present within 30 minutes after the time fixed for holding the meeting, such meeting, if convened by the Certificateholders or on a Certificateholders' Request, must be dissolved. If otherwise convened, the meeting will be adjourned without notice to the same day in the next week (unless such day is not a Business Day in which case it shall stand adjourned to the next following Business Day thereafter) at the same time and place, unless the chair appoints some other place, day or time, of which not less than five Business Days' notice must be given in the manner provided in Article 10. At the adjourned meeting, the Certificateholders present in person or by proxy will constitute a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent 25% of the Participation Units represented by all outstanding Certificates.

11.5 Power to Adjourn

The chair of any meeting at which a quorum of the Certificateholders is present may, with the consent of the holders of a majority of the Participation Units represented by the Certificates represented thereat, adjourn any such meeting and no notice of such adjourned meeting need be given except such notice, if any, as the meeting so adjourned may prescribe.

11.6 Show of Hands

Every question submitted to a meeting will be decided in the first place by a majority of the votes given on a show of hands except that votes on Extraordinary Resolutions must be given in the manner hereinafter provided. At any such meeting, unless a poll is duly demanded as herein provided, a declaration by the chair that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority will be conclusive evidence of the fact.

11.7 Poll

On every Extraordinary Resolution, and on any other question submitted to a meeting when demanded after a vote by show of hands by the chair or by any Certificateholders acting in person or by proxy, a poll must be taken in such manner as the chair directs. Questions other than Extraordinary Resolutions will, if a poll is taken, be decided by the votes of the holders of a majority of the Participation Units represented by the Certificates represented at the meeting and voted on the poll.

11.8 Voting

On a show of hands every person who is present and entitled to vote, whether as a Certificateholder or as proxy for one or more absent Certificateholders or both, will have one vote. On a poll each Certificateholder present in person or represented by a proxy duly appointed by an instrument in writing will be entitled to one vote in respect of each Participation Unit of which it is then the holder. A proxy need not be a Certificateholder. In the case of joint

registered holders of a Certificates, any one of them present in person or by proxy at the meeting may vote in the absence of the other or others; but if more than one of them is present in person or by proxy, they must vote together in respect of the Certificates of which they are joint registered holders.

11.9 Regulations

The Liquidator may from time to time make or vary such regulations as it thinks fit:

- (a) providing for the form of the instrument of proxy and the manner in which the same is to be executed and the production of the authority of any person signing on behalf of a Certificateholder;
- (b) for the deposit of instruments appointing proxies at such place as the Liquidator may in the notice convening the meeting direct, and the time before the holding of the meeting, or adjourned meeting, when the same must be deposited; and
- (c) enabling particulars of such instruments appointing proxies to be mailed, cabled or sent by any other means of electronic communication before the meeting to the Liquidator at the place where the same is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting.

Any regulations so made will be binding and effective and the votes given in accordance therewith will be valid and counted. Except as otherwise provided by such regulations, the only persons who will be recognized at any meeting as the holders of any Certificates, or as entitled to vote or be present at the meeting in respect thereof, will be the registered holders of Certificates and persons duly appointed as proxy holders.

11.10 Representation at Meetings

The Liquidator, by its officers, employees and directors, and its legal and financial advisors, and the Certificateholders and their respective legal and financial advisors, may attend any meeting of the Certificateholders.

11.11 Powers Exercisable by Extraordinary Resolution

In addition to all other powers conferred upon them by the provisions of this Agreement or by Law, a meeting of the Certificateholders shall have the following powers, exercisable from time to time by Extraordinary Resolution only:

- (a) subject to Article 8, power to direct or authorize the Liquidator to exercise or refrain from exercising any power, right, remedy or authority given to it by this Agreement or the Certificates delivered pursuant hereto in any manner specified in such Extraordinary Resolution, other than the rights of remuneration, funding, reimbursement and indemnity of the Liquidator hereunder and, provided that any such directions or authorizations shall not have the effect of amending or limiting any of the powers, privileges, rights, remedies, authorities, immunities or

protections granted or afforded to the Liquidator under the OBCA Sanction Order; and

- (b) power to repeal, modify or amend any Extraordinary Resolution previously passed by the Certificateholders;

provided that (i) any proposal to modify the terms of the Certificates respecting any payments to be made thereunder or the meaning of Extraordinary Resolution shall require the unanimous approval of all holders of the Certificates, and (ii) any of the foregoing actions which constitutes an amendment to the Plan must be taken in accordance with the amendment provisions of the Plan.

11.12 Meaning of "Extraordinary Resolution"

- (a) The expression "Extraordinary Resolution" means, subject as hereinafter in this Section 11.12 and in Section 11.15 provided, a resolution passed at a meeting of Certificateholders duly convened for the purpose and held in accordance with the provisions hereof at which the majority of holders in number are present in person or by proxy and the Certificates of such holders represent $66 \frac{2}{3}\%$ of the aggregate number of Participation Units represented by all outstanding Certificates and passed by the affirmative vote of the holders of not less than 50% of the Participation Units represented by the Certificates represented at the meeting and voted thereon.
- (b) If at any such meeting the quorum specified in paragraph (a) above is not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by Certificateholders or on a Certificateholders' Request, will be dissolved; but, if otherwise convened, the meeting shall stand adjourned to such date being not less than five Business Days later, and to such place and time as may be appointed by the chair. Not less than five days' notice must be given of such adjourned meeting in the manner provided in Article 10. Such notice shall state that at the adjourned meeting the Certificateholders present in person or by proxy will constitute a quorum but it is not necessary to set forth the purposes for which the meeting was originally called. At the adjourned meeting, the Certificateholders present in person or by proxy shall constitute a quorum and may transact the business for which the meeting was originally convened and a resolution passed at such adjourned meeting and passed by the affirmative vote of the holders of not less than 50% of the Participation Units represented by the Certificates represented at the meeting and voted thereon is an Extraordinary Resolution within the meaning of this Agreement.

11.13 Powers Cumulative

Any one or more of the powers and any combination of the powers in this Agreement stated to be exercisable by the Certificateholders by Extraordinary Resolution or otherwise may be exercised from time to time and the exercise of any one or more of such powers from time to time will not be deemed to exhaust the right of the Certificateholders to exercise such powers thereafter from time to time.

11.14 Minutes

Minutes of all resolutions and proceedings at every meeting of the Certificateholders shall be made and duly entered in books to be from time to time provided for that purpose by the Liquidator at the expense of the Certificateholders, and any such minutes, if signed by the chair of the meeting at which such resolutions were passed or proceedings had, or by the chair of the next succeeding meeting of the Certificateholders, shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes shall have been made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had.

11.15 Instruments in Writing

All actions that may be taken and all powers that may be exercised by the Certificateholders at a meeting held as herein provided may also be taken and exercised by the holders of 50% of the Participation Units represented by such Certificates by an instrument in writing signed in one or more counterparts and the expression "Extraordinary Resolution" when used in this Agreement includes an instrument so signed.

11.16 Binding Effect of Resolutions

Every resolution and every Extraordinary Resolution passed in accordance with the provisions hereof at a meeting of Certificateholders or by an instrument in writing in lieu of a meeting of Certificateholders will be binding upon all Certificateholders entitled to vote at such meeting, and each Certificateholder and the Liquidator (subject to the provisions for its indemnity herein contained) shall be bound to give effect accordingly to every such resolution, Extraordinary Resolution and instrument in writing.

ARTICLE 12
EXECUTION

12.1 Counterparts and Formal Date and Effective Date

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to be effective from and after the Plan Implementation Date if approved by the Court pursuant to the OBCA Sanction Order. If this Agreement is not approved as aforesaid, it shall be of no force or effect and shall be deemed to be terminated without any further action on the part of any person as of the date of the OBCA Sanction Order.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**DISTRIBUTIONCO INC., by RICHTER &
PARTNERS INC., in its capacity as
Liquidator of Distributionco Inc. and not in
its personal capacity**

By: 

Name:

Title:

**RICHTER & PARTNERS INC., in its
capacity as Liquidator of Distributionco Inc.
and not in its personal capacity**

By: 

Name:

Title:

**SCHEDULE A to the Administration Agreement dated
December 30, 1999 between Distributionco Inc. and Richter & Partners Inc., in its capacity
as Liquidator and not in its personal capacity**

(FORM OF PARTICIPATION UNIT CERTIFICATE)

**ANY TRANSFER OF THIS CERTIFICATE IS SUBJECT TO THE PROVISIONS OF THE
ADMINISTRATION AGREEMENT, AS HEREAFTER DEFINED.**

**PARTICIPATION UNIT CERTIFICATES ISSUED TO RESIDENTS OF CANADA ARE BEING ISSUED
IN RELIANCE UPON EXEMPTIONS FROM THE PROSPECTUS AND REGISTRATION
REQUIREMENTS OF APPLICABLE CANADIAN SECURITIES LAWS. AS A RESULT,
PARTICIPATION UNIT CERTIFICATES ISSUED TO RESIDENTS OF CANADA MAY NOT BE
RESOLD TO PURCHASERS IN CANADA EXCEPT IN RELIANCE UPON AVAILABLE STATUTORY
EXEMPTIONS FROM THE APPLICABLE PROSPECTUS AND REGISTRATION REQUIREMENTS.**

**PARTICIPATION UNIT CERTIFICATES ISSUED TO RESIDENTS OF THE UNITED STATES WILL
NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "U.S.
SECURITIES ACT"), AND ARE BEING ISSUED IN RELIANCE UPON THE EXEMPTION FROM
REGISTRATION PROVIDED BY SECTION 3(a)(10) OF THE U.S. SECURITIES ACT. PARTICIPATION
UNIT CERTIFICATES ISSUED TO A RESIDENT OF THE UNITED STATES WHO IS NEITHER AN
AFFILIATE, FOR PURPOSES OF THE U.S. SECURITIES ACT, OF EATON'S PRIOR TO THE
IMPLEMENTATION OF THE PLAN NOR AN AFFILIATE OF DISTRIBUTIONCO AFTER THE
IMPLEMENTATION OF THE PLAN (A "RELEVANT AFFILIATE") MAY BE RESOLD WITHOUT
RESTRICTION UNDER THE U.S. SECURITIES ACT SO LONG AS SUCH PERSON IS NOT AN
AFFILIATE OF DISTRIBUTIONCO AT THE TIME OF SUCH RESALE. ANY RESALE OF
PARTICIPATION UNIT CERTIFICATES TO A PERSON WHO IS A RELEVANT AFFILIATE WILL BE
SUBJECT TO RESALE RESTRICTIONS UNDER THE U.S. SECURITIES ACT.**

**PARTICIPATION UNIT CERTIFICATES ISSUED TO RESIDENTS OF JURISDICTIONS OTHER
THAN CANADA AND THE UNITED STATES MAY BE SUBJECT TO RESALE RESTRICTIONS.**

No. ●

Participation Units: ●

**DISTRIBUTIONCO INC.
PARTICIPATION UNIT CERTIFICATE**

Distributionco Inc. (formerly known as 1381052 Ontario Inc.) ("Distributionco") hereby agrees to distribute to _____, its share, if any, of any Distribution Amount on the Distribution Date therefor, if any, together with Income thereon, in accordance with the provisions of the Administration Agreement (as hereinafter defined), in lawful money of Canada, in the manner provided in the Administration Agreement (unless this Participation Unit Certificate has been previously cancelled or deemed to have been cancelled or to be of no further force and effect in accordance with the provisions of the Administration Agreement) without the necessity of notation of such payments hereon. Interest shall not accrue or be payable in respect of any amount distributed under this Participation Unit Certificate. Distributions hereunder shall be made by the Liquidator, on behalf of Distributionco, sending or causing to be sent a cheque to the holder of this Participation Unit Certificate by prepaid ordinary mail addressed to such holder's last address appearing on the register as of the Record Date, all in accordance with the Administration Agreement.

This Participation Unit Certificate is one of the Certificates designated as Participation Unit Certificates (the "Participation Unit Certificates") issued or to be issued under an administration agreement dated as of December 30, 1999 between Distributionco and Richter & Partners Inc. (the "Liquidator"), as amended, supplemented or varied from time to time (such administration agreement, as so amended, supplemented or varied, is herein referred to as the "Administration Agreement"), to which Administration Agreement and all administration agreements and all instruments supplemental thereto reference is made for a description of the terms and conditions upon which the Participation Unit Certificates are issued and held and the rights of the holders of the Participation Unit Certificates, Distributionco and the Liquidator, all to the same effect as if the provisions of the Administration Agreement and all instruments supplemental thereto were herein set forth, to all of which the holder, by acceptance hereof, assents.

Each Participation Unit represents a unit of Participation allocated a Shareholder on the basis of one unit per Common Share held by such Shareholder and representing a *pari passu* beneficial ownership interest in the proceeds of the Sears Variable Note and any payment thereof after deducting any payment payable to the Liquidator and Distributionco pursuant to the OBCA Sanction Order, the Escrow Agreement and the Administration Agreement.

Capitalized terms and expressions defined in the Administration Agreement and not otherwise defined herein shall, when used in this Participation Unit Certificate, have the same meanings as are ascribed thereto in the Administration Agreement.

This Participation Unit Certificate shall rank *pari passu* with the Common Share Certificates and with each Participation Unit Certificate issued and certified in accordance with the Administration Agreement, as if all such Certificates had been issued and, if applicable, certified simultaneously. The Participation Unit Certificates and the Common Share Certificates are direct obligations of Distributionco. The Participation Unit Certificates and the Common Share Certificates do not constitute debt obligations of Distributionco.

Upon presentment at the principal office of the Liquidator in the City of Toronto, Ontario, and payment of the Liquidator's administration fee (as prescribed by the Administration Agreement), subject to the provisions of the Administration Agreement and upon compliance with the reasonable requirements of the Liquidator, (i) Participation Unit Certificates representing any number of Participation Units may be exchanged for Participation Unit Certificates representing any other authorized denomination of Participation Units in the same aggregate number of Participation Units represented by the Participation Unit Certificates submitted for exchange, and (ii) a Participation Unit Certificate may be transferred by the registered holder thereof or its executors, administrators or other legal representatives or its attorney duly appointed in writing, but no such transfer of a Participation Unit Certificate shall be valid as against Distributionco unless it has been duly certified on one of the registers maintained for that purpose.

This Participation Unit Certificate will not become obligatory for any purpose until it is certified by the Liquidator for the time being under the Administration Agreement.

IN WITNESS WHEREOF Distributionco has caused this Participation Unit Certificate to be signed as of _____ which date shall be deemed to be the date of issue hereof.

**DISTRIBUTIONCO INC., by Richter &
Partners Inc., in its capacity as Liquidator of
Distributionco Inc. and not in its personal
capacity**

By: _____

Name:

Title:

(FORM OF LIQUIDATOR'S CERTIFICATE)

This Certificate is one of the Participation Unit Certificates referred to in the Administration Agreement within mentioned.

**RICHTER & PARTNERS INC., in its
capacity as Liquidator of Distributionco Inc.
and not in its personal capacity**

By: _____

Name:

Title: i

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.O. 1990, c. B-16, s. 182, AS AMENDED

AND IN THE MATTER OF AN APPLICATION BY THE T. EATON COMPANY LIMITED RELATING TO A PROPOSED ARRANGEMENT INVOLVING THE
T. EATON COMPANY LIMITED AND ITS SECURITYHOLDERS AND 1381052 ONTARIO INC.

Applicant

Court File No. 99-CL-3514

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

ORDER

FASKEN MARTINEAU DUMOULIN LLP
Suite 4200, TD Bank Tower
Box 20, Toronto-Dominion Centre
Toronto, Ontario
M5K 1N6

Edmond F.B. Lamek [LSUC No. 33338U]
Carole J. Hunter [LSUC No. 43087I]
Tel: (416) 366 8381
Fax: (416) 364 7813

Solicitors for RSM Richter Inc., in its capacity as
Liquidator of Distributionco Inc.