UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 4

to
FORM S-11
FOR REGISTRATION

Under
THE SECURITIES ACT OF 1933
OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

Seritage Growth Properties
(Exact Name of Registrant as Specified in Its Governing Instruments)

Seritage Growth Properties
3333 Beverly Road
Hoffman Estates, Illinois 60179

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant’s Principal Executive Offices)

Robert A. Riecker
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Hoffman Estates, Illinois 60179
(847) 286-2500

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

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Washington, D.C. 20549

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If any of the Securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box: ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement of the same offering: ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: ☐

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. ☐

If a form of prospectus, included in a registration statement, is to be simultaneously filed with SEC or used in connection with the registration of additional securities pursuant to Rule 462(b) or (c), check the following box: ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(e) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐
Accelerated filer ☐
Non-accelerated filer ☐ (Do not check if a smaller reporting company)
Smaller reporting company ☒

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered

| Subscription rights to purchase Class A common shares of beneficial interest, par value $0.01 per share | N/A | N/A(1) |
| Class A common shares of beneficial interest, par value $0.01 per share, underlyi ng the subscription rights | $1,576,581,444(2) | 183,198.76(2) |
| Class C common shares of beneficial interest, par value $0.01 per share, issuable in lieu of Class A common shares upon the election of certain holders | N/A | N/A(3) |
| Class A common shares of beneficial interest, par value $0.01 per share, issuable upon conversion of Class C common shares of beneficial interest, par value $0.01 per share | N/A | N/A(4) |
| Total | $1,576,581,444(2) | 183,198.76(2) |

(1) The subscription rights are being issued without consideration. Pursuant to Rule 457(g), no separate registration fee is payable.

(2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) of the Securities Act of 1933, as amended. Includes the estimated maximum aggregate gross proceeds from the exercise of the maximum number of subscription rights that may be issued.

(3) Class C common shares will be issued only in lieu of Class A common shares for the same consideration as Class A common shares. Pursuant to Rule 457(i), no separate registration fee is payable.

(4) The Class A common shares will be issued upon conversion of the Class C common shares for no additional consideration. Pursuant to Rule 457(i), no separate registration fee is payable.

(5) The registrant previously paid $11,620 of the registration fee.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This registration statement has been prepared on a prospective basis on the assumption that, among other things, the offering (as described in the prospectus which is a part of this registration statement) and the related transactions (including the negotiation, execution and performance of the agreements referred to in the prospectus) and approvals contemplated to occur prior to or contemporaneously with the offering will be consummated as contemplated by the prospectus. There can be no assurance, however, that any or all of such transactions will occur or will occur as so contemplated. Any significant modifications to or variations in the transactions contemplated will be reflected in an amendment or supplement to this registration statement.
Seritage Growth Properties

Up to 53,298,899 Class A Common Shares Issuable Upon the Exercise of Subscription Rights at $29.58 Per Share

Subscription Rights to Purchase Class A Common Shares

Class C Non-voting Common Shares at $29.58 Per Share, in lieu of certain Class A Common Shares

Class A Common Shares Issuable Upon the Conversion of Class C Non-voting Common Shares

This prospectus is being furnished to you as a holder of common stock of Sears Holdings Corporation (together with its subsidiaries, “Sears Holdings” or “SHC”) in connection with the planned distribution by Sears Holdings to each holder of its common stock as of the close of business on June 11, 2015 (the “record date”), at no charge, transferable subscription rights (the “subscription rights”) to purchase up to an aggregate of 53,298,899 Class A common shares of beneficial interest, par value $0.01 per share (the “Seritage Growth common shares”), of Seritage Growth Properties, a Maryland real estate investment trust (the “Subsidiary”), at a price of $29.58 per whole share (the “rights offering”), as well as the offering of 9,527,198 Class C non-voting common shares of beneficial interest, par value $0.01 per share (the “Seritage Growth non-voting shares”), of Seritage Growth to clients (“Fairholme Clients”) of Fairholme Capital Management L.L.C. (“FCM”), in lieu of certain Class A Common Shares also at a price of $29.58 per share. The Seritage Growth non-voting shares are convertible into Seritage Growth common shares as more fully described in this prospectus. Sears Holdings will distribute to each holder of its common stock as of the record date one subscription right for each full share of common stock owned by that stockholder as of the record date. Each subscription right will entitle its holder to purchase one half of one Seritage Growth common share. Additionally, holders of subscription rights who fully exercise all of their basic subscription rights, after giving effect to any purchases or sales of subscription rights by them prior to such exercise, may also make a request to purchase additional Seritage Growth common shares through the exercise of an over-subscription privilege, although over-subscriptions may not be filled.

In this prospectus, we refer to the acquisition of properties from Sears Holdings by Seritage Growth, the rights offering and the related transactions described in this prospectus as the “Transaction.” In connection with the Transaction, we have entered into or will enter into various agreements with Sears Holdings which, among other things, govern the principal transactions relating to this offering, the sale to a subsidiary of Seritage Growth of 235 properties owned (or, in one case, ground-leased) by Sears Holdings, the leaseback of most of these properties to Sears Holdings, and the sale to a subsidiary of Seritage Growth by Sears Holdings of its 50% interests in three joint ventures (the “GGP JV,” the “Simon JV” and the “Macerich JV”) that own an additional 12, 10 and 9 properties, respectively.

The subscription rights will expire if they are not exercised by 5:00 p.m., New York City time, on July 2, 2015. We are requiring that the rights offering be fully subscribed in order to complete the rights offering. In addition, Sears Holdings has the right to withdraw and cancel the rights offering if, at any time prior to its expiration, the board of directors of Sears Holdings determines, in its sole discretion, that the rights offering is not in the best interest of Sears Holdings or its stockholders, or that market conditions are such that it is not advisable to consummate the rights offering.

We intend to elect and qualify to be taxed as a real estate investment trust (“REIT”) for U.S. federal income tax purposes commencing with our taxable year ending December 31, 2015. To assist us in qualifying to be taxed as a REIT, among other purposes, Seritage Growth’s declaration of trust contains certain restrictions relating to the ownership and transfer of Seritage Growth common shares, including a provision generally restricting shareholders from owning more than 9.6% by value or number of shares, whichever is more restrictive, of all outstanding shares of beneficial interest of Seritage Growth without the prior consent of the Seritage Growth Board of Trustees. In addition, Seritage Growth’s declaration of trust also provides for restrictions on such ownership or transfer that are designed to, among other things, prevent rents received or accrued from Sears Holdings from being treated as non-qualifying rent for purposes of the REIT gross-income requirements. The Seritage Growth Board of Trustees is expected to grant a waiver of certain of these provisions to FCM and certain Fairholme Clients. See “Description of Shares of Beneficial Interest—Restrictions on Ownership and Transfer” for a detailed description of the ownership and transfer restrictions applicable to Seritage Growth common shares.

As of the date of this prospectus, ESL Investments, Inc. and its affiliates, including Edward S. Lampert (collectively, “ESL”), beneficially own approximately 53.2% of the outstanding common stock of Sears Holdings, and Fairholme Clients beneficially own approximately 24.6% of the outstanding common stock of Sears Holdings. ESL has advised Seritage Growth that it intends to exchange a majority of its subscription rights for interests in a subsidiary of Seritage Growth and to the extent of the non-economic common shares of beneficial interest of Seritage Growth holding voting power in Seritage Growth, and FCM has advised Seritage Growth that it anticipates that certain Fairholme Clients, subject to the final terms of the offering and other considerations including market conditions and tax, regulatory and investment mandate restrictions, are likely to exchange a portion of their subscription rights for the Seritage Growth non-voting shares and that, subject to such considerations, certain other Fairholme Clients intend to exercise their subscription rights to purchase Seritage Growth common shares.

An affiliate of General Growth Properties, Inc. and an affiliate of Simon Property Group, Inc. (which (through subsidiaries) own the remaining 50% interests in the GGP JV and the Simon JV, respectively, have each agreed to acquire 1,125,760 Seritage Growth common shares at a purchase price per share equal to the subscription price for the rights offering set forth above in private placements that will close concurrently with the closing of this offering.

We are an “emerging growth company,” as that term is used in the Jumpstart Our Business Startups Act of 2012, and, as such, we will be subject to reduced public company reporting requirements compared to other public companies. See “Prospectus Summary—Our Status as Emerging Growth Company.”

You should carefully consider whether to exercise your subscription rights before the rights offering expires. All exercises of subscription rights are irrevocable.

Exercising the rights and investing in Seritage Growth common shares involves risks. We urge you to carefully read the section entitled “Risk Factors” beginning on page 32 of this prospectus, and all other information in this prospectus in its entirety before you decide whether to exercise your rights. Neither Sears Holdings nor Seritage Growth, nor their respective boards, is making any recommendation regarding your exercise of the subscription rights.

The subscription rights are transferable during the course of the subscription period, until June 26, 2015, the fourth business day prior to the expiration of the rights offering, and we intend to apply to list the rights for trading on the New York Stock Exchange (the “NYSE”) under the symbol “SRGRT.” We currently expect that the subscription rights will begin to trade on a when-issued basis on the date of this prospectus, however, we cannot assure you that a market for the subscription rights will develop. We intend to apply to list the Seritage Growth common shares for trading on the NYSE under the symbol “SRG.” No public market currently exists for the Seritage Growth common shares or for the subscription rights.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Prospectus dated June 8, 2015
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You should rely only on information contained in this prospectus or in any prospectus supplement or free writing prospectus prepared by or on behalf of us or to which we have referred you. We have not authorized anyone to provide you with additional or different information. Neither this prospectus nor any prospectus supplement or free writing prospectus constitutes an offer to sell, or a solicitation of an offer to buy, any of the securities offered hereby by any person in any jurisdiction in which it is unlawful for such person to make such an offering or solicitation. The information contained in this prospectus or any prospectus supplement or free writing prospectus is accurate only as of the date of this prospectus or such prospectus supplement or free writing prospectus, as applicable.
MARKET AND INDUSTRY DATA

Although we are responsible for all of the disclosure contained in this prospectus, this prospectus contains industry, market and competitive position data that are based on industry publications and studies conducted by third parties. The industry publications and third-party studies generally state that the information that they contain has been obtained from sources believed to be reliable, although they do not guarantee the accuracy or completeness of such information. While we believe the industry, market and competitive position information included in this prospectus is generally reliable, such information is inherently imprecise.
PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus. This summary does not contain all of the information that you should consider before making an investment decision to purchase Seritage Growth common shares in this offering. You should read the entire prospectus carefully, including the section entitled “Risk Factors,” our consolidated financial statements and the related notes thereto and Management’s Discussion and Analysis of Financial Condition and Results of Operations included elsewhere in this prospectus, before making an investment decision to purchase Seritage Growth common shares.

Seritage Growth Properties

Our Company

Seritage Growth Properties, a Maryland real estate investment trust, (“Seritage Growth”) is a newly organized entity that was formed in Maryland on June 3, 2015. Seritage Growth conducts its operations through Seritage Growth Properties, L.P. (together with its subsidiaries, “Operating Partnership”), a Delaware limited partnership, formed on April 22, 2015. In this prospectus, we refer to our business, including Seritage Growth, Operating Partnership and, as applicable, Old Seritage Growth Properties (“Old Seritage”), as “we,” “our” or “us.” Our principal offices are currently located at 3333 Beverly Road, Hoffman Estates, Illinois 60179, and our main telephone number is currently (847) 286-2500. We expect to change our principal offices and main telephone number prior to the completion of the Transaction. Seritage Growth intends to elect to be treated as a real estate investment trust (“REIT”) for federal income tax purposes commencing with our taxable year ending December 31, 2015.

Following the Transaction, Seritage Growth will be a publicly traded, self-administered, self-managed REIT primarily engaged in the real property business through its investment in Operating Partnership. Initially, our portfolio will consist of 235 properties (the “Acquired Properties”) that are owned (or, in one case, ground-leased) by Sears Holdings Corporation (together with its subsidiaries, “Sears Holdings” or “SHC”), as of the date of this prospectus. In addition, we will own three 50% joint venture interests in an additional twelve, ten and nine properties (collectively, the “JV Properties”), respectively, which joint venture interests are owned by Sears Holdings as of the date of this prospectus and will be sold to us in the Transaction. We will lease (or sublease) a substantial majority of the space at all but eleven of the Acquired Properties (such eleven properties, the “Third Party Properties”) back to Sears Holdings under a master lease agreement (the “Master Lease”), with the remainder of such space leased to third-party tenants. The Third Party Properties, which do not currently contain a Sears Holdings store, will not have any space leased to Sears Holdings, and will instead be leased solely to third-party tenants. A substantial majority of the space at the JV Properties is also leased to Sears Holdings by GS Portfolio Holdings LLC (the “GGP JV”), a joint venture between Sears Holdings and a subsidiary of General Growth Properties, Inc. (together with its subsidiaries, “GGP”), SPS Portfolio Holdings LLC (the “Simon JV”), a joint venture between Sears Holdings and a subsidiary of Simon Property Group, Inc. (together with its subsidiaries, “Simon”), or MS Portfolio LLC (the “Macerich JV” and, together with the GGP JV and the Simon JV, each, a “JV”), a joint venture between Sears Holdings and a subsidiary of The Macerich Company (together with its subsidiaries, “Macerich”), as applicable, in each case under a separate master lease with each JV (the “JV Master Leases”). We will acquire Sears Holdings’ 50% interest in each of the JVs in the Transaction.

We expect to generate revenues primarily by leasing our properties to tenants, including both Sears Holdings and third-party tenants, who will operate retail stores (and potentially other uses) in the leased premises, a business model common to many publicly traded REITs. In addition to revenues generated under the Master Lease through rent payments from Sears Holdings, we expect to generate revenue through leases to third-party tenants under existing and future leases for space at our properties, including the Acquired Properties. In addition, we will have an interest in the JV Properties through our 50% interest in each JV. The Master Lease provides us with the right to
recapture up to approximately 50% of the space within the Sears or Kmart stores located at the Acquired Properties (the “Stores”) (subject to certain exceptions), in addition to all of any automotive care centers which are freestanding or attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain portions of parking areas and common areas, at the Acquired Properties leased to Sears Holdings under the Master Lease. We will have the right to reconfigure and rent the recaptured space to third-party tenants on potentially superior terms determined by us and for our own account. The JV Master Leases provide each JV with a similar right in respect of its JV Properties (other than one property owned by the Macerich JV). We also have the right to recapture 100% of the space within the Sears Holdings main store located on each of 21 identified Acquired Properties by making a specified lease termination payment to Sears Holdings, after which we expect to be able to reposition and re-lease those stores and potentially generate additional revenue. See “Certain Relationships and Related Transactions—The Master Lease.”

Our initial portfolio of 235 Acquired Properties, consisting of approximately 36.7 million square feet of building space, will be broadly diversified by location across 49 states and Puerto Rico. These Acquired Properties will consist of 84 properties operated under the Kmart brand, 140 operated under the Sears brand, and eleven properties leased entirely to third parties. At certain of the Acquired Properties, third parties under existing leases occupy a portion of the overall leasable space alongside Sears Holdings. Third-party tenants will initially represent approximately 6.6% of our overall portfolio of Acquired Properties as a percentage of total leasable space and approximately 10% of existing rent. The amount of space leased to third-party tenants, and the resulting revenue, are expected to increase as we recapture space under the Master Lease and then re-lease it to such third-party tenants.

In addition, through our 50% interests in each of the GGP JV (the “GGP JV Interest”), the Simon JV (the “Simon JV Interest”) and the Macerich JV (the “Macerich JV Interest” and, together with the GGP JV Interest and the Simon JV Interest, the “JV Interests”), we will have an interest in the JV Properties, which consist of twelve, ten and nine properties, respectively, formerly owned or leased by Sears Holdings and currently leased back to Sears Holdings under the JV Master Leases, as well as to certain third parties under third-party leases. Except with respect to the rent amounts and the properties covered and certain additional matters described in “Business and Properties—The GGP JV, the Simon JV and the Macerich JV,” the general format of each of the JV Master Leases is similar to the Master Lease.

To maintain REIT status, Seritage Growth must meet a number of organizational and operational requirements, including a requirement that Seritage Growth distribute annually to Seritage Growth shareholders at least 90% of Seritage Growth’s REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gains. See “U.S. Federal Income Tax Considerations.”

The Transaction

Seritage Growth is a recently formed entity that will, in connection with this offering and through Operating Partnership, purchase the 235 Acquired Properties that are currently owned (or, in one case, ground-leased) by Sears Holdings and lease space at all of them except for the eleven Third Party Properties back to Sears Holdings, and also purchase the JV Interests. This offering and the related transactions described in this prospectus (the “Transaction”) will include a series of interim steps summarized below:

- On December 18, 2014, Old Seritage, a Maryland REIT that conducted certain of our initial transaction activities was formed. As part of the Transaction, prior to the Closing of the Transaction, Seritage Growth will acquire Operating Partnership and Old Seritage;
- On June 3, 2015, Seritage Growth, a Maryland REIT that will be structured as an umbrella partnership real estate investment trust (commonly referred to as an UPREIT), was formed;
- On April 22, 2015, Old Seritage formed Operating Partnership, a Delaware limited partnership;
• A majority of the 235 Acquired Properties, consisting of Sears Holdings’ fee-owned (or, in one instance, ground leased) real estate assets, will be transferred to one or more subsidiaries of Sears Holdings (the “Acquired Entities”) and the Acquired Entities will incur approximately $1,161.2 million of indebtedness, and will establish a $100.0 million future funding facility (the “Financing”);

• Operating Partnership will purchase for cash from Sears Holdings the Acquired Properties (directly or through the purchase of the Acquired Entities) and the JV Interests for an aggregate purchase price of approximately $2,677.3 million (a value which includes $2,248.3 million in respect of the Acquired Properties, which amount was determined by Sears Holdings with the assistance of a third-party appraisal process conducted by Cushman & Wakefield (“Cushman”), taking into account all the terms of the Master Lease and other relevant factors), inclusive of the amount of debt assumed by Operating Partnership through the purchase of the Acquired Entities;

• Sears Holdings and certain of the Acquired Entities will enter into the Master Lease pursuant to which a substantial majority of the Acquired Properties or certain space therein will be leased (or subleased) back to Sears Holdings, and Sears Holdings will assign existing third-party leases in the Acquired Properties to Operating Partnership, except for certain minor leases, agreements, concessions, licenses or departments within the Sears Holdings stores and the Lands’ End lease agreements, which will be treated as described in “Certain Relationships and Related Transactions—The Master Lease”;

• For purposes of, among other things, funding the purchase price for the Acquired Properties and the JV Interests:
  • Seritage Growth has entered into an agreement with Sears Holdings for Sears Holdings to subscribe for rights to purchase Seritage Growth Class A common shares of beneficial interest, par value $0.01 per share (the “Seritage Growth common shares” or the “common shares”) from Seritage Growth and distribute such rights to Sears Holdings stockholders in the rights offering;
  • Seritage Growth has agreed to issue and sell to each of GGP and Simon in private placements 1,125,760 Seritage Growth common shares at a purchase price per share equal to the subscription price in the rights offering, for an aggregate purchase price of $33.3 million for each of GGP and Simon (together, the “Seritage Private Placements”);
  • Seritage Growth and Fairholme Capital Management, L.L.C. (“FCM”) have entered into an agreement giving certain clients (“Fairholme Clients”) of FCM the right to exchange subscription rights that, if exercised, would result in such Fairholme Clients receiving, in the aggregate, in excess of 11.7% of the Seritage Growth common shares outstanding immediately following this offering for 9,527,198 Class C non-voting common shares of beneficial interest, par value $0.01 per share, of Seritage Growth (the “Seritage Growth non-voting shares”);
    • We are offering the Seritage Growth non-voting shares in this offering to Fairholme Clients at a purchase price per share of $29.58 (the subscription price in the rights offering) (the “Non-Voting Shares Offering”);
    • The Seritage Growth non-voting shares will be entitled to per-share dividends and distributions equal to those issued with respect to Seritage Growth common shares but have no voting power;
    • In the aspects of the Transaction relating to FCM and the Fairholme Clients, (i) the Seritage Growth Board of Trustees expects to grant FCM and certain Fairholme Clients waivers of certain ownership restrictions in the Seritage Growth declaration of trust, which are described in “Description of Shares of Beneficial Interest—Restrictions on Ownership and Transfer” (collectively, the “Excess Share Waivers”), and (ii) FCM has agreed to vote a portion of any Seritage Growth common shares owned by the Fairholme Clients following this offering in...
proportion to the votes of other holders of such shares and to abide by certain other restrictions described in “Certain Relationships and Related Transactions—Fairholme Exchange Agreement”;

- The Non-Voting Shares Offering and Excess Share Waivers are intended to allow certain Fairholme Clients, which (in the aggregate) own a significant number of shares of Sears Holdings common stock and therefore will receive a significant number of subscription rights, to purchase interests in us in excess of the amounts they would otherwise be able to purchase in light of regulatory and tax considerations;

- Operating Partnership and Seritage Growth have entered into an agreement with ESL Investments, Inc. (together with its affiliates, including Edward S. Lampert, collectively, “ESL”) giving the right to exchange cash and subscription rights that, if exercised, would result in ESL receiving in excess of 3.1% of the Seritage Growth common shares for Operating Partnership units (the “OP Private Placement”) and Class B non-economic common shares of beneficial interest (“Seritage Growth non-economic shares”), par value $0.01 per share, of Seritage Growth (the “Non-Economic Shares Private Placement,” and together with the OP Private Placement, the “ESL Private Placement”).

- The Seritage Growth non-economic shares will have, in the aggregate, 5.4% of the voting power of Seritage Growth at the closing of the Transaction but will not be entitled to any dividends or other distributions;

- The OP Private Placement and Non-Economic Shares Private Placement are intended to allow ESL, which owns a significant number of shares of Sears Holdings common stock and therefore will receive a significant number of subscription rights, to purchase interests in us in excess of the amounts it would otherwise be able to purchase in light of tax considerations, including the ownership limits set forth in Seritage Growth’s declaration of trust, which are designed to protect Seritage Growth’s REIT status;

- At the closing of the Transaction:

  - Seritage Growth and Operating Partnership will use the proceeds from this offering, the Seritage Private Placements, the ESL Private Placement and the assumption of the indebtedness incurred in the Financing to purchase the Acquired Properties (directly or through the purchase of the Acquired Entities) and the JV Interests from Sears Holdings and pay related fees and expenses (with remaining proceeds used for working capital and other general purposes);

  - As part of the Financing, the Acquired Entities will have access to a future funding facility in the amount of $100.0 million to provide funding for redevelopment activities at the Properties following the closing, subject to satisfaction of certain conditions;

  - Certain of the Acquired Entities and Sears Holdings will enter into the Master Lease; and

  - the indebtedness incurred by the Acquired Entities in the Financing will become, on a consolidated basis, indebtedness of Operating Partnership and Seritage Growth (with the proceeds of such indebtedness having been distributed by the Acquired Entities to Sears Holdings prior to the closing of the Transaction and, therefore, not available to us).
The following table sets forth the sources and uses of funds for the Transaction, assuming that the subscription rights are exercised in full (or, in the case of the maximum portion of the subscription rights held by each of ESL and certain Fairholme Clients permitted to be exchanged under their respective Exchange Agreements, exchanged for Operating Partnership units and Seritage Growth non-economic shares, and for Seritage Growth non-voting shares, respectively). See “Principal Shareholders” and “Capitalization.”

<table>
<thead>
<tr>
<th>Sources of Funds</th>
<th>Uses of Funds</th>
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<tbody>
<tr>
<td>Proceeds from this offering</td>
<td>Purchase of the Acquired Properties 2,248,274</td>
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<td>Proceeds from the Seritage Private Placements</td>
<td>Purchase of the JV Interests 429,000</td>
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<td>Proceeds from the Non-Economic Shares Private</td>
<td>Offering related costs 8,720</td>
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<td>Placement</td>
<td>Other Closing Costs 10,000</td>
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<tr>
<td>Proceeds from the Non-Voting Shares Offering</td>
<td>Organization related costs 1,080</td>
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<td>Proceeds from ESL Private Placement</td>
<td>Cash for general corporate purposes 31,303</td>
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<td>Proceeds from debt issuance</td>
<td>Redevelopment &amp; capital expenditures for</td>
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<td>tenant occupancy 41,500</td>
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<td>Interest rate cap 9,400</td>
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<td>Total Uses of Funds 2,805,036</td>
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<td>$2,805,036</td>
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### Our Relationship with Sears Holdings

In connection with the Transaction, we and Sears Holdings have entered or will enter into: (i) a subscription, distribution and purchase and sale agreement governing the sale of the Acquired Properties and the JV Interests to Operating Partnership, and pursuant to which Sears Holdings will subscribe for Seritage Growth common shares and distribute such subscription rights to its stockholders (the “Subscription, Distribution and Purchase and Sale Agreement”), (ii) the Master Lease, pursuant to which subsidiaries of Operating Partnership, as landlord, will lease to Sears Holdings, as tenant, most of the Acquired Properties, and (iii) an agreement pursuant to which Sears Holdings Management Corporation (“SHMC”), a wholly owned subsidiary of Sears Holdings, will provide certain services to us (the “Transition Services Agreement”). The terms of our agreements with Sears Holdings have been and will be established by Sears Holdings with the intention of producing sustainable and fair terms consistent with the respective business plans of both Sears Holdings and Seritage Growth following the Transaction. Because these agreements will be negotiated in the context of the Transaction, they necessarily will involve negotiations between affiliated entities. Accordingly, the terms of these agreements may have different terms than would have resulted from negotiations with one or more unrelated third parties. See “Certain Relationships and Related Transactions.”

### Financing

In connection with the Transaction, the Acquired Entities and Operating Partnership are expected to enter into the Financing. The proceeds of this offering, the Seritage Private Placements, the ESL Private Placement, and the assumption of the indebtedness incurred in the Financing will be used to purchase the Acquired Properties (directly or through the purchase of the Acquired Entities) and the JV Interests from Sears Holdings and pay related fees and expenses (with remaining proceeds used for working capital and other purposes); the indebtedness incurred by the Acquired Entities in the Financing will become indebtedness of Operating Partnership on a consolidated basis; and, as part of the Financing, the Acquired Entities will have access to a future funding facility in the amount of $100.0 million to provide funding for redevelopment activities at the Properties following the closing, subject to satisfaction of certain conditions. Sears Holdings and Seritage Growth have entered into a commitment letter with two institutional lenders in respect of the Financing and the post-closing future funding facility (the “Commitment”). The Commitment and the Financing are subject to certain customary and other conditions precedent. While Sears Holdings and Seritage expect to consummate the Financing on the terms contemplated by the Commitment, no assurances can be given that we will be able to do so.
Restrictions on Ownership and Transfer of Seritage Growth Shares

To assist Seritage Growth in complying with the limitations on the concentration of ownership of REIT shares imposed by the Internal Revenue Code of 1986, as amended (the “Code”), among other purposes, Seritage Growth’s declaration of trust will provide for restrictions on ownership and transfer of its common shares, including, subject to certain exceptions, prohibitions on any person actually or constructively owning more than 9.6% in value or in number, whichever is more restrictive, of all outstanding shares, or all outstanding common shares (including Seritage Growth common shares, Seritage Growth non-economic shares and Seritage Growth non-voting shares), of beneficial interest of Seritage Growth. These restrictions are collectively referred to herein as the “ownership limits.” A person that did not acquire more than 9.6% of Seritage Growth’s outstanding shares (in value or number of shares, whichever is more restrictive) may become subject to its declaration of trust restrictions if repurchases by Seritage Growth cause such person’s holdings to exceed 9.6% of its outstanding shares. Under certain circumstances, the Board of Trustees of Seritage Growth may waive the ownership limits if it determines that Seritage Growth will not fail to qualify as a REIT and certain other conditions are satisfied. The Seritage Growth Board of Trustees expects to grant the Excess Share Waivers to FCM and certain Fairholme Clients. Seritage Growth’s declaration of trust provides that shares of beneficial interest of Seritage Growth acquired or held in excess of the ownership limit will be transferred to a trust for the benefit of a designated charitable beneficiary, and that any person who acquires shares of beneficial interest of Seritage Growth in violation of the ownership limits will not be entitled to any dividends on the shares or be entitled to vote the shares or receive any proceeds from the subsequent sale of the shares in excess of the lesser of the price paid by such person for the shares (or, if such person did not give value for the shares, the market price on the day the shares were transferred to the trust) or the amount realized from the sale. Seritage Growth or its designee will have the right to purchase the shares from the trustee at this calculated price as well. In addition, a transfer of shares of beneficial interest of Seritage Growth in violation of the restrictions on ownership and transfer in the declaration of trust may be void under certain circumstances. Seritage Growth’s ownership limits may have the effect of delaying, deferring or preventing a change in control of Seritage Growth, including an extraordinary transaction (such as a merger, tender offer or sale of all or substantially all of our assets) that might provide a premium price for Seritage Growth’s shareholders or otherwise be in their best interest. See “Description of Shares of Beneficial Interest—Restrictions on Ownership and Transfer.”

Seritage Growth’s Tax Status

Seritage Growth intends to elect and qualify to be taxed as a REIT for U.S. federal income tax purposes, currently expected to occur commencing with the taxable year ending December 31, 2015. Seritage Growth’s qualification as a REIT depends upon its ability to meet, on a continuing basis, through actual investment and operating results, various complex requirements under the Code, relating to, among other things, the sources of Seritage Growth’s gross income, the composition and value of its assets, its distribution levels and the diversity of ownership of its shares. Seritage Growth believes that, at the time of the Transaction, it will be organized in conformity with the requirements for qualification and taxation as a REIT under the Code and that its intended manner of operation will enable Seritage Growth to meet the requirements for qualification and taxation as a REIT.

So long as Seritage Growth qualifies to be taxed as a REIT, it generally will not be required to pay U.S. federal income tax on its net REIT taxable income that it distributes currently to its shareholders. If Seritage Growth fails to qualify to be taxed as a REIT in any taxable year and does not qualify for certain statutory relief provisions, it would be subject to U.S. federal income tax at regular corporate rates and would be precluded from re-electing to be taxed as a REIT for the subsequent four taxable years following the year during which it lost REIT qualification. Even if Seritage Growth qualifies to be taxed as a REIT, it may be subject to certain U.S. federal, state, local and foreign taxes on its income or property, and the income of its taxable REIT subsidiaries (“TRSs”), if any, will be subject to taxation at regular corporate rates. See “U.S. Federal Income Tax Considerations.”
Our Status as an Emerging Growth Company

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012, or the “JOBS Act,” since we meet certain specifications under the JOBS Act such as having total annual gross revenue of under $1.0 billion. As an emerging growth company, we have chosen to take advantage of specified reduced disclosure and other requirements that are otherwise applicable generally to public companies. We have taken advantage of reduced disclosure regarding executive compensation arrangements and the presentation of certain historical financial information in this prospectus, and we may in the future choose to take advantage of some or all of the reduced reporting obligations, which include exceptions from requirements to provide an auditor’s attestation report on the effectiveness of our system of internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), to comply with certain audit firm rotation and audit rule requirements, to provide certain disclosure regarding executive compensation and to hold advisory votes on executive compensation, among other things. As a result, the information we provide to shareholders would be different than what you may receive from other public companies in which you hold stock. We will remain an emerging growth company until the earliest of:

- the last day of the fiscal year (i) following the fifth anniversary of the completion of the Transaction or (ii) in which we have total annual gross revenue of at least $1.0 billion; or
- the date on which Seritage Growth is deemed to be a “large accelerated filer,” which would occur if the market value of Seritage Growth common shares that are held by non-affiliates exceeds $700 million as of the last business day of our most recently completed second fiscal quarter; or
- the date on which we have issued more than $1.0 billion in non-convertible debt during the prior three-year period.

See “Risk Factors—Risks Related to Our Business and Operations—For as long as we are an emerging growth company and while remaining a non-accelerated filer, we will not be required to comply with certain reporting requirements that apply to other public companies.”
QUESTIONS AND ANSWERS ABOUT THE COMPANY AND THE OFFERING

Set forth below are examples of what we anticipate will be commonly asked questions about this offering and the transactions contemplated thereby. The answers are based on selected information included elsewhere in this prospectus. The following questions and answers do not contain all of the information that may be important to you and may not address all of the questions that you may have about this offering. This prospectus contains more detailed descriptions of the terms and conditions of the rights offering and provides additional information about us and our business, including potential risks related to this offering, Seritage Growth common shares and our business.

Exercising the rights and investing in Seritage Growth common shares involves risks. We urge you to carefully read the section entitled “Risk Factors” beginning on page 32 of this prospectus and all other information in this prospectus in its entirety before you decide whether to exercise your rights.

What is the rights offering?

Sears Holdings is distributing, at no charge, to holders of shares of its common stock as of the record date, transferable subscription rights to purchase Seritage Growth common shares in the amount of one subscription right for each full share of common stock of Sears Holdings owned by that stockholder as of the record date, except that holders of Sears Holdings’ restricted stock that is unvested as of the record date will receive cash awards in lieu of subscription rights. Each subscription right will entitle its holder to purchase from Seritage Growth one half of one Seritage Growth common share. Each subscription right entitles the holder to a basic subscription right and an over-subscription privilege, as described below. We intend to apply to list the Seritage Growth common shares to be issued upon exercise of the subscription rights for trading on the New York Stock Exchange (the “NYSE”) under the ticker symbol “SRG.”

What is Seritage Growth?

Seritage Growth is a newly organized REIT that was formed in Maryland on June 3, 2015. Its principal offices are currently located at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Its main telephone number is currently (847) 286-2500. Seritage Growth expects to change its principal offices and main telephone number prior to the completion of the Transaction. Seritage Growth intends to elect to be treated as a REIT under the Code.

Following the Transaction, Seritage Growth will be a publicly traded, self-administered, self-managed REIT primarily engaged in the real property business through its investment in Operating Partnership. Initially, our portfolio will consist of 235 Acquired Properties that are owned (or, in one case, ground-leased) by Sears Holdings as of the date of this prospectus, as well as the JV Interests that are owned by Sears Holdings as of the date of this prospectus. Operating Partnership will lease (or sublease) a substantial majority of the space at all but eleven of the Acquired Properties back to Sears Holdings under the Master Lease, with the remainder of such space leased to third-party tenants. A substantial majority of the space at the JV Properties is also leased by the JVs to Sears Holdings under the JV Master Leases. In addition, we will lease all of certain Acquired Properties and certain space within other Acquired Properties to third parties pursuant to leases under which Sears Holdings currently is the lessor and which will be assigned to us, along with certain redevelopment and other obligations under such leases. Lease agreements pursuant to which Sears Holdings currently leases space at certain of the Acquired Properties to Lands’ End will be treated as described in “Certain Relationships and Related Transactions—The Master Lease.” The Master Lease will provide Operating Partnership with the right to recapture up to approximately 50% of the space within the Stores (subject to certain exceptions), in addition to all of any automotive care centers which are free-standing or attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain portions of parking areas and common areas, at the Acquired Properties leased to Sears Holdings under the Master Lease. Upon exercise of this recapture right, we must pay all costs and
expenses for the separation of the recaptured space from the remaining Sears Holdings space and will have the right to reconfigure and rent such space to third-party tenants on terms we agree to with such third parties. The JV Master Leases provide each JV with a similar right in respect of its JV Properties (other than one property owned by the Macerich JV). We will also have the further right to recapture 100% of the space within the Sears Holdings main store located on each of 21 identified Acquired Properties, subject to a specified lease termination payment made to Sears Holdings. However, Sears Holdings will have the right to terminate the lease as to an Acquired Property or a JV Property if its earnings before interest, taxes, depreciation, amortization and rent costs (“EBITDAR”) for the twelve-month period ending as of the most recent fiscal quarter end attributable to such Acquired Property or JV Property is less than the rent attributable to it. Sears Holdings’ ability to exercise this termination right will be limited so that the aggregate base rent under the Master Lease in any lease year does not decline by more than 20% as a result of such terminations or, in the case of the JV Properties owned by the GGP JV, the Simon JV and the Macerich JV, so that the applicable JV Master Lease is not terminated as to more than four JV Properties, three JV Properties and three JV Properties, respectively, in any lease year.

Prior to the closing of this offering, we have not operated as a business; instead the Acquired Properties that make up our business were generally used in Sears Holdings’ retail operations and the JV Interests were owned by Sears Holdings. Following the closing of this offering and subscription for Seritage Growth common shares, we will be a publicly traded company independent from Sears Holdings, and Sears Holdings will not have any ownership interest in us.

In connection with the Transaction, we have entered into or will enter into various agreements with Sears Holdings that, among other things, govern the principal transactions relating to this offering and certain aspects of our relationship with Sears Holdings following the Transaction. These agreements were made or will be made in the context of our current relationship with Sears Holdings and were or will be negotiated in the overall context of the Transaction. Accordingly, the terms of these agreements may be different than those we could have negotiated with unaffiliated parties. For more information regarding the agreements between us and Sears Holdings, see “Certain Relationships and Related Transactions.”

**What is a REIT?**

Following the Transaction, Seritage Growth intends to qualify and elect to be taxed as a REIT under Sections 856 through 859 of the Code, which election is currently expected to occur commencing with the taxable year ending December 31, 2015. As a REIT, Seritage Growth generally will not be required to pay U.S. federal income tax on REIT taxable income it distributes to its shareholders. Seritage Growth’s qualification as a REIT depends upon its ability to meet, on a continuing basis, through actual investment and operating results, various complex requirements under the Code, relating to, among other things, the sources of Seritage Growth’s gross income, the composition and value of its assets, its distribution levels and the diversity of ownership of its shares. Seritage Growth believes that, at the time of the Transaction, it will be organized in conformity with the requirements for qualification and taxation as a REIT under the Code and that its intended manner of operation will enable Seritage Growth to meet the requirements for qualification and taxation as a REIT. Seritage Growth anticipates that distributions we make to shareholders generally will be taxable to shareholders as ordinary income, although a portion of the distributions may be designated by us as qualified dividend income or capital gain or may constitute a return of capital. For a more complete discussion of the U.S. federal income tax treatment of distributions to Seritage Growth shareholders, see “U.S. Federal Income Tax Considerations.”

**What are the OP Private Placement, the Non-Economic Shares Private Placement and the Non-Voting Shares Offering?**

As of the date of this prospectus, ESL beneficially owns approximately 48.5% of the outstanding common stock of Sears Holdings (53.2% including shares issuable upon the exercise of warrants held by ESL), and Fairholme Clients beneficially own approximately 24.6% of the outstanding common stock of Sears Holdings.
In light of the restrictions on ownership in Seritage Growth’s declaration of trust, we have entered into an agreement with FCM pursuant to which certain Fairholme Clients have the right to exchange subscription rights that, if exercised, would result in Fairholme Clients receiving, in the aggregate, in excess of 11.7% of the Seritage Growth common shares outstanding immediately following this offering for the Seritage Growth non-voting shares. These Seritage Growth non-voting shares are entitled to per-share dividends and distributions equal to those issued with respect to Seritage Growth common shares but have no voting power. We refer to this as the Non-Voting Shares Offering, and it is a part of this offering. In addition, we have entered into an agreement with ESL pursuant to which ESL has the right to exchange (a) subscription rights that, if exercised, would result in ESL receiving in excess of 3.1% of the Seritage Growth common shares outstanding immediately following this offering and (b) cash in the aggregate amount ESL would have paid had it exercised such subscription rights, plus the value of the Seritage Growth non-economic shares. ESL will have the right to exchange such subscription rights and cash for (i) Seritage Growth non-economic shares having 5.5% of the voting power of Seritage Growth but not entitled to dividends or distributions in the Non-Voting Shares Private Placement and (ii) Operating Partnership units constituting 44.9% of the Operating Partnership units outstanding immediately following the closing of the Transaction in the OP Private Placement. The ESL Private Placement and the Non-Voting Shares Offering to Fairholme Clients are intended to allow ESL and certain Fairholme Clients, respectively, to purchase interests in us in excess of the amounts they would otherwise be able to purchase in light of regulatory and tax considerations, including, in the case of ESL, the ownership limits set forth in Seritage Growth’s declaration of trust, which are designed to, among other purposes, protect Seritage Growth’s REIT status. Seritage Growth common shares that would be issued upon the exercise of any subscription rights exchanged in the ESL Private Placement and the Non-Voting Shares Offering will not be sold in this offering and will not be available as part of the over-subscription process.

What are the Seritage Private Placements?

In connection with the agreements to enter into the GGP JV and the Simon JV, respectively, each of GGP and Simon agreed to acquire 1,125,760 Seritage Growth common shares at a price of $29.58 per share (the subscription price for the rights offering), for an aggregate purchase price of $33.3 million for each of GGP and Simon, in the Seritage Private Placements. Seritage Growth will issue and sell these Seritage Growth common shares to each of GGP and Simon concurrently with the closing of this offering, subject to the satisfaction of certain other related closing conditions. The shares to be issued and sold in the Seritage Private Placements are not registered as part of, and are in addition to the Seritage Growth common shares offered in, this offering.

What is the basic subscription right?

Holders of the basic subscription rights will have the opportunity to purchase from Seritage Growth, in the aggregate, 53,298,899 Seritage Growth common shares at a subscription price of $29.58 per whole share (without giving effect to any potential exchange by ESL or any Fairholme Client). Sears Holdings has granted to you, as a stockholder of record on the record date, one subscription right allowing you to subscribe for one half of one Seritage Growth common share on the terms set forth in this offering, for every share of Sears Holdings common stock you owned at that time. Fractional shares or cash in lieu of fractional shares will not be issued in the rights offering. Instead, the number of shares issuable upon the exercise of the basic subscription right will be rounded down to the nearest whole share. The subscription rights are contractual obligations of Seritage Growth.

You may exercise all or a portion of your basic subscription right or you may choose not to exercise any subscription rights at all. However, if you exercise less than your full basic subscription right (after giving effect to any purchases or sales of subscription rights prior to the time of such exercise), you will not be entitled to purchase Seritage Growth common shares pursuant to the over-subscription privilege. If you are a registered holder of Sears Holdings common stock, the number of Seritage Growth common shares you may purchase pursuant to your basic subscription right is indicated on the enclosed rights certificate. If you hold your shares in the name of a broker, dealer, custodian bank or other nominee that uses the services of the Depository Trust Company (“DTC”), you will...
not receive a rights certificate. Instead, DTC will electronically issue one subscription right to your nominee record
holder for every share of Sears Holdings common stock that you own as of the record date. If you are not contacted
by your nominee, you should contact your nominee as soon as possible.

Holders of the basic subscription rights (other than ESL and Fairholme Clients) will not have the right to
participate in the OP Private Placement, the Non-Economic Shares Private Placement or the Non-Voting Shares
Offering and will not be entitled to purchase Seritage Growth non-economic shares or Seritage Growth non-voting
shares in this offering.

What is the over-subscription privilege and how will Seritage Growth common shares be allocated in the
rights offering?

If you purchase all of the Seritage Growth common shares available to you pursuant to your basic
subscription rights, you may also choose to purchase from Seritage Growth a portion of any Seritage Growth
common shares that other holders of subscription rights do not purchase through the exercise of their basic
subscription rights. Only holders who fully exercise all of their basic subscription rights, after giving effect to
any purchases or sales of subscription rights prior to the time of such exercise, may participate in the over-
subscription privilege. ESL and Fairholme Clients may participate in the over-subscription privilege; however, in
light of tax and regulatory restrictions, ESL and Fairholme Clients are expected to acquire interests in Seritage
Growth and the Operating Partnership (in ESL’s case) and in Seritage Growth (in the case of Fairholme Clients)
by means of the ESL Private Placement and the Non-Voting Shares Offering, respectively. Seritage Growth
common shares with respect to any subscription rights exchanged in the ESL Private Placement and the Non-
Voting Shares Offering will not be sold in this offering and will not be available as part of the over-subscription
process. In no circumstance will any holder (other than Fairholme Clients, which are expected to receive the
Excess Share Waivers) be allocated Seritage Growth common shares pursuant to the over-subscription privilege
to the extent such allocation would result in such holder beneficially owning 9.6% or more of the outstanding
shares of beneficial interest of Seritage Growth (as calculated for certain federal income tax purposes), nor will
any holder, other than ESL and Fairholme Clients, participate in the OP Private Placement, the Non-Economic
Shares Private Placement or the Non-Voting Shares Offering. See “Certain Relationships and Related
Transactions—ESL Exchange Agreement” and “Certain Relationships and Related Transactions—Fairholme
Exchange Agreement.”

If you wish to exercise your over-subscription privilege, you must indicate on your rights certificate, or the
form provided by your nominee if your Sears Holdings shares are held in the name of a nominee, how many
additional Seritage Growth common shares you would like to purchase pursuant to your over-subscription
privilege, and provide payment as described below.

Seritage Growth common shares will be allocated in the rights offering as follows:

• First, shares will be allocated to holders of rights who exercise their basic subscription rights for one-half of
one Seritage Growth common share per exercised subscription right.

• Second, any remaining shares that were eligible to be purchased in the rights offering will be allocated among
the holders of rights who exercise the over-subscription privilege, in accordance with the following formula:

• Each holder who exercises the over-subscription privilege will be allocated a percentage of the
remaining shares equal to the percentage that results from dividing (i) the number of basic subscription
rights which that holder exercised by (ii) the number of basic subscription rights which all holders who
wish to participate in the over-subscription privilege validly exercised. Such percentage could result in
the allocation of more or fewer over-subscription shares than the holder requested to purchase through
the exercise of the over-subscription privilege.

• For example, if Stockholder A holds 200 subscription rights and Stockholder B holds 300
subscription rights and they are the only two stockholders who exercise the over-subscription
privilege, Stockholder A will be allocated 40% and Stockholder B will be allocated 60% of all remaining shares available. (Example A)

- Third, if the allocation of remaining shares pursuant to the formula described above in the second step would result in any holder receiving a greater number of Seritage Growth common shares than that holder subscribed for pursuant to the over-subscription privilege, then such holder will be allocated only that number of shares for which the holder over-subscribed.

  - For example, if Stockholder A is allocated 100 shares pursuant to the formula described above but subscribed for only 40 additional shares pursuant to the over-subscription privilege, Stockholder A’s allocation would be reduced to 40 shares. (Example B)

- Fourth, any Seritage Growth common shares that remain available as a result of the allocation described above being greater than a holder’s over-subscription request (the 60 additional shares in Example B above) will be allocated among all remaining holders who exercised the over-subscription privilege and whose initial over-subscription allocations were less than the number of shares they requested. This second allocation will be made pursuant to the same formula described above and repeated, if necessary, until all available Seritage Growth common shares have been allocated or all over-subscription requests have been satisfied in full.

However, in no circumstance will any holder (other than Fairholme Clients, which are expected to receive the Excess Share Waivers) be allocated Seritage Growth common shares pursuant to the over-subscription privilege to the extent such allocation would result in such holder beneficially owning 9.6% or more of the outstanding shares of beneficial interest of Seritage Growth (as calculated for certain federal income tax purposes), nor will any holder, other than ESL and Fairholme Clients, participate in the OP Private Placement, the Non-Economic Shares Private Placement or the Non-Voting Shares Offering. See “Risk Factors—Risks Related to the Offering—If you own more than 5.3% of the Sears Holdings common stock as of the record date, you will not be able to exercise all of your basic subscription rights received in the rights offering,” “Certain Relationships and Related Transactions—ESL Exchange Agreement” and “Certain Relationships and Related Transactions—Fairholme Exchange Agreement.” Seritage Growth common shares with respect to any subscription rights exchanged in the ESL Private Placement or the Non-Voting Shares Offering will not be sold in this offering and will not be available as part of the over-subscription process.

To properly exercise your over-subscription privilege, you must deliver the subscription payment related to your over-subscription privilege before the rights offering expires. Because we will not know the total number of unsubscribed common shares before the rights offering expires, if you wish to maximize the number of Seritage Growth common shares you purchase pursuant to your over-subscription privilege, you will need to deliver payment in an amount equal to the aggregate subscription price for the maximum number of shares that could be available to you at the time you exercise your basic subscription rights (i.e., the aggregate payment for both your basic subscription right and for all additional shares you desire to purchase pursuant to your over-subscription request). See “The Rights Offering—The Subscription Rights—Over-subscription Privilege.” Any excess subscription payments received by the subscription agent, including payments for additional shares you requested to purchase pursuant to the over-subscription privilege but which were not allocated to you will be returned, without interest or penalty, promptly following the expiration of the rights offering.

Computershare Trust Company, N.A., our subscription agent for the rights offering, will determine, in its sole discretion, the over-subscription allocation based on the formula described above.
What is the purpose of the Transaction?

Sears Holdings believes that the Transaction would provide, among other things, financial and operational benefits to both us and Sears Holdings, including but not limited to the following expected benefits:

- **Additional Liquidity and Financial Flexibility.** The Transaction is intended to monetize a portion of Sears Holdings’ real estate assets in a manner that provides current value to Sears Holdings while allowing Sears Holdings to continue to operate in its existing store locations and creating significant flexibility and potential upside for both us and Sears Holdings. Specifically, the Transaction will provide Sears Holdings the ability to rationalize certain of its real estate holdings in a deliberate and considered manner, immediately gain increased liquidity, and subsequently rationalize a portion of its rental costs to the extent its stores become unprofitable below certain levels.

- **Additional Strategic Opportunities.** We will immediately have an income stream from an existing tenant, with enhanced flexibility as a lessor due to the ability to recapture substantial amounts of space from Sears Holdings and diversify its tenant mix by leasing recaptured space to other tenants. As a REIT, Seritage Growth will generally not pay income taxes on income that is distributed to shareholders, and will be required to distribute at least 90% of its REIT taxable income to shareholders. Sears Holdings expects the Transaction to facilitate strategic expansion opportunities for us by providing us with the ability to pursue transactions with other operators that would not pursue transactions with Sears Holdings as a current competitor and to diversify into different businesses.

- **Business-Appropriate Capital Structure.** The Transaction will create an independent equity structure that will afford us direct access to capital markets and facilitate our ability to effect future real estate acquisitions utilizing Seritage Growth common shares and Operating Partnership units.

- **Focused Management.** The Transaction will allow management of each of Sears Holdings and Seritage Growth to devote time and attention to the development and implementation of corporate strategies and policies that are based on the specific business characteristics of the respective companies, and to design more tailored compensation structures that better reflect these strategies, policies and business characteristics. Our separate equity-based compensation arrangements should more closely align the interests of management with the interests of shareholders and more directly incentivize our employees and attract new talent.

- **Distinct Investment Opportunities.** The Transaction will provide investors with two distinct and targeted investment opportunities. Since the subscription rights are being distributed at no charge to Sears Holdings’ existing stockholders, stockholders will have the choice to acquire a stake in Seritage Growth in addition to retaining their existing Sears Holdings stake.

What are the GGP JV, the Simon JV and the Macerich JV?

The GGP JV is a joint venture between Sears Holdings and GGP formed on March 31, 2015. The Simon JV is a joint venture between Sears Holdings and Simon formed on April 13, 2015. The Macerich JV is a joint venture between Sears Holdings and Macerich formed on April 30, 2015. Each JV entered into a sale-leaseback transaction with Sears Holdings with respect to the JV Properties, which consist of twelve properties sold by Sears Holdings to the GGP JV, ten properties sold by Sears Holdings to the Simon JV and nine properties sold by Sears Holdings to the Macerich JV. The JVs currently own the JV Properties and lease them to Sears Holdings under their respective JV Master Leases, as well as to certain third parties under third-party leases. Except with respect to the rent amounts and the properties covered, the general formats of the JV Master Leases are similar to one another and to the Master Lease, including with respect to the lessor’s right to recapture space leased to Sears Holdings (other than at one property owned by the Macerich JV) and Sears Holdings’ right to terminate a portion of the lease as to certain properties.
As of the date of this prospectus, each of GGP and Sears Holdings owns a 50% interest in the GGP JV, each of Simon and Sears Holdings owns a 50% interest in the Simon JV and each of Macerich and Sears Holdings owns a 50% interest in the Macerich JV. In the Transaction, Sears Holdings will sell to Operating Partnership its 50% interests in the GGP JV, the Simon JV and the Macerich JV for $165 million, $114 million and $150 million, respectively (which is equal to the purchase price previously paid by GGP, Simon and Macerich, respectively, for their 50% interests in the applicable JVs). As a result, the GGP JV will become a joint venture between Operating Partnership and GGP, the Simon JV will become a joint venture between Operating Partnership, and Simon and the Macerich JV will become a joint venture between Operating Partnership and Macerich.

Each JV will be governed by an executive committee that consists of one representative designated by GGP, Simon or Macerich, as applicable, and one representative that, following the Transaction, will be designated by us. Day-to-day operation of the GGP JV, the Simon JV and the Macerich JV and responsibility for leasing and redevelopment activities related to the JV Properties owned by each JV, are generally delegated to GGP, Simon and Macerich, respectively, subject to certain exceptions and to mutual approval of major decisions relating to the JV Properties or the applicable JV. In addition, GGP will be entitled to certain fees in connection with the management, leasing and development of the JV Properties owned by the GGP JV, except that if GGP fails to meet certain leasing performance conditions by March 31, 2018, we (assuming the applicable JV Interest has been transferred to us) will have increased involvement in leasing. Similarly, Simon will be entitled to certain fees in connection with the management, leasing and development of the JV Properties owned by the Simon JV, except that if Simon fails to meet certain leasing performance conditions by April 13, 2018, we (assuming the applicable JV Interest has been transferred to us) will have increased involvement in leasing. Likewise, Macerich will be entitled to certain fees in connection with the management, lease and development of the JV Properties owned by the Macerich JV, except that if Macerich fails to meet certain leasing performance conditions by April 30, 2018, we (assuming the applicable JV Interest has been transferred to us) will have increased involvement in leasing. In addition, at any time after March 31, 2018 in the case of the GGP JV, April 13, 2018 in the case of the Simon JV, and April 30, 2018 in the case of the Macerich JV we will have the right to cause GGP to purchase from the GGP JV, Simon to purchase from the Simon JV, or Macerich to purchase from the Macerich JV, as applicable, any JV Property owned by the applicable JV with respect to which a certain third-party leasing threshold has been satisfied at the fair market value of the property, less certain mortgage loans and other debt in respect of such property and certain selling expenses. A substantial majority of the space at the JV Properties is leased by the JVs to Sears Holdings under the JV Master Leases. See “Business and Properties—The GGP JV, the Simon JV and the Macerich JV.”

**How was the $29.58 per share subscription price determined?**

In determining the subscription price, the board of directors of Sears Holdings considered, among other things, (1) the opinion of Duff & Phelps LLC, which it engaged to act as a financial advisor in connection with the Transaction, (2) the appraisal reports of Cushman & Wakefield, which assisted in valuing the Acquired Properties, (3) the desirability of broad participation in the rights offering by Sears Holdings’ stockholders and of the development of a trading market for both the subscription rights and Seritage Growth common shares, (4) the fair market value of the Acquired Properties and the JV Interests purchased in the Transaction, including the terms of the Master Lease, and (5) Seritage Growth’s liquidity needs and the aggregate amount of proceeds to be paid to Sears Holdings pursuant to the Transaction if the rights offering were fully subscribed.

**Am I required to exercise all of the subscription rights I receive in the rights offering?**

No. You may exercise any number of your subscription rights or you may choose not to exercise any subscription rights. If you do not exercise any subscription rights, you will not receive any Seritage Growth common shares.

The number of shares of Sears Holdings common stock that you own, and your percentage ownership, will not change as a result of the rights offering. If you do not exercise your subscription rights to purchase Seritage
Growth common shares, following the Transaction you will no longer retain an ownership interest in the assets and liabilities transferred to us, as the common stock of Sears Holdings that you hold will no longer reflect the activities, assets or liabilities transferred to us. In addition, the trading price of Sears Holdings common stock immediately following the rights offering may be higher or lower than immediately prior to the rights offering because the assets and liabilities transferred to us will no longer be held by Sears Holdings, those assets and liabilities and related activities will no longer be reflected in Sears Holdings financial statements, and Sears Holdings will receive cash proceeds of approximately $2,677.3 million as a result of the sale of the Acquired Properties and the JV Interests to us (including the distribution of the net proceeds of the debt incurred in the Financing, which will become, on a consolidated basis, indebtedness of the Operating Partnership and Seritage Growth) and will become obligated to pay rent (of $140.0 million per year, initially) as well as other charges associated with the Acquired Properties pursuant to the Master Lease. See “Certain Relationships and Related Transactions—The Master Lease.”

See “Risk Factors—Risks Related to the Offering—If you receive and exercise the subscription rights, you may be subject to adverse U.S. federal income tax consequences” and “Risk Factors—Risks Related to the Offering—If you receive but do not sell or exercise the subscription rights before they expire, you may be subject to adverse U.S. federal income tax consequences.”

How soon must I act to exercise my subscription rights?

If you received a rights certificate and elect to exercise any or all of your subscription rights, the subscription agent must receive your completed and signed rights certificate and payments before the rights offering expires on July 2, 2015 at 5:00 p.m., New York City time. If you hold your shares of Sears Holdings common stock in the name of a broker, dealer, custodian bank or other nominee, your nominee may establish a deadline before the expiration of the rights offering by which you must provide it with your instructions to exercise your subscription rights. Although Sears Holdings may, in its discretion, extend the expiration date of the rights offering, it currently does not intend to do so. In addition, Sears Holdings may cancel the rights offering for various reasons. If the rights offering is cancelled, all subscription payments received will be returned, without interest or penalty, as soon as practicable. See “The Rights Offering—Conditions, Withdrawal and Cancellation.”

Although we will make reasonable attempts to provide this prospectus to Sears Holdings’ stockholders, the rights offering and all subscription rights will expire on the expiration date, whether or not we have been able to locate each person entitled to subscription rights.

May I transfer my subscription rights?

Yes. The subscription rights are transferable during the course of the subscription period and we intend to apply to list the subscription rights for trading on the NYSE under the symbol “SRGRT.” We expect that a limited market, commonly known as a “when-issued” trading market, will develop on the NYSE for the subscription rights. We currently expect that the subscription rights will begin to trade on a when-issued basis on the date of this prospectus and will continue to trade until 4:00 p.m., New York City time, on June 26, 2015, the fourth business day prior to the scheduled expiration date of the rights offering (or, if the offer is extended, on the fourth business day immediately prior to the extended expiration date). As a result, you may transfer or sell your subscription rights if you do not want to exercise them to purchase Seritage Growth common shares. However, the subscription rights are a new issue of securities with no prior trading market, and there may be insufficient liquidity in any trading market for the subscription rights or the market value of the subscription rights may be lower than expected.

If you hold your Sears Holdings common shares through a broker, custodian bank or other nominee, you may sell your subscription rights by contacting your broker, custodian bank or other nominee until the close of business on the business day preceding the expiration date of this rights offering. To sell your subscription rights, in addition to any other procedures your broker, custodian bank or other nominee may require, you must deliver
your order to sell to your broker, custodian bank or other nominee such that it will be actually received prior to 4:00 p.m., New York City time, on June 26, 2015, the fourth business day prior to the expiration date of this rights offering. If you are a record holder of a subscription rights certificate, you may take your subscription rights certificate to a broker who can sell your subscription rights for you. To do so, you must deliver your properly executed subscription rights certificate, with appropriate instructions, and any additional documentation required by the broker. Commissions and applicable taxes or broker fees may apply if you sell your subscription rights. See “The Rights Offering—Transferability of Subscription Rights.”

What is the effect of transferring subscription rights?

You may transfer or sell your subscription rights if you do not want to exercise them to purchase Seritage Growth common shares. However, if you transfer all or a portion of your subscription rights, you will be unable to purchase the Seritage Growth common shares underlying such transferred rights. In addition, if you transfer all or a portion of your subscription rights, you will not be entitled to exercise the over-subscription privilege with respect to the portion of your rights so transferred.

What is the effect of purchasing subscription rights?

If you purchase subscription rights prior to the expiration of the subscription period, you may exercise such subscription rights and the over-subscription privilege related thereto or further transfer such subscription rights in accordance with the terms set forth in this prospectus. If Sears Holdings cancels the rights offering, the subscription rights will be void, of no value and will cease to be exercisable for Seritage Growth common shares. If you purchase subscription rights during the subscription period and Sears Holdings cancels the rights offering, you will lose the entire purchase price paid to acquire such subscription rights in the market; however any subscription payments that you paid and that were received by the subscription agent will be returned to you, without interest or penalty, as soon as practicable. See “Risk Factors—Risks Related to the Offering—Sears Holdings may cancel the rights offering at any time prior to the expiration of the rights offering and in such case neither Sears Holdings nor the subscription agent will have any obligation to you except to return your exercise payments.”

Is Sears Holdings requiring a minimum subscription to complete the offering?

Yes. Sears Holdings is requiring that the offering be fully subscribed (including taking into account any exchanges by ESL or any Fairholme Client) to complete the offering. If this offering is not fully subscribed, the offering will be terminated unless the Sears Holdings board of directors, in its sole discretion, waives the minimum subscription requirement. If the rights offering is terminated, any money received by the subscription agent from subscribing stockholders will be refunded promptly, without interest or deduction.

Are there any conditions to closing the rights offering?

Yes. Sears Holdings’ obligation to close the rights offering and to distribute the Seritage Growth common shares subscribed for in the rights offering is conditioned upon the satisfaction or waiver of certain conditions, including that the board of directors of Sears Holdings does not determine, in its sole discretion, that the rights offering is not in the best interest of Sears Holdings or its stockholders, or that market conditions are such that it is not advisable to consummate the rights offering (which could occur if, among other things, we do not receive sufficient proceeds from this offering, the OP Private Placement, the Seritage Private Placements and the Non-Economic Shares Private Placement, or if the Acquired Entities do not receive sufficient proceeds from the Financing). See “The Rights Offering—Conditions, Withdrawal and Cancellation.”
Can Sears Holdings cancel or extend the rights offering?

The rights offering is subject to the satisfaction or waiver of certain conditions. In addition, Sears Holdings has the right to withdraw and cancel the rights offering if, at any time prior to its expiration, the board of directors of Sears Holdings determines, in its sole discretion, that the rights offering is not in the best interest of Sears Holdings or its stockholders, or that market conditions are such that it is not advisable to consummate the rights offering. If the rights offering is cancelled, any money received by the subscription agent from subscribing holders of rights will be returned, without interest or penalty, as soon as practicable. If Sears Holdings cancels the rights offering, the subscription rights will be void, of no value and will cease to be exercisable for Seritage Growth common shares. If you purchase rights during the subscription period and Sears Holdings cancels the rights offering, you will lose the entire purchase price paid to acquire such subscription rights in the market; however, any subscription payments that you paid and that were received by the subscription agent will be returned to you, without interest or penalty, as soon as practicable. Sears Holdings may also extend the rights offering for additional periods ending no later than July 17, 2015, although it does not presently intend to do so.

You should discuss with your tax advisor the tax consequences of receiving subscription rights if Sears Holdings subsequently cancels the rights offering. See “What are the material U.S. federal income tax consequences if I receive a subscription right from Sears Holdings and Sears Holdings subsequently cancels the rights offering?”

Will Sears Holdings’ directors and officers and Seritage Growth’s trustees and officers be able to exercise their subscription rights?

Sears Holdings’ directors and officers and Seritage Growth’s trustees and officers that hold shares of Sears Holdings’ common stock, excluding shares of Sears Holdings’ restricted stock that is unvested as of the record date, may participate in the rights offering at the same subscription price per share as all other holders of subscription rights, but none of Sears Holdings’ directors and officers nor our trustees and officers is obligated to participate.

Holders of Sears Holdings’ restricted stock that is unvested as of the record date will receive a cash award, to be paid on the applicable vesting date, in lieu of any right such holder may have to receive subscription rights with respect to such unvested restricted stock. Such cash awards will represent the right to receive, on the applicable vesting date, a cash payment from Sears Holdings equal to the value of the subscription rights that would have been distributed to such holder had such holder’s unvested restricted stock been unrestricted shares of Sears Holdings’ common stock, calculated on the basis of the volume-weighted average trading price per share for the 10 trading-day period beginning on the first day on which the subscription rights trade on the NYSE. The subscription rights are expected to begin to trade on the NYSE on the first business day following the distribution of the subscription rights.

Has the Sears Holdings board of directors made a recommendation to Sears Holdings stockholders regarding the rights offering?

No. Neither Sears Holdings nor Seritage Growth, nor their respective boards, is making any recommendation regarding the exercise of the subscription rights or the purchase, retention or sale of Sears Holdings common stock or Seritage Growth common shares. Stockholders who exercise subscription rights will incur investment risk on new money invested. Neither we nor Sears Holdings can predict the price at which Seritage Growth common shares will trade after this offering. The market price for Seritage Growth common shares may be below the subscription price, and if you purchase common shares at the subscription price, you may not be able to sell the shares in the future at the same price or a higher price. You should make your decision based on your assessment of our business and financial condition, our prospects for the future, the terms of the rights offering and the information contained in this prospectus. See “Risk Factors” for a discussion of some of the risks involved in investing in Seritage Growth common shares.
ESL beneficially owns approximately 48.5% of Sears Holdings’ outstanding shares of common stock as of the date of this prospectus (53.2% including shares issuable upon the exercise of warrants held by ESL). Edward S. Lampert is the Chairman of the Board and Chief Executive Officer of Sears Holdings and Chairman and Chief Executive Officer of ESL. You should not view the intentions of ESL or Mr. Lampert as a recommendation or other indication, by them or any member of the Sears Holdings or Seritage Growth boards, regarding whether the exercise of the subscription rights is or is not in your best interests.

**How do I exercise my subscription rights if I am a registered holder of Sears Holdings Common Stock?**

If you are a registered holder of Sears Holdings common stock and you wish to participate in the rights offering, you must take the following steps:

- deliver payment (as set forth below) to the subscription agent before 5:00 p.m., New York City time, on July 2, 2015; and
- deliver a properly completed and duly executed rights certificate to the subscription agent before 5:00 p.m., New York City time, on July 2, 2015.

In certain cases, you may be required to provide additional documentation or signature guarantees. For example, your signature on the rights certificate must be guaranteed by an eligible institution unless you provide on the rights certificate that shares are to be delivered to you as record holder of those subscription rights or you are an eligible institution. See “The Rights Offering” for more information.

Please follow the delivery instructions on the rights certificate. Do not deliver subscription documents, the rights certificate or payment to Sears Holdings or to us. The risk of delivery to the subscription agent of your subscription documents, rights certificate and payment is borne by you, and not by us, Sears Holdings or the subscription agent. You should allow sufficient time for delivery of your subscription materials to the subscription agent so that the subscription agent receives them prior to 5:00 p.m., New York City time, on July 2, 2015.

You must timely pay the full subscription price in U.S. dollars for the full number of Seritage Growth common shares you wish to acquire in the rights offering, including any shares you wish to acquire pursuant to the over-subscription privilege. You must deliver to the subscription agent payment in full, by cashier’s or certified check drawn upon a United States bank payable to the subscription agent at the address set forth below, before the expiration of the rights offering period. Personal checks and wire transfers will not be accepted.

**How do I participate in the rights offering if my shares are held in the name of a broker, dealer, custodian bank or other nominee?**

If you hold your shares of Sears Holdings common stock in the name of a broker, dealer, custodian bank or other nominee, then your nominee is the record holder of the shares you own. The record holder must exercise the subscription rights on your behalf in accordance with your instructions. If you wish to purchase Seritage Growth common shares through the rights offering, you should contact your broker, dealer, custodian bank or nominee as soon as possible. Please follow the instructions of your nominee. Your nominee may establish a deadline that may be before the expiration date of the rights offering.

**How do I exercise subscription rights that were purchased during the subscription period?**

If you purchased subscription rights during the subscription period through a broker, dealer, custodian bank or other nominee, you will not receive a rights certificate. Instead, your broker, dealer, custodian bank or other nominee must exercise the subscription rights on your behalf. If you wish to exercise your subscription rights and purchase Seritage Growth common shares through the rights offering, you should contact your nominee as soon as possible. Please follow the instructions of your nominee. Your nominee may establish a deadline that may be before the expiration date of the rights offering.
If you purchased subscription rights during the subscription period directly from a registered holder of Sears Holdings common stock, you should contact the subscription agent as soon as possible regarding the exercise of your subscription rights. Please follow the instructions of the subscription agent in order to properly exercise your subscription rights. See “The Rights Offering—Method of Exercising Subscription Rights.”

When will I receive my subscription rights certificate?

Promptly after the date of this prospectus, the subscription agent will send a subscription rights certificate to each registered holder of Sears Holdings’ common stock on the record date, based on the stockholder registry maintained by the transfer agent for Sears Holdings’ common stock. If you hold your shares of common stock in the name of a broker, dealer, custodian bank or other nominee, you will not receive an actual subscription rights certificate. Instead, DTC will electronically issue one subscription right to your nominee record holder for every share of Sears Holdings common stock that you beneficially own as of the record date.

What form of payment must I use to pay the subscription price?

You must timely pay the full subscription price in U.S. dollars for the full number of Seritage Growth common shares you wish to acquire in the rights offering, including any shares you wish to acquire pursuant to the over-subscription privilege. You must deliver to the subscription agent payment in full, by cashier’s or certified check drawn upon a United States bank payable to the subscription agent at the address set forth below, before the expiration of the rights offering period. Personal checks and wire transfers will not be accepted.

If you send a subscription payment that is insufficient to purchase the number of Seritage Growth common shares you requested, or if the number of shares you requested is not specified in the rights certificate or subscription documents, the payment received will be applied to exercise your subscription rights to the fullest extent possible based on the amount of the payment received, subject to the availability of Seritage Growth common shares under the over-subscription privilege and the elimination of fractional shares.

If you send a subscription payment that exceeds the amount necessary to purchase the number of Seritage Growth common shares for which you have indicated an intention to purchase, then the remaining amount will be returned to you by the subscription agent, without interest or penalty, as soon as practicable following the expiration of the rights offering.

What is the record date for the rights offering?

Record ownership will be determined as of the close of business on June 11, 2015 (the “record date”).

When will I receive my Seritage Growth common shares?

The distribution of the Seritage Growth common shares will be made by way of direct registration in book-entry form. No share certificates will be issued. If you purchase Seritage Growth common shares in the rights offering, as soon as practicable after the closing of the rights offering and the valid exercise of subscription rights pursuant to the basic subscription right and over-subscription privilege, and after all allocations and adjustments contemplated by the terms of the rights offering have been effected, the subscription agent will (i) credit your account or the account of your record holder with the number of Seritage Growth common shares that you purchased pursuant to the basic subscription right and the over-subscription privilege and (ii) mail to each holder of subscription rights who exercises the over-subscription privilege any excess amount, without interest or penalty, received in payment of the subscription price for excess Seritage Growth common shares that are subscribed for by such holder of subscription rights but not allocated to such holder of subscription rights pursuant to the over-subscription privilege.
After I exercise my subscription rights and send in my payment, may I withdraw or cancel my exercise of subscription rights?

No. All exercises of subscription rights are irrevocable unless the rights offering is cancelled, even if you later learn information that you consider to be unfavorable to the exercise of your subscription rights. You should not exercise your subscription rights unless you are certain that you wish to purchase Seritage Growth common shares at a price of $29.58 per whole share.

What effect does this offering have on the outstanding common stock of Sears Holdings?

The issuance of Seritage Growth shares of beneficial interest in this offering, the Non-Economic Shares Private Placement and the Seritage Private Placements will not affect the number of shares of Sears Holdings common stock you own or your percentage ownership of Sears Holdings. If you do not exercise your subscription rights to purchase Seritage Growth common shares, following the Transaction you will no longer retain an ownership interest in the assets and liabilities transferred to us, as the common stock of Sears Holdings that you hold will no longer reflect the activities, assets or liabilities transferred to us. In addition, the trading price of Sears Holdings common stock immediately following this offering may be higher or lower than immediately prior to this offering because the assets and liabilities transferred to us will no longer be held by Sears Holdings, those assets and liabilities and related activities will no longer be reflected in Sears Holdings financial statements, and Sears Holdings will receive cash proceeds of approximately $2,677.3 million as a result of the sale of the Acquired Properties and the JV Interests to us (including the distribution of the net proceeds of the debt incurred in the Financing, which will become, on a consolidated basis, indebtedness of Operating Partnership and Seritage Growth) and will become obligated to pay rent (of $140.0 million per year, initially) as well as other charges associated with the Acquired Properties pursuant to the Master Lease. See “Certain Relationships and Related Transactions—The Master Lease.”

What is the expected distribution policy of Seritage Growth?

Seritage Growth intends to elect and qualify to be taxed as a REIT for U.S. federal income tax purposes. U.S. federal income tax law generally requires, among other things, that a REIT distribute annually at least 90% of its REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gains, and that it pay regular corporate rates to the extent that it annually distributes less than 100% of its taxable income.

Seritage Growth currently intends to pay quarterly distributions in cash. For purposes of satisfying the minimum distribution requirement to qualify for and maintain REIT status, Seritage Growth’s taxable income will be calculated without reference to its cash flow. Consequently, under certain circumstances, Seritage Growth may not have available cash to pay its required distributions and may distribute a portion of its dividends in the form of Seritage Growth common shares. In either event, a shareholder of Seritage Growth will be required to report dividend income to the extent of current or accumulated earnings and profit as a result of such distributions even though Seritage Growth distributed only nominal amounts of cash to such shareholder. The Internal Revenue Service (the “IRS”) has issued private letter rulings to other REITs treating certain distributions that are paid partly in cash and partly in shares as taxable dividends that would satisfy the REIT annual distribution requirement and qualify for the dividends paid deduction for U.S. federal income tax purposes. Those rulings may be relied upon only by taxpayers to whom they were issued, but Seritage Growth could request a similar ruling from the IRS. In addition, the IRS previously issued a revenue procedure authorizing publicly traded REITs to make elective cash/share dividends, but that revenue procedure does not apply to Seritage Growth’s taxable year ending December 31, 2015 and future taxable years. Accordingly, it is unclear whether and to what extent Seritage Growth will be able to make taxable dividends payable in-kind. For more information, see “U.S. Federal Income Tax Considerations.” Seritage Growth currently believes that it will have sufficient available cash to pay its required distribution for 2015 in cash but there can be no assurance that this will be the case.
It presently is anticipated that acquisitions, investment and redevelopment activities with respect to our properties will be financed through internally generated cash flow, borrowings under the debt agreements to be entered into by Operating Partnership in connection with the Transaction, other debt financing or the issuance of equity securities. To the extent that those sources of funds are insufficient to meet all such cash needs, or the cost of such financing exceeds the cash flow generated by our properties for any period, cash available for distribution could be reduced. In that event, we may also borrow funds, liquidate or sell a portion of our properties or investments or find another source of funds, such as the issuance of equity securities, in order to pay required distributions. See “Risk Factors—Risk Related to Status as a REIT.”

Seritage Growth anticipates that its distributions generally will be taxable as ordinary income to its shareholders, although a portion of the distributions may be designated by Seritage Growth as qualified dividend income or capital gain or may constitute a return of capital. Seritage Growth will furnish annually to each Seritage Growth shareholder a statement setting forth distributions paid during the preceding year and their characterization as ordinary income, return of capital, qualified dividend income or capital gain. For a more complete discussion of the U.S. federal income tax treatment of distributions to shareholders of Seritage Growth, see “U.S. Federal Income Tax Considerations.”

Are there risks in exercising my subscription rights?

Yes. Exercising the rights and investing in Seritage Growth common shares involves risks. We urge you to carefully read the section entitled “Risk Factors” beginning on page 32 of this prospectus, and all other information in this prospectus in its entirety before you decide whether to exercise your rights.

If the rights offering is not completed, will my subscription payment be refunded to me?

The subscription agent will hold all funds it receives in escrow in a segregated bank account until completion of the rights offering. If the rights offering is not completed, all subscription payments received by the subscription agent will be returned, without interest or penalty, as soon as practicable. If you own shares of Sears Holdings common stock in the name of a broker, dealer, custodian bank or other nominee, it may take longer for you to receive your subscription payment because the subscription agent will return payments through the nominee record holder of your shares. If you purchase rights during the subscription period and Sears Holdings cancels the rights offering, you will lose the entire purchase price paid to acquire such subscription rights in the market; however any subscription payments that you paid and that were received by the subscription agent will be returned to you, without interest or penalty, as soon as practicable. See “Risk Factors—Risks Related to the Offering—Sears Holdings may cancel the rights offering at any time prior to the expiration of the rights offering and in such case neither Sears Holdings nor the subscription agent will have any obligation to you except to return your exercise payments.”

Will the rights be listed on a securities exchange?

The subscription rights are transferable during the course of the subscription period and we intend to apply to list the subscription rights for trading on the NYSE under the symbol “SRGRT.” No public market currently exists for the subscription rights. We currently expect that they will begin to trade on a when-issued basis on the date of this prospectus, and will continue to trade until 4:00 p.m., New York City time, on June 26, 2015, the fourth business day prior to the scheduled expiration date of this rights offering (or if the offer is extended, on the fourth business day immediately prior to the extended expiration date). As a result, you may transfer or sell your subscription rights if you do not want to purchase any or all of the Seritage Growth common shares you are entitled to purchase through the rights offering. However, the subscription rights are a new issue of securities with no prior trading market, and we cannot provide you with any assurances as to the liquidity of any trading market for the subscription rights or the market value of the subscription rights.
Will the Seritage Growth common shares be listed on a securities exchange?

We intend to apply to list the Seritage Growth common shares on the NYSE under the symbol “SRG” and expect that trading will begin the first trading day after the completion of this offering. Currently, there is no public market for Seritage Growth common shares. We cannot predict the trading prices for the common shares or whether an active trading market for the common shares will develop. See “Risk Factors—Risks Related to the Offering—There is currently no public market for Seritage Growth common shares. An active trading market for Seritage Growth common shares may not develop following this offering, and you may be unable to sell your shares at a price above the initial public offering price or at all.

What will happen to the listing of Sears Holdings shares?

Sears Holdings shares will continue to be traded on the NASDAQ Global Select Market under the symbol “SHLD.”

What if I want to sell my Sears Holdings common stock or my Seritage Growth common shares?

You should consult with your financial advisors, such as your stockbroker, bank or tax advisor. Neither Sears Holdings nor Seritage Growth, nor their respective boards, is making any recommendation regarding the exercise of the subscription rights or the purchase, retention or sale of Sears Holdings common stock or Seritage Growth common shares. In addition, the trading price of Sears Holdings common stock immediately following the Transaction may be higher or lower than immediately prior to the Transaction because the assets and liabilities of transferred to us will no longer be held by Sears Holdings, those assets and liabilities and related activities will no longer be reflected in Sears Holdings financial statements and Sears Holdings will receive cash proceeds of approximately $2,677.3 million as a result of the sale of the Acquired Properties and the JV Interests to us (including the distribution of the net proceeds of the debt incurred in the Financing, which will be assumed by Operating Partnership) and will become obligated to pay rent (of $140.0 million per year, initially) as well as other charges associated with the properties pursuant to the Master Lease. See “Certain Relationships and Related Transactions—The Master Lease.”

If you decide to sell any shares of Sears Holdings common stock before the record date, you will not receive any subscription rights described in this prospectus in respect of the shares sold. If you own Sears Holdings common stock on the record date and sell those shares after the record date, you will still receive the subscription rights that you would be entitled to receive in respect of the Sears Holdings common stock you owned on the record date.

What fees or charges apply if I purchase Seritage Growth common shares in the rights offering?

Sears Holdings is not charging any fee or sales commission to issue subscription rights to you or to deliver shares to you if you exercise your subscription rights. If you exercise your subscription rights through your broker, dealer, custodian bank or other nominee, you are responsible for paying any fees your intermediary may charge you.

What are the material U.S. federal income tax consequences if I receive and exercise a subscription right?

You should discuss with your tax advisor the tax consequences of receiving and exercising a subscription right; however, if you receive a subscription right and exercise that right, you should generally expect to have (1) taxable dividend income equal to the fair market value (if any) of the subscription right on the date of its distribution by Sears Holdings and (2) no additional income upon the exercise of the subscription right. You will need to fund any tax resulting from the receipt of the subscription right with cash from other sources. For a detailed discussion, see “U.S. Federal Income Tax Considerations.”
What are the material U.S. federal income tax consequences if I receive and sell a subscription right?

You should discuss the tax consequences of receiving and selling a subscription right with your tax advisor; however, if you receive a subscription right and sell that right, you should generally expect to have (1) taxable dividend income equal to the fair market value (if any) of the subscription right on the date of its distribution by Sears Holdings and (2) short-term capital gain or loss on the sale of the subscription right equal to the difference between the proceeds received upon the sale and the fair market value (if any) of the subscription right on the date of its distribution by Sears Holdings. It is possible that the sale proceeds received upon a sale of the subscription rights will be less than any tax resulting from your receipt of the subscription right. In this event, you will generally need to fund the remaining portion of any tax with cash from other sources. For a detailed discussion, see “U.S. Federal Income Tax Considerations.”

What are the material U.S. federal income tax consequences if I receive and do not sell or exercise the right before it expires?

You should discuss with your tax advisor the tax consequences of receiving a subscription right and neither selling nor exercising that right; however, if you receive a subscription right from Sears Holdings and do not sell or exercise that right before it expires, you should generally expect to have (1) taxable dividend income equal to the fair market value (if any) of the subscription right on the date of its distribution by Sears Holdings and (2) a short-term capital loss upon the expiration of such right in an amount equal to your adjusted tax basis (if any) in such right. In general, capital losses are available to offset only capital gains and may not be used to offset dividend or other income (except, to the extent of up to $3,000 of capital loss per year, in the case of a non-corporate U.S. shareholder). Accordingly, if you receive a subscription right from Sears Holdings and take no action, you may owe tax and need to fund that tax with cash from other sources. See “Risk Factors—Risks Related to the Offering—if you receive but do not sell or exercise the subscription rights before they expire, you may be subject to adverse U.S. federal income tax consequences.” For a detailed discussion, see “U.S. Federal Income Tax Considerations.”

How will I be impacted if the distribution of rights to me is subject to withholding tax?

In certain circumstances, withholding tax or backup withholding tax may apply to the distribution by Sears Holdings of the subscription rights. If withholding tax or backup withholding tax applies to the distribution of the subscription rights to you, your broker (or other applicable withholding agent) will be required to remit any such withholding tax or backup withholding tax in cash to the IRS. Depending on the circumstances, the broker (or other applicable withholding agent) may obtain the funds necessary to remit any such withholding tax by asking you to provide the funds, by using funds in your account with the broker or by selling (on your behalf) all or a portion of the subscription rights or by another means (if any) available. For a detailed discussion, see “U.S. Federal Income Tax Considerations.”

What are the material U.S. federal income tax consequences if I receive a subscription right from Sears Holdings and Sears Holdings subsequently cancels the rights offering?

You should discuss with your tax advisor the tax consequences of receiving a subscription right if Sears Holdings subsequently cancels the rights offering. There are limited authorities addressing the tax consequences that would apply to you in this circumstance. Certain of the authorities suggest that in this circumstance you may not have taxable dividend income upon the receipt of the subscription rights if you do not sell or otherwise dispose of the rights and if the receipt and cancellation occur in the same taxable year. However, the scope of those authorities is unclear and Sears Holdings (and any other applicable withholding agent) is likely to take the position, for information reporting and withholding purposes, that you have taxable dividend income upon the receipt of the subscription rights even if Sears Holdings subsequently cancels the rights offering. If withholding tax is withheld from you in this event, you may wish to seek a refund of such amount from the IRS.
If you do have taxable dividend income upon the receipt of a subscription right even though Sears Holdings subsequently cancels the rights offering, you should generally expect to have a short-term capital loss upon the cancellation of the subscription right in an amount equal to your adjusted tax basis (if any) in such right. In general, capital losses are available to offset only capital gains and may not be used to offset dividend or other income (except, to the extent of up to $3,000 of capital loss per year, in the case of a non-corporate U.S. shareholder). For a detailed discussion, see “U.S. Federal Income Tax Considerations.”

How do I exercise my subscription rights if I live outside of the United States and Canada or have an army post office or fleet post office address?

The subscription agent will hold rights certificates for holders of Sears Holdings common stock having an address outside the United States and Canada, or who have an Army Post Office (APO) address or Fleet Post Office (FPO) address. In order to exercise subscription rights, such stockholders must notify the subscription agent and timely follow the additional procedures described under the heading “The Rights Offering—Foreign Stockholders.”

To whom should I send my forms and payment?

If your Sears Holdings shares are held in the name of a broker, dealer or other nominee, you should send your subscription documents and subscription payment to that nominee.

If you are the record holder, you should send your subscription documents, rights certificate and subscription payment by first class mail or courier service to:

By Registered Certified or Express Mail: By Overnight Courier:
Computershare Computershare
 c/o Voluntary Corporate Actions c/o Voluntary Corporate Actions
 P.O. Box 43011 250 Royall Street
 Providence, RI 02940-3011 Suite V

Canton, MA 02021

The risk of delivery to the subscription agent of subscription documents, rights certificates and subscription payments is borne by the holders of subscription rights, and not by us, Sears Holdings or the subscription agent. You should allow sufficient time for delivery of your subscription materials to the subscription agent.

How will this offering affect outstanding Sears Holdings warrants?

On November 21, 2014, Sears Holdings issued an aggregate of approximately 22 million warrants. Each warrant, when exercised, entitles the holder thereof to purchase one share of Sears Holdings common stock at an exercise price of $28.41 per share under the terms of the warrant agreement. The exercise price and the number of shares of Sears Holdings common stock issuable upon exercise of a warrant are subject to adjustment in certain circumstances as provided in the related warrant agreement. Because Sears Holdings is distributing the subscription rights to holders of its common stock as of the record date, holders of Sears Holdings warrants will not receive subscription rights for their warrants or the shares of Sears Holdings common stock for which such warrants may be exercised unless they exercise their warrants and are issued Sears Holdings common stock prior to the record date.
How will this offering affect participants of the savings plans sponsored within the Sears Holdings controlled group of corporations?

The Sears Holdings Savings Plan and the Sears Holdings Puerto Rico Savings Plan (collectively, the “Savings Plans”) offer an employer stock fund through which participants (current and former Sears Holdings employees) may invest in Sears Holdings common stock. The applicable trust of each Savings Plan will, on behalf of each participant, receive one subscription right for each full share of Sears Holdings common stock held in the Sears Holdings stock fund under the applicable Savings Plan as of the record date. If necessary Sears Holdings will apply to the U.S. Department of Labor requesting that it grant a prohibited transaction exemption, effective as of the date of the distribution of the subscription rights, with respect to the acquisition, holding and disposition of the subscription rights by the Savings Plans. It is anticipated that an independent fiduciary will be engaged for each Savings Plan to determine whether and/or when to exercise or sell the subscription rights on behalf of the trusts of the Savings Plans, subject to the terms of any prohibited transaction exemption. Proceeds from the exercise or sale of the subscription rights will be credited to the Sears Holdings Stock Fund and reflected in the unit value of that fund, in accordance with the Savings Plans and related trust documents.

Whom should I contact if I have other questions?

If you have more questions about this offering or need additional copies of the offering documents, please contact Georgeson Inc., our information agent, by calling (866) 257-5415 (toll-free) or emailing SearsSeritageOffer@georgeson.com.
Sears Holdings is distributing, at no charge, to holders of shares of its common stock as of the record date, transferable subscription rights to purchase from Seritage Growth up to an aggregate of 53,298,899 Seritage Growth common shares (without giving effect to any potential exchange by ESL or any Fairholme Client), at a price of $29.58 per share. Sears Holdings will distribute to each holder of its common stock one subscription right for each full share of its common stock owned by that stockholder as of 5:00 p.m., New York City time, on June 11, 2015, the Record Date, except that holders of Sears Holdings’ restricted stock that is unvested as of the Record Date are expected to receive a cash award (equal to the value of the subscription rights that would have been distributed to such holder) in lieu of subscription rights. Each subscription right is a contractual obligation of Seritage Growth that allows the holder thereof to subscribe for one half of one Seritage Growth common shares at any time following the holder’s receipt of a subscription rights certificate and prior to the expiration date. Each subscription right entitles the holder to a basic subscription right and an over-subscription privilege. The subscription rights will expire if they are not exercised by 5:00 p.m., New York City time, on July 2, 2015.

Seritage Growth is also offering to certain Fairholme Clients 9,527,198 Seritage Growth non-voting shares at a price of $29.58 per share (the subscription price for the rights offering), in lieu of certain Class A Common Shares. FCM has advised us that it anticipates that certain Fairholme Clients, subject to the final terms of the offering and other considerations including market conditions and tax, regulatory and investment mandate restrictions, are likely to exchange a portion of their subscription rights for the Seritage Growth non-voting shares and that, subject to such considerations, certain other Fairholme Clients are likely to exercise their subscription rights to purchase Seritage Growth common shares. This offering also includes 9,527,198 Seritage Growth common shares that may be issued from time to time upon conversion of the Seritage Growth non-voting shares. See “Description of Shares of Beneficial Interest—Non-Voting Shares.”

Sears Holdings expects the gross proceeds from this offering, together with the Seritage Private Placements and the ESL Private Placement, will be approximately $1,644.5 million, assuming that the subscription rights are exercised in full (or, in the case of the maximum portion of the subscription rights held by each of ESL and certain Fairholme Clients permitted to be exchanged under their respective Exchange Agreements, exchanged for Operating Partnership units and Seritage Growth non-economic shares, and for Seritage Growth non-voting shares, respectively).
Seritage Private Placements

Seritage Growth will issue and sell to each of GGP and Simon, concurrently with the closing of this offering and subject to the satisfaction of certain other related closing conditions, 1,125,760 Seritage Growth common shares at a price of $29.58 per share (the subscription price for the rights offering), for an aggregate purchase price of $33.3 million for each of Simon and GGP, in the Seritage Private Placements. The shares to be issued and sold in the Seritage Private Placements are not registered as part of, and are in addition to the Seritage Growth common shares offered in, this offering.

Basic Subscription Right

The basic subscription right gives holders of the subscription rights the right to purchase, in the aggregate, up to 53,298,899 Seritage Growth common shares (without giving effect to any potential exchange by ESL or any Fairholme Client) at a subscription price of $29.58 per whole share. Sears Holdings will distribute to each stockholder of record on the record date one subscription right allowing the holder to subscribe for one half of one Seritage Growth common share on the terms set forth in this offering, for every share of its common stock owned by such stockholder at that time. Fractional shares or cash in lieu of fractional shares will not be delivered in the rights offering. Instead, the number of shares issuable upon the exercise of the basic subscription right will be rounded down to the nearest whole share.

Over-subscription Privilege

If you purchase all of the Seritage Growth common shares available to you pursuant to your basic subscription right, you may also choose to purchase from Seritage Growth a portion of any common shares that other holders of subscription rights do not purchase through the exercise of their basic subscription rights, subject to limitations on ownership contained in Seritage Growth’s declaration of trust. ESL and Fairholme Clients may participate in the over-subscription privilege; however, in light of tax and regulatory restrictions ESL and certain Fairholme Clients are expected to acquire interests in Seritage Growth and the Operating Partnership (in ESL’s case) and in Seritage Growth (in the case of Fairholme Clients) by means of the ESL Private Placement and the Non-Voting Shares Offering. Seritage Growth common shares with respect to any subscription rights exchanged in the ESL Private Placement and the Non-Voting Shares Offering will not be sold in this offering and will not be available as part of the over-subscription process. In no circumstance will any holder (other than Fairholme Clients, which are expected to receive the Excess Share Waivers) be allocated common shares pursuant to the over-subscription privilege to the extent such allocation would result in such holder owning shares of beneficial interest of Seritage Growth in excess of the ownership limits, nor will any holder, other than ESL and Fairholme Clients, participate in the OP Private Placement, the Non-Economic Shares Private Placement or the Non-Voting Shares Offering. See “Certain Relationships and Related Transactions—ESL Exchange Agreement” and “Certain Relationships and Related Transactions—Fairholme Exchange Agreement.”

Ownership and Transfer Restrictions

To assist Seritage Growth in qualifying and maintaining its status as a REIT, among other purposes, Seritage Growth’s declaration of trust...
contains certain restrictions relating to the ownership and transfer of shares of beneficial interest of Seritage Growth, including a provision restricting shareholders from beneficially or constructively owning more than 9.6% by value or number of shares, whichever is more restrictive, of all outstanding shares, or all outstanding common shares (including Seritage Growth common shares, Seritage Growth non-economic shares and Seritage Growth non-voting shares), of beneficial interest, of Seritage Growth. The Seritage Growth Board of Trustees is expected to grant the Excess Share Waiver to FCM and Fairholme Clients. See “Description of Shares of Beneficial Interest—Restrictions on Ownership and Transfer.”

**Subscription Price**

$29.58 per whole share.

**Record Date**

5:00 p.m., New York City time, on June 11, 2015.

**Expiration Date**

5:00 p.m., New York City time, on July 2, 2015, unless Sears Holdings extends the rights offering period.

**Trading of Subscription Rights**

The subscription rights are transferable during the course of the subscription period. Sears Holdings currently expects that the subscription rights will begin to trade on the NYSE on a when-issued basis on the date of this prospectus, and will continue to trade until close of business on June 26, 2015, the fourth business day prior to the scheduled expiration date of the rights offering (or if the offer is extended, on the fourth business day immediately prior to the extended expiration date). As a result, you may transfer or sell your subscription rights if you do not want to exercise them to purchase Seritage Growth common shares. However, the subscription rights are a new issue of securities with no prior public trading market, and there can be no assurances provided as to the liquidity of the trading market for the subscription rights or their market value. See “The Rights Offering—Transferability of Subscription Rights.”

**No Revocation**

All exercises of subscription rights are irrevocable, subject to applicable law, even if you later learn of information about us that you consider to be unfavorable. You should not exercise your subscription rights unless you are certain that you wish to purchase Seritage Growth common shares at the subscription price.

**Conditions; Extension and Cancellation**

The offering is subject to the satisfaction or waiver of certain conditions. It is a condition to this offering that the offering be fully subscribed (including taking into account any exchanges by ESL or any Fairholme Client), which the Sears Holdings board of directors, at its sole discretion, may waive. In addition, Sears Holdings has the right to withdraw and cancel the rights offering if, at any time prior to its expiration, the board of directors of Sears Holdings determines, in its sole discretion, that the rights offering is not in the best interest of Sears Holdings or its stockholders, or that market conditions are such that it is not advisable to consummate the rights offering. See “The Rights Offering—Conditions, Withdrawal and Cancellation.”
Shares of Beneficial Interest to Be Outstanding After this Offering

55,550,420 Seritage Growth common shares, assuming full exercise of the subscription rights.

Or, if the maximum portion of the subscription rights held by each of ESL and certain Fairholme Clients permitted to be exchanged under their respective Exchange Agreements is exchanged for Operating Partnership units and Seritage Growth non-economic shares, and for Seritage Growth non-voting shares, respectively and including the Seritage Private Placements:

21,118,438 Seritage Growth Class A common shares

1,231,125 Seritage Growth non-economic shares.

9,527,198 Seritage Growth non-voting shares.

Use of Proceeds

Assuming the subscription rights are exercised in full, which is a condition to the completion of this offering (and including the maximum portion of the subscription rights held by each of ESL and certain Fairholme Clients permitted to be exchanged under their respective Exchange Agreements, exchanged for Operating Partnership units and Seritage Growth non-economic shares, and for Seritage Growth non-voting shares, respectively), we expect to receive gross cash proceeds of approximately $839.2 million as a result of the sale of Seritage Growth common shares and Seritage Growth non-voting shares in this offering. We also expect to receive gross cash proceeds of approximately $737.3 million through the sale of Operating Partnership units in the OP Private Placement, gross cash proceeds of approximately $0.7 million through the sale of Seritage Growth non-economic shares in the Non-Economic Shares Private Placement, and gross cash proceeds of approximately $66.6 million through the sale of Seritage Growth common shares in the Seritage Private Placements. We intend to contribute the proceeds from this offering, the Non-Economic Shares Private Placement and the Seritage Private Placements to Operating Partnership, which will, together with the proceeds of the OP Private Placement and the assumption of the indebtedness incurred in the Financing, be used to pay the purchase price to Sears Holdings for the Acquired Entities, the remaining Acquired Properties and the JV Interests and related fees and expenses, with remaining proceeds used for working capital and other general purposes.

Listing

We intend to apply to list the Seritage Growth common shares on the NYSE under the symbol “SRG.”

Ownership by ESL and Fairholme Clients

As of the date of this prospectus, ESL beneficially owns approximately 48.5% of the outstanding common stock of Sears Holdings (53.2% including shares issuable upon the exercise of
warrants held by ESL) and Fairholme Clients beneficially own approximately 24.6% of the outstanding common stock of Sears Holdings. In light of tax and regulatory restrictions ESL and Fairholme Clients are expected to acquire interests in Seritage Growth and the Operating Partnership (in ESL’s case) and in Seritage Growth (in the case of Fairholme Clients) by means of the ESL Private Placement and the Non-Voting Shares Offering, respectively. See “Certain Relationships and Related Transactions—ESL Exchange Agreement” and “Certain Relationships and Related Transactions—Fairholme Exchange Agreement.”

No Recommendation

Neither Sears Holdings nor Seritage Growth, nor their respective boards, is making any recommendation regarding the exercise of the subscription rights or the purchase, retention or sale of Sears Holdings common stock or Seritage Growth common shares. In addition, the trading price of Sears Holdings common stock immediately following the Transaction may be higher or lower than immediately prior to the Transaction because the assets and liabilities transferred to us will no longer be held by Sears Holdings, those assets and liabilities and related activities will no longer be reflected in Sears Holdings financial statements and Sears Holdings will receive cash proceeds of $2,677.3 million as a result of the sale of the Acquired Properties and the JV Interests to us and will become obligated to pay rent (of $140.0 million per year, initially) as well as other charges associated with the Acquired Properties pursuant to the Master Lease. See “Risk Factors” for a discussion of some of the risks involved in investing in Seritage Growth common shares.

Subscription Agent

Computershare Trust Company, N.A.

Information Agent

Georgeson Inc. If you have questions about the Transaction offering or need additional copies of the offering documents, please contact the information agent by calling (866) 257-5415 (toll-free) or emailing SearsSeritageOffer@georgeson.com.

Risk Factors

Exercising the rights and investing in Seritage Growth common shares involves risks. We urge you to carefully read the section entitled “Risk Factors” beginning on page 32 of this prospectus, and all other information in this prospectus in its entirety before you decide whether to exercise your rights.

Information related to the Acquired Properties and the JV Interests, and with respect to uses of proceeds, is estimated as of the anticipated consummation of the Transaction. Except as otherwise stated, this prospectus assumes that ESL exchanges subscription rights to purchase 24,927,033 Seritage Growth common shares and cash for 24,927,033 Operating Partnership units and 1,231,125 Seritage Growth non-economic shares in the ESL Private Placement, and certain Fairholme Clients exchange subscription rights to purchase 9,527,198 Seritage Growth common shares and cash for 9,527,198 Seritage Growth non-voting shares in the Non-Voting Shares Offering, although neither ESL nor any such Fairholme Client is obligated to do so.
SUMMARY PRO FORMA FINANCIAL DATA

Following the Transaction, Seritage Growth will be a publicly traded, self-administered, self-managed REIT primarily engaged in the real property business through its investment in Operating Partnership. Initially, Operating Partnership’s portfolio will consist of 235 Acquired Properties that are owned (or, in one case, ground-leased) by Sears Holdings as of the date of this prospectus, as well as the JV Interests that are owned by Sears Holdings as of the date of this prospectus, which will be sold to Operating Partnership in the Transaction. Operating Partnership will lease (or sublease) a substantial majority of the space at all of the Acquired Properties other than the Third Party Properties back to Sears Holdings under a Master Lease, with the remainder of such space leased to third-party tenants. The eleven Third Party Properties, which do not currently contain a Sears Holdings store, will not have any space leased to Sears Holdings, and will instead be leased solely to third-party tenants. A substantial majority of the space at the JV Properties is also leased by the JVs to Sears Holdings under the JV Master Leases. We expect to generate revenues primarily by leasing retail properties to Sears Holdings and eventually other operators.

The following summary pro forma financial data does not reflect the financial position or results of operations of Seritage Growth for the periods indicated. The following table sets forth the historical real estate assets to be acquired by Seritage Growth and pro forma financial data for Seritage Growth. The following table should be read in conjunction with the sections entitled “Unaudited Pro Forma Consolidated Financial Data” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

The pro forma financial information may not be indicative of our future performance and does not necessarily reflect what our financial position and results of operations would have been had we operated as a publicly traded company independent from Sears Holdings during the periods presented.

<table>
<thead>
<tr>
<th></th>
<th>As of and for the Three Months ended March 31, 2015</th>
<th>As of and for the Year ended December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sears Holdings’ historical basis of Acquired Properties</td>
<td>$1,297,656</td>
<td>$1,307,808</td>
</tr>
<tr>
<td>Sears Holdings’ historical basis of JV Properties (i)</td>
<td>$240,485</td>
<td>$243,525</td>
</tr>
</tbody>
</table>

Seritage Growth Properties

Pro Forma Data (unaudited):

Income Statement data:

- Pro Forma revenues ............................................. $ 64,670 $ 260,092
- Pro Forma equity in income in unconsolidated real estate affiliates ........ $ 3,251 $ 13,004
- Pro Forma net loss attributable to common shareholders ................ $ (1,093) $ (4,372)
- Class A shares - Pro Forma basic & diluted loss per share ........... $ (0.04) $ (0.14)
- Class C shares - Pro Forma basic & diluted loss per share ........... $ (0.04) $ (0.14)

Balance Sheet data:

- Pro Forma purchase price of Acquired Properties .................. $2,248,274
- Pro Forma investment in unconsolidated real estate affiliates .... $ 429,000
- Pro Forma total debt ............................................. $1,161,196
- Pro Forma number of real estate properties (ii) .................. 235

(i) The amount related to the JV Properties is based on Sears Holdings’ historical cost basis in 100% of the JV Properties, as opposed to the 50% interest Seritage Growth expects to acquire of the JV Interests.
(ii) The number of properties represents the properties to be acquired by Seritage Growth not included in joint ventures.
RISK FACTORS

Exercising the rights and investing in Seritage Growth common shares involves risks. In addition to other information contained in this prospectus, you should carefully consider the following factors before acquiring Seritage Growth common shares offered by this prospectus. The occurrence of any of the following risks might cause you to lose all or a part of your investment. Some statements in this prospectus, including statements in the following risk factors, constitute forward-looking statements. Please refer to the section entitled “Special Note Regarding Forward-Looking Statements.”

Risks Related to Our Business and Operations

We will be substantially dependent on Sears Holdings until we substantially diversify our portfolio, and an event or development that has a material adverse effect on Sears Holdings’ business, financial condition or results of operations could have a material adverse effect on our business, financial condition or results of operations.

Immediately following the Transaction, Sears Holdings will be the lessee of all but eleven of the Acquired Properties pursuant to the Master Lease and will account for a substantial majority of our revenues. Sears Holdings will also be the lessee of most of the space at each of the JV Properties and will account for a substantial majority of each JV’s revenues immediately following the Transaction. Under the Master Lease, we will depend on Sears Holdings to pay all insurance, taxes, utilities and maintenance and repair expenses in connection with these leased properties and to indemnify, defend and hold us harmless from and against various claims, litigation and liabilities arising in connection with its business, subject to proportionate sharing of certain of these expenses with occupants of the remainder of the space not leased to Sears Holdings. We may also rely on Sears Holdings for various support services, pursuant to the Transition Services Agreement that we expect to enter into with Sears Holdings. See “—Following this offering, we will continue to depend on Sears Holdings to provide us with certain services for our business, including, among other things, corporate and real estate redevelopment services, which may not be sufficient to meet our business needs, and we may have difficulty finding replacement services or be required to pay increased costs to replace these services after our agreements with Sears Holdings expire.” Sears Holdings may not have sufficient assets, income and access to financing to enable it to satisfy its payment obligations under the Master Lease following the Transaction. In addition, Sears Holdings has disclosed that its domestic pension and postretirement benefit plan obligations are currently underfunded. Sears Holdings may have to make significant cash payments to some or all of its pension and postretirement benefit plans, which would reduce the cash available for its businesses, potentially including its rent obligations under the Master Lease. The inability or unwillingness of Sears Holdings to meet its rent obligations and other obligations under the Master Lease could materially adversely affect our business, financial condition or results of operations, including our ability to pay the obligations under ground leases for properties that following the completion of the Transaction will be leased by Operating Partnership, to pay the interest, principal and other costs and expenses under our financings, or to pay dividends to Seritage Growth shareholders as required to maintain Seritage Growth’s status as a REIT. For these reasons, if Sears Holdings were to experience a material adverse effect on its business, financial condition or results of operations, our business, financial condition or results of operations could also be materially adversely affected.

Due to our dependence on rental payments from Sears Holdings as our main source of revenues, we may be limited in our ability to enforce our rights under the Master Lease. In addition, we may be limited in our ability to enforce our rights under the Master Lease because it is a unitary lease and does not provide for termination with respect to individual properties by reason of the default of the tenant. Failure by Sears Holdings to comply with the terms of the Master Lease or to comply with the regulations to which the leased properties are subject could require us to find another master lessee for all such leased property and there could be a decrease or cessation of rental payments by Sears Holdings. In such event, we may be unable to locate a suitable master lessee or a lessee for individual properties at similar rental rates and other obligations and in a timely manner or at all, which would have the effect of reducing our rental revenues. In addition, each JV will be subject to similar limitations.
and risks under its JV Master Lease, which could reduce the value of our investment in, or distributions to us by, one or more JVs.

**The bankruptcy or insolvency of any of our tenants, particularly Sears Holdings, could result in the termination of such tenant’s lease and material losses to us.**

A tenant bankruptcy or insolvency could diminish the rental revenue we receive from that property or could force us to “take back” a property as a result of a default or a rejection of the lease by a tenant in bankruptcy. In particular, a bankruptcy or insolvency of Sears Holdings, which will be our primary tenant, could result in a loss of a substantial portion of our rental revenue and materially and adversely affect us. Any claims against bankrupt tenants for unpaid future rent would be subject to statutory limitations that would likely result in our receipt, if at all, of rental revenues that are substantially less than the contractually specified rent we are owed under their leases. In addition, any claim we have for unpaid past rent will likely not be paid in full. If a tenant becomes bankrupt or insolvent, federal law may prohibit us from evicting such tenant based solely upon such bankruptcy or insolvency. We may also be unable to re-lease a terminated or rejected space or re-lease it on comparable or more favorable terms. If we do re-lease rejected space, we may incur significant costs for brokerage, marketing and tenant expenses.

Sears Holdings leases a substantial majority of the Acquired Properties pursuant to the Master Lease and most of the space at each of the JV Properties pursuant to the JV Master Lease. Bankruptcy laws afford certain protections to tenants that may also affect the Master Lease or JV Master Lease. Subject to certain restrictions, a tenant under a master lease generally is required to assume or reject the master lease as a whole, rather than making the decision on a property-by-property basis. This prevents the tenant from assuming only the better performing properties and terminating the master lease with respect to the poorer performing properties. Whether or not a bankruptcy court will require that a master lease must be assumed or rejected as a whole depends upon a “facts and circumstances” analysis considering a number of factors, including the parties’ intent, the nature and purpose of the relevant documents, whether there was separate and distinct consideration for each property included in the master lease, the provisions contained in the relevant documents and applicable state law. If a bankruptcy court in a Sears Holdings bankruptcy were to allow the Master Lease or a JV Master Lease to be rejected in part, certain underperforming leases related to properties we or the JV party to that JV Master Lease, respectively, own could be rejected by the tenant in bankruptcy while tenant-favorable leases are allowed to remain in place, thereby adversely affecting payments to us derived from the properties. For this and other reasons, a Sears Holdings bankruptcy could materially and adversely affect us.

In addition, although we believe that the Master Lease is a “true lease” for purposes of bankruptcy law, it is possible that a bankruptcy court could re-characterize the lease transaction set forth in the Master Lease as a secured lending transaction. If the Master Lease were judicially recharacterized as a secured lending transaction, we would not be treated as the owner of the property and could lose certain rights as the owner in the bankruptcy proceeding. In addition, each JV is subject to this risk with respect to its JV Master Lease, which could reduce the value of our investment in, or distribution to us by, one or more JVs.

**Sears Holdings’ right to terminate the Master Lease with respect to a portion of the Acquired Properties could negatively impact our business, results of operations and financial condition.**

Under the terms of the Master Lease, in each year, Sears Holdings will have the right to terminate the Master Lease with respect to Acquired Properties representing up to 20% of the aggregate annual rent payment under the Master Lease with respect to all Acquired Properties, if, with respect to an Acquired Property, the EBITDAR for the twelve-month period ending as of the most recent fiscal quarter end produced by the Sears Holdings store operated there is less than the rent allocated to such Acquired Property payable during that year. While Sears Holdings must pay a termination fee equal to one year of rent (together with taxes and other expenses) with respect to such property, the value of some of the Acquired Properties could be materially
adversely affected if we are not able to relet such Acquired Properties at the same rates which Sears Holdings was paying in a timely manner or at all, and this may negatively impact our business, results of operations and financial condition. Moreover, we are advised by Sears Holdings that approximately 59 of the Acquired Properties and JV Properties would qualify for such right of termination as of April 30, 2015. In addition, Sears Holdings will have the right to terminate a portion of the JV Master Lease with the GGP JV with respect to up to four JV Properties in any lease year, the JV Master Lease with the Simon JV with respect to up to three JV Properties in any lease year and the JV Master Lease with the Macerich JV with respect to up to three JV Properties in any lease year, in each case if, with respect to a JV Property owned by the applicable JV, the same EBITDAR condition is satisfied, which could reduce the value of our investment in, or distributions to us by, one or more JVs.

**We may not be able to renew leases or relet space at the Acquired Properties, or lease space in newly recaptured properties, and property vacancies could result in significant capital expenditures.**

When leases for our properties expire, the premises may not be relet in a timely manner or at all, or the terms of reletting, including the cost of allowances and concessions to tenants, may be less favorable than the current lease terms. The loss of a tenant through lease expiration or other circumstances may require us to spend (in addition to other re-leasing expenses) significant amounts of capital to renovate the property before it is suitable for a new tenant and cause us to incur significant costs in the form of ongoing expenses for property maintenance, taxes, insurance and other expenses. Many of the leases we will enter into or acquire may be for properties that are especially suited to the particular business of the tenants operating on those properties. Because these properties have been designed or physically modified for a particular tenant, if the current lease is terminated or not renewed, we may be required to renovate the property at substantial costs, decrease the rent we charge or provide other concessions to re-lease the property. In addition, if we are required to sell the property, we may have difficulty selling it to a party other than the tenant due to the special purpose for which the property may have been designed or modified. This potential illiquidity may limit our ability to quickly modify our portfolio in response to changes in economic or other conditions, including tenant demand. Also, we may not be able to lease new properties to an appropriate mix of tenants or for rents that are consistent with our expectations. To the extent that our leasing plans are not achieved or that we incur significant capital expenditures as a result of property vacancies, our business, results of operations and financial condition could be materially adversely affected.

**Real estate investments are relatively illiquid.**

Our properties represent a substantial portion of our total consolidated assets, and these investments are relatively illiquid. Significant expenditures associated with each equity investment, such as mortgage payments, real estate taxes, insurance, and repair and maintenance costs, are generally not reduced when circumstances cause a reduction in income from the investment. If income from a property declines while the related expenses do not decline, our income and cash available to us would be adversely affected. If it becomes necessary or desirable for us to dispose of one or more of our mortgaged properties, we might not be able to obtain a release of the lien on the mortgaged property without payment of the associated debt or other costs and expenses. As a result, our ability to sell one or more of our properties or investments in real estate in response to any changes in economic or other conditions may be limited. If we want to sell a property, we may not be able to dispose of it in the desired time period or at a sale price that would exceed the cost of our investment in that property.

The number of potential buyers for certain properties that we may seek to sell may be limited by the presence of such properties in retail or mall complexes owned or managed by other property owners. In addition, our ability to sell or dispose of certain of the Acquired Properties may be hindered by the fact that such properties will be subject to the Master Lease, as the terms of the Master Lease or the fact that Sears Holdings is the lessee may make such properties less attractive to a potential buyer than alternative properties that may be for sale. Furthermore, if we decide to sell any of our properties, we may provide financing to purchasers and bear the risk that the purchasers may default, which may delay or prevent our use of the proceeds of the sales for other purposes or the distribution of such proceeds to Seritage Growth shareholders.
Both we and our tenants face a wide range of competition that could affect our ability to operate profitably.

The presence of competitive alternatives, both to our properties and the businesses that lease our properties, affects our ability to lease space and the level of rents we can obtain. Our properties will operate in locations that compete with other retail properties and also compete with other forms of retailing, such as catalogs and e-commerce websites. Competition may also come from strip centers, outlet centers, lifestyle centers and malls, and both existing and future development projects. New construction, renovations and expansions at competing sites could also negatively affect our properties. In addition, we compete with other retail property companies for tenants and qualified management. These other retail property companies may have relationships with tenants that we do not have since we have no operating history, including with respect to national chains that may be desirable tenants. If we are unable to successfully compete, our business, results of operations and financial condition could be materially adversely affected.

In addition, the retail business is highly competitive and if our tenants fail to differentiate their shopping experiences, create an attractive value proposition or execute their business strategies, they may terminate, default on, or fail to renew their leases with us, and our results of operations and financial condition could be materially adversely affected. Furthermore, we believe that the increase in digital and mobile technology usage has increased the speed of the transition from shopping at physical locations to web-based purchases and that our tenants, including Sears Holdings, may be negatively affected by these changing consumer spending habits. If our tenants are unsuccessful in adapting their businesses, and, as a result terminate, default on, or fail to renew their leases with us, our results of operations and financial condition could be materially adversely affected.

Our pursuit of investments in and redevelopment of Acquired Properties, and investments in and acquisitions or development of additional properties, may be unsuccessful or fail to meet our expectations.

We intend to grow our business through investments in, and acquisitions or development of, properties, including through the recapture and redevelopment of space at many of the Acquired Properties. However, our industry is highly competitive, and we will face competition from other REITs, investment companies, private equity and hedge fund investors, sovereign funds, lenders, and other investors, some of whom are significantly larger and have greater resources and lower costs of capital. This competition will make it more challenging to identify and successfully capitalize on acquisition and development opportunities that meet our investment objectives. If we cannot identify and purchase a sufficient quantity of properties at favorable prices or if we are unable to finance acquisitions or other development opportunities on commercially favorable terms, our business, financial condition or results of operations could be materially adversely affected. Additionally, the fact that Seritage Growth must distribute 90% of its net taxable income in order to maintain its qualification as a REIT may limit Seritage Growth’s ability to rely upon rental payments from leased properties or subsequently acquired properties in order to finance acquisitions. As a result, if debt or equity financing is not available on acceptable terms, further acquisitions or other development opportunities might be limited or curtailed.

Investments in, and acquisitions of, properties we might seek to acquire entail risks associated with real estate investments generally, including (but not limited to) the following risks and as noted elsewhere in this section:

• we may be unable to acquire a desired property because of competition;
• even if we are able to acquire a desired property, competition from other potential acquirers may significantly increase the purchase price;
• even if we enter into agreements for the acquisition of properties, these agreements are subject to customary conditions to closing, including completion of due diligence investigations to our satisfaction;
• we may incur significant costs and divert management attention in connection with evaluation and negotiation of potential acquisitions, including ones that we are subsequently unable to complete;
• we may acquire properties that are not initially accretive to our results upon acquisition, and we may not successfully manage and lease those properties to meet our expectations;
• we may be unable to finance the acquisition on favorable terms in the time period we desire, or at all;
• even if we are able to finance the acquisition, our cash flow may be insufficient to meet our required principal and interest payments;
• we may spend more than budgeted to make necessary improvements or renovations to acquired properties;
• we may be unable to quickly and efficiently integrate new acquisitions, particularly the acquisition of portfolios of properties, into our existing operations;
• market conditions may result in higher than expected vacancy rates and lower than expected rental rates; and
• we may acquire properties subject to liabilities and without any recourse, or with only limited recourse, with respect to unknown liabilities.

In addition, we intend to redevelop a portion of the Acquired Properties purchased from Sears Holdings in order to make space available for lease to additional retail tenants (and potentially other third-party lessees for other uses). The redevelopment of the Acquired Properties involves the risks associated with real estate development activities generally. See “—Current and future redevelopment may not yield expected returns.” Our redevelopment strategies also involve additional risks, including that Sears Holdings may terminate or fail to renew leases with us for the applicable portion of the redeveloped space as a result of our redevelopment activities. If we are unable to successfully redevelop properties or to lease the redeveloped properties to third parties on acceptable terms, our business, results of operations and financial condition could be materially adversely affected.

Current and future redevelopment may not yield expected returns.

We expect to undertake redevelopment, expansion and reinvestment projects involving the Acquired Properties, and potentially other properties, as part of our long-term strategy. Likewise, each JV expects to undertake redevelopment, expansion and reinvestment projects involving its JV Properties, with respect to which we may be required to make additional capital contributions to the applicable JV under certain circumstances. These projects are subject to a number of risks, including (but not limited to):

• abandonment of redevelopment activities after expending resources to determine feasibility;
• loss of rental income, as well as payments of maintenance, repair, real estate taxes and other charges, from Sears Holdings related to space that is recaptured pursuant to the Master Lease (or the JV Master Leases) and which may not be re-leased to third parties;
• restrictions or obligations imposed pursuant to other agreements (see “Certain properties within our portfolio are subject to restrictions pursuant to reciprocal easement agreements, operating agreements, or similar agreements, some of which contain a purchase option or right of first refusal or right of first offer in favor of a third party”);
• construction and/or lease-up costs (including tenant improvements or allowances) and delays and cost overruns, including construction costs that exceed original estimates;
• failure to achieve expected occupancy and/or rent levels within the projected time frame or at all;
• inability to operate successfully in new markets where new properties are located;
• inability to successfully integrate new or redeveloped properties into existing operations;
• difficulty obtaining financing on acceptable terms or paying operating expenses and debt service costs associated with redevelopment properties prior to sufficient occupancy and commencement of rental obligations under new leases;
changes in zoning, building and land use laws, and conditions, restrictions or limitations of, and delays or failures to obtain, necessary zoning, building, occupancy, land use and other governmental permits;

changes in local real estate market conditions, including an oversupply of, or a reduction in demand for, retail space or retail goods, and the availability and creditworthiness of current and prospective tenants;

negative perceptions by retailers or shoppers of the safety, convenience and attractiveness of the property;

exposure to fluctuations in the general economy due to the significant time lag between commencement and completion of redevelopment projects; and

vacancies or ability to rent space on favorable terms, including possible market pressures to offer tenants rent abatements, tenant improvements, early termination rights or below-market renewal options.

If any of these events occur at any time during the process with respect to any project, overall project costs may significantly exceed initial cost estimates, which could result in reduced returns or losses from such investments. In addition, we may not have sufficient liquidity to fund such projects, and delays in the completion of a redevelopment project may provide various tenants the right to withdraw from a property.

Independent appraisals of the highest and best use for the Acquired Properties conducted by Cushman have noted that the redevelopment value of the Acquired Properties is speculative.

Rising expenses could reduce cash flow and funds available for future acquisitions.

If any property is not fully occupied or becomes vacant in whole or in part, or if rents are being paid in an amount that is insufficient to cover operating costs and expenses, we could be required to expend funds with respect to that property for operating expenses. Our properties will be subject to increases in tax rates and tax assessments, utility costs, insurance costs, repairs, maintenance and administrative expenses, and other operating expenses. We may also incur significant expenditures as a result of deferred maintenance for the Acquired Properties and other properties we may acquire in the future. While Acquired Properties under the Master Lease are generally leased on a triple-net basis (subject to proportionate sharing of operating expenses with respect to space not leased by Sears Holdings), renewals of leases or future leases may not be negotiated on that basis, in which event we may have to pay those costs. If we are unable to lease properties on a triple-net-lease basis or on a basis requiring the tenants to pay all or some of such expenses, or if tenants fail to pay required tax, utility and other impositions and other operating expenses, we could be required to pay those costs which could adversely affect funds available for future acquisitions or cash available for distributions.

Real estate related taxes may increase (including as a result of the Transaction) and if these increases are not passed on to tenants, our income will be reduced.

Some local real property tax assessors may seek to reassess some of our properties as a result of our acquisitions of properties, including as a result of the Transaction. Generally, from time to time our property taxes increase as property values or assessment rates change or for other reasons deemed relevant by the assessors. An increase in the assessed valuation of a property for real estate tax purposes will result in an increase in the related real estate taxes on that property. Although the Master Lease and some third-party tenant leases may permit us to pass through such tax increases to the tenants for payment, there is no assurance that renewal leases or future leases will be negotiated on the same basis. Increases not passed through to tenants will reduce our income and the cash available for distributions to Seritage Growth shareholders.
Changes in building and/or zoning laws may require us to update a property in the event of recapture or prevent us from fully restoring a property in the event of a substantial casualty loss and/or require us to meet additional or more stringent construction requirements.

Due to changes, among other things, in applicable building and zoning laws, ordinances and codes that may affect certain of our properties that have come into effect after the initial construction of the properties, certain properties may not comply fully with current building and/or zoning laws, including electrical, fire, health and safety codes and regulations, use, lot coverage, parking and setback requirements, but may qualify as permitted non-conforming uses. Such changes may require updating various existing physical conditions of buildings in connection with our recapture, renovation, and/or redevelopment of properties. In addition, such changes may limit our or our tenant’s ability to restore the premises of a property to its previous condition in the event of a substantial casualty loss with respect to the property or the ability to refurbish, expand or renovate such property to remain compliant, or increase the cost of construction in order to comply with changes in building or zoning codes and regulations. If we are unable to restore a property to its prior use after a substantial casualty loss or are required to comply with more stringent building or zoning codes and regulations, we may be unable to re-lease the space at a comparable effective rent or sell the property at an acceptable price, which may materially and adversely affect us.

Our real estate assets may be subject to impairment charges.

On a periodic basis, we must assess whether there are any indicators that the value of our real estate assets and other investments may be impaired. A property’s value is considered to be impaired only if the estimated aggregate future cash flows (undiscounted and without interest charges) to be generated by the property are less than the carrying value of the property. In our estimate of cash flows, we will consider factors such as expected future operating income, trends and prospects, the effects of demand, competition and other factors. If we are evaluating the potential sale of an asset or development alternatives, the undiscounted future cash flows considers the most likely course of action at the balance sheet date based on current plans, intended holding periods and available market information. We are required to make subjective assessments as to whether there are impairments in the value of our real estate assets and other investments. These assessments may have a direct impact on our earnings because recording an impairment charge results in an immediate negative adjustment to earnings. We may take charges in the future related to the impairment of our assets, and any future impairment could have a material adverse effect on our results of operations in the period in which the charge is taken.

Properties in our portfolio may be subject to ground leases; if we are found to be in breach of these ground leases or are unable to renew them, we could be materially and adversely affected.

We have one property in our portfolio that is on land subject to a ground lease. Accordingly, we only own a long-term leasehold or similar interest in the land underlying this property, and we own the improvements thereon only during the term of the ground lease. In the future, our portfolio may include additional properties subject to ground leases. If we are found to be in breach of a ground lease, we could lose the right to use the property and could also be liable to the ground lessor for damages. In addition, unless we can purchase a fee interest in the underlying land or extend the terms of these leases before their expiration, which we may be unable to do, we will lose our right to operate these properties and our interest in the improvements upon expiration of the leases. Assuming that we exercise all available options to extend the terms of our ground lease, it will expire after the term of the Master Lease (including all renewal options). However, our ability to exercise such options under the ground lease is subject to the condition that we are not in default under the terms of the ground lease at the time that we exercise such options, and we may not be able to exercise our options at such time. Furthermore, we may not be able to renew our ground lease or future ground leases upon their expiration (after the exercise of all renewal options). If we were to lose the right to use a property due to a breach or non-renewal or final expiration of the ground lease, we would be unable to derive income from such property, which could materially and adversely affect our business, financial conditions or results of operations.
Certain properties within our portfolio are subject to restrictions pursuant to reciprocal easement agreements, operating agreements, or similar agreements, some of which contain a purchase option or right of first refusal or right of first offer in favor of a third party.

Many of the Acquired Properties and the JV Properties are, and properties that we acquire in the future may be, subject to use restrictions and/or operational requirements imposed pursuant to ground leases, restrictive covenants or conditions, reciprocal easement agreements or operating agreements (collectively, “Property Restrictions”) that could adversely affect our ability to lease space to third parties. Such Property Restrictions could include, for example, limitations on alterations, changes, expansions, or reconfiguration of properties; limitations on use of properties, including for retail uses only; limitations affecting parking requirements; restrictions on exterior or interior signage or facades; or access to an adjoining mall, among other things. In certain cases, consent of the other party or parties to such agreements may be required when altering, reconfiguring, expanding, redeveloping or re-leasing properties. Failure to secure such consents when necessary may harm our ability to execute leasing, redevelopment or expansion strategies, which could adversely affect our business, financial condition or results of operations. In certain cases, a third party has a purchase option or right of first refusal or right of first offer that is activated by a sale or transfer of the property, or a change in use or operations, including a closing of the Sears Holdings operation or cessation of business operations, on the encumbered property.

Economic conditions may affect the cost of borrowing, which could materially adversely affect our business.

Our business is affected by a number of factors that are largely beyond our control but may nevertheless have a significant negative impact on us. These factors include, but are not limited to:

- interest rates and credit spreads;
- the availability of credit, including the price, terms and conditions under which it can be obtained;
- a decrease in consumer spending or sentiment, including as a result of increases in savings rates and tax increases, and any effect that this may have on retail activity;
- the actual and perceived state of the real estate market, market for dividend-paying stocks and public capital markets in general; and
- unemployment rates, both nationwide and within the primary markets in which we operate.

In addition, economic conditions such as inflation or deflation could materially adversely affect our business, financial condition and results of operations. Deflation may have an impact on our ability to repay our debt. Deflation may delay consumption and thus weaken tenant sales, which may reduce our tenants’ ability to pay rents. Deflationary pressure on retailers may diminish their ability to rent our space and decrease our ability to re-lease the space on favorable terms to us. In an inflationary economic environment, increased inflation may have a pronounced negative impact on the interest expense we pay in connection with our indebtedness and our general and administrative expenses, as these costs could increase at a rate higher than rents we collect. Also, inflation may adversely affect tenant leases with stated rent increases, which could be lower than the increase in inflation at any given time. Inflation could also have an adverse effect on consumer spending, which could impact our tenants’ sales and, in turn, our own results of operations. Restricted lending practices may impact our ability to obtain financing for our properties and may also negatively impact our tenants’ ability to obtain credit. Decreases in consumer demand can have a direct impact on our tenants and the rents we receive.

Compliance with the Americans with Disabilities Act may require us to make expenditures that adversely affect our cash flows.

The Americans with Disabilities Act (the “ADA”) has separate compliance requirements for “public accommodations” and “commercial facilities,” but generally requires that buildings be made accessible to people with disabilities. Compliance with the ADA requirements could require removal of access barriers, and non-
compliance could result in imposition of fines by the United States government or an award of damages to private litigants, or both. While the tenants to whom our properties are leased are generally obligated by law or lease to comply with the ADA provisions applicable to the property being leased to them, if required changes involve other property not being leased to such tenants, if the required changes include greater expenditures than anticipated, or if the changes must be made on a more accelerated basis than anticipated, the ability of these tenants to cover costs could be adversely affected. Moreover, certain third-party leases may require the landlord to comply with the ADA with respect to the building as a whole and/or the tenant’s space. As a result of any of the foregoing circumstances, we could be required to expend funds to comply with the provisions of the ADA, which could adversely affect our results of operations and financial condition.

Environmental, health, safety and land use laws and regulations may limit or restrict some of our operations.

As the owner or operator of various real properties and facilities, we must comply with various federal, state and local environmental, health, safety and land use laws and regulations. We and our properties are subject to such laws and regulations relating to the use, storage, disposal, emission and release of hazardous and non-hazardous substances and employee health and safety, as well as zoning restrictions. Historically, Sears Holdings has not incurred significant expenditures to comply with these laws with respect to the substantial majority of the space at the properties. However, a substantial portion of the Acquired Properties that have resulted in certain remediation activities currently include, or previously included, automotive care center facilities and retail fueling facilities, and/or above-ground or underground storage tanks, and are or were subject to laws and regulations governing the handling, storage and disposal of hazardous substances contained in some of the products or materials used or sold in the automotive care center facilities (such as gasoline, motor oil, fluid in hydraulic lifts, antifreeze, solvents and lubricants), the recycling/disposal of batteries and tires, air emissions, wastewater discharges and waste management. In addition to these products, the equipment in use or previously used at such Acquired Properties, such as service equipment, car lifts, oil/water separators, and storage tanks, has been subject to increasing environmental regulation relating to, among other things, the storage, handling, use, disposal and transportation of hazardous materials. There are also federal, state and local laws, regulations and ordinances that govern the use, removal and/or replacement of underground storage tanks in the event of a release on, or an upgrade or redevelopment of, certain properties. Such laws, as well as common-law standards, may impose liability for any releases of hazardous substances associated with the underground storage tanks and may provide for third parties to seek recovery from owners or operators of such properties for damages associated with such releases. If hazardous substances are released from any underground storage tanks on any of our properties, we may be materially and adversely affected. In a few states, transfers of some types of sites are conditioned upon clean-up of contamination prior to transfer. If any of our properties are subject to such contamination, we may be subject to substantial clean-up costs before we are able to sell or otherwise transfer the property.

Under the Master Lease, Sears Holdings is required to indemnify us from certain environmental liabilities at the Acquired Properties before or during the period in which each Acquired Property is leased to Sears Holdings, including removal and remediation of all affected facilities and equipment constituting the automotive care center facilities (and each JV Master Lease includes a similar requirement of Sears Holdings). Although existing and future third-party leases are expected to require tenants generally to indemnify us for such tenants’ non-compliance with environmental laws as a result of their occupancy, such tenants typically will not be required to indemnify us for environmental non-compliance arising prior to their occupancy. In such cases, we may incur costs and expenses under such leases or as a matter of law. The amount of any environmental liabilities could exceed the amounts for which Sears Holdings or other third parties are required to indemnify us (or the applicable JV) or their financial ability to do so.

In addition, additional laws which may be passed in the future, or a finding of a violation of or liability under existing laws, could require us and/or one or more JVs to make significant expenditures and otherwise limit or restrict some of our or its or their operations, which could have an adverse effect on our business, financial condition and results of operations.
Environmental compliance costs and liabilities associated with real estate properties owned by us may materially and adversely affect us.

Our properties may be subject to known and unknown environmental liabilities under various federal, state and local laws and regulations relating to human health and the environment. Certain of these laws and regulations may impose joint and several liability on certain statutory classes of persons, including owners or operators, for the costs of investigation or remediation of contaminated properties. These laws and regulations apply to past and present business operations on the properties, and the use, storage, handling and recycling or disposal of hazardous substances or wastes. We may face liability regardless of our knowledge of the contamination, the timing of the contamination, the cause of the contamination or the party responsible for the contamination of the property.

We may be held primarily or jointly and severally liable for costs relating to the investigation and clean-up of any of our properties from which there has been a release or threatened release of a regulated material as well as other affected properties, regardless of whether we knew of or caused the release.

As the owner or operator of real property, we may also incur liability based on various building conditions. For example, buildings and other structures on properties that we currently own or operate or those we acquire or operate in the future contain, may contain, or may have contained, asbestos-containing material (or “ACM”). Environmental, health and safety laws require that ACM be properly managed and maintained and may impose fines or penalties on owners, operators or employers for non-compliance with those requirements. These requirements include special precautions, such as removal, abatement or air monitoring, if ACM would be disturbed during maintenance, renovation or demolition of a building, potentially resulting in substantial costs. In addition, we may be subject to liability for personal injury or property damage sustained as a result of exposure to ACM or releases of ACM into the environment. In addition, the presence of significant mold or other airborne contaminants at any of our properties could require us to undertake a costly remediation program to contain or remove the mold or other airborne contaminants or increase ventilation and/or expose us to liability from our tenants, employees of our tenants, or others if property damage or personal injury occurs.

In addition to these costs, which are typically not limited by law or regulation and could exceed the property’s value, we could be liable for certain other costs, including governmental fines, and injuries to persons, property or natural resources. Further, some environmental laws create a lien on the contaminated site in favor of the government for damages and the costs the government incurs in connection with such contamination. Any such costs or liens could have a material adverse effect on our business or financial condition.

Although we intend to require our tenants to undertake to indemnify us for certain environmental liabilities, including environmental liabilities they cause, the amount of such liabilities could exceed the financial ability of the tenant to indemnify us. The presence of contamination or the failure to remediate contamination may adversely affect our ability to sell or lease the real estate or to borrow using the real estate as collateral.

Each JV is subject to similar risks relating to environmental compliance costs and liabilities associated with its JV Properties, which may reduce the value of our investment in, or distributions to us by, one or more JVs, or require that we make additional capital contributions to one or more JVs.

Possible terrorist activity or other acts of violence could adversely affect our financial condition and results of operations.

Terrorist attacks or other acts of violence may result in declining economic activity, which could harm the demand for goods and services offered by our tenants and the value of our properties and might adversely affect the value of an investment in our securities. Such a resulting decrease in retail demand could make it difficult for us to renew or re-lease our properties at lease rates equal to or above historical rates. Terrorist activities or violence also could directly affect the value of our properties through damage, destruction or loss, and the availability of insurance for such acts, or of insurance generally, might be lower or cost more, which could increase our operating expenses and adversely affect our financial condition and results of operations. To the extent that our tenants are
affected by future attacks, their businesses similarly could be adversely affected, including their ability to continue
to meet obligations under their existing leases. These acts might erode business and consumer confidence and
spending and might result in increased volatility in national and international financial markets and economies. Any
one of these events might decrease demand for real estate, decrease or delay the occupancy of our new or
redeveloped properties, and limit our access to capital or increase our cost of raising capital.

We may have future capital needs and may not be able to obtain additional financing on acceptable terms.

In connection with the Transaction, the Acquired Entities are expected to incur indebtedness of
approximately $1,161.2 million in the aggregate, and, as part of the Financing, we expect the Acquired Entities to
have approximately $100 million available to fund redevelopment activities at the Properties following the
closing of the Transaction subject to satisfaction of certain conditions. Following the closing of the Transaction,
the indebtedness incurred by the Acquired Entities in the Financing will become, on a consolidated basis,
indebtedness of Operating Partnership. We may incur additional indebtedness in the future to refinance our
existing indebtedness or to finance newly acquired properties or capital contributions to joint ventures. The debt
to be incurred to finance the Transaction and any significant additional indebtedness could require a substantial
portion of our cash flow to make interest and principal payments. Demands on our cash resources from debt
service will reduce funds available to us to pay dividends, make capital expenditures and acquisitions or carry out
other aspects of our business strategy. Our indebtedness may also limit our ability to adjust rapidly to changing
market conditions, make us more vulnerable to general adverse economic and industry conditions and create
competitive disadvantages for us compared to other companies with relatively lower debt levels. Increased future
debt service obligations may limit our operational flexibility, including our ability to acquire properties, finance
or refinance our properties, contribute properties to joint ventures or sell properties as needed.

Moreover, our ability to obtain additional financing and satisfy our financial obligations under indebtedness
outstanding from time to time will depend upon our future operating performance, which is subject to then-
prevailing general economic, real estate and credit market conditions, including interest rate levels and the
availability of credit generally, and financial, business and other factors, many of which are beyond our control.
A prolonged worsening of credit market conditions would have a material adverse effect on our ability to obtain
financing on favorable terms, if at all.

We may be unable to obtain additional financing or financing on favorable terms or our operating cash flow
may be insufficient to satisfy our financial obligations under any indebtedness outstanding from time to time.
Among other things, the absence of an investment grade credit rating or any credit rating downgrade could
increase our financing costs and could limit our access to financing sources. If financing is not available when
needed, or is available only on unfavorable terms, we may be unable to enhance our properties or develop new
properties, complete acquisitions or otherwise take advantage of business opportunities or respond to competitive
pressures, any of which could have a material adverse effect on our business, financial condition and results of
operations.

If additional funds are raised through the issuance of equity securities, Seritage Growth shareholders may
experience significant dilution. Additionally, sales of substantial amounts of Seritage Growth common shares in
the public market following the Transaction, or the perception that such sales could occur, could adversely affect
the market price of Seritage Growth common shares, may make it more difficult for Seritage Growth
shareholders to sell their common shares at a time and price that they deem appropriate, and could impair our
future ability to raise capital through an offering of our equity securities.

We expect to incur mortgage indebtedness and other borrowings, which may increase our business risks.

We may incur mortgage debt and pledge all or some of our real properties as security for that debt to obtain
funds to acquire additional real properties. Seritage Growth may also borrow if it needs funds or deems it
necessary or advisable to assure that it maintains its qualification as a REIT for federal income tax purposes. If
there is a shortfall between the cash flow from a property and the cash flow needed to service mortgage debt on a property, then the amount available for distributions to shareholders may be reduced. In addition, incurring mortgage debt increases the risk of loss since defaults on indebtedness secured by a property may result in lenders initiating foreclosure actions. In that case, we could lose the property securing the loan that is in default. For tax purposes, a foreclosure of any of our properties would be treated as a sale of the property for a purchase price equal to the outstanding balance of the debt secured by the mortgage. If the outstanding balance of the debt secured by the mortgage exceeds our tax basis in the property, we would recognize taxable income on foreclosure, but would not receive any cash proceeds. In such event, Seritage Growth may be unable to pay the amount of distributions required in order to maintain its REIT status. If any mortgages contain cross-collateralization or cross-default provisions, a default on a single property could affect multiple properties. If any properties are foreclosed upon due to a default, Seritage Growth’s ability to pay cash distributions to its shareholders may be adversely affected, which could result in Seritage Growth losing its REIT status.

Covenants in our debt agreements may limit our operational flexibility, and a covenant breach or default could materially adversely affect our business, financial condition or results of operations.

The agreements governing our indebtedness are expected to contain customary covenants for a real estate financing, including restrictions on our ability to grant liens on our assets, incur additional indebtedness, pay dividends, make investments or distributions and other restricted payments, or transfer or sell our assets. These restrictions may limit our operational flexibility. Covenants that limit our operational flexibility as well as defaults under our debt instruments could have a material adverse effect on our business, financial condition or results of operations.

We have no operating history as a REIT or an independent public company, and our inexperience may impede our ability to successfully manage our business or implement effective internal controls.

We have no operating history owning, leasing or developing properties independent from Sears Holdings or operating as a REIT. Similarly, we have no operating history as an independent public company. We cannot assure you that our past experience will be sufficient to successfully operate our company as a REIT or an independent public company. Upon completion of this offering, Seritage Growth will be required to implement substantial control systems and procedures in order to maintain its qualification as a REIT, satisfy its periodic and current reporting requirements under applicable Securities and Exchange Commission (“SEC”) regulations and comply with the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the NYSE listing standards. As a result, we will incur significant legal, accounting and other expenses that we have not previously incurred, and our management and other personnel will need to devote a substantial amount of time to comply with these rules and regulations and establish the corporate infrastructure and controls demanded of a publicly traded REIT. These costs and time commitments could be substantially more than we currently expect. If our finance and accounting organization is unable for any reason to respond adequately to the increased demands that will result from being an independent public company, the quality and timeliness of our financial reporting may suffer, and we could experience significant deficiencies or material weaknesses in our disclosure controls and procedures or our internal control over financial reporting.

An inability to establish effective disclosure controls and procedures and internal control over financial reporting or remediate existing deficiencies could cause us to fail to meet our reporting obligations under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or result in material weaknesses, material misstatements or omissions in our Exchange Act reports, any of which could cause investors to lose confidence in our company, which could have an adverse effect on our revenues and results of operations or the market price of Seritage Growth common shares.

For as long as we are an “emerging growth company” under the recently enacted JOBS Act or we remain a non-accelerated filer, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404(b). We could be an emerging growth company for up to five years. An independent assessment of the effectiveness of our internal
controls could detect problems that our management’s assessment might not detect. Undetected material weaknesses in our internal controls could lead to financial statement restatements and require us to incur the expense of remediation.

For as long as we are an emerging growth company and while remaining a non-accelerated filer, we will not be required to comply with certain reporting requirements that apply to other public companies.

As an “emerging growth company” under the JOBS Act, we may take advantage of provisions that, among other things, reduce certain reporting requirements, including relating to accounting standards and compensation disclosure. For as long as we are an emerging growth company and while remaining a non-accelerated filer, which may be up to five full fiscal years, unlike most other public companies, we will not be required to:

- provide an auditor’s attestation report on the effectiveness of our system of internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act;
- comply with any new requirements adopted by the Public Company Accounting Oversight Board, requiring mandatory audit firm rotation or a supplement to the auditor’s report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer;
- provide certain disclosure regarding executive compensation required of larger public companies; or
- hold shareholder advisory votes on executive compensation.

Our status as an “emerging growth company” under the JOBS Act may make it more difficult to raise capital as and when we need it.

Because of the exemptions from various reporting requirements provided to us as an “emerging growth company,” we may be less attractive to investors and it may be difficult for us to raise additional capital as and when we need it. Investors may be unable to compare our business with other companies in our industry if they believe that our financial accounting is not as transparent as other companies in our industry. If we are unable to raise additional capital as and when we need it, our financial condition and results of operations may be materially and adversely affected.

Our rights and the rights of Seritage Growth shareholders to take action against our trustees and officers are limited.

As permitted by the Maryland REIT Law (the “MRL”), Seritage Growth’s declaration of trust limits the liability of its trustees and officers to Seritage Growth and its shareholders for money damages, except for liability resulting from:

- actual receipt of an improper benefit or profit in money, property or services; or
- a final judgment based upon a finding of active and deliberate dishonesty by the trustee or officer that was material to the cause of action adjudicated.

In addition, Seritage Growth’s declaration of trust authorizes it and Seritage Growth’s bylaws obligate it to indemnify its present and former trustees and officers for actions taken by them in those capacities and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding to the maximum extent permitted by Maryland law, and effective upon completion of this offering, Seritage Growth will enter into indemnification agreements with its trustees and executive officers. As a result, Seritage Growth and its shareholders may have more limited rights against our trustees and officers than might otherwise exist absent the provisions in Seritage Growth’s declaration of trust and bylaws or that might exist with other companies. Accordingly, in the event that actions taken by any of Seritage Growth’s trustees or officers are immune or exculpated from, or indemnified against, liability but which impede Seritage Growth’s performance, Seritage Growth and its shareholders’ ability to recover damages from that trustee or officer will be limited.
Seritage Growth’s declaration of trust and bylaws, Maryland law, and the partnership agreement of Operating Partnership contain provisions that may delay, defer or prevent an acquisition of Seritage Growth common shares or a change in control.

Seritage Growth’s declaration of trust and bylaws, Maryland law and the partnership agreement of Operating Partnership contain a number of provisions, the exercise or existence of which could delay, defer or prevent a transaction or a change in control that might involve a premium price for Seritage Growth shareholders or otherwise be in their best interests, including the following:

The Seritage Growth Declaration of Trust Contains Restrictions on the Ownership and Transfer of Seritage Growth Shares of Beneficial Interest. In order for us to qualify as a REIT, no more than 50% of the value of outstanding Seritage Growth common shares may be owned, beneficially or constructively, by five or fewer individuals at any time during the last half of each taxable year other than the first year for which we elect to be taxed as a REIT. Additionally, at least 100 persons must beneficially own Seritage Growth common shares during at least 335 days of a taxable year (other than the first taxable year for which we elect to be taxed as a REIT). The Seritage Growth declaration of trust, with certain exceptions, will authorize the Board of Trustees to take such actions as are necessary and desirable to preserve its qualification as a REIT. For this and other purposes, subject to certain exceptions, Seritage Growth’s declaration of trust provides that no person may beneficially or constructively own more than 9.6%, in value or in number of shares, whichever is more restrictive, of all outstanding shares, or all outstanding common shares (including Seritage Growth common shares, Seritage Growth non-economic shares and Seritage Growth non-voting shares), of beneficial interest of Seritage Growth. We refer to these restrictions collectively as the “ownership limits.” The constructive ownership rules under the Code are complex and may cause shares owned directly or constructively by a group of related individuals or entities to be deemed to be constructively owned by one individual or entity. As a result, the acquisition of less than 9.6% of the outstanding shares of beneficial interest of Seritage Growth shares by an individual or entity could cause that individual or entity or another individual or entity to own, beneficially or constructively, Seritage Growth shares of beneficial interest in violation of the ownership limits. Seritage Growth’s declaration of trust also prohibits any person from owning Seritage Growth common shares that would result in our being “closely held” under Section 856(h) of the Code or otherwise cause us to fail to qualify as a REIT. Any attempt to own or transfer Seritage Growth common shares or any of our other shares of beneficial interest in violation of these restrictions or other restrictions on ownership or transfer in Seritage Growth’s declaration of trust may result in the transfer being automatically void. Seritage Growth’s declaration of trust also provides that Seritage Growth common shares in excess of the ownership limits will be transferred to a trust for the exclusive benefit of a designated charitable beneficiary, and that any person who acquires Seritage Growth common shares in violation of the ownership limits will not be entitled to any dividends on the shares or be entitled to vote the shares or receive any proceeds from the subsequent sale of the shares in excess of the lesser of the price paid by such person for the shares (or, if such person did not give value for such shares, the market price on the day the shares were transferred to the trust) or the amount realized from the sale. We or our designee will have the right to purchase the shares from the trustee at this calculated price as well. The ownership limits and other restrictions on ownership and transfer in Seritage Growth’s declaration of trust may have the effect of preventing, or may be relied upon to prevent, a third party from acquiring control of us if the Seritage Growth Board of Trustees does not grant an exemption from the ownership limits, even if Seritage Growth shareholders believe the change in control is in their best interests. See “Description of Shares of Beneficial Interest—Restrictions on Ownership and Transfer” and “U.S. Federal Income Tax Considerations.”

The Seritage Growth Board of Trustees Has the Power to Cause Us to Issue Additional Shares of Beneficial Interest and Classify and Reclassify Any Unissued Seritage Growth Common Shares without Shareholder Approval. Immediately following the closing of the Transaction, Seritage Growth will have issued and outstanding, in addition to the Seritage Growth common shares, Seritage Growth non-economic shares having, in the aggregate, 5.4% of the voting power of Seritage Growth, all of which will be held by ESL, and Seritage Growth non-voting shares entitled to, in the aggregate, 31.0% of the dividends or
other distributions issued to holders of shares of beneficial interest of Seritage Growth, all of which will be held by Fairholme Clients. Seritage Growth’s declaration of trust authorizes us to issue additional authorized but unissued common shares or preferred shares of beneficial interest. In addition, the Seritage Growth Board of Trustees may, without shareholder approval, (i) amend the declaration of trust to increase or decrease the aggregate number of shares of beneficial interest or the number of shares of beneficial interest of any class or series that we have authority to issue and (ii) classify or reclassify any unissued common shares or preferred shares of beneficial interest and set the preferences, rights and other terms of the classified or reclassified shares. As a result, the Seritage Growth Board of Trustees may establish a class or series of common shares or preferred shares of beneficial interest that could delay or prevent a transaction or a change in control that might involve a premium price for Seritage Growth common shares or otherwise be in the best interests of Seritage Growth shareholders. See “Description of Shares of Beneficial Interest—Power to Increase or Decrease Authorized Shares, Reclassify Unissued Shares and Issue Additional Common Shares and Preferred Shares of Beneficial Interest.”

The Seritage Growth Board of Trustees Is Divided into Three Classes and Trustee Elections Require a Vote of 75% of the Seritage Growth Common Shares and Seritage Growth Non-Economic Shares Entitled to Vote. The Seritage Growth Board of Trustees is divided into three classes of trustees, with each class to be as nearly equal in number as possible. As a result, approximately one-third of the Board of Trustees will be elected at each annual meeting of shareholders, with, in both contested and uncontested elections, trustees elected by the vote of 75% of the votes of the Seritage Growth common shares and Seritage Growth non-economic shares (voting together as a single class) entitled to be cast in the election of trustees. In the event that an incumbent trustee does not receive a sufficient percentage of votes cast for election, he or she will continue to serve on the Board of Trustees until a successor is duly elected and qualifies. The classification of trustees and requirement that trustee nominees receive a vote of 75% of the votes of the Seritage Growth common shares and Seritage Growth non-economic shares (voting together as a single class) entitled to be cast in the election of trustees may have the effect of making it more difficult for shareholders to change the composition of the Board of Trustees. The requirement that trustee nominees receive a vote of 75% of the votes of the Seritage Growth common shares and Seritage Growth non-economic shares (voting together as a single class) entitled to be cast in the election of trustees may also have the effect of making it more difficult for shareholders to elect trustee nominees that do not receive the votes of shares of beneficial interest held by ESL and/or Fairholme clients, which will initially control approximately 9.8% and 9.0%, respectively, of the voting power of Seritage Growth. See “Management—Board of Trustees Following the Transaction.”

The Partnership Agreement of Operating Partnership Provides Holders of Operating Partnership Units Approval Rights over Certain Change in Control Transactions Involving Seritage Growth or Operating Partnership. Pursuant to the partnership agreement of Operating Partnership, certain transactions, including mergers, consolidations, conversions or other combinations or extraordinary transactions or transactions that constitute a “change of control” of Seritage Growth or Operating Partnership, as defined in the partnership agreement, will require the approval of the partners (other than Seritage Growth and entities controlled by it) holding a majority of all the outstanding Operating Partnership units held by all partners (other than Seritage Growth and entities controlled by it). These provisions could have the effect of delaying or preventing a change in control. See “Description of Partnership Agreement of Operating Partnership—Restrictions on General Partner’s Authority: Change of Control Transactions.” Immediately following the closing of the Transaction, ESL will hold all of the Operating Partnership units not held by Seritage Growth and entities controlled by it.

Certain Provisions of Maryland Law May Limit the Ability of a Third Party to Acquire Control of Us. Certain provisions of the Maryland General Corporation Law (the “MGCL”) applicable to Maryland REITs may have the effect of inhibiting a third party from acquiring us or of impeding a change of control of Seritage Growth under circumstances that otherwise could provide Seritage Growth common
shareholders with the opportunity to realize a premium over the then-prevailing market price of such shares or otherwise be in the best interest of shareholders, including:

- **“business combination”** provisions that, subject to certain exceptions and limitations, prohibit certain business combinations between a Maryland REIT and an “interested shareholder” (defined generally as any person who beneficially owns, directly or indirectly, 10% or more of the voting power of Seritage Growth’s outstanding voting shares or an affiliate or associate of the Maryland REIT who, at any time within the two-year period immediately prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then-outstanding shares of Seritage Growth) or an affiliate of any interested shareholder and the Maryland REIT for five years after the most recent date on which the shareholder becomes an interested shareholder, and thereafter imposes two supermajority shareholder voting requirements on these combinations;

- **“control share”** provisions that provide that, subject to certain exceptions, holders of “control shares” of our company (defined as voting shares that, if aggregated with all other shares owned or controlled by the acquirer, would entitle the acquirer to exercise one of three increasing ranges of voting power in electing trustees) acquired in a “control share acquisition” (defined as the direct or indirect acquisition of issued and outstanding “control shares”) have no voting rights with respect to the control shares except to the extent approved by Seritage Growth shareholders by the affirmative vote of at least two-thirds of all of the votes entitled to be cast on the matter, excluding all interested shares; and

- Additionally, Title 3, Subtitle 8 of the MGCL permits the Seritage Growth Board of Trustees, without shareholder approval and regardless of what is currently provided in Seritage Growth’s declaration of trust or bylaws, to implement certain takeover defenses. See “Certain Provisions of Maryland Law and of Seritage Growth’s Declaration of Trust and Bylaws—Business Combinations,” “—Control Share Acquisitions” and “—Subtitle 8.”

The Seritage Growth Board of Trustees has, by resolution, exempted from the provisions of the Maryland Business Combination Act all business combinations (a) between us and (i) Sears Holdings or its affiliates or (ii) ESL or FCM and/or Fairholme Clients and their respective affiliates and (b) between us and any other person, provided that such business combination is first approved by the Board of Trustees (including a majority of our trustees who are not affiliates or associates of such person). In addition, Seritage Growth’s bylaws contain a provision opting out of the Maryland control share acquisition act.

_We may experience uninsured or underinsured losses, or insurance proceeds may not otherwise be available to us which could result in a significant loss of the capital we have invested in a property, decrease anticipated future revenues or cause us to incur unanticipated expense._

While the Master Lease and other existing third-party leases will require, and new lease agreements are expected to require, that comprehensive general insurance and hazard insurance be maintained by the tenants with respect to their premises, and we expect to obtain casualty insurance with respect to the Acquired Properties, there are certain types of losses, generally of a catastrophic nature, such as earthquakes, hurricanes and floods, that may be uninsurable or not economically insurable. Insurance coverage (net of deductibles) may not be effective or be sufficient to pay the full current market value or current replacement cost of a loss. Inflation, changes in building and zoning codes and ordinances, environmental considerations, and other factors also might make it infeasible to use insurance proceeds to restore or replace the property after such property has been damaged or destroyed. Under such circumstances, the insurance proceeds received might not be adequate to restore the economic position with respect to such property or to comply with the requirements of our mortgages and Property Restrictions. Moreover, the holders of any mortgage indebtedness may require some or all property insurance proceeds to be applied to reduce such indebtedness, rather than being made available for property restoration.

If we experience a loss that is uninsured or that exceeds our policy coverage limits, we could lose the capital invested in the damaged properties as well as the anticipated future cash flows from those properties. In addition,
if the damaged properties were subject to recourse indebtedness, Property Restrictions or ground leases, we could continue to be liable for the indebtedness or subject to claims for damages even if these properties were irreparably damaged.

In addition, even if damage to our properties is covered by insurance, a disruption of our business or that of our tenants caused by a casualty event may result in the loss of business and/or tenants. The business interruption insurance we or our tenants carry may not fully compensate us for the loss of business or tenants due to an interruption caused by a casualty event. Further, if one of our tenants has insurance but is underinsured, that tenant may be unable to satisfy its payment obligations under its lease with us or its other payment or other obligations.

A disruption in the financial markets may make it more difficult to evaluate the stability, net assets and capitalization of insurance companies and any insurer’s ability to meet its claim payment obligations. A failure of an insurance company to make payments to us upon an event of loss covered by an insurance policy, losses in excess of our policy coverage limits or disruptions to our business or the business of our tenants caused by a casualty event could adversely affect our business, financial condition and results of operations.

Each JV may also experience uninsured or underinsured losses, and also faces other risks related to insurance that are similar to those we face, which could reduce the value of our investment in, or distributions to us by, one or more JVs, or require that we make additional capital contributions to one or more JVs.

Conflicts of interest may exist or could arise in the future between the interests of Seritage Growth shareholders and the interests of holders of Operating Partnership units, and the partnership agreement of Operating Partnership grants holders of Operating Partnership units certain rights, which may harm the interests of Seritage Growth shareholders.

Conflicts of interest may exist or could arise in the future as a result of the relationships between Seritage Growth and its affiliates, on the one hand, and Operating Partnership or any of its partners, on the other. Seritage Growth’s trustees and officers have duties to Seritage Growth under Maryland law in connection with their oversight and management of the company. At the same time, Seritage Growth, as general partner of Operating Partnership, will have duties and obligations to Operating Partnership and its limited partners under Delaware law, as modified by the partnership agreement of Operating Partnership in connection with the management of Operating Partnership.

For example, without the approval of the majority of the Operating Partnership units not held by Seritage Growth and entities controlled by it, Seritage Growth will be prohibited from taking certain extraordinary actions, including change of control transactions of Seritage Growth or Operating Partnership. See “Certain Relationships and Related Transactions” and “Description of Partnership Agreement of Operating Partnership.”

**Conflicts of interest may exist or could arise in the future between the interests of Seritage Growth shareholders and the interests of holders of Operating Partnership units, and the partnership agreement of Operating Partnership grants holders of Operating Partnership units certain rights, which may harm the interests of Seritage Growth shareholders.**

For example, without the approval of the majority of the Operating Partnership units not held by Seritage Growth and entities controlled by it, Seritage Growth will be prohibited from taking certain extraordinary actions, including change of control transactions of Seritage Growth or Operating Partnership. See “Certain Relationships and Related Transactions” and “Description of Partnership Agreement of Operating Partnership.”

**Upon completion of this offering, ESL will own a substantial percentage of the Operating Partnership Units, which may be exchanged for cash or, at the election of Seritage Growth, Seritage Growth common shares, and which will result in certain transactions involving Seritage Growth or Operating Partnership requiring the approval of ESL.**

Upon completion of the OP Private Placement, ESL is expected to own approximately 44.9% of the Operating Partnership units, with the remainder of the units held by Seritage Growth. In addition, ESL will have the right to acquire additional Operating Partnership units in order to allow it to maintain its relative ownership interest in Operating Partnership if Operating Partnership issues additional units to Seritage Growth under certain circumstances, including if Seritage Growth issues additional equity and contributes the funds to Operating Partnership to fund acquisitions or redevelopment of properties, among other uses. In addition, ESL will have the right to require Operating Partnership to redeem its Operating Partnership units in whole or in part in exchange for cash or, at the election of Seritage Growth, Seritage Growth common shares, except as described below. If
exchanged for Seritage Growth common shares (and assuming the ownership limits set forth in Seritage Growth’s declaration of trust did not apply), the Operating Partnership units owned by ESL would represent approximately 44.9% of the outstanding Seritage Growth common shares based on the number of shares outstanding as of the closing of the Transaction. Due to the ownership limits set forth in Seritage Growth’s declaration of trust, ESL may dispose of some or all of the Seritage Growth common shares it beneficially owns prior to exercising its right to require Operating Partnership to redeem Operating Partnership units, and the partnership agreement of Operating Partnership will permit ESL (and only ESL) to transfer its Operating Partnership units to one or more underwriters to be exchanged for Seritage Growth common shares in connection with certain dispositions in order to achieve the same effect as would occur if ESL were to exchange a larger portion of its Operating Partnership units for Seritage Growth common shares and then dispose of those shares in an underwritten offering. See “Description of Partnership Agreement of Operating Partnership.” Sales of a substantial number of Seritage Growth common shares in connection with or to raise cash proceeds to facilitate, such a redemption, or the perception that such sales may occur, could adversely affect the market price of the Seritage Growth common shares. See “—The number of shares available for future sale could adversely affect the market price of Seritage Growth common shares.”

In addition, the partnership agreement of Operating Partnership requires the approval of a majority of the Operating Partnership units not held by Seritage Growth and entities controlled by it for certain transactions and other actions, including certain change of control transactions involving Seritage Growth or Operating Partnership, sales of all or substantially all of the assets of Operating Partnership, waivers to the excess share provision in the declaration of trust of Seritage Growth, certain modifications to the partnership agreement, withdrawal or succession of Seritage Growth as general partner of Operating Partnership, limits on the right of holders of Operating Partnership units to redeem their units, tax elections and certain other matters. See “Description of Partnership Agreement of Operating Partnership.” As long as ESL owns a majority of the outstanding Operating Partnership units not held by Seritage Growth and entities controlled by it (and, for certain actions, as long as ESL holds at least 40% of the economic interests of Seritage Growth and Operating Partnership on a combined basis), ESL’s approval will be required in order for the general partner to undertake such actions. If ESL refuses to approve a transaction, our business could be materially adversely affected. For example, without the approval of limitations on the right of holders of Operating Partnership units to redeem their units, potential lenders may be unwilling to lend to us because funds may be needed to pay for redemptions of Operating Partnership units. Furthermore, upon the completion of this offering, ESL is expected to own approximately 4.5% of the outstanding Seritage Growth common shares, as well as Seritage Growth non-economic shares having, in the aggregate, 9.8% of the voting power of Seritage Growth. In any of these matters, the interests of ESL may differ from or conflict with the interests of our other shareholders.

ESL exerts substantial influence over us and Sears Holdings, and its interests may differ from or conflict with the interests of our other shareholders.

Following the Transaction, ESL is expected to beneficially own approximately 44.9% of the Operating Partnership units, and approximately 4.5% of the outstanding Seritage Growth common shares and Seritage Growth non-economic shares having, in the aggregate, 9.8% of the voting power of Seritage Growth. ESL is also expected to beneficially own as well as approximately 48.5% of the outstanding common stock of Sears Holdings (53.2% including shares issuable upon the exercise of warrants held by ESL). In addition, Mr. Lampert, the Chairman of the Board and Chief Executive Officer of Sears Holdings and Chairman and Chief Executive Officer of ESL, will serve on the Seritage Growth Board of Trustees. As a result, ESL and its affiliates will have substantial influence over us and Sears Holdings. In any matter affecting us, including our relationship with Sears Holdings, the interests of ESL may differ from or conflict with the interests of our other shareholders.
The businesses of each of the GGP JV, the Simon JV, and the Macerich JV are similar to our business and the occurrence of risks that adversely affect us could also adversely affect our investment in the GGP JV, the Simon JV and/or the Macerich JV.

In the Transaction, Sears Holdings will sell to Operating Partnership its 50% interests in each of the GGP JV, the Simon JV and the Macerich JV. In connection with our purchase of Sears Holdings’ JV Interests, we will assume Sears Holdings’ obligation to make capital contributions to each JV under certain circumstances. The GGP JV is a joint venture that owns and operates certain JV Properties, which consist of twelve properties formerly owned by Sears Holdings, the Simon JV is a joint venture that owns and operates certain other JV Properties, which consist of ten other properties formerly owned by Sears Holdings and the Macerich JV is a joint venture that owns and operates the remaining JV Properties, which consist of nine other properties formerly owned by Sears Holdings. A substantial majority of the space at the JV Properties is leased by the applicable JV to Sears Holdings under the applicable JV Master Lease. Except with respect to the rent amounts and the properties covered, the general formats of the JV Master Leases are similar to one another and to the Master Lease, including with respect to the lessor’s right to recapture space leased to Sears Holdings (other than at one property owned by the Macerich JV) and Sears Holdings’ right to terminate a portion of the lease as to certain properties. As a result, each JV’s business is similar to our business, and each JV is subject to many of the same risks that we face, including those described in “Risks Related to Our Business and Operations.” The occurrence of risks that adversely affect us could also adversely affect one or more JVs and reduce the value of our investment in, or distributions to us from, one or more JVs, or require that we make additional capital contributions to one or more JVs.

In addition, our influence over each JV may be limited by the fact that day-to-day operation of the GGP JV, the Simon JV and the Macerich JV, and responsibility for leasing and redevelopment activities related to the JV Properties owned by the GGP JV, the Simon JV and the Macerich JV, as applicable, are generally delegated to GGP, Simon and Macerich, respectively, subject to certain exceptions. The JV Properties owned by the GGP JV are located at malls owned and operated by GGP, the JV Properties owned by the Simon JV are located at malls owned and operated by the Simon JV and the JV Properties owned by the Macerich JV are located at malls owned and operated by the Macerich JV. As a result, conflicts of interest may exist or could arise in the future between the interests of GGP, Simon or Macerich and our interests as a holder of 50% interests in the GGP JV, the Simon JV and the Macerich JV, respectively, including, for example, with respect to decisions as to whether to lease to third parties space at a JV Property or other space at the mall at which such JV Property is located.

Following this offering, we will continue to depend on Sears Holdings to provide us with certain services for our business, including, among other things, corporate and real estate redevelopment services, which may not be sufficient to meet our business needs, and we may have difficulty finding replacement services or be required to pay increased costs to replace these services after our agreements with Sears Holdings expire.

Certain administrative services required for the operation of our business will be provided by Sears Holdings during the 18-month period following the closing of the Transaction. Prior to the closing of this offering, we will have entered into various agreements that will effect the purchase and sale of the Acquired Properties and the lease or sublease of a substantial majority of the Acquired Properties to Sears Holdings, including, among others, the Subscription, Distribution and Purchase and Sale Agreement, the Master Lease and the Transition Services Agreement. The Subscription, Distribution and Purchase and Sale Agreement will provide for, among other things, our responsibility for liabilities relating to our business and the responsibility of Sears Holdings for liabilities unrelated to our business. The agreements between us and Sears Holdings will also govern our various interim and ongoing relationships. The Subscription, Distribution and Purchase and Sale Agreement will also contain indemnification obligations and ongoing commitments of us and Sears Holdings. The Master Lease will govern the terms of the use and operation of the Acquired Properties leased by us to Sears Holdings, including our redevelopment and recapture rights and Sears Holdings’ lease termination rights, and the repair, maintenance and redevelopment-related services Sears Holdings may provide to us. Under the Transition Services Agreement, Sears Holdings Management Corporation will continue to provide various interim facilities.
management and corporate support services to us. The terms of the Transaction were determined by Sears Holdings, and thus may be different than the terms we could have obtained from an unaffiliated third party. These agreements will continue in accordance with their terms after the closing of the Transaction. For a description of these agreements and the other agreements that we will enter into with Sears Holdings, see “Certain Relationships and Related Transactions.”

After these agreements expire, or if Sears Holdings is unable to meet its obligations under these agreements, we may be forced to seek replacement services from alternate providers. These replacement services may be more costly to us or of lower quality, and the transition process to a new service provider may result in interruptions to our business or operations, which could harm our financial condition or results of operations.

In connection with the Transaction, Sears Holdings will indemnify us for certain liabilities. However, these indemnities may be insufficient to insure us against the full amount of such liabilities, and Sears Holdings’ ability to satisfy its indemnification obligations may be impaired in the future.

Pursuant to the Subscription, Distribution and Purchase and Sale Agreement and the Master Lease, Sears Holdings will agree to indemnify us for certain liabilities. However, third parties could seek to hold us responsible for any of the liabilities that Sears Holdings will agree to retain, and Sears Holdings may be unable to fully satisfy its indemnification obligations. Moreover, even if we ultimately succeed in recovering from Sears Holdings any amounts for which we are held liable, we may be temporarily required to bear these losses while seeking recovery from Sears Holdings. Any liabilities in excess of amounts for which we receive timely indemnification from Sears Holdings could have a material adverse effect on our business and financial condition.

Risks Related to Status as a REIT

If we do not qualify to be taxed as a REIT, or fail to remain qualified as a REIT, we will be subject to U.S. federal income tax as a regular corporation and could face a substantial tax liability, which would reduce the amount of cash available for distribution to Seritage Growth shareholders.

We intend to operate in a manner that will allow us to qualify to be taxed as a REIT for U.S. federal income tax purposes commencing with our taxable year ending December 31, 2015. References throughout this document to the “first taxable year” for which we have elected to be taxed as a REIT refer to the taxable year ending December 31, 2015. Seritage Growth expects to receive an opinion of Wachtell, Lipton, Rosen & Katz (“Wachtell Lipton”) with respect to its qualification as a REIT in connection with the Transaction. Investors should be aware, however, that opinions of counsel are not binding on the IRS or any court. The opinion of Wachtell Lipton represents only the view of Wachtell Lipton based on its review and analysis of existing law and on certain representations as to factual matters and covenants made by us, including representations relating to the values of our assets and the sources of our income. The opinion is expressed as of the date issued. Wachtell Lipton will have no obligation to advise Seritage Growth or the holders of Seritage Growth common shares of any subsequent change in the matters stated, represented or assumed or of any subsequent change in applicable law. Furthermore, both the validity of the opinion of Wachtell Lipton and Seritage Growth’s qualification as a REIT will depend on Seritage Growth’s satisfaction of certain asset, income, organizational, distribution, shareholder ownership and other requirements on a continuing basis, the results of which will not be monitored by Wachtell Lipton. Our ability to satisfy the asset tests depends upon our analysis of the characterization and fair market values of our assets, some of which are not susceptible to a precise determination, and for some of which we will not obtain independent appraisals.

If Seritage Growth were to fail to qualify as a REIT in any taxable year, Seritage Growth would be subject to U.S. federal income tax, including any applicable alternative minimum tax, on its taxable income at regular corporate rates, and dividends paid to Seritage Growth shareholders would not be deductible by Seritage Growth in computing its taxable income. Any resulting corporate tax liability could be substantial and would reduce the amount of cash available for distribution to Seritage Growth shareholders, which in turn could have an adverse impact on the value of Seritage Growth common shares. Unless we were entitled to relief under certain Code
provisions, Seritage Growth also would be disqualified from re-electing to be taxed as a REIT for the four taxable years following the year in which Seritage Growth failed to qualify as a REIT.

Qualifying as a REIT involves highly technical and complex provisions of the Code.

Qualification as a REIT involves the application of highly technical and complex Code provisions for which only limited judicial and administrative authorities exist. Even a technical or inadvertent violation could jeopardize Seritage Growth’s REIT qualification. Seritage Growth’s qualification as a REIT will depend on the satisfaction of certain asset, income, organizational, distribution, shareholder ownership and other requirements on a continuing basis. In addition, Seritage Growth’s ability to satisfy the requirements to qualify as a REIT may depend in part on the actions of third parties over which Seritage Growth has no control or only limited influence, including in cases where we own an equity interest in an entity that is classified as a partnership for U.S. federal income tax purposes.

We could fail to qualify to be taxed as a REIT if income we receive from Sears Holdings is not treated as qualifying income.

Under applicable provisions of the Code, we will not be treated as a REIT unless we satisfy various requirements, including requirements relating to the sources of our gross income. See “U.S. Federal Income Tax Considerations.” Rents we receive or accrue from Sears Holdings will not be treated as qualifying rent for purposes of these requirements if the Master Lease is not respected as a true lease for U.S. federal income tax purposes and is instead treated as a service contract, joint venture, financing, or some other type of arrangement. If the Master Lease is not respected as a true lease for U.S. federal income tax purposes, we may fail to qualify to be taxed as a REIT. Furthermore, Seritage Growth’s qualification as a REIT will depend on the satisfaction of certain asset, income, organizational, distribution, shareholder ownership and other requirements on a continuing basis. Seritage Growth’s ability to satisfy the asset tests depends upon our analysis of the characterization and fair market values of our assets, some of which are not susceptible to a precise determination, and for some of which Seritage Growth will not obtain independent appraisals.

In addition, subject to certain exceptions, rents we receive or accrue from Sears Holdings (or other tenants) will not be treated as qualifying rent for purposes of these requirements if we or an actual or constructive owner of 10% or more of the Seritage Growth common shares actually or constructively owns 10% or more of the total combined voting power of all classes of Sears Holdings stock (or the stock of such other tenant) entitled to vote or 10% or more of the total value of all classes of Sears Holdings stock (or the stock of such other tenant). Seritage Growth’s declaration of trust provides for restrictions on ownership and transfer of Seritage Growth common shares, including restrictions on such ownership or transfer that would cause the rents we receive or accrue from Sears Holdings (or other tenants) to be treated as non-qualifying rent for purposes of the REIT gross income requirements. The provisions of Seritage Growth’s declaration of trust that restrict the ownership and transfer of Seritage Growth common shares are described in “Description of Shares of Beneficial Interest—Restrictions on Ownership and Transfer.” Nevertheless, such restrictions may not be effective in ensuring that rents we receive or accrue from Sears Holdings (or other tenants) will be treated as qualifying rent for purposes of REIT qualification requirements.

Dividends payable by REITs do not qualify for the reduced tax rates available for some dividends.

The maximum U.S. federal income tax rate applicable to income from “qualified dividends” payable by U.S. corporations to U.S. shareholders that are individuals, trusts and estates is currently 20%. Dividends payable by REITs, however, generally are not eligible for the reduced rates. Although these rules do not adversely affect the taxation of REITs, the more favorable rates applicable to regular corporate qualified dividends could cause investors who are individuals, trusts and estates to perceive investments in REITs to be relatively less attractive than investments in the shares of non-REIT corporations that pay dividends, which could adversely affect the value of the shares of REITs, including the Seritage Growth common shares.
**REIT distribution requirements could adversely affect our ability to execute our business plan.**

We generally must distribute annually at least 90% of Seritage Growth’s REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gains, in order for us to qualify to be taxed as a REIT (assuming that certain other requirements are also satisfied) so that U.S. federal corporate income tax does not apply to earnings that we distribute. To the extent that we satisfy this distribution requirement and qualify for taxation as a REIT but distribute less than 100% of Seritage Growth’s REIT taxable income, determined without regard to the dividends paid deduction and including any net capital gains, we will be subject to U.S. federal corporate income tax on our undistributed net taxable income. In addition, we will be subject to a 4% nondeductible excise tax if the actual amount that we distribute to Seritage Growth shareholders in a calendar year is less than a minimum amount specified under U.S. federal tax laws. We intend to make distributions to Seritage Growth shareholders to comply with the REIT requirements of the Code.

From time to time, we may generate taxable income greater than our cash flow as a result of differences in timing between the recognition of taxable income and the actual receipt of cash or the effect of nondeductible capital expenditures, the creation of reserves or required debt or amortization payments. If we do not have other funds available in these situations, we could be required to borrow funds on unfavorable terms, sell assets at disadvantageous prices or distribute amounts that would otherwise be invested in future acquisitions to make distributions sufficient to enable us to pay out enough of our taxable income to satisfy the REIT distribution requirement and to avoid corporate income tax and the 4% excise tax in a particular year. These alternatives could increase our costs or reduce our equity. Thus, compliance with the REIT requirements may hinder our ability to grow, which could adversely affect the value of Seritage Growth common shares.

Restrictions in our indebtedness following the Transaction, including restrictions on our ability to incur additional indebtedness or make certain distributions, could preclude us from meeting the 90% distribution requirement. Decreases in funds from operations due to unfinanced expenditures for acquisitions of properties or increases in the number of Seritage Growth common shares outstanding without commensurate increases in funds from operations each would adversely affect our ability to maintain distributions to Seritage Growth shareholders. Moreover, the failure of Sears Holdings to make rental payments under the Master Lease would materially impair our ability to make distributions. Consequently, we may be unable to make distributions at the anticipated distribution rate or any other rate. See “Dividend Policy.”

**Even if we remain qualified as a REIT, we may face other tax liabilities that reduce our cash flow.**

Even if we remain qualified for taxation as a REIT, we may be subject to certain U.S. federal, state, local and foreign taxes on our income and assets, including taxes on any undistributed income and state, local or foreign income, property and transfer taxes. See “U.S. Federal Income Tax Considerations.” For example, in order to meet the REIT qualification requirements, Seritage Growth may hold some of our assets or conduct certain of our activities through one or more TRSs or other subsidiary corporations that will be subject to federal, state and local corporate-level income taxes as regular C corporations. In addition, we may incur a 100% excise tax on transactions with a TRS if they are not conducted on an arm’s-length basis. Any of these taxes would decrease cash available for distribution to Seritage Growth shareholders.

**Complying with REIT requirements may cause us to liquidate or forgo otherwise attractive opportunities.**

To qualify to be taxed as a REIT, we must ensure that, at the end of each calendar quarter, at least 75% of the value of our assets consists of cash, cash items, government securities and “real estate assets” (as defined in the Code), including certain mortgage loans and securities. The remainder of our investments (other than government securities, qualified real estate assets and securities issued by a TRS) generally cannot include more than 10% of the outstanding voting securities of any one issuer or more than 10% of the total value of the outstanding securities of any one issuer. In addition, in general, no more than 5% of the value of our total assets (other than government securities, qualified real estate assets and securities issued by a TRS) can consist of the
securities of any one issuer, and no more than 25% of the value of our total assets can be represented by securities of one or more TRSs. See “U.S. Federal Income Tax Considerations.” If Seritage Growth fails to comply with these requirements at the end of any calendar quarter, we must correct the failure within 30 days after the end of the calendar quarter or qualify for certain statutory relief provisions to avoid losing Seritage Growth’s REIT qualification and suffering adverse tax consequences. As a result, we may be required to liquidate or forgo otherwise attractive investments. These actions could have the effect of reducing our income and amounts available for distribution to Seritage Growth shareholders.

In addition to the asset tests set forth above, to qualify to be taxed as a REIT, we must continually satisfy tests concerning, among other things, the sources of our income, the amounts we distribute to Seritage Growth shareholders and the ownership of Seritage Growth shares of beneficial interest. We may be unable to pursue investments that would be otherwise advantageous to us in order to satisfy the source-of-income or asset-diversification requirements for qualifying as a REIT. Thus, compliance with the REIT requirements may hinder our ability to make certain attractive investments.

**Complying with REIT requirements may limit our ability to hedge effectively and may cause us to incur tax liabilities.**

The REIT provisions of the Code substantially limit our ability to hedge our assets and liabilities. Any income from a hedging transaction that we enter into to manage risk of interest rate changes with respect to borrowings made or to be made to acquire or carry real estate assets does not constitute “gross income” for purposes of the 75% or 95% gross income tests that apply to REITs, provided that certain identification requirements are met. To the extent that we enter into other types of hedging transactions or fail to properly identify such transaction as a hedge, the income is likely to be treated as non-qualifying income for purposes of both of the gross income tests. See “U.S. Federal Income Tax Considerations.” As a result of these rules, we may be required to limit our use of advantageous hedging techniques or implement those hedges through a TRS. This could increase the cost of our hedging activities because our TRS may be subject to tax on gains or expose us to greater risks associated with changes in interest rates than we would otherwise want to bear. In addition, losses in our TRS will generally not provide any tax benefit, except that such losses could theoretically be carried back or forward against past or future taxable income in the TRS.

**Legislative or other actions affecting REITs could have a negative effect on us.**

The rules dealing with U.S. federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Department of the Treasury (the “Treasury”). Changes to the tax laws or interpretations thereof, with or without retroactive application, could materially and adversely affect our investors or us. We cannot predict how changes in the tax laws might affect our investors or us. New legislation, Treasury regulations, administrative interpretations or court decisions could significantly and negatively affect Seritage Growth’s ability to qualify as a REIT or the U.S. federal income tax consequences to Seritage Growth’s investors and Seritage Growth of such qualification.

**Risks Related to the Offering**

*The subscription price determined for the rights offering is not necessarily an indication of the price at which Seritage Growth common shares will trade.*

The board of directors of Sears Holdings based the per share subscription price being used in the rights offering on various factors, including, among other things (1) the opinion of Duff & Phelps, LLC, which it engaged to act as a financial advisor in connection with the Transaction, (2) the appraisal reports of Cushman & Wakefield, which assisted in valuing the Acquired Properties, (3) the desirability of broad participation in the rights offering by Sears Holdings’ stockholders and of the development of a trading market for both the subscription rights and Seritage Growth common shares, (4) the fair market value of the Acquired Properties and the JV Interests purchased in the Transaction, including the terms of the Master Lease, and (5) Seritage Growth’s liquidity needs and the aggregate amount of proceeds to be paid to Sears Holdings pursuant to the Transaction if
the rights offering were fully subscribed. The per share subscription price may not be indicative of the price at which Seritage Growth common shares will trade after this offering. After the date of this prospectus, you may not be able to sell Seritage Growth common shares that you hold at prices equal to or above the subscription price.

_Sears Holdings may cancel the rights offering at any time prior to the expiration of the rights offering and in such case neither Sears Holdings nor the subscription agent will have any obligation to you except to return your exercise payments._

The rights offering is subject to the satisfaction or waiver of certain conditions. In addition, Sears Holdings has the right to withdraw and cancel the rights offering if, at any time prior to its expiration, the board of directors of Sears Holdings determines, in its sole discretion, that the rights offering is not in the best interest of Sears Holdings or its stockholders, or that market conditions are such that it is not advisable to consummate the rights offering (which could occur if, among other things, we do not receive sufficient proceeds from this offering, the OP Private Placement, the Seritage Private Placements and the Non-Economic Shares Private Placement, or if the Acquired Entities do not receive sufficient proceeds from the Financing). See “The Rights Offering—Conditions, Withdrawal and Cancellation.” Sears Holdings and Seritage have entered into the Commitment in respect of the Financing with two institutional lenders. The Commitment and the Financing are subject to certain customary and other conditions precedent. While Sears Holdings and Seritage expect to consummate the Financing on the terms contemplated by the Commitment, no assurances can be given that we will be able to do so.

If the rights offering is cancelled, any money received by the subscription agent from subscribing stockholders will be returned, without interest or penalty, as soon as practicable. Sears Holdings may also extend the rights offering for additional periods ending no later than July 17, 2015, although it does not presently intend to do so. If Sears Holdings cancels the rights offering and you have not exercised any rights, the subscription rights will expire, have no value, and cease to be exercisable for Seritage Growth common shares. If you purchase subscription rights during the subscription period and Sears Holdings cancels the rights offering, you will lose the entire purchase price paid to acquire such subscription rights in the market; however, any subscription payments that you paid and that were received by the subscription agent will be returned to you, without interest or penalty, as soon as practicable.

_If you own more than 5.3% of the Sears Holdings common stock outstanding as of the record date, you will not be able to exercise all of your basic subscription rights received in the rights offering._

In light of the restrictions on ownership in Seritage Growth’s declaration of trust designed to, among other purposes, help Seritage Growth maintain its qualification as a REIT, including prohibitions on any person actually or constructively owning more than 9.6% in value or in number, whichever is more restrictive, of all outstanding shares, or all outstanding common shares (including Seritage Growth common shares, Seritage Growth non-economic shares and Seritage Growth non-voting shares), of beneficial interest of Seritage Growth, and based on the number of shares of Sears Holdings common stock outstanding as of the record date and the current anticipated ownership of Seritage Growth and the Operating Partnership, if you beneficially own more than 5.3% of the Sears Holdings common stock outstanding as of the record date, you will not be able to exercise your basic subscription rights in full because the exercise of subscription rights to purchase more than Seritage Growth common shares would result in you receiving more than 9.6% of the outstanding shares of beneficial interest of Seritage Growth (as calculated for certain federal income tax purposes). Despite this limit, only ESL will be permitted to participate in the OP Private Placement and the Non-Economic Shares Private Placement and only Fairholme Clients (which are expected to receive the Excess Share Waivers) will be permitted to participate in the Non-Voting Shares Offering. Your rights are transferable during the course of the subscription period, but if you do not sell your excess rights that, if exercised, would result in ownership in excess of the ownership limits, these excess rights will not be exercisable and will be cancelled. Furthermore, because the over-subscription privilege is only available to those who fully exercise their basic subscription
rights, if you beneficially own more than 5.3% of the Sears Holdings common stock as of the record date, you will not be able to participate in the over-subscription privilege.

No prior market exists for the subscription rights and a liquid market for the subscription rights may not develop.

We intend to apply to list the subscription rights for trading on the NYSE under the symbol “SRGRT.” However, the subscription rights are a new issue of securities with no prior trading market. Neither we nor Sears Holdings can provide you with any assurances as to the liquidity of the trading market for the subscription rights or the price at which the subscription rights may trade following the rights offering. In addition, the listing of the subscription rights on the NYSE is subject to Seritage Growth meeting the listing requirements of the NYSE. In the event that these listing approvals cannot be obtained, holders of subscription rights will own unlisted securities, which may affect the pricing of the rights in the secondary market, the transparency and availability of trading prices, and the liquidity of the rights.

If you do not act promptly and follow the subscription instructions, your exercise of subscription rights will be rejected.

If you desire to purchase Seritage Growth common shares in the rights offering, you must act promptly to ensure that the subscription agent actually receives all required forms and payments before the expiration of the rights offering at 5:00 p.m., New York City time, on July 2, 2015 unless Sears Holdings extends the rights offering for additional periods ending no later than July 17, 2015. If you are a beneficial owner of Sears Holdings common stock, you must act promptly to ensure that your broker, dealer, custodian bank or other nominee acts for you and that the subscription agent receives all required forms and payments before the rights offering expires. Neither we nor Sears Holdings is or will be responsible if your nominee fails to ensure that the subscription agent receives all required forms and payments before the rights offering expires. If you fail to complete and sign the required subscription forms, send an incorrect payment amount, or otherwise fail to follow the subscription procedures that apply to the exercise of your subscription rights before the rights offering expires, the subscription agent will reject your subscription or accept it only to the extent of the payment received. None of Seritage Growth, Operating Partnership, Sears Holdings or the subscription agent undertakes any responsibility or action to contact you concerning an incomplete or incorrect subscription form or payment, nor are we or Sears Holdings under any obligation to correct such forms or payment. Sears Holdings has the sole discretion to determine whether a subscription exercise properly complies with the subscription procedures.

You will not be able to sell the Seritage Growth common shares you buy in this offering until your account is credited with the common shares.

If you are a registered stockholder of Sears Holdings and you purchase shares in this offering, your account will be credited with Seritage Growth common shares as soon as practicable after the expiration of the rights offering. If your shares of Sears Holdings common stock are held by a broker, dealer, custodian bank or other nominee and you purchase Seritage Growth common shares pursuant to your subscription rights, your account with your nominee will be credited with the Seritage Growth common shares you purchased in the rights offering as soon as practicable after the expiration of the rights offering. Until your account is credited, you may not be able to sell your shares even though the Seritage Growth common shares issued in the rights offering will be listed for trading on the NYSE. The share price may decline between the time you decide to sell your Seritage Growth common shares and the time you are actually able to sell such shares.

You may not revoke your exercise of the subscription rights and you could be committed to buying shares at a price above the prevailing market price after completion of the rights offering.

Once you exercise your rights, you may not revoke the exercise even if you later learn information that you consider to be unfavorable to the exercise of your rights. If you exercise your rights, you may not be able to sell the Seritage Growth common shares purchased under the rights at a price equal to or greater than the subscription price, and you may lose all or part of your investment in Seritage Growth common shares.
You will not receive interest on your subscription funds during the period pending the closing of the offering.

The subscription agent will hold the gross proceeds from the sale of shares underlying the rights in escrow in a segregated bank account, and it will release the proceeds together with any interest earned on the proceeds, less any applicable withholding taxes, to Sears Holdings as soon as is practicable after the expiration of the rights offering. If the rights offering is cancelled, any money received by the subscription agent from subscribing stockholders will be returned, without interest or penalty, as soon as practicable.

The tax consequences of the receipt, sale, exercise, expiration and cancellation of the subscription rights are not certain.

We believe that the treatment of the receipt, sale, exercise, expiration and cancellation of the subscription rights for U.S. federal income tax purposes is not entirely clear. The IRS may disagree with the tax treatment discussed herein. You should discuss with your tax advisor the treatment of the receipt, sale, exercise, expiration and cancellation of the subscription rights for U.S. federal income tax purposes.

If you receive and exercise the subscription rights, you may be subject to adverse U.S. federal income tax consequences.

If you receive a subscription right and exercise that right, you should generally expect to have (1) taxable dividend income equal to the fair market value (if any) of the subscription right on the date of its distribution by Sears Holdings and (2) no additional income upon the exercise of the subscription right. You may need to fund any tax resulting from the receipt of the subscription right with cash from other sources. You should discuss with your tax advisor the U.S. federal income tax consequences of receiving and exercising the subscription rights. For a detailed discussion, see “U.S. Federal Income Tax Considerations.”

If you receive and sell the subscription rights, you may be subject to adverse U.S. federal income tax consequences.

If you receive a subscription right and sell that right, you should generally expect to have (1) taxable dividend income equal to the fair market value (if any) of the subscription right on the date of its distribution by Sears Holdings and (2) short-term capital gain or loss upon the sale equal to the difference between the proceeds received upon the sale and the fair market value (if any) of the subscription right on the date of its distribution by Sears Holdings. It is possible that the sale proceeds received by you upon a sale of the subscription rights will be less than any tax resulting from your receipt of the subscription right. In this event, you will generally need to fund the remaining portion of any tax with cash from other sources. You should discuss with your tax advisor the U.S. federal income tax consequences of receiving and selling the subscription rights. For a detailed discussion, see “U.S. Federal Income Tax Considerations.”

If you receive but do not sell or exercise the subscription rights before they expire, you may be subject to adverse U.S. federal income tax consequences.

If you receive a subscription right from Sears Holdings and do not sell or exercise that right before it expires, you should generally expect to have (1) taxable dividend income equal to the fair market value (if any) of the subscription right on the date of its distribution by Sears Holdings and (2) a short-term capital loss upon the expiration of such right in an amount equal to your adjusted tax basis (if any) in such right. In general, capital losses are available to offset only capital gains and may not be used to offset dividend or other income (except, to the extent of up to $3,000 of capital loss per year, in the case of a non-corporate U.S. stockholder). Accordingly, if you receive a subscription right from Sears Holdings and take no action, you may owe tax and need to fund that tax with cash from other sources.
By illustration, if you receive subscription rights that have a value of $5,000 on the date they are distributed by Sears Holdings, you do not sell or exercise those rights before they expire and Sears Holdings does not cancel the rights offering, you should generally expect to have $5,000 of dividend income upon the receipt of the subscription rights and a $5,000 short-term capital loss upon the expiration of those rights.

You should discuss with your tax advisor the U.S. federal income tax consequences of receiving and neither selling nor exercising the subscription rights. For a detailed discussion, see “U.S. Federal Income Tax Considerations.”

If you receive subscription rights and Sears Holdings subsequently cancels the rights offering, you may be subject to adverse U.S. federal income tax consequences.

You should discuss with your tax advisor the tax consequences of receiving subscription rights if Sears Holdings subsequently cancels the rights offering. There are limited authorities addressing the tax consequences that would apply to you in this circumstance. Certain of the authorities suggest that in this circumstance you may not have taxable dividend income upon the receipt of the subscription rights if you do not sell or otherwise dispose of the rights and if the receipt and cancellation occur in the same taxable year. However, the scope of those authorities is unclear and Sears Holdings (and any other applicable withholding agent) is likely to take the position, for information reporting and withholding purposes, that you have taxable dividend income upon the receipt of the subscription rights even if Sears Holdings subsequently cancels the rights offering. If withholding tax is withheld from you in this event, you should consult your tax advisor as to whether to seek a refund of such amount from the IRS.

If you have taxable dividend income upon the receipt of a subscription right even though Sears Holdings subsequently cancels the rights offering, you should generally expect to have a short-term capital loss upon the cancellation of the subscription right in an amount equal to your adjusted tax basis (if any) in such right. In general, capital losses are available to offset only capital gains and may not be used to offset dividend or other income (except, to the extent of up to $3,000 of capital loss per year, in the case of a non-corporate U.S. stockholder). For a detailed discussion, see “U.S. Federal Income Tax Considerations.”

There is currently no public market for Seritage Growth common shares. An active trading market for Seritage Growth common shares may not develop following this offering, and you may be unable to sell your shares at a price above the subscription price or at all.

There has not been any public market for Seritage Growth common shares prior to this offering. We intend to apply to list Seritage Growth common shares for trading on the NYSE under the symbol “SRG.” However, an active trading market for Seritage Growth common shares may not develop after this offering or, if one develops, may not be sustained. In the absence of a public market, you may be unable to liquidate an investment in Seritage Growth common shares.

The market price and trading volume of Seritage Growth common shares may be volatile following this offering.

Even if an active trading market develops for Seritage Growth common shares, the market price of common shares may be volatile. In addition, the trading volume in Seritage Growth common shares may fluctuate and cause significant price variations to occur. If the market price of Seritage Growth common shares declines significantly, you may be unable to resell your shares at or above the public offering price or at all. The market price of the common shares may fluctuate or decline significantly in the future.

Some of the factors that could negatively affect the market price of Seritage Growth common shares or result in fluctuations in the price or trading volume of the common shares include:

- actual or anticipated variations in our quarterly results of operations or distributions;
• changes in our funds from operations or earnings estimates;
• publication of research reports about us or the real estate or retail industries;
• increases in market interest rates that may cause purchasers of Seritage Growth common shares to demand a higher yield;
• changes in market valuations of similar companies;
• adverse market reaction to any additional debt we may incur in the future;
• actions by ESL or FCM and/or Fairholme Clients, or by institutional shareholders;
• speculation in the press or investment community about our company or industry or the economy in general;
• Adverse performance by Sears Holdings, our primary tenant;
• the occurrence of any of the other risk factors presented in this prospectus;
• specific real estate market and real estate economic conditions; and
• general market and economic conditions.

Future offerings of debt, which would be senior to Seritage Growth common shares upon liquidation, and/or preferred equity securities, which may be senior to Seritage Growth common shares for purposes of distributions or upon liquidation, may adversely affect the market price of Seritage Growth common shares.

In the future, we may attempt to increase our capital resources by making additional offerings of debt or preferred equity securities, including medium-term notes, trust preferred securities, senior or subordinated notes and preferred shares. Upon liquidation, holders of our debt securities and preferred shares and lenders with respect to other borrowings may receive distributions of our available assets prior to the holders of Seritage Growth common shares. Additional equity offerings may dilute the holdings of our existing shareholders or reduce the market price of Seritage Growth common shares, or both. Holders of Seritage Growth common shares are not entitled to preemptive rights or other protections against dilution, and will have no voting rights in connection with the issuance of these securities. Our preferred shares of beneficial interest, if issued, could have a preference on liquidating distributions or a preference on distribution payments that could limit our ability to make a distribution to the holders of Seritage Growth common shares. Since our decision to issue securities in any future offering will depend in part on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, Seritage Growth shareholders bear the risk of our future offerings reducing the market price of Seritage Growth common shares and diluting their holdings in us.

The historical and pro forma financial information included in this prospectus may not be a reliable indicator of future results.

The historical financial statements included herein are (1) a Combined Statement of Investments of Real Estate Assets to be Acquired by Seritage Growth Properties as of December 31, 2014 and (2) a balance sheet of Seritage Growth Properties as of June 3, 2015 (Formation Date). In addition, this prospectus includes pro forma financial information regarding Seritage Growth.

The historical financial statements and the pro forma financial information included herein may not reflect what our business, financial position or results of operations will be in the future when we are a separate, publicly traded company. Until the Transaction is completed, we will not have been an operating business and will not have had historical operations. The Acquired Properties we will purchase from Sears Holdings were operated by Sears Holdings as part of its larger corporate organization and not as a stand-alone business or independent company. Because we have no historical operations and will not own any properties or commence our real estate ownership and development business until the Transaction is completed, there are no historical financial statements for
Seritage Growth as it will exist following the Transaction. The financial information that we have included in this prospectus may not reflect what our financial condition, results of operations or cash flows would have been had we been a stand-alone business or independent entity, or had we operated as a REIT, during the periods presented. Significant changes will occur in our cost structure, financing and business operations as a result of our operation as a stand-alone company and the entry into transactions with Sears Holdings that have not existed historically, including the Master Lease. The pro forma financial information included in this prospectus was prepared on the basis of assumptions derived from available information that we believed to be reasonable. However, these assumptions may change or may be incorrect, and actual results may differ, perhaps significantly. Therefore, the financial information we have included in this prospectus may not necessarily be indicative of what our financial condition, results of operations or cash flows will be in the future. For additional information about the basis of presentation of the financial information included in this prospectus, see “Capitalization,” “Selected Financial Data,” “Unaudited Pro Forma Consolidated Financial Data” and the financial statements.

The Transaction could give rise to disputes or other unfavorable effects, which could have a material adverse effect on our business, financial condition or results of operations.

Disputes with third parties could arise out of the Transaction, and we could experience unfavorable reactions to the Transaction from employees, ratings agencies, regulators or other interested parties. These disputes and reactions of third parties could have a material adverse effect on our business, financial condition or results of operations. In addition, following the Transaction, disputes between us and Sears Holdings (and our subsidiaries) could arise in connection with any of the Subscription, Distribution and Purchase and Sale Agreement, the Master Lease, the Transition Services Agreement or other agreements.

A court could deem aspects of the Transaction to be a fraudulent conveyance and void the transaction or impose substantial liabilities upon us.

A court could deem aspects of the Transaction (such as the sale of the Acquired Properties in connection with the Transaction) to be a fraudulent conveyance upon a subsequent legal challenge by unpaid creditors or a bankruptcy trustee of the debtor that made the conveyance. Fraudulent conveyances include transfers made or obligations incurred with the actual intent to hinder, delay or defraud current or future creditors, or transfers made or obligations incurred in exchange for less than reasonably equivalent value when the debtor was, or was rendered, insolvent, inadequately capitalized or unable to pay its debts as they become due. To remedy a fraudulent conveyance, a court could void the challenged transfer or obligation, requiring us to return consideration that we received in the Transaction, or impose substantial liabilities upon us for the benefit of unpaid creditors of the debtor that made the fraudulent conveyance, which could adversely affect our financial condition and our results of operations. Among other things, the court could require Seritage Growth shareholders to return to Sears Holdings some or all of the Seritage Growth common shares issued in the distribution. Whether a transaction is a fraudulent conveyance will vary depending upon, among other things, the jurisdiction whose law is being applied.

The number of shares available for future sale could adversely affect the market price of Seritage Growth common shares.

We cannot predict whether future issuances of Seritage Growth common shares, the availability of Seritage Growth common shares for resale in the open market or the conversion of Seritage Growth non-voting shares into Seritage Growth common shares will decrease the market price per share of Seritage Growth common shares. Sales of a substantial number of Seritage Growth common shares in the public market, or the perception that such sales might occur, could adversely affect the market price of the Seritage Growth common shares.

Our earnings and cash distributions will affect the market price of Seritage Growth common shares.

We believe that the market value of a REIT’s equity securities is based primarily upon market perception of the REIT’s growth potential and its current and potential future cash distributions, whether from operations, sales, acquisitions, development or refinancing, and is secondarily based upon the value of the underlying assets.
For these reasons, Seritage Growth common shares and Seritage Growth non-voting shares may trade at prices that are higher or lower than the net asset value per share. To the extent we retain operating cash flow for investment purposes, working capital reserves or other purposes rather than distributing the cash flow to shareholders, these retained funds, while increasing the value of our underlying assets, may negatively impact the market price of Seritage Growth common shares. Our failure to meet market expectations with regard to future earnings and cash distributions would likely adversely affect the market price of Seritage Growth common shares and Seritage Growth non-voting shares.

The Sears Holdings board of directors has reserved the right, in its sole discretion, to amend, modify or abandon the Transaction and the related transactions at any time prior to the distribution date. In addition, the Transaction and related transactions are subject to the satisfaction or waiver (by Sears Holdings’ board of directors in its sole discretion) of a number of conditions. We and Sears Holdings cannot assure that any or all of these conditions will be met.

The Sears Holdings board of directors has reserved the right, in its sole discretion, to amend, modify or abandon the Transaction and the related transactions at any time prior to the distribution date. This means Sears Holdings may cancel or delay the rights offering if at any time the board of directors of Sears Holdings determines that the rights offering is not in the best interests of Sears Holdings or its stockholders, or that market conditions are such that it is not advisable to consummate the rights offering. If the Sears Holdings board of directors determines to cancel the Transaction, stockholders of Sears Holdings will not receive any Seritage Growth common shares. In addition, the Transaction and related transactions are subject to the satisfaction or waiver (by the Sears Holdings board of directors in its sole discretion) of a number of conditions. See “The Rights Offering—Conditions, Withdrawal and Cancellation.” We and Sears Holdings cannot assure that any or all of these conditions will be met. The fulfillment of the conditions to the Transaction will not create any obligation on Sears Holdings’ part to effect the Transaction.
SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

We make statements in this prospectus that are forward-looking statements within the meaning of the federal securities laws. In particular, statements pertaining to our capital resources, portfolio performance and results of operations contain forward-looking statements. Likewise, our pro forma financial statements and all of our statements regarding anticipated growth in our funds from operations and anticipated market conditions, demographics and results of operations are forward-looking statements. You can identify forward-looking statements by the use of forward-looking terminology such as “believes,” “expects,” “may,” “will,” “should,” “seeks,” “approximately,” “intends,” “plans,” “pro forma,” “estimates” or “anticipates” or the negative of these words and phrases or similar words or phrases which are predictions of or indicate future events or trends and which do not relate solely to historical matters. You can also identify forward-looking statements by discussions of strategy, plans or intentions.

Forward-looking statements involve numerous risks and uncertainties and you should not rely on them as predictions of future events. Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise and we may not be able to realize them. We do not guarantee that the transactions and events described will happen as described (or that they will happen at all). The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements:

- Declines in retail, real estate and general economic conditions;
- Our substantial dependence on, or agreements entered into with, Sears Holdings, and indemnities from Sears Holdings that may be insufficient to insure us against certain liabilities;
- Sears Holdings’ rights under the Master Lease, including the right to terminate with respect to a portion of the properties;
- Competition with us or our tenants;
- Tax, environmental, health, safety and land use laws and regulations;
- The terms of our investments in the GGP JV, the Simon JV and the Macerich JV and future acquisitions and other strategic transactions or investments in and redevelopment of properties;
- The ownership of ESL of Seritage Growth common shares, Seritage Growth non-economic shares and Operating Partnership units, and the ownership of Fairholme Clients of Seritage Growth common shares and Seritage Growth non-voting shares;
- Our lack of an operating history as an independent public company;
- The ability of the Seritage Growth Board of Trustees to cause it to issue additional shares of beneficial interest without shareholder approval;
- Certain provisions of Maryland law, the declaration of trust and bylaws of Seritage Growth and the partnership agreement of Operating Partnership that may limit the ability of a third party to acquire control of us;
- Limitations on our rights and the rights of Seritage Growth shareholders to take action against our trustees and officers;
- The failure to realize the expected benefits of the Transaction;
- Our substantial indebtedness, which could adversely affect our financial condition;
- The terms of the agreements governing our indebtedness that restrict our current and future operations, particularly our ability to incur additional debt that we may need to fund initiatives in response to changes in our business, the industries in which we operate, the economy and governmental regulations;
• Incurrence of additional debt, including secured debt, and funds for future capital needs and the availability of external sources of capital;

• The reliability of the financial information included in this prospectus as an indicator of our future results and different results than if we were a stand-alone public company;

• Legislative or other actions affecting REITs, including positions taken by the IRS;

• Restrictions on ownership and transfer of Seritage Growth common shares and our failure to qualify, or remain qualified, to be taxed as a REIT;

• The failure of dividends payable by REITs to qualify for the reduced tax rates available for some dividends;

• Failure to qualify as a REIT if income received from Sears Holdings is not treated as qualifying income;

• REIT distribution requirements;

• An active trading market for Seritage Growth common shares may not develop or market price and trading volumes may be volatile;

• Dilution following this offering; and

• Delays in the completion of the Transaction or the nonoccurrence of the Transaction.

While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. We disclaim any obligation to publicly update or revise any forward-looking statement to reflect changes in underlying assumptions or factors of new information, data or methods, future events or other changes. For a further discussion of these and other factors that could impact our future results, performance or transactions, see the section above entitled “Risk Factors.”
USE OF PROCEEDS

Assuming the subscription rights are exercised in full, which is a condition to the completion of this offering, (and including the maximum portion of the subscription rights held by each of ESL and certain Fairholme Clients permitted to be exchanged under their respective Exchange Agreements, exchanged for Operating Partnership units and Seritage Growth non-economic shares, and for Seritage Growth non-voting shares, respectively), we expect to receive gross cash proceeds of approximately $839.2 million as a result of the sale of Seritage Growth common shares and Seritage Growth non-voting shares in this offering. We also expect to receive gross cash proceeds of approximately $737.3 million through the sale of Operating Partnership units in the OP Private Placement, gross cash proceeds of approximately $0.7 million through the sale of Seritage Growth non-economic shares in the Non-Economic Shares Private Placement, and gross cash proceeds of approximately $66.6 million through the sale of Seritage Growth common shares in the Seritage Private Placements. We intend to contribute the proceeds from this offering, the Non-Economic Shares Private Placement and the Seritage Private Placements to Operating Partnership, which will, together with the proceeds of the OP Private Placement and the assumption of the indebtedness incurred in the Financing, be used to pay the purchase price to Sears Holdings for the Acquired Entities, the remaining Acquired Properties and the JV Interests and related fees and expenses, with remaining proceeds used for working capital and other general purposes. We expect the Acquired Entities to receive, in the aggregate, gross cash proceeds of approximately $1,161.2 million from the Financing. The net proceeds of the Financing will be distributed by the Acquired Entities to Sears Holdings prior to the closing of the Transaction, and therefore will not be available to us following the closing of the Transaction.
DIVIDEND POLICY

Seritage Growth intends to elect and qualify to be taxed as a REIT for U.S. federal income tax purposes commencing with Seritage Growth’s taxable year ending December 31, 2015. U.S. federal income tax law generally requires that a REIT distribute annually at least 90% of its REIT taxable income, without regard to the deduction for dividends paid and excluding net capital gains, and that it pay regular corporate rates to the extent that it annually distributes less than 100% of its taxable income.

Initially, cash available for distribution to Seritage Growth shareholders will be derived solely from the rental payments under the Master Lease and leases with certain parties other than Sears Holdings as well as any distributions to us from the GGP JV, the Simon JV and the Macerich JV. All distributions will be made by Seritage Growth at the discretion of the Board of Trustees and will depend on the financial position, results of operations, cash flows, capital requirements, debt covenants (which are expected to include limits on distributions by Seritage Growth), applicable law and other factors as the Board of Trustees of Seritage Growth deems relevant. The Seritage Growth Board of Trustees has not yet determined when any distributions will be declared or paid.

Seritage Growth currently intends to pay quarterly distributions in cash. For purposes of satisfying the minimum distribution requirement to qualify for and maintain REIT status, Seritage Growth’s taxable income will be calculated without reference to its cash flow. Consequently, under certain circumstances, Seritage Growth may not have available cash to pay its required distributions and may distribute a portion of its dividends in the form of its shares of beneficial interest. In either event, to the extent the distribution represents a distribution of Seritage Growth’s current or accumulated earnings and profits, a shareholder of Seritage Growth will be required to report dividend income as a result of such distributions even though Seritage Growth distributed only nominal amounts of cash to such shareholder. The IRS has issued private letter rulings to other REITs treating certain distributions that are paid partly in cash and partly in shares as taxable dividends that would satisfy that REIT annual distribution requirement and qualify for the dividends paid deduction for U.S. federal income tax purposes. Those rulings may be relied upon only by taxpayers to whom they were issued, but Seritage Growth could request a similar ruling from the IRS. The IRS previously issued a revenue procedure authorizing publicly traded REITs to make elective cash/share dividends, but that revenue procedure does not apply to Seritage Growth’s taxable year ending on December 31, 2015 and future taxable years. Accordingly, it is unclear whether and to what extent Seritage Growth will be able to make taxable dividends payable in-kind. For more information, see “U.S. Federal Income Tax Considerations.” Seritage Growth currently believes that it will have sufficient available cash to pay its required distribution for 2015 in cash but there can be no assurance that this will be the case.

It presently is anticipated that acquisitions, investment and redevelopment activities will be financed through internally generated cash flow, borrowings under the debt agreements to be entered into by Operating Partnership in connection with the Transaction, other debt financing or the issuance of equity securities. To the extent that those sources of funds are insufficient to meet all such cash needs, or the cost of such financing exceeds the cash flow generated by our properties for any period, cash available for distribution could be reduced. In that event, we may also borrow funds, liquidate or sell a portion of our properties or investments or find another source of funds, such as the issuance of equity securities, in order to pay its required distributions. See “Risk Factors—Risks Related to Status as a REIT.”

Seritage Growth anticipates that its distributions generally will be taxable as ordinary income to its shareholders, although a portion of the distributions may be designated by Seritage Growth as qualified dividend income or capital gain or may constitute a return of capital. Seritage Growth will furnish annually to each Seritage Growth shareholder a statement setting forth distributions paid during the preceding year and their characterization as ordinary income, return of capital, qualified dividend income or capital gain. For a more complete discussion of the U.S. federal income tax treatment of distributions to shareholders of Seritage Growth, see “U.S. Federal Income Tax Considerations.”
**CAPITALIZATION**

The following table sets forth the unaudited pro forma capitalization of Seritage Growth as of March 31, 2015, which gives effect to the Transaction (and all other related transactions) as if they occurred on March 31, 2015 and were fully subscribed (which is a condition to this offering).

The assumptions used and pro forma adjustments derived from such assumptions are based on currently available information and Seritage Growth believes such assumptions are reasonable under the circumstances.

This table should be read in conjunction with “Use of Proceeds,” “Selected Financial Data,” “Description of Shares of Beneficial Interest,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” as well as the financial information on Seritage Growth and the “Unaudited Pro Forma Consolidated Financial Data” and accompanying notes included in this prospectus.

<table>
<thead>
<tr>
<th>thousands</th>
<th>As of March 31, 2015 (unaudited)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual</td>
</tr>
<tr>
<td>Seritage Growth Properties</td>
<td></td>
</tr>
<tr>
<td>Long-term debt</td>
<td>$—</td>
</tr>
<tr>
<td>Equity</td>
<td></td>
</tr>
<tr>
<td>Class A shares $0.01 par value; 100,000,000 shares authorized; 21,118,438 shares outstanding</td>
<td>—</td>
</tr>
<tr>
<td>Class B shares $0.01 par value; 5,000,000 shares authorized; 1,231,125 shares outstanding</td>
<td>—</td>
</tr>
<tr>
<td>Class C shares $0.01 par value; 50,000,000 shares authorized; 9,527,198 shares outstanding</td>
<td>—</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>—</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>—</td>
</tr>
<tr>
<td>Redeemable Noncontrolling Interest in Operating Partnership</td>
<td>—</td>
</tr>
<tr>
<td>Total Equity</td>
<td>—</td>
</tr>
<tr>
<td>Total Capitalization</td>
<td>$—</td>
</tr>
</tbody>
</table>

(1) The pro forma adjustments give effect to the expected indebtedness incurred by the Acquired Entities which will become, on a consolidated basis, indebtedness of the Operating Partnership and Seritage Growth.

(2) The pro forma adjustments give effect to $737.3 million from the issuance of Operating Partnership units in the OP Private Placement transaction, $0.3 million for the proportional relationship in the carrying value of equity associated with our common shareholders relative to that of the unitholders of the Operating Partnership, and less the portion of offering, organization and other closing costs attributable to noncontrolling interest of $3.9 million, $0.5 million, and $4.4 million, respectively.

(3) The pro forma adjustments give effect to the expected proceeds from this offering, the Non-Economic Shares Private Placement, the Non-Voting Shares Offering, and the Seritage Private Placements, net of our share of offering related costs of $4.8 million.

(4) The pro forma adjustments give effect to our share of the expected organization costs and other closing costs from the Transaction.
OWNERSHIP AND ORGANIZATIONAL STRUCTURE

The following diagram sets forth our ownership and organizational structure as of immediately following the completion of this offering, assuming that the subscription rights are exercised in full (or, in the case of the maximum portion of the subscription rights held by each of ESL and certain Fairholme Clients permitted to be exchanged under their respective Exchange Agreements, exchanged for Operating Partnership units and Seritage Growth non-economic shares, and for Seritage Growth non-voting shares, respectively). The diagram reflects the voting power of each holder as well as the percentage of economic ownership of the consolidated Seritage Growth and Operating Partnership group that such holder has. See “Principal Shareholders” and “Capitalization.”

---

(1) Consolidated economic ownership represents such person’s economic interest in Seritage Growth if all Operating Partnership units were converted into Seritage Common Shares.
Seritage Growth is a newly organized REIT that was formed in Maryland on June 3, 2015. Seritage Growth will conduct its operations through Operating Partnership, formed on April 22, 2015.

Seritage Growth will hold directly or indirectly 235 of the assets associated with Sears Holdings’ real property interests in connection with the Transaction as well as the JV Interests. Seritage Growth’s primary business following the Transaction will consist of acquiring, financing and owning real estate property to be leased to retailers. Initially, Seritage Growth’s primary tenant will be Sears Holdings under a Master Lease.

The following unaudited pro forma consolidated statement of operations of Seritage Growth for the three months ended March 31, 2015 and for the fiscal year ended December 31, 2014 are presented as if the Transaction, including the rights offering, the Seritage Private Placements, the OP Private Placement, the acquisition of properties and the other adjustments described in the unaudited pro forma financial information beginning on page 70, had occurred on January 1, 2014. The following unaudited pro forma consolidated balance sheet as of March 31, 2015 assumes that the Transaction occurred on March 31, 2015.

The statements are presented based on information currently available, are intended for informational purposes only, and do not purport to represent what Seritage Growth’s financial position and results of operations actually would have been had the Transaction occurred on the dates indicated, or to project Seritage Growth’s financial performance for any future period.

The unaudited pro forma consolidated financial statements and the accompanying notes should be read in conjunction with the audited Combined Statement of Investments of Real Estate Assets to be Acquired by Seritage Growth Properties, and Combined Statement of Investments of Real Estate Assets of JV Properties to be Acquired by Seritage Growth Properties and accompanying notes included herein.

The Pro Forma Adjustments column in the Unaudited Pro Forma Consolidated Financial Statements reflects pro forma adjustments, which are further described in the accompanying notes to the Unaudited Pro Forma Consolidated Financial Statements.
## Seritage Growth Properties
### Unaudited Pro Forma Consolidated Balance Sheet
#### As of March 31, 2015

(in thousands, except for share and per share amounts)

<table>
<thead>
<tr>
<th></th>
<th>Historical (a)</th>
<th>Pro Forma Adjustments</th>
<th>Pro Forma Seritage Growth Properties</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment in real estate assets:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land</td>
<td>$—</td>
<td>$ 965,516 (b)(l)</td>
<td>$ 965,516</td>
</tr>
<tr>
<td>Buildings and improvements, less accumulated depreciation</td>
<td>$—</td>
<td>1,026,838 (b)(l)</td>
<td>1,026,838</td>
</tr>
<tr>
<td>Land, buildings and improvements, net</td>
<td>$—</td>
<td>1,992,354 (b)(l)</td>
<td>1,992,354</td>
</tr>
<tr>
<td>Investment in unconsolidated real estate affiliates</td>
<td>$—</td>
<td>429,000 (g)</td>
<td>429,000</td>
</tr>
<tr>
<td>Total investments in real estate, net</td>
<td>$—</td>
<td>2,421,354</td>
<td>2,421,354</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$—</td>
<td>31,303 (f)</td>
<td>31,303</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>$—</td>
<td>102,000 (i)</td>
<td>102,000</td>
</tr>
<tr>
<td>Rent and tenant receivables</td>
<td>$—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Deferred expenses, net</td>
<td>$—</td>
<td>96,211 (j)(l)</td>
<td>96,211</td>
</tr>
<tr>
<td>Prepaid expenses and other assets</td>
<td>$—</td>
<td>207,038 (h)(l)</td>
<td>207,038</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td>$—</td>
<td>$2,857,906</td>
<td>$2,857,906</td>
</tr>
<tr>
<td><strong>LIABILITIES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-term debt</td>
<td>$—</td>
<td>$1,161,196 (c)</td>
<td>$1,161,196</td>
</tr>
<tr>
<td>Accounts payable and accrued expenses</td>
<td>$—</td>
<td>72,671 (k)(l)</td>
<td>72,671</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>$—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total liabilities</td>
<td>$—</td>
<td>$1,233,867</td>
<td>$1,233,867</td>
</tr>
<tr>
<td>Commitments and contingencies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>EQUITY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shareholders’ Equity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class A shares $0.01 par value; 100,000,000 shares authorized;</td>
<td>$211 (e)</td>
<td>211</td>
<td></td>
</tr>
<tr>
<td>21,118,438 shares outstanding</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class B shares $0.01 par value; 5,000,000 shares authorized;</td>
<td>$12 (e)</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>1,231,125 shares outstanding</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class C shares $0.01 par value; 50,000,000 shares authorized;</td>
<td>$95 (e)</td>
<td>95</td>
<td></td>
</tr>
<tr>
<td>9,527,198 shares outstanding</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>$901,075 (e)</td>
<td>901,075</td>
<td>901,075</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>$—</td>
<td>(6,110) (m)</td>
<td>(6,110)</td>
</tr>
<tr>
<td>Total Shareholders’ Equity</td>
<td>$—</td>
<td>895,283</td>
<td>895,283</td>
</tr>
<tr>
<td>Redeemable Noncontrolling interest in Operating Partnership</td>
<td>$—</td>
<td>728,756 (d)</td>
<td>728,756</td>
</tr>
<tr>
<td><strong>Total Equity</strong></td>
<td>$—</td>
<td>$1,624,039</td>
<td>$1,624,039</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES AND EQUITY</strong></td>
<td>$—</td>
<td>$2,857,906</td>
<td>$2,857,906</td>
</tr>
</tbody>
</table>

See accompanying notes to unaudited pro forma consolidated financial statements.
Seritage Growth Properties  
**Unaudited Pro Forma Consolidated Statement of Operations**  
**Three Months Ended March 31, 2015**

(in thousands, except for per share amounts)

<table>
<thead>
<tr>
<th></th>
<th>Historical (aa)</th>
<th>Pro Forma Adjustments</th>
<th>Pro Forma</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rental and other property income (SHC)</td>
<td>$—</td>
<td>$38,084 (bb)</td>
<td>$38,084</td>
</tr>
<tr>
<td>Rental and other property income</td>
<td>—</td>
<td>4,392 (bb)</td>
<td>4,392</td>
</tr>
<tr>
<td>Tenant reimbursement income</td>
<td>—</td>
<td>22,194 (cc)</td>
<td>22,194</td>
</tr>
<tr>
<td>Total revenues</td>
<td>—</td>
<td>64,670</td>
<td>64,670</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative expenses</td>
<td>—</td>
<td>963 (hh)</td>
<td>963</td>
</tr>
<tr>
<td>Property operating expenses</td>
<td>—</td>
<td>23,660 (ff)</td>
<td>23,660</td>
</tr>
<tr>
<td>Property and asset management expenses</td>
<td>—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition related expenses</td>
<td>—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>—</td>
<td>28,573 (dd)</td>
<td>28,573</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>—</td>
<td>53,196</td>
<td>53,196</td>
</tr>
<tr>
<td>Operating income</td>
<td>—</td>
<td>11,474</td>
<td>11,474</td>
</tr>
<tr>
<td>Interest expense</td>
<td>—</td>
<td>16,712 (ee)</td>
<td>16,712</td>
</tr>
<tr>
<td>Equity in income in unconsolidated real estate affiliates</td>
<td>—</td>
<td>3,251 (ii)</td>
<td>3,251</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>(1,987)</td>
<td>(1,987)</td>
</tr>
<tr>
<td>Net loss attributable to redeemable noncontrolling interest in Operating Partnership</td>
<td>—</td>
<td>894 (gg)</td>
<td>894</td>
</tr>
<tr>
<td><strong>Net loss attributable to common shareholders</strong></td>
<td>$—</td>
<td>$(1,093)</td>
<td>$(1,093)</td>
</tr>
</tbody>
</table>

**CLASS A SHARES**

Weighted average number of common shares

|                        |                 |                        |           |
| Basic                  | —               | 21,118 (jj)           | 21,118   |
| Diluted                | —               | 30,645 (jj)           | 30,645   |
| Basic loss per share   | $—              | $(0.04) (jj)          | $(0.04)  |
| Diluted loss per share | $—              | $(0.04) (jj)          | $(0.04)  |

**CLASS C SHARES**

Weighted average number of common shares

|                        |                 |                        |           |
| Basic                  | —               | 9,527 (jj)            | 9,527    |
| Diluted                | —               | 9,527 (jj)            | 9,527    |
| Basic loss per share   | $—              | $(0.04) (jj)          | $(0.04)  |
| Diluted loss per share | $—              | $(0.04) (jj)          | $(0.04)  |

See accompanying notes to unaudited pro forma consolidated financial statements.
Seritage Growth Properties  
Unaudited Pro Forma Consolidated Statement of Operations  
Year Ended December 31, 2014  

(in thousands, except for per share amounts)

<table>
<thead>
<tr>
<th></th>
<th>Historical</th>
<th>Pro Forma Adjustments</th>
<th>Pro Forma</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rental and other property income (SHC)</td>
<td>$—</td>
<td>$152,336 (bb)</td>
<td>$152,336</td>
</tr>
<tr>
<td>Rental and other property income</td>
<td>—</td>
<td>17,569 (bb)</td>
<td>17,569</td>
</tr>
<tr>
<td>Tenant reimbursement income</td>
<td>—</td>
<td>90,187 (cc)</td>
<td>90,187</td>
</tr>
<tr>
<td>Total revenues</td>
<td>—</td>
<td>260,092</td>
<td>260,092</td>
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<tr>
<td>Expenses:</td>
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</tr>
<tr>
<td>General and administrative expenses</td>
<td>—</td>
<td>3,850 (hh)</td>
<td>3,850</td>
</tr>
<tr>
<td>Property operating expenses</td>
<td>—</td>
<td>96,051 (ff)</td>
<td>96,051</td>
</tr>
<tr>
<td>Property and asset management expenses</td>
<td>—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition related expenses</td>
<td>—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>—</td>
<td>114,293 (dd)</td>
<td>114,293</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>—</td>
<td>214,194</td>
<td>214,194</td>
</tr>
<tr>
<td>Operating income</td>
<td>—</td>
<td>45,898</td>
<td>45,898</td>
</tr>
<tr>
<td>Interest expense</td>
<td>—</td>
<td>66,850 (ee)</td>
<td>66,850</td>
</tr>
<tr>
<td>Equity in income in unconsolidated real estate affiliates</td>
<td>—</td>
<td>13,004 (ii)</td>
<td>13,004</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>(7,948) (gg)</td>
<td>(7,948)</td>
</tr>
<tr>
<td>Net loss attributable to redeemable noncontrolling interest in Operating Partnership</td>
<td>—</td>
<td>3,576 (gg)</td>
<td>3,576</td>
</tr>
<tr>
<td><strong>Net loss attributable to common shareholders</strong></td>
<td>$—</td>
<td>$(4,372) (gg)</td>
<td>$(4,372)</td>
</tr>
</tbody>
</table>

**CLASS A SHARES**  
Weighted average number of common shares

<table>
<thead>
<tr>
<th></th>
<th>Historical</th>
<th>Pro Forma Adjustments</th>
<th>Pro Forma</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic</td>
<td>—</td>
<td>21,118 (jj)</td>
<td>21,118</td>
</tr>
<tr>
<td>Diluted</td>
<td>—</td>
<td>30,645 (jj)</td>
<td>30,645</td>
</tr>
<tr>
<td>Basic loss per share</td>
<td>$—</td>
<td>$(0.14) (jj)</td>
<td>$(0.14)</td>
</tr>
<tr>
<td>Diluted loss per share</td>
<td>$—</td>
<td>$(0.14) (jj)</td>
<td>$(0.14)</td>
</tr>
</tbody>
</table>

**CLASS C SHARES**  
Weighted average number of common shares

<table>
<thead>
<tr>
<th></th>
<th>Historical</th>
<th>Pro Forma Adjustments</th>
<th>Pro Forma</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic</td>
<td>—</td>
<td>9,527 (jj)</td>
<td>9,527</td>
</tr>
<tr>
<td>Diluted</td>
<td>—</td>
<td>9,527 (jj)</td>
<td>9,527</td>
</tr>
<tr>
<td>Basic loss per share</td>
<td>$—</td>
<td>$(0.14) (jj)</td>
<td>$(0.14)</td>
</tr>
<tr>
<td>Diluted loss per share</td>
<td>$—</td>
<td>$(0.14) (jj)</td>
<td>$(0.14)</td>
</tr>
</tbody>
</table>

See accompanying notes to unaudited pro forma consolidated financial statements.
1. Adjustments to the Pro Forma Consolidated Balance Sheet
   (a) Represents the newly formed Maryland REIT, which will be the ultimate parent entity upon the completion of the Transaction. Seritage Growth Properties is the public registrant under the Securities Act of 1933. Seritage Growth has not had any operating activity since its formation on June 3, 2015. We expect to conduct substantially all of our operations and make substantially all of our investments through the Operating Partnership. At such time, we, as the sole general partner of the Operating Partnership, are expected to own approximately 55% of the interests in the Operating Partnership and control the Operating Partnership. Accordingly, under accounting principles generally accepted in the United States of America, or GAAP, we will consolidate the assets, liabilities and results of operations of the Operating Partnership and its subsidiaries.
   (b) Represents the fair value of real estate assets to be acquired by Seritage Growth based on a preliminary purchase price allocation. Land has an indefinite useful life and is not depreciated. Buildings and improvements generally have a useful life of 3 to 35 years.
   (c) Reflects Seritage Growth’s indebtedness. For purposes of funding a portion of the purchase price of the Acquired Properties, Seritage Growth will raise indebtedness. The indebtedness bears interest at one-month LIBOR plus a margin. The term of the indebtedness is four years with the right to extend the maturity date on two occasions for one-year increments, subject to payment of an extension fee and certain other terms and conditions.
   (d) Reflects our redeemable noncontrolling interest in the anticipated issuance of Operating Partnership units in the OP Private Placement transaction. We, as the sole general partner of the Operating Partnership, own approximately 55% of the interest in the Operating Partnership. Redeemable noncontrolling interest in Operating Partnership is comprised of $737.3 million from the issuance of Operating Partnership units in the OP Private Placement transaction, $0.3 million for the proportional relationship in the carrying value of equity associated with our common shareholders relative to that of the unitholders of the Operating Partnership, and less the portion of offering, organization and other closing costs attributable to noncontrolling interest of $3.9 million, $0.5 million, and $4.4 million, respectively.
   (e) Reflects the sale of Seritage Growth Class A shares for $557.4 million in this rights offering and $66.6 million in the Seritage Private Placements, Seritage Growth Class B shares for $0.7 million in the Non-Economic Shares private placement, and Seritage Growth Class C shares for $282 million in the Non-Voting Shares Offering. Seritage Growth accounts for specific incremental costs directly attributable to this offering by offsetting it against the gross proceeds of this offering and concurrent private placements and recognizing those costs directly in the equity issued. Such costs are comprised of accounting fees, legal fees, and other professional fees.

   | Gross proceeds from offering and concurrent private placements | $1,643,840 |
   | Transfer taxes and other costs | $8,720 |
   | Net proceeds from offering | $1,635,120 |

For purposes of this pro forma presentation, the net proceeds from the offering have been applied to the pro forma consolidated balance sheet assuming they had occurred on March 31, 2015.

Seritage Growth has determined that the ownership of Operating Partnership units, Seritage Growth non-economic shares and Seritage Growth non-voting shares by ESL and Fairholme Clients will not impact its ability to qualify as a REIT under the Code.
(f) Cash and cash equivalents includes the following cash inflows and cash outflows:

<table>
<thead>
<tr>
<th>Sources</th>
<th>$</th>
<th>Uses</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceeds from this offering</td>
<td>557,425</td>
<td>Purchase of the Acquired Properties</td>
<td>2,248,274</td>
</tr>
<tr>
<td>Proceeds from the Seritage</td>
<td>66,600</td>
<td>Purchase of the JV Interests</td>
<td>429,000</td>
</tr>
<tr>
<td>Private Placements</td>
<td></td>
<td>Offering related costs</td>
<td>8,720</td>
</tr>
<tr>
<td>Proceeds from the Non-Economic Shares Private Placement</td>
<td>658</td>
<td>Organization related costs</td>
<td>1,080</td>
</tr>
<tr>
<td>Proceeds from the Non-Voting Shares Offering</td>
<td>281,815</td>
<td>Other closing costs</td>
<td>10,000</td>
</tr>
<tr>
<td>Proceeds from Redeemable Noncontrolling interest in Operating Partnership</td>
<td>737,342</td>
<td>Cash for general corporate purposes</td>
<td>31,303</td>
</tr>
<tr>
<td>Proceeds from debt issuance</td>
<td>1,161,196</td>
<td>Redevelopment &amp; capital expenditures for tenant occupancy</td>
<td>41,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Debt issuance costs</td>
<td>25,759</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Interest rate cap</td>
<td>9,400</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2,805,036</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2,805,036</td>
</tr>
</tbody>
</table>

(g) Reflects unconsolidated real estate affiliates, which represents our investment in the GGP JV, Simon JV and Macerich JV. The acquisition of our 50% interest in the JVs will be recorded at fair value in accordance with accounting standards applicable to Business Combinations. Generally, we will share in the profits and losses, cash flows and other matters relating to the JVs in accordance with our ownership percentage. As we will have joint control of the JVs with our venture partners, we will account for the JVs under the equity method of accounting.

(h) Prepaid expenses and other assets represent the following:

| In-place tenant leases       | $157,028 (i) |
| Debt issuance costs          | 25,759 (ii)  |
| Below-market ground lease    | 14,202 (iii) |
| Other assets                 | 9,400 (iv)   |
| Above-market leases          | 649 (v)      |

$207,038

(i) Represents the fair value of identified intangible assets related to in-place tenant leases based on a preliminary purchase price allocation. In-place tenant leases are amortized over periods that approximate the related non-cancelable remaining lease term.

(ii) Represents debt issuance costs related to Seritage Growth’s indebtedness. Debt issuance costs will be amortized over the term of the related indebtedness on a straight-line basis as a component of interest expense.

(iii) Represents the fair value of identified intangible assets related to below-market leases where we are the lessee and own real estate subject to a ground lease based on a preliminary purchase price allocation. Below-market ground leases are amortized over 5 years, which represents the remaining contractual term, as a component of property operating expenses.

(iv) Represents the fair value of an interest rate cap related to Seritage Growth’s indebtedness. The notional amount of the interest rate cap is $1,261 million. The interest rate cap has a LIBOR strike rate of 3.0% and a term of four years. Seritage Growth manages interest rate risk by varying its exposure to variable rates while attempting to minimize interest costs, principally through the use of an interest rate cap. Seritage Growth enters into interest rate cap agreements with high credit quality counterparties in order to reduce its exposure to credit losses. The cap limits exposure on variable rate debt that would result from an increase in interest rates. Our lender, as stipulated in the respective loan agreements, requires an interest rate cap agreement. All derivatives are recognized at fair value in prepaid expenses and other assets on the Unaudited Pro Forma Consolidated Balance Sheet.
(v) Represents the fair value of identified intangible assets related to above-market leases where we are the lessor based on a preliminary purchase price allocation. Above-market leases are accreted to rental and other property income over the estimated useful life of the contractual term ranging from 3 to 23 years.

(i) Reflects amounts that will be held in escrow pursuant to the terms of our financing arrangements, and are accordingly classified as Restricted Cash, related to redevelopment and capital expenditures necessary for tenant occupancy of $41.5 million, and certain other escrow accounts funded by Sears Holdings of $60.5 million related to repairs and maintenance, environmental remediation, and redevelopment for certain JV Properties.

(j) Deferred expenses consist of leasing commissions and related costs based on a preliminary purchase price allocation and are amortized using the straight-line method over the life of the leases.

(k) Represents escrow accounts funded by Sears Holdings of $60.5 million related to obligations for repairs and maintenance, environmental remediation, and redevelopment for certain JV Properties. Also, represents the fair value of identified intangible liabilities based on a preliminary purchase price allocation of $12.1 million which relates to below-market leases where we are the lessor. These intangible liabilities are accreted to rental and other property income over the estimated useful life of the contractual term ranging from 3 to 23 years.

(l) The purchase price of the Acquired Properties is $2.2 billion. The assets acquired pursuant to the Transaction will be recorded at fair value as the Transaction will be accounted for in accordance with accounting standards applicable to Business Combinations. The following table summarizes the estimated fair values of the assets acquired at the date of acquisition. These fair values were based, in part, on preliminary third-party market valuations. Because these fair values were based on currently available information and assumptions and estimates that we believe are reasonable at this time, they are subject to reallocation as additional information becomes available. As we finalize our purchase price allocation, actual adjustments may differ from the pro forma adjustments and the difference, if any, may be material. For further description regarding the components of the preliminary purchase price allocation, please refer to adjustment (b) for land, buildings and improvements, net; adjustment (h) for in-place tenant leases, below-market ground lease, and above-market leases; adjustment (j) for deferred expenses, net; and adjustment (k) for below-market leases.

(m) Reflects our share of the organization costs of $1 million and other closing costs of $10 million from the Transaction.

2. Adjustments to the Pro Forma Consolidated Income Statements

(aa) Represents the newly formed Maryland REIT, which will be the ultimate parent entity upon the completion of the Transaction. Seritage Growth Properties is the public registrant under the Securities Act of 1933. Seritage Growth has not had any operating activity since its formation on June 3, 2015. We expect to conduct substantially all of our operations and make substantially all of our investments through the Operating Partnership. At such time, we, as the sole general partner of the Operating Partnership, are expected to own approximately 55% of the interests in the Operating Partnership and control the Operating Partnership. Accordingly, under accounting principles generally accepted in the
United States of America, or GAAP, we will consolidate the assets, liabilities and results of operations of the Operating Partnership and its subsidiaries.

(bb) Reflects rental revenues pursuant to the anticipated terms of the Master Lease. Rental revenue is $13 million higher than lease payments due as a result of recording rental revenue on a straight-line basis. Rental revenues will consist of base rent of $140 million per year from Sears Holdings, pursuant to the Master Lease, and $16 million per year from third parties for leases currently in place for which rent has commenced. The aggregate rent for all of the Acquired Properties (except for those already subject to existing third-party leases) will initially be set at fair market value, and in each of the initial and first two renewal terms, after the first lease year, the annual rent will be increased by 2% per annum (cumulative and compounded) for each lease year over the rent for immediately preceding lease year. For properties with additional renewal options, rent for the renewal period will be set at a fair market rent determined based on a customary third-party appraisal process, taking into account all the terms of the Master Lease and other relevant factors. Also reflects an increase for the accretion and amortization related to below-market leases where we are the lessor of $1.2 million, and above-market leases where we are the lessor of ($74 thousand), based on a preliminary purchase price allocation.

(cc) Reflects reimbursement from Sears Holdings and certain third party tenants for maintenance, real estate taxes and insurance of the Acquired Properties pursuant to the anticipated terms of the Master Lease and the historical expenses incurred by Sears Holdings. Under the Master Lease, Sears Holdings and/or one or more of its subsidiaries will be required to make all expenditures reasonably necessary to maintain the premises in good appearance and condition, subject to ordinary wear and tear.

(dd) Reflects depreciation and amortization expense related to the building and improvements based on fair values pursuant to a preliminary purchase price allocation and the useful lives of the properties. Depreciation and amortization also reflects amortization of intangible assets based on fair values pursuant to a preliminary purchase price allocation related to in-place tenant leases, leasing commissions and related costs acquired by Seritage Growth. Depreciation and amortization expense is recorded over the estimated useful lives of the respective assets using the straight-line method.

(ee) Reflects interest expense related to Seritage Growth’s indebtedness, amortization of related debt issuance costs, and the amortization of the value of the related interest rate cap. Seritage Growth Properties will incur interest expense from its borrowing obligations plus the amortization of its debt issuance costs related to its indebtedness. Following the Transaction, Seritage Growth will have $1,162 million in outstanding borrowings and annual interest costs of approximately $58 million. A 1/8% variance in interest rates could impact interest expense by approximately $1.5 million on an annual basis. Debt issuance costs of $26 million will be amortized over the term of the related indebtedness on a straight-line basis as a component of interest expense.

(ff) Reflects expenses expected to be incurred by Seritage Growth for maintenance, real estate taxes and insurance of the Acquired Properties. These expenses were based on the historical expenses incurred by Sears Holdings. Ground lease rent expenses of $45 thousand are included in the adjustment to property operating expenses based on the terms of the executed ground leases. Property operating expenses also reflects amortization expense related to below-market ground leases of $3 million based on fair values pursuant to a preliminary purchase price allocation and recognized over 5 years on a straight-line basis, which represents the remaining contractual term.

(gg) Represents the net loss attributable to Seritage Growth’s redeemable noncontrolling interest in Operating Partnership.

(hh) Represents expense related to the base salary and cash bonus pursuant to the employment agreement with our Chief Executive Officer, General Counsel, and Executive Vice President Development and Construction of $1.9 million, $0.7 million, and $0.5 million, respectively. General and administrative expenses also includes $0.2 million and $0.5 million, respectively, related to restricted stock units pursuant to annual equity award grants and sign-on equity awards for our Chief Executive Officer. We
also expect to incur expense related to performance-based restricted stock units for our Chief Executive Officer. As amounts related to performance-based restricted stock units are not factually supportable, an adjustment for these amounts has been excluded. We also expect to incur expense related to restricted stock units pursuant to annual equity award grants and sign-on equity awards for our General Counsel and Executive Vice President Development and Construction. As amounts related to these restricted stock units are not factually supportable, an adjustment for these amounts has been excluded. We account for stock-based compensation using the fair value method in accordance with accounting standards regarding share-based payment transactions. We also expect to incur other additional costs as a result of becoming a publicly traded company independent from Sears Holdings. As these amounts are not factually supportable, an adjustment for such additional general and administrative costs has been excluded. As an independent public company, we expect to incur incremental costs to support our business, including management personnel, legal expense, finance, and human resources as well as certain costs associated with becoming a public company. These additional annual operating charges are estimated to be approximately $15 million dollars.

(ii) Represents unconsolidated real estate affiliates, which represents our investment in the GGP JV, Simon JV and Macerich JV. Generally, we will share in the profits and losses, cash flows and other matters relating to the JVs in accordance with our 50% ownership percentage. As we will have joint control of the JVs with our venture partners, we will account for the JVs under the equity method of accounting. Equity in income in unconsolidated real estate affiliates is based on our expected 50% interest multiplied by the sum of: rental revenues pursuant to the JV Master Lease, plus, reimbursement from Sears Holdings and certain third party tenants for maintenance, real estate taxes and insurance, and rent of the JV Properties, less, expenses expected to be incurred by the JVs for maintenance, real estate taxes, insurance, rent, property management fees, and depreciation and amortization.

Rental revenues were determined based on the terms of the JV Master Lease, calculated on a straight-line basis over the ten year lease term. Reimbursement from Sears Holdings and certain third-party tenants, and expenses expected to be incurred by the JVs, for maintenance, real estate taxes and insurance and rent were determined based on the historical expenses incurred by Sears Holdings. Under the JV Master Lease, Sears Holdings and/or one or more of its subsidiaries will be required to make all expenditures reasonably necessary to maintain the premises in good appearance and conditions, subject to ordinary wear and tear. Property management fees were determined based on 4% of rental revenues pursuant to the terms of the JV agreements. Depreciation and amortization was determined based on a preliminary purchase price allocation of the fair value of the properties and the estimated useful lives of the properties using the straight-line method.

(jj) We compute net earnings (loss) per share of Class A and Class C common shares using the two-class method. Basic net earnings (loss) per share is computed using the weighted-average number of common shares outstanding during the period. Diluted net earnings (loss) per share is computed using the weighted-average number of common shares and the effect of potentially dilutive securities outstanding during the period. Potentially dilutive securities consist of the redeemable noncontrolling interest in Operating Partnership. The redeemable noncontrolling interest in Operating Partnership has been excluded from the diluted earnings (loss) per share calculation because including such interests would also require that the share of Operating Partnership income attributable to such interests be added back to net income, therefore, resulting in no effect on earning per share. There were no potentially dilutive securities included in the pro forma calculation of earnings (loss) per share. We did not include the effect of restricted stock units or performance-based restricted stock units in the pro forma calculation of earnings per share as certain terms related to these units, including participation in dividends, is not factually supportable. The computation of the diluted net earnings (loss) per share of Class A common shares assumes the conversion of Class C common shares, while the diluted net earnings (loss) per share of Class C common shares does not assume the conversion of those shares.

The rights, including the liquidation and dividend rights, of the holders of our Class A and Class C common shares are identical, except with respect to voting. As the liquidation and dividend rights are
identical, the undistributed earnings are allocated on a proportionate basis. The net earnings (loss) per share amounts are the same for Class A and Class C common shares because the holders of each class are legally entitled to equal per share distributions whether through dividends or in liquidation. Further, as we assume the conversion of Class C common shares in the computation of the diluted net earnings (loss) attributable to common shareholders per share of Class A common shares, the undistributed earnings are equal to net income (loss) for that computation.

The following table sets forth the computation of basic and diluted net loss attributable to common shareholders per share of Class A and Class C common shares (in thousands, except share amounts which are reflected in thousands and per share amounts):

<table>
<thead>
<tr>
<th></th>
<th>For the Three Months ended March 31, 2015</th>
<th>For the Year ended December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Class A shares</td>
<td>Class C shares</td>
</tr>
<tr>
<td>Basic net loss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>attributable to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>common shareholders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>per share:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Numerator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocation of</td>
<td>(753)</td>
<td>(340)</td>
</tr>
<tr>
<td>undistributed loss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denominator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of shares</td>
<td>21,118</td>
<td>9,527</td>
</tr>
<tr>
<td>used in per share</td>
<td></td>
<td></td>
</tr>
<tr>
<td>computation:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic net loss</td>
<td></td>
<td>(0.04)</td>
</tr>
<tr>
<td>attributable to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>common shareholders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>per share:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diluted net loss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>attributable to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>common shareholders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>per share:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Numerator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocation of</td>
<td>(753)</td>
<td>(340)</td>
</tr>
<tr>
<td>undistributed loss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>among Class A and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class C shares</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reallocation of</td>
<td>(340)</td>
<td>—</td>
</tr>
<tr>
<td>undistributed loss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>as a result of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>conversion of Class</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C to Class A shares</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocation of</td>
<td>(1,093)</td>
<td>(340)</td>
</tr>
<tr>
<td>undistributed loss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denominator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of shares</td>
<td>21,118</td>
<td>9,527</td>
</tr>
<tr>
<td>used in basic loss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>per share computation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Add:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conversion of Class</td>
<td>9,527</td>
<td>—</td>
</tr>
<tr>
<td>C shares to Class A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>shares</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of shares</td>
<td>30,645</td>
<td>9,527</td>
</tr>
<tr>
<td>used in diluted loss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>per share computation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diluted net loss</td>
<td></td>
<td>(0.04)</td>
</tr>
</tbody>
</table>
SELECTED FINANCIAL DATA

Following the Transaction, Seritage Growth will be a publicly traded, self-administered, self-managed REIT primarily engaged in the real property business through its investment in Operating Partnership. Initially, Operating Partnership’s portfolio will consist of 235 Acquired Properties that are owned (or, in one case, ground-leased) by Sears Holdings as of the date of this prospectus, as well as the JV Interests that are owned by Sears Holdings as of the date of this prospectus, which will be sold to Operating Partnership in the Transaction. Operating Partnership will lease (or sublease) a substantial majority of the space at all of the Acquired Properties other than the Third Party Properties back to Sears Holdings under the Master Lease, with the remainder of such space leased to third-party tenants. The eleven Third Party Properties, which do not currently contain a Sears Holdings store, will not have any space leased to Sears Holdings, and will instead be leased solely to third-party tenants. A substantial majority of the space at the JV Properties is also leased by the JVs to Sears Holdings under the JV Master Leases. We expect to generate revenues primarily by leasing retail properties to Sears Holdings and eventually other operators.

The following selected financial data does not reflect the financial position or results of operations of Seritage Growth for the periods indicated. The following table sets forth the historical real estate assets to be acquired by Seritage Growth and pro forma financial data for Seritage Growth. The following table should be read in conjunction with: “Unaudited Pro Forma Consolidated Financial Data,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

The pro forma financial information may not be indicative of our future performance and does not necessarily reflect what our financial position and results of operations would have been had we operated as a publicly traded company independent from Sears Holdings during the periods presented.

<table>
<thead>
<tr>
<th></th>
<th>As of and for the Three Months ended March 31, 2015</th>
<th>As of and for the Year ended December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sears Holdings’ historical basis of Acquired Properties</td>
<td>$1,297,656</td>
<td>$1,307,808</td>
</tr>
<tr>
<td>Sears Holdings’ historical basis of JV Properties (i)</td>
<td>$ 240,485</td>
<td>$ 243,525</td>
</tr>
<tr>
<td>Seritage Growth Properties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income Statement data:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pro Forma revenues</td>
<td>$ 64,670</td>
<td>$ 260,092</td>
</tr>
<tr>
<td>Pro Forma equity in income in unconsolidated real estate affiliates</td>
<td>$ 3,251</td>
<td>$ 13,004</td>
</tr>
<tr>
<td>Pro Forma net loss attributable to common shareholders</td>
<td>$(1,093)</td>
<td>$(4,372)</td>
</tr>
<tr>
<td>Pro Forma loss per share</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class A shares - Pro Forma basic &amp; diluted loss per share</td>
<td>$(0.04)</td>
<td>$(0.14)</td>
</tr>
<tr>
<td>Class C shares - Pro Forma basic &amp; diluted loss per share</td>
<td>$(0.04)</td>
<td>$(0.14)</td>
</tr>
<tr>
<td>Balance Sheet data:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pro Forma purchase price of Acquired Properties</td>
<td>$2,248,274</td>
<td></td>
</tr>
<tr>
<td>Pro Forma investment in unconsolidated real estate affiliates</td>
<td>$ 429,000</td>
<td></td>
</tr>
<tr>
<td>Pro Forma total debt</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pro Forma number of real estate properties (ii)</td>
<td>235</td>
<td></td>
</tr>
</tbody>
</table>

(i) The amount related to the JV Properties is based on Sears Holdings’ historical cost basis in 100% of the JV Properties, as opposed to the 50% interest Seritage Growth expects to acquire of the JV Interests.
(ii) The number of properties represents the properties to be acquired by Seritage Growth not included in joint ventures.
The following is a discussion and analysis of the anticipated financial condition of Seritage Growth immediately following the Transaction. Seritage Growth was formed in connection with the Transaction and did not have material predecessor real estate or other operations. In addition, the Acquired Properties did not have business activities or, other than with respect to certain leases with third-party retailers, rental history. Therefore, there are no historical revenues other than the leases with third-party retailers. The statement of operations and cash flows of Seritage Growth will consist primarily of its operations after the Transaction. Accordingly, the following does not include a discussion and analysis of the historical results of operations for Seritage Growth. This discussion contains forward-looking statements that involve risks and uncertainties. Seritage Growth’s actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those which are discussed below and elsewhere in this registration statement. See also “Risk Factors.”

Overview

Seritage Growth Properties (“Seritage Growth”) is a newly organized entity that was formed in Maryland on June 3, 2015. Seritage Growth conducts its operations through Seritage Growth Properties, L.P. (“Operating Partnership”), a Delaware limited partnership, formed on April 22, 2015. In this prospectus, we refer to our business, including Seritage Growth and Operating Partnership, as “we,” “our” or “us.” Our principal offices are currently located at 3333 Beverly Road, Hoffman Estates, Illinois 60179, and our main telephone number is currently (847) 286-2500. We expect to change our principal offices and main telephone number prior to the completion of the Transaction. Seritage Growth intends to elect to be treated as a real estate investment trust (“REIT”) for federal income tax purposes commencing with our taxable year ending December 31, 2015.

Following the Transaction, Seritage Growth will be a publicly traded, self-administered, self-managed REIT primarily engaged in the real property business through its investment in Operating Partnership. Initially, our portfolio will consist of 235 properties (the “Acquired Properties”) that are owned (or, in one case, ground-leased) by Sears Holdings. In addition, we will own the JV Interests, three 50% joint venture interests in an additional twelve, ten and nine properties (collectively, the “JV Properties”), respectively, which JV Interests are owned by Sears Holdings as of the date of this prospectus and will be sold to us in the Transaction. We will lease (or sublease) a substantial majority of the space at all but eleven of the Acquired Properties (such eleven properties, the “Third-Party Properties”) back to Sears Holdings under a master lease agreement (the “Master Lease”), with the remainder of such space leased to third-party tenants. The Third Party Properties, which do not currently contain a Sears Holdings store, will not have any space leased to Sears Holdings, and will instead be leased solely to third-party tenants. A substantial majority of the space at the JV Properties is also leased by GS Portfolio Holdings LLC (the “GGP JV”), a joint venture between Sears Holdings and a subsidiary of General Growth Properties, Inc. (together with its other subsidiaries, “GGP”), SPS Portfolio Holdings LLC (the “Simon JV”), a joint venture between Sears Holdings and a subsidiary of Simon Property Group, Inc. (together with its other subsidiaries, “Simon”), or MS Portfolio LLC (the “Macerich JV” and, together with the GGP JV and the Simon JV, each, a “JV”) and a subsidiary of The Macerich Company (together with its subsidiaries, “Macerich”), as applicable, in each case under a separate master lease with each JV (the “JV Master Leases”). We will acquire Sears Holdings’ 50% interests in each of the JVs in the Transaction.

We expect to generate revenues primarily by leasing our properties to tenants, including both Sears Holdings and third-party tenants, who will operate retail stores (and potentially other uses) in the leased premises, a business model common to many publicly traded REITs. In addition to revenues generated under the Master Lease through rent payments from Sears Holdings, we expect to generate revenue through leases to third-party tenants under existing and future leases for space at our properties, including the Acquired Properties. The Master Lease will provide us with the right to recapture up to approximately 50% of the space within the Stores (subject to certain exceptions), in addition to all of any automotive care centers which are free-standing or
attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain portions of parking areas and common areas, at the Acquired Properties leased to Sears Holdings under the Master Lease. Upon exercise of this recapture right, we must pay all costs and expenses for the separation of the recaptured space from the remaining Sears Holdings space and can reconfigure and rent the recaptured space to third-party tenants on potentially superior terms determined by us and for our own account. We also have the right to recapture 100% of the space within the Sears Holdings main store located on each of 21 identified Acquired Properties by making a specified lease termination payment to Sears Holdings, after which we expect to be able to reposition and re-lease those stores and potentially generate additional revenue. See “Certain Relationships and Related Transactions—The Master Lease.”

Our initial portfolio of 235 Acquired Properties, consisting of approximately 36.7 million square feet of building space, will be broadly diversified by location across 49 states and Puerto Rico. These Acquired Properties will consist of 84 properties operated under the Kmart brand, 140 operated under the Sears brand, and eleven properties leased entirely to third parties. At certain of the Acquired Properties, third parties under existing leases occupy a portion of the overall leasable space alongside Sears Holdings. Third-party tenants will initially represent approximately 6.6% of our overall portfolio as a percentage of total leasable space and approximately 10% of existing rent. The amount of space leased to third-party tenants, and the resulting revenue, are expected to increase as we recapture space under the Master Lease and then re-lease it to such third-party tenants.

To maintain REIT status, Seritage Growth must meet a number of organizational and operational requirements, including a requirement that Seritage Growth distribute annually to Seritage Growth shareholders at least 90% of Seritage Growth’s REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gains. See “U.S. Federal Income Tax Considerations.”

Results of Operations

Revenues

Following the Transaction, Seritage Growth’s earnings will primarily be the result of the rental revenue from the Master Lease through rent payments from Sears Holdings. Rental revenue from the Master Lease is expected to be approximately $153 million per year. The Master Lease generally will be a triple net lease between Operating Partnership and Sears Holdings. The Master Lease will have an initial term of ten years and the aggregate rent for all of the Acquired Properties will initially be set at fair market value. In each of the initial and first two renewal terms, after the first lease year, the annual rent will be increased by 2% per annum (cumulative and compounded) for each lease year over the rent for immediately preceding lease year. For properties with additional renewal options, rent for the renewal period will be set at a fair market rent determined based on a customary third-party appraisal process, taking into account all the terms of the Master Lease and other relevant factors.

The Master Lease provides Seritage Growth the right to recapture up to approximately 50% of the space within the Sears or Kmart stores located at the Acquired Properties (the “Stores”) (subject to certain exceptions), in addition to all of any automotive care centers which are freestanding or attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain portions of parking areas and common areas, at the Acquired Properties leased to Sears Holdings under the Master Lease, allowing us to reconfigure and rent the recaptured space to third-party tenants on potentially superior terms determined by us and for our own account. We also have the right to recapture 100% of the space within the Sears Holdings main store located on each of 21 identified Acquired Properties by making a specified lease termination payment to Sears Holdings, after which we expect to be able to reposition and re-lease those stores and potentially generate additional revenue. See “Certain Relationships and Related Transactions—The Master Lease.”

Sears Holdings will initially represent approximately 90% of existing rent. The Master Lease will contain provisions requiring Sears Holdings to provide Seritage Growth with financial information about it which is intended to help Seritage Growth monitor Sears Holdings’ creditworthiness, including certain audited annual
financial statements and unaudited quarterly financial statements and statements of EBITDA and EBITDAR with respect to each Acquired Property that is within a specified threshold of the EBITDAR condition that would allow Sears Holdings to terminate the Master Lease as to that Acquired Property, and upon Seritage Growth’s request, to provide documentation and/or information to help it ensure that Sears Holdings is complying with the requirements to maintain Seritage Growth’s status as a REIT.

Under the Master Lease, Sears Holdings and/or one or more of its subsidiaries will be required to make all expenditures reasonably necessary to maintain the premises in good appearance, repair and condition. Revenues from tenant reimbursement income will equal expenditures for which Sears Holdings reimburses Seritage Growth pursuant to the terms of the Master Lease.

In addition to revenues generated under the Master Lease through rent payments from Sears Holdings, we expect to generate revenue through leases to third-party tenants under existing and future leases for space at our properties, including the Acquired Properties. Rental revenue from third-party tenants is expected to be approximately $16 million per year for lease agreements currently in place for which rent has commenced. Rental revenue for third-party tenants is expected to increase by approximately $15 million per year within the next two years as redevelopment activities are completed, the third-party tenants take possession of the demised premises, and rent commences for lease agreements currently in place.

Revenues will also include the accretion related to below-market leases where we are the lessor, and amortization related to above-market leases where we are the lessor, which are expected to be $1.2 million, and ($74 thousand) annually based on a preliminary purchase price allocation.

**Expenses**

General and administrative expenses are expected for items such as compensation costs, professional services, legal expenses, property management and leasing costs, office costs and other costs associated with development activities. To the extent requested by Seritage Growth, Sears Holdings Management Corporation will provide Seritage Growth with certain administrative and support services pursuant to a Transition Services Agreement. The fees charged to Seritage Growth for the services furnished pursuant to this agreement will generally be determined on cost plus basis.

We will incur costs as a result of becoming a publicly traded company independent from Sears Holdings. As an independent public company, we expect to incur incremental costs to support our business, including management personnel, legal expenses, finance, and human resources as well as certain costs associated with becoming a public company. These additional annual operating charges are estimated to be approximately $15 million.

Property operating expenses are expected for expenditures necessary to maintain the premises in good appearance, repair and condition and will be paid or reimbursed by Sears Holdings pursuant to the Master Lease with respect to space occupied by Sears Holdings and, in many cases, by tenants under third-party leases with respect to space occupied by such tenants. Property operating expenses will also include other expenses expected to be paid or reimbursed by Sears Holdings or third-party tenants such as property taxes, common area expenses and management fees. Property operating expenses, including property taxes, which are not expected to be paid or reimbursed by Sears Holdings or third-party tenants are expected to be paid by us. Property operating expenses are expected to be approximately $96 million per year, with the majority of such expenses being paid or reimbursed by Sears Holdings or third-party tenants.

Seritage Growth will incur depreciation expense related to the buildings and improvements acquired from Sears Holdings pursuant to the Transaction. Depreciation expense will be determined based on the useful lives of the properties. Depreciation expense is expected to be $114 million annually.
Seritage Growth will incur interest expense and other loan-related charges related to Seritage Growth’s indebtedness. Seritage Growth will incur interest expense from its borrowing obligations plus the amortization of its anticipated debt issuance costs related to its indebtedness. Following the Transaction, Seritage Growth will have approximately $1,162 million in outstanding borrowings and annual interest costs of approximately $58 million.

**Liquidity and Capital Resources**

For purposes of funding the purchase price of the Acquired Properties (directly or through the acquisition of the Acquired Entities) and the JV Interests (with remaining proceeds used for working capital and other general purposes): (1) Seritage Growth has entered into an agreement with Sears Holdings to subscribe for subscription rights to acquire Seritage Growth common shares, which Sears Holdings will distribute to its stockholders, as well as an agreement with each of GGP and Simon to issue and sell to each of GGP and Simon, respectively, Seritage Growth common shares for an aggregate purchase price of $33.3 million for each of GGP and Simon in the Seritage Private Placements and (2) Operating Partnership expects to engage in the OP Private Placement of Operating Partnership units to ESL and Seritage Growth expects to engage in the Non-Economic Shares Private Placement of Seritage Growth non-economic shares to ESL and the Non-Voting Shares Offering of Seritage Growth non-voting shares to Fairholme Clients, in each case in exchange for a portion of their subscription rights and cash.

At the closing of the Transaction, Seritage Growth and Operating Partnership will use the proceeds from this offering, the Seritage Private Placements, the OP Private Placement, the Non-Economic Shares Private Placement and the assumption of the indebtedness incurred in the Financing to purchase the Acquired Properties (directly or through the acquisition of the Acquired Entities) and the JV Interests from Sears Holdings, the indebtedness incurred by the Acquired Entities in the Financing will become, on a consolidated basis, indebtedness of Operating Partnership (with the proceeds of such indebtedness distributed by the Acquired Entities to Sears Holdings prior to the closing of the Transaction and, therefore, not available to us) and Sears Holdings and Operating Partnership will enter into the Master Lease.

We also expect that, as part of the Financing, the Acquired Entities will have access to a future funding facility in the amount of $100 million that will be undrawn at the closing of the Transaction and available to finance redevelopment projects at the properties post-closing subject to satisfaction of certain conditions.

**Capital Expenditures**

Capital expenditures for Acquired Properties leased under the Master Lease will be the responsibility of the tenant. Additionally, Seritage Growth anticipates incurring capital expenditures of approximately $65 million over the next one to two years in connection with the redevelopment of certain properties.

**Contractual Obligations and Commitments**

In addition to the indebtedness described above, Sears Holdings will assign to Operating Partnership various ground leases on certain of the Acquired Properties. The anticipated future minimum lease commitments of Seritage Growth are approximately $1.3 million. Note that this does not include commitments related to obligations that are variable in nature and as such is not an illustration of anticipated payments Seritage Growth will incur related to these leases over the respective lease terms.
Information concerning our obligations and commitments to make future payments under contracts such as debt and lease agreements is aggregated in the following table.

<table>
<thead>
<tr>
<th>Contractual Obligations</th>
<th>Payments Due by Period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
</tr>
<tr>
<td>Pro Forma data (unaudited):</td>
<td></td>
</tr>
<tr>
<td>Pro Forma Long-term debt(1)</td>
<td>$1,393,435</td>
</tr>
<tr>
<td>Pro Forma Operating leases</td>
<td>$1,282</td>
</tr>
<tr>
<td>Pro Forma Redevelopment &amp; capital expenditures for tenant occupancy</td>
<td>$64,977</td>
</tr>
<tr>
<td>Total Pro-Forma Contractual obligations</td>
<td>$1,459,694</td>
</tr>
</tbody>
</table>

(1) Including interest payments

Application of Critical Accounting Policies and Estimates

Critical accounting policies are those that are both significant to the overall presentation of our financial condition and results of operations and require management to make difficult, complex or subjective judgments. Our critical accounting policies are as follows:

Revenue Recognition

Minimum rent revenues will be recognized on a straight-line basis over the terms of the related leases. Rental and other property income will include accretion related to above and below-market tenant leases on acquired properties and properties that will be fair valued at Seritage Growth’s acquisition date.

In leasing tenant space, we may provide funding to the lessee through a tenant allowance. In accounting for a tenant allowance, we will determine whether the allowance represents funding for the construction of leasehold improvements and evaluate the ownership of such improvements. If we are considered the owner of the leasehold improvements for accounting purposes, we capitalize the amount of the tenant allowance and depreciate it over the shorter of the useful life of the leasehold improvements or the related lease term. If the tenant allowance represents a payment for a purpose other than funding leasehold improvements, or in the event we are not considered the owner of the improvements for accounting purposes, the allowance is considered to be a lease incentive and is recognized over the lease term as a reduction of rental revenue on a straight-line basis.

We provide an allowance for doubtful accounts against the portion of accounts receivable, including straight-line rents, which is estimated to be uncollectible. Such allowances are reviewed periodically based upon our recovery experience.

The Master Lease provides Seritage Growth the right to recapture up to approximately 50% of the space within the Sears or Kmart stores located at the Acquired Properties (the “Stores”) (subject to certain exceptions), in addition to all of any automotive care centers which are freestanding or attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain portions of parking areas and common areas, at the Acquired Properties leased to Sears Holdings under the Master Lease, allowing us to reconfigure and rent the recaptured space to third-party tenants on potentially superior terms determined by us and for our own account. We also have the right to recapture 100% of the space within the Sears Holdings main store located on each of 21 identified Acquired Properties by making a specified lease termination payment to Sears Holdings, after which we expect to be able to reposition and re-lease those stores and potentially generate additional revenue. To the extent Seritage Growth must pay a fee to recapture any space and Seritage has identified a replacement tenant and entering into a replacement lease is reasonably assured, amounts paid to Sears Holdings to recapture the
space qualifies as an initial indirect cost of the new lease and the payment shall be deferred and it will be recognized as income over the term of the new lease. If a replacement tenant has not been identified or a replacement lessee has been identified but entering into a new lease with that replacement lessee is not reasonably assured, the payment will be expensed as incurred. Our lease term is the fixed non-cancelable lease term. As the recapture right is within our control as a lessor, we included this right in our determination of our lease term. Any deferred rent receivable will be expensed as part of a recapture exercise.

The Master Lease will also provide for certain rights of Sears Holdings to terminate the Master Lease with respect to Acquired Properties that cease to be profitable for operation by Sears Holdings. Specifically, Sears Holdings will have the right to terminate the Master Lease with respect to an Acquired Property where the fixed rent (together with all other costs and expenses payable under the Master Lease) attributable to such Acquired Property exceeds Sears Holdings’ EBITDAR attributable thereto for any 12-month period beginning after the commencement of the lease and ending at the end of the most recent fiscal quarter. In order to terminate the Master Lease with respect to a certain property, Sears Holdings must make a payment to us of an amount equal to one year of rent (together with taxes and other expenses) with respect to such property. Such termination right, however, will be limited so that it will not have the effect of reducing the fixed rent under the Master Lease by more than 20% per annum. The lease term is not impacted by the Sears Holdings right to terminate, as they may only be exercised based on a contingency of tenant operational metrics. A termination fee earned by Seritage Growth will be recognized when the payment is earned concurrent with the termination and will reduce any deferred rent receivable.

The recapture rights and termination rights are also included with similar terms in the leases with Sears Holdings in the GGP JV, Simon JV, and Macerich JV. The accounting policies for these terms will follow the accounting discussed above.

Consolidation of variable interests

The Company evaluates its variable interests to assess whether it holds interests in variable interest entities and whether the Company is the primary beneficiary of those interests. To the extent such variable interests are not entities that do not meet the definition of Variable Interest Entities in ASC 810-10, we evaluate our interests in the Voting Interest Entity Model. We have a variable interest in Seritage Growth Properties, LP, our operating partnership. The operating partnership is not within the scope of the Variable Interest Model and is instead evaluated under the Voting Interest Entity Model. While the Company holds a voting interest of 55.1% in the operating partnership, the Company also holds the general partner interest in the operating partnership. As the limited partners in the operating partnership and not held by the Company do not possess kick-out rights and substantive participating rights, the Company consolidates its interest in the operating partnership.

The Company will evaluate all other variable interests held within the consolidation guidance articulated in ASC 810.

Allocation of Purchase Price of Acquired Assets

Upon the acquisition of real properties, it is the Company’s policy to allocate the purchase price of properties to acquired tangible assets, consisting of land, building, fixtures and improvements, and identified intangible lease assets and liabilities, consisting of the value of above-market and below-market leases, as applicable, other value of in-place leases and ground leases, based in each case on their fair values.

The Company will record above-market and below-market in-place lease values for acquired properties based on the present value (using an interest rate that reflects the risks associated with the leases acquired) of the difference between (i) the contractual amounts to be paid pursuant to the in-place leases and (ii) management’s estimate of fair market lease rates for the corresponding in-place leases, measured over a period equal to the remaining non-cancelable term of the lease. The Company will amortize any capitalized above-market or below-market lease values as an increase or reduction to rental income over the remaining non-cancelable terms of the respective leases.
The Company will measure the aggregate value of other intangible assets acquired based on the difference between (i) the property valued with existing in-place leases adjusted to market rental rates and (ii) the property valued as if vacant. Management’s estimates of value are expected to be made using methods similar to those used by independent appraisers (e.g., discounted cash flow analysis). Factors to be considered by management in its analysis include an estimate of carrying costs during hypothetical expected lease-up periods considering current market conditions and costs to execute similar leases.

The Company will also consider information obtained about each property as a result of its pre-acquisition due diligence, marketing and leasing activities in estimating the fair value of the tangible and intangible assets acquired. In estimating carrying costs, management will also include real estate taxes, insurance and other operating expenses and estimates of lost rentals at market rates during the expected lease-up periods. Management will also estimate costs to execute similar leases including leasing commissions and legal and other related expenses to the extent that such costs have not already been incurred in connection with a new lease origination as part of the transaction.

The total amount of other intangible assets acquired will be further allocated to in-place lease values based on management’s evaluation of the specific characteristics of each tenant’s lease and the Company’s overall relationship with that respective tenant. Characteristics to be considered by management in allocating these values include the nature and extent of the Company’s existing business relationships with the tenant, growth prospects for developing new business with the tenant, the tenant’s credit quality and expectations of lease renewals (including those existing under the terms of the lease agreement), among other factors.

The Company will amortize the value of in-place leases to expense over the initial term of the respective leases. Should a tenant terminate its lease, the unamortized portion of the in-place lease value would be charged to expense in that period.

The determination of the fair value of the assets and liabilities acquired requires the use of significant assumptions with regard to current market rental rates, discount rates and other variables. The use of inappropriate estimates would result in an incorrect assessment of the fair value of these assets and liabilities, which could impact the amount of the Company’s reported net income. These estimates are subject to change until all information is finalized, which is generally within one year of the acquisition date.

**Investment in Real Estate**

Rental property and improvements, including interest and other costs capitalized during construction, are included in investments in real estate and will be stated at cost. Expenditures for ordinary repairs and maintenance will be expensed as incurred. Significant renovations which improve the property or extend the useful life of the assets are capitalized. Rental property and improvements, excluding land, will be depreciated over their estimated useful lives using the straight-line method. Construction in progress includes costs for capital projects that are in process of being completed. These costs will be depreciated upon completion of the projects.

The table below shows the estimated useful lives by asset category:

<table>
<thead>
<tr>
<th>Asset Category</th>
<th>Estimated Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building</td>
<td>28-35 years</td>
</tr>
<tr>
<td>Building improvements</td>
<td>3-10 years</td>
</tr>
<tr>
<td>Tenant improvements</td>
<td>shorter of the asset’s useful life or the noncancellable term of lease</td>
</tr>
<tr>
<td>Furniture and fixtures</td>
<td>3-5 years</td>
</tr>
</tbody>
</table>

We make subjective assessments as to the useful lives of our assets. These assessments have a direct impact on our results of operations. Should we lengthen the expected useful life of an asset, it would be depreciated over a longer period, resulting in less annual depreciation expense and higher annual net income. Should we shorten the expected useful life of an asset, it would be depreciated over a shorter period resulting in more annual depreciation expense and lower annual net income.
**Impairment of Long-Lived Assets**

In accordance with accounting standards governing the impairment or disposal of long-lived assets, the carrying value of long-lived assets, including land, buildings and improvements and definite-lived intangible assets, is evaluated whenever events or changes in circumstances indicate that a potential impairment has occurred relative to a given asset or assets. Factors that could result in an impairment review include, but are not limited to, a current period cash flow loss combined with a history of cash flow losses, current cash flows that may be insufficient to recover the investment in the property over the remaining useful life, or a projection that demonstrates continuing losses associated with the use of a long-lived asset, significant changes in the manner of use of the assets or significant changes in business strategies. An impairment loss is recognized when the estimated undiscounted cash flows expected to result from the use of the asset plus net proceeds expected from disposition of the asset (if any) are less than the carrying value of the asset. When an impairment loss is recognized, the carrying amount of the asset is reduced to its estimated fair value as determined based on quoted market prices or through the use of other valuation techniques.

**Investments in Unconsolidated Real Estate Affiliates**

We will account for investments in joint ventures where we own a non-controlling joint interest using the equity method. To determine the method of accounting for partially owned joint ventures, we evaluate the characteristics of associated entities and determine whether an entity is a variable interest entity (“VIE”) and, if so, determine which party is primary beneficiary by analyzing whether we have both the power to direct the entity’s significant economic activities and the obligation to absorb potentially significant losses or receive potentially significant benefits. Significant judgments and assumptions inherent in this analysis include the nature of the entity’s operations, future cash flow projections, the entity’s financing and capital structure, and contractual relationship and terms. We consolidate a VIE when we have determined that we are the primary beneficiary. Primary risks associated with our VIEs include the potential of funding the entities’ debt obligations or making additional contributions to fund the entities’ operations.

**Impairment of Investment in Unconsolidated Affiliates**

A series of operating losses of an investee or other factors may indicate that a decrease in value of a company’s investment in unconsolidated affiliates has occurred which is other-than-temporary. Accordingly, the investment in each of the unconsolidated affiliates is evaluated periodically for valuation declines that are other-than-temporary. If the investment is other than temporarily impaired, the investment is written down to its estimated fair value. Also taken into consideration when testing for impairment is the value of the underlying real estate investments, the ownership and distribution preferences and limitations and rights to sell and repurchase of its ownership interests. Any such adjustments could be material, but will be non-cash.

Partially owned, non-variable interest joint ventures over which we would have controlling financial interest will be consolidated in our consolidated financial statements. In determining if we have a controlling financial interest, we consider factors such as ownership interest, authority to make decisions, kick-out rights and substantive participating rights. Partially owned joint ventures where we do not have a controlling financial interest, but have the ability to exercise significant influence, are accounted for using the equity method.

We continually analyze and assess reconsideration events, including changes in the factors mentioned above, to determine if the consolidation treatment remains appropriate. Decisions regarding consolidation of partially owned entities frequently require significant judgment by our management. Errors in the assessment of consolidation could result in material changes to our consolidated financial statements.

**Recently Issued Accounting Pronouncements**

In August 2014, the FASB issued new accounting guidance which requires management to perform interim and annual assessments of an entity’s ability to continue as a going concern within one year of the date the financial statements are issued. The standard provides guidance on determining when and how to disclose going
concern uncertainties in the financial statements. Certain disclosures will be required if conditions give rise to substantial doubt about an entity’s ability to continue as a going concern. This guidance is effective on January 1, 2017. The Company will apply the guidance prospectively and does not anticipate the guidance will have a material impact on its consolidated financial statements or disclosures.

In May 2014, companies will be required to apply a five-step model in accounting for revenue arising from contracts with customers. The core principle of the revenue model is that a company recognizes revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Lease contracts will be excluded from this revenue recognition criteria; however, the sale of real estate will be required to follow the new model. Expanded quantitative and qualitative disclosures regarding revenue recognition will be required for contracts that are subject to this pronouncement. This new guidance is effective January 1, 2015. On April 1, 2015, the Financial Accounting Standards Board voted for a one-year deferral of the effective date of the new revenue recognition standard. If approved, the new standard will become effective for the Company beginning with the first quarter 2018 and can be adopted either retrospectively to each prior reporting period presented or as a cumulative effect adjustment as of the date of adoption. The Company is evaluating the potential impact of this pronouncement on its consolidated financial statements.

In February 2015, the FASB issued an update (“ASU 2015-02”) Amendments to the Consolidation Analysis to ASC Topic 810, Consolidation. ASU 2015-02 affects reporting entities that are required to evaluate whether they should consolidate certain legal entities. Specifically, the amendments: (i) modify the evaluation of whether limited partnerships and similar legal entities are variable interest entities (“VIEs”) or voting interest entities, (ii) eliminate the presumption that a general partner should consolidate a limited partnership, (iii) affect the consolidated analysis of reporting entities that are involved with VIEs, and (iv) provide a scope exception for certain entities. ASU 2015-02 is effective for interim and annual reporting periods beginning after December 15, 2015. The Company is evaluating the impact of the adoption of this pronouncement on its consolidated financial statements.

In April 2015, the Financial Accounting Standards Board (FASB) issued new guidance which changes the presentation of debt issuance costs in financial statements. Under the new guidance, an entity presents debt issuance costs in the balance sheet as a direct deduction from the related debt liability rather than as an asset. Amortization of the debt issuance costs is reported as interest expense. The new guidance is effective on January 1, 2016, with early adoption permitted for any annual or interim period for which an entity’s financial statements have not yet been made available for issuance. The new guidance must be applied retrospectively to all prior periods presented. The Company expects to adopt the new guidance on January 1, 2016 and will apply the presentation guidance to all periods presented in its consolidated financial statements.

**REIT Qualification**

Seritage Growth has determined that the ownership of Operating Partnership units, Seritage Growth non-economic shares and Seritage Growth non-voting shares by ESL and Fairholme Clients will not impact its ability to qualify as a REIT under the Code.

**Emerging Growth Company**

We are an “emerging growth company” under the federal securities laws and, as such, we have elected to provide reduced public company reporting requirements in this and in future filings. The JOBS Act permits an emerging growth company such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We are choosing to “opt out” of this provision and, as a result, we will comply with new or revised accounting standards as required when they are adopted. This decision to opt out of the extended transition period under the JOBS Act is irrevocable.
BUSINESS AND PROPERTIES

Our Business

Seritage Growth Properties is a newly organized entity that was formed in Maryland on June 3, 2015. Seritage Growth conducts its operations through Seritage Growth Properties, L.P., a Delaware limited partnership, formed on April 22, 2015. Our principal offices are currently located at 3333 Beverly Road, Hoffman Estates, Illinois 60179, and our main telephone number is currently (847) 286-2500. We expect to change our principal offices and main telephone number prior to the completion of the Transaction. Seritage Growth intends to elect to be treated as a REIT for federal income tax purposes commencing with our taxable year ending December 31, 2015.

Following the Transaction, Seritage Growth will be a publicly traded, self-administered, self-managed REIT primarily engaged in the real property business through its investment in Operating Partnership. Initially, our portfolio will consist of the 235 Acquired Properties that are owned (or, in one case, ground-leased) by Sears Holdings as of the date of this prospectus. In addition, we will own the JV Interests, which are owned by Sears Holdings as of the date of this prospectus and will be sold to us in the Transaction. We will lease (or sublease) a substantial majority of the space at all of the Acquired Properties other than the Third Party Properties back to Sears Holdings under the Master Lease, with the remainder of such space leased to third-party tenants. The eleven Third Party Properties, which do not currently contain a Sears Holdings store, will not have any space leased to Sears Holdings, and will instead be leased solely to third-party tenants. A substantial majority of the space at the JV Properties is also leased by the JVs to Sears Holdings under the JV Master Leases.

We expect to generate revenues primarily by leasing our properties to tenants, including both Sears Holdings and third-party tenants, who will operate retail stores (and potentially other uses) in the leased premises, a business model common to many publicly traded REITs. In addition to revenues generated under the Master Lease through rent payments from Sears Holdings, we expect to generate revenue through leases to third-party tenants under existing and future leases for space at our properties, including the Acquired Properties. The Master Lease will provide us with the right to recapture up to approximately 50% of the space within the Stores (subject to certain exceptions), in addition to all of any automotive care centers which are free-standing or attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain portions of parking areas and common areas, at the Acquired Properties leased to Sears Holdings under the Master Lease. Upon exercise of this recapture right we must pay all costs and expenses for the separation of the recaptured space from the remaining Sears Holdings space and can reconfigure and rent the recaptured space to third-party tenants on potentially superior terms determined by us and for our own account. We also have the right to recapture 100% of the space within the Sears Holdings main store located on each of 21 identified Acquired Properties by making a specified lease termination payment to Sears Holdings, after which we expect to be able to reposition and re-lease those stores and potentially generate additional revenue. See “Certain Relationships and Related Transactions—The Master Lease.”

Our initial portfolio of 235 Acquired Properties, consisting of approximately 36.7 million square feet of building space, will be broadly diversified by location across 49 states and Puerto Rico. These Acquired Properties will consist of 84 properties operated under the Kmart brand, 140 operated under the Sears brand, and eleven properties leased entirely to third parties. At certain of the Acquired Properties, third parties under existing leases occupy a portion of the overall leasable space alongside Sears Holdings. Third-party tenants will initially represent approximately 6.6% of our overall portfolio as a percentage of total leasable space and approximately 10% of existing rent. The amount of space leased to third-party tenants, and the resulting revenue, are expected to increase as we recapture space under the Master Lease and then re-lease it to such third-party tenants. In addition, we will have interests in twelve additional properties through our investment in the GGP JV, ten additional properties through our investment in the Simon JV and nine additional properties through our investment in the Macerich JV.
To maintain REIT status, Seritage Growth must meet a number of organizational and operational requirements, including a requirement that Seritage Growth distribute annually to Seritage Growth shareholders at least 90% of Seritage Growth’s REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gains. See “U.S. Federal Income Tax Considerations.”

History

Seritage Growth is a newly organized REIT that was formed in Maryland on June 3, 2015, and Operating Partnership is a Delaware limited partnership formed on April 22, 2015. We have operated prior to the Transaction. Sears Holdings, the parent company of Sears Roebuck and Co. and Kmart Holding Corporation, was formed in connection with the merger of Sears Roebuck and Kmart in March 2005.

Corporate Information

Our principal executive offices are located at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Our telephone number is (847) 286-2500.

Industry Background / Market Opportunity

Strategic Opportunities

We expect the Transaction to facilitate increased revenue generation from the Acquired Properties through recapturing of space and then re-leasing such space to third-party retailers (and potentially other third-party lessees for other uses) for higher rents than are payable under the Master Lease by Sears Holdings. We also expect the Transaction to facilitate the redevelopment and possible sale of certain properties in order to maximize their value. In addition to diversifying our tenant base, we will have greater opportunity to expand into new business activities outside of the retail industry. Historically, Sears Holdings has not pursued significant development opportunities unrelated to the retail industry, in part because of the expectations and preferences of its stockholders. However, we are being formed as a property acquisition, development, ownership and management company, and will be positioned to capitalize on these opportunities without similar constraints, subject to any applicable Property Restrictions. We do not currently have a fixed schedule of the number of acquisitions we intend to make over a particular time period, but instead we intend to pursue those acquisitions that meet our investing and financing strategy and that are attractively priced. We also intend to further develop our relationships with tenants with a goal to progressively expand the mixture of tenants leasing our properties.

The Transaction will also provide stockholders with two distinct and targeted investment opportunities.

Competitive Strengths

We believe the following competitive strengths will contribute significantly to our success:

Geographically Diverse Property Portfolio

Initially, our portfolio will consist of 235 retail facilities (excluding the JV Properties). Our portfolio of 235 Acquired Properties, comprising approximately 36.7 million square feet of building space, is broadly diversified by location across 49 states and Puerto Rico. Our geographic diversification will limit the effect of a decline in any one regional market on our overall performance. In addition, we will have interests in twelve additional properties through our investment in the GGP JV, ten additional properties through our investment in the Simon JV and nine additional properties through our investment in the Macerich JV.
**Long-Term, Triple-Net Lease Structure**

Immediately following the Transaction, all but eleven of the Acquired Properties will be leased to Sears Holdings under the Master Lease, generally a “triple net” operating lease guaranteed by Sears Holdings with an average term of ten years (in addition to between two and four five-year renewals to be exercised at Sears Holdings’ option), pursuant to which the tenant is responsible for all costs and expenses of operation, facility maintenance, repairs, insurance required in connection with the leased properties and the business conducted on the leased properties, taxes levied on or with respect to the leased properties and all utilities and other services necessary or appropriate for the leased properties and the business conducted on the leased properties, subject to proportionate sharing of repair and maintenance charges and other costs and expenses which are common to both the space leased by Sears Holdings and other space occupied by unrelated third-party tenants, common area maintenance expenses and real property taxes with respect to space not occupied by Sears Holdings.

We will immediately have an income stream from an existing tenant, with enhanced flexibility as a lessor with the ability to recapture substantial amounts of space from Sears Holdings and diversify the tenant mix by leasing recaptured space to other tenants.

**Unrelated Third-Party Leases**

The Acquired Properties are currently subject to various existing leases with unrelated third-party retail tenants for approximately 2.4 million square feet of space in the aggregate (excluding certain minor leases, agreements, concessions, licenses or departments within the Sears Holdings stores and the lease agreements between Sears Holdings and Lands’ End, the “Third-Party Leases”). The Third-Party Leases are further described in “Our Portfolio / Properties,” including a list of the five largest tenants under Third-Party Leases. The Third-Party Leases will be assigned by Sears Holdings to us for our own account and benefit, so that we will be the landlord thereunder, and the space leased thereunder will not be leased to Sears Holdings under the Master Lease. Lease agreements between Sears Holdings and Lands’ End will be retained by Sears Holdings for its own account under the Master Lease and will not be considered Third-Party Leases (and, therefore, will not be assigned to Operating Partnership along with the Third-Party Leases). However, Sears Holdings will pay as additional rent under the Master Lease (in lieu of base rent attributable to the Lands’ End space leased to Sears Holdings under the Master Lease) an amount equal to rent payments (including expenses, if any) required to be made by Lands’ End under existing Lands’ End lease agreements with respect to the Lands’ End space within the Acquired Properties and Operating Partnership will perform all repair, maintenance and other similar obligations of the landlord under the Lands’ End lease agreements and hold harmless Sears Holdings therefrom. Should the lease arrangements between Sears Holdings and Lands’ End terminate with respect to the Acquired Properties, Sears Holdings’ rent obligations under the Master Lease for the space previously occupied by Lands’ End will reflect the base rent (on a square footage basis) under the Master Lease for the affected Acquired Properties.

We also intend to enter into additional leases with third parties from time to time for our own account and benefit if and when we exercise recapture rights under the Master Lease. The existing Third-Party Leases generally provide for payments of fixed rent (and, in some cases, percentage rent based on such tenant’s sales at the premises), and additional rent for certain costs, expenses and charges under the lease; the tenant is generally required to perform ordinary repairs and maintenance to their respective space and to either pay (a) additional rent for their proportionate share of taxes and/or operating costs and expenses for the building in which the space is located as well as common area expenses, including structural repairs, insurance, real estate taxes and all other customary operating costs and expenses, or (b) fixed rental that takes into account and includes an amount for some or all of these costs and expenses (and, in certain cases, requires separate payment of taxes and/or other expenses); and the landlord thereunder may in some cases perform certain construction and preparation work for the tenant and/or make financial contributions to certain tenant improvements for the tenant’s initial occupancy. Certain Third-Party Leases include redevelopment and capital expenditures for tenant occupancy, and other obligations that we will assume in the Transaction. Other terms and conditions for such existing Third-Party Leases include provisions for insurance, indemnity, casualty, condemnation and other provisions which are usual and customary for retail space leases depending on the size of the space, rent and creditworthiness of the tenant.
Future third-party leases may incorporate some or all of the features of the existing unrelated Third-Party Leases, or may be made on some net or modified net lease basis, depending on the retail space market and the particular circumstances at the time such leases are negotiated.

**UPREIT Structure**

We will operate through an umbrella partnership, commonly referred to as an UPREIT structure, in which substantially all of our properties and assets are held by Operating Partnership or by subsidiaries of Operating Partnership. Conducting business through Operating Partnership allows us flexibility in the manner in which we structure and acquire properties. In particular, an UPREIT structure enables us to acquire additional properties from sellers in exchange for Operating Partnership units, which provides property owners the opportunity to diversify their portfolios in a tax-efficient manner and to defer the tax consequences that would otherwise arise from a sale of their real properties and other assets to us. As a result, this structure potentially may facilitate our acquisition of assets in a more efficient manner and may allow us to acquire assets that the owner would otherwise be unwilling to sell because of tax considerations.

**Business and Growth Strategies**

**Develop New Tenant Relationships**

We will seek to cultivate our relationships with tenants in order to expand the mixture of tenants operating our properties and, in doing so, to reduce our dependence on any single tenant or operator. We expect that this objective will be achieved over time as part of our overall strategy to lease space recaptured under the Master Lease and acquire new properties and further diversify our overall portfolio of properties.

**Pursue Strategic Development Opportunities**

We intend to identify strategic development opportunities. These opportunities may involve replacing or renovating facilities in our portfolio that may have become less competitive. We also intend to identify new development opportunities that present attractive risk-adjusted returns.

**Maintain Balance Sheet Strength and Liquidity**

We will seek to maintain a capital structure that provides the resources and flexibility to support the growth of our business. We intend to maintain a mix of credit facility debt, mortgage debt and unsecured term debt which, together with our anticipated ability to complete future equity financings, we expect will fund the growth of our operations.

**Diversify Asset Portfolio**

We expect to diversify through the acquisition of new properties. We will employ what we believe to be a disciplined, opportunistic acquisition strategy. Initially following the Transaction, we expect to grow our portfolio by pursuing opportunities to acquire additional retail facilities to lease.

**The GGP JV, the Simon JV and the Macerich JV**

The GGP JV is a joint venture between Sears Holdings and GGP formed on March 31, 2015. The Simon JV is a joint venture between Sears Holdings and Simon formed on April 13, 2015. The Macerich JV is a joint venture between Sears Holdings and Macerich formed on April 30, 2015. Each JV entered into a sale-leaseback transaction with Sears Holdings with respect to the JV Properties, which consist of twelve properties sold by Sears Holdings to the GGP JV, ten properties sold by Sears Holdings to the Simon JV and nine properties sold by Sears Holdings to the Macerich JV. The JVs currently own the JV Properties and lease them to Sears Holdings under their respective JV Master Leases, as well as to certain third parties under third-party leases.
As of the date of this prospectus, each of GGP and Sears Holdings owns a 50% interest in the GGP JV, each of Simon and Sears Holdings owns a 50% interest in the Simon JV and each of Macerich and Sears Holdings owns a 50% interest in the Macerich JV. In the Transaction, Sears Holdings will sell to Operating Partnership its 50% interest in the GGP JV, the Simon JV and the Macerich JV for $165 million, $114 million and $150 million, respectively (which is equal to the purchase price previously paid by GGP, Simon and Macerich, respectively, for their 50% interests in the applicable JVs). As a result, the GGP JV will become a joint venture between Operating Partnership and GGP, the Simon JV will become a joint venture between Operating Partnership and Simon and the Macerich JV will become a joint venture between Operating Partnership and Macerich.

Each JV will be governed by an executive committee that consists of one representative designated by GGP, Simon or Macerich, as applicable, and one representative that, following the Transaction, will be designated by us. Day-to-day operation of the GGP JV, the Simon JV and the Macerich JV, and responsibility for leasing and redevelopment activities related to the JV Properties owned by each JV, are generally delegated to GGP, Simon and Macerich, respectively, subject to mutual approval of major decisions relating to the JV Properties or the applicable JV, including approval of the venture’s budget, capital calls and distributions, sales of properties, issuances of equity interests in the venture, incurrences of indebtedness, mergers and other extraordinary transactions, and key operational decisions regarding the JV and the JV Properties, including approval of all leasing and development plans for the properties, material changes to any property management agreement, entry into lease terms not in keeping with the pre-approved leasing plans, formation of subsidiaries of the JV, appointments of accountants and legal counsel for the JV, and material contracts (including any material employment or collective bargaining agreement). Under certain circumstances, including if a party to the limited liability company agreement of each JV is in default of that agreement, a party may be removed from the executive committee and as managing member of the JV and replaced by the other party (with the defaulting party thereafter having minimal governance rights). In addition, GGP will be entitled to a management fee based on the GGP JV’s gross revenues, as well construction management fees based on the cost of work and a leasing commission, in connection with the management, leasing and development of the JV Properties owned by the GGP JV, except that if GGP fails to meet certain leasing performance conditions by March 31, 2018, we (assuming the applicable JV Interest has been transferred to us) will have increased involvement in leasing. Similarly, Simon will be entitled to a management fee based on the Simon JV’s gross revenues, as well construction management fees based on the cost of work and a leasing commission, in connection with the management, leasing and development of the JV Properties owned by the Simon JV, except that if Simon fails to meet certain leasing performance conditions by April 13, 2018, we (assuming the applicable JV Interest has been transferred to us) will have increased involvement in leasing. Likewise, Macerich will be entitled to a management fee based on the Macerich JV’s gross revenues, as well construction management fees based on the cost of work and a leasing commission, in connection with the management, leasing and development of the JV Properties owned by the Macerich JV, except that if Macerich fails to meet certain leasing performance conditions by April 30, 2018, we (assuming the applicable JV Interest has been transferred to us) will have increased involvement in leasing. In addition, at any time after March 31, 2018 in the case of the GGP JV, April 13, 2018, in the case of the Simon JV, and April 30, 2018, in the case of the Macerich JV, we will have the right to cause GGP to purchase from the GGP JV, Simon to purchase from the Simon JV, and Macerich to purchase from the Macerich JV, respectively, any JV Property owned by the applicable JV with respect to which a certain third-party leasing threshold has been satisfied at the fair market value of such JV property, less certain mortgage loans and other debt in respect of such property and certain selling expenses, determined in accordance with the limited liability company agreement of the applicable JV. A substantial majority of the space at the JV Properties is leased by the JVs to Sears Holdings under the JV Master Leases. 7.0% of the space at the JV Properties owned by the GGP JV, 4.3% of the space at the JV Properties owned by the Simon JV and 8.7% of the space at the JV Properties owned by the Macerich JV is leased to third parties.

The JV Master Leases are unitary, non-severable leases for all JV Properties in the applicable JV Master Lease and are generally triple net leases with respect to the space occupied by Sears Holdings, subject to Sears Holdings’ proportionate sharing of taxes and other operating expenses with respect to properties that have third-party tenants of the GGP JV, the Simon JV and the Macerich JV, as applicable. The JV Master Leases each
have an initial term of ten years, and in each case Sears Holdings has three separate, consecutive five-year renewal options to extend the initial term. The aggregate base rent for all of the JV Properties leased to Sears Holdings under the JV Master Lease with the GGP JV is set at $15.5 million, under the JV Master Lease with Simon is set at $12.7 million, and under the JV Master Lease with the Macerich JV is set at $14.1 million, plus in each case the rent for the Lands’ End space. For each JV Master Lease in each of the initial and renewal terms, after the third lease year of the initial term, the annual base rent (excluding the Lands’ End rent) for the remainder of the term and all renewal terms will be increased by 2% per annum (cumulative and compounded) for each lease year over the rent for the immediately preceding lease year.

Each JV Master Lease provides Sears Holdings with the right to terminate the lease with respect to underperforming stores upon payment of a termination fee calculated as provided in the JV Master Lease and provides the GGP JV, the Simon JV and the Macerich JV, as applicable, with the right to recapture (without additional payment) up to approximately 50% of the space occupied by Sears Holdings under such JV Master Lease (subject to certain exceptions), in addition to all of any automotive care centers which are free-standing or attached as “appendages” to the JV Properties, all outparcels or outlots, and certain portions of parking areas and common areas at the JV Properties, in each case under such JV Master Lease (other than with respect to one property owned by the Macerich JV). The Simon JV will have the additional right to recapture 100% of the space occupied by Sears Holdings at some of the JV Properties under its JV Master Lease for termination fees as provided in such JV Master Lease. Except with respect to the rent amounts and the properties covered, the general formats of the JV Master Leases are similar to one another and to the Master Lease. Under each JV Master Lease, the rent payable to the JV by Sears Holdings for Lands’ End space is an amount equal to the rent required to be paid by Lands’ End under the Lands’ End leases, which amount will be paid to the JV throughout the term and renewal terms of the JV Master Lease (whether or not the Lands’ End leases continue), unless the JV Master Lease is terminated with respect to the applicable JV Property subject to a Lands’ End lease.
Our Portfolio / Properties (including Operating Data)

The following is a list of the Acquired Properties as of June 3, 2015. The categories are based, in part, on certain rights and restrictions that we have with respect to the assets in our portfolio. In particular, our portfolio has been divided into “Type I Properties” (where we can recapture up to 100% of the space leased to Sears Holdings), “Type II Properties” (where we can recapture up to approximately 50% of the space within the Stores (subject to certain exceptions), in addition to all of any automotive care centers which are free-standing or attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain portions of parking areas and common areas, leased to Sears Holdings), and, finally “Type III Properties” (where Sears Holdings is no longer operating a Store and the property is not leased to Sears Holdings by us). There is also one ground-leased property where we lease, and do not own, the land on which the property is located.

In addition, set forth below, as a separate category, are the JV Properties owned by the GGP JV, the Simon JV or the Macerich JV.

<table>
<thead>
<tr>
<th>City</th>
<th>State</th>
<th>GLA</th>
<th>Total GLA</th>
<th>3rd Party(b)</th>
<th>Occupancy Rate(d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anchorage AK</td>
<td>AK</td>
<td>257,948</td>
<td>212,079</td>
<td>34,956</td>
<td>SHC, Nordstrom Rack</td>
</tr>
<tr>
<td>San Bernadino CA</td>
<td>264,682</td>
<td>264,682</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>Santa Monica CA</td>
<td>117,801</td>
<td>117,801</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>Westminster CA</td>
<td>197,904</td>
<td>197,904</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>West Hartford CT</td>
<td>194,385</td>
<td>194,385</td>
<td>0</td>
<td>SHC, Olive Garden</td>
<td>100%</td>
</tr>
<tr>
<td>Boca Raton FL</td>
<td>174,333</td>
<td>174,333</td>
<td>0</td>
<td>SHC, Washington Mutual Bank</td>
<td>100%</td>
</tr>
<tr>
<td>Miami FL</td>
<td>173,322</td>
<td>173,322</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>Miami FL</td>
<td>170,122</td>
<td>170,122</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>North Miami FL</td>
<td>106,305</td>
<td>106,305</td>
<td>0</td>
<td>SHC, Aldi</td>
<td>100%</td>
</tr>
<tr>
<td>Orlando FL</td>
<td>202,000</td>
<td>202,000</td>
<td>0</td>
<td>SHC, UP Development</td>
<td>100%</td>
</tr>
<tr>
<td>St. Petersburg FL</td>
<td>187,000</td>
<td>187,000</td>
<td>0</td>
<td>SHC, Simon Property Group</td>
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</tr>
<tr>
<td>Savannah GA</td>
<td>155,684</td>
<td>155,684</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
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<tr>
<td>Honolulu HI</td>
<td>77,452</td>
<td>77,452</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>Braintree MA</td>
<td>113,442</td>
<td>102,396</td>
<td>11,046</td>
<td>SHC, Ulta</td>
<td>100%</td>
</tr>
<tr>
<td>St. Clair Shores MI</td>
<td>122,137</td>
<td>117,959</td>
<td>4,178</td>
<td>SHC, Champs Complete Auto Service</td>
<td>100%</td>
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<tr>
<td>St. Paul MN</td>
<td>217,930</td>
<td>216,304</td>
<td>1,626</td>
<td>SHC, License Bureau, Department of Administration/Plant Management Division</td>
<td>100%</td>
</tr>
<tr>
<td>Middletown NJ</td>
<td>184,540</td>
<td>184,540</td>
<td>0</td>
<td>SHC, Township of Middletown, Wendy’s, Investors Bank</td>
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</tr>
<tr>
<td>Watchung NJ</td>
<td>262,902</td>
<td>262,902</td>
<td>0</td>
<td>SHC, License Bureau, Department of Administration/Plant Management Division</td>
<td>100%</td>
</tr>
<tr>
<td>Hicksville NY</td>
<td>340,434</td>
<td>340,434</td>
<td>0</td>
<td>SHC, Red Lobster, Chipotle Mexican Grill, TD Bank, Citigroup, Chase Bank</td>
<td>100%</td>
</tr>
<tr>
<td>Memphis TN</td>
<td>196,564</td>
<td>196,564</td>
<td>0</td>
<td>SHC, On the Border</td>
<td>100%</td>
</tr>
<tr>
<td>Valley View TX</td>
<td>229,227</td>
<td>229,227</td>
<td>0</td>
<td>SHC, Jared Galleria of Jewelry</td>
<td>100%</td>
</tr>
</tbody>
</table>

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a In addition to the recapture rights for Type II properties, subject to recapture of the entire space within a store for a specified fee.
b Includes all lessees who are not SHC, but does not include the square footage of improvements constructed on land ground-leased by SHC to other parties.
c Includes major third-party lessees (including all of those who lease over 10% of the property’s rental value based on total GLA).
d As of June 3, 2015.
<table>
<thead>
<tr>
<th>City</th>
<th>State</th>
<th>GLA</th>
<th>Total</th>
<th>SHC</th>
<th>3rd Party</th>
<th>Vacant</th>
<th>Significant Tenants</th>
<th>Occupancy Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cullman</td>
<td>AL</td>
<td>98,522</td>
<td>98,522</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>North Little Rock</td>
<td>AR</td>
<td>185,718</td>
<td>185,718</td>
<td>0</td>
<td>0</td>
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<td>VA</td>
<td>186,099</td>
<td>84,239</td>
<td>101,860</td>
<td>0</td>
<td>SHC, DSW, REI, The Fresh Market, Nordstrom Rack, Smokey Bones, Branch Banking &amp; Trust Company</td>
</tr>
<tr>
<td>206 Warrenton</td>
<td>VA</td>
<td>121,078</td>
<td>121,078</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>207 Redmond</td>
<td>WA</td>
<td>267,407</td>
<td>267,407</td>
<td>0</td>
<td>0</td>
<td>SHC, Sprint Spectrum, Red Robin</td>
</tr>
<tr>
<td>208 Vancouver</td>
<td>WA</td>
<td>129,638</td>
<td>129,638</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>209 Yakima</td>
<td>WA</td>
<td>117,251</td>
<td>97,251</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>210 Greendale</td>
<td>WI</td>
<td>238,416</td>
<td>238,416</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>211 Madison</td>
<td>WI</td>
<td>138,263</td>
<td>138,263</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>212 Platteville</td>
<td>WI</td>
<td>94,841</td>
<td>94,841</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>213 Charleston</td>
<td>WV</td>
<td>105,575</td>
<td>105,575</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>214 Elkins</td>
<td>WV</td>
<td>99,598</td>
<td>94,885</td>
<td>4,713</td>
<td>0</td>
<td>SHC, Appalachian Tire Products</td>
</tr>
<tr>
<td>215 Scott Depot</td>
<td>WV</td>
<td>89,790</td>
<td>89,790</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>216 Casper</td>
<td>WY</td>
<td>91,366</td>
<td>91,266</td>
<td>100</td>
<td>0</td>
<td>SHC, Wyoming Coffee Kiosk</td>
</tr>
<tr>
<td>217 Gillette</td>
<td>WY</td>
<td>94,587</td>
<td>94,587</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>218 Riverton</td>
<td>WY</td>
<td>94,840</td>
<td>94,840</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>219 Bayamon</td>
<td>PR</td>
<td>115,191</td>
<td>114,600</td>
<td>591</td>
<td>0</td>
<td>SHC, Mps Digital Printing</td>
</tr>
<tr>
<td>220 Caguas</td>
<td>PR</td>
<td>138,686</td>
<td>138,686</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>221 Carolina</td>
<td>PR</td>
<td>198,009</td>
<td>198,009</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>City</td>
<td>State</td>
<td>Total</td>
<td>SHC</td>
<td>3rd Party</td>
<td>Vacant</td>
<td>Significant Tenants</td>
</tr>
<tr>
<td>----------</td>
<td>-------</td>
<td>----------</td>
<td>-----------</td>
<td>-----------</td>
<td>--------</td>
<td>---------------------</td>
</tr>
<tr>
<td>222 Guaynabo</td>
<td>PR</td>
<td>213,335</td>
<td>115,745</td>
<td>85,478</td>
<td>12,112</td>
<td>SHC, Venetian Nails and Spa, McDonald’s, T-Mobile, Claire’s Boutique, Baskin Robbins, La Defensa, Sally Beauty Supply, Gamestop, Payless Shoesource, La Nueva Era, Firstbank, Me Salve, Rent-a-Center, All Ways 99, Rainbow, Kress Kids, Doral Bank, Ocean Garden Buffet, Amigo</td>
</tr>
<tr>
<td>223 Mayaguez</td>
<td>PR</td>
<td>118,242</td>
<td>118,242</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
<tr>
<td>224 Ponce</td>
<td>PR</td>
<td>126,887</td>
<td>126,887</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
</tr>
</tbody>
</table>

*a* Subject to a lessor right to recapture approximately 50% of the space within the Stores (subject to certain exceptions), in addition to all of any automotive care centers which are free-standing or attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain portions of parking areas and common areas, at the Acquired Properties leased to Sears Holdings under the Master Lease.

*b* Includes all lessees who are not SHC, but does not include the square footage of improvements constructed on land ground-leased by SHC to other parties.

*c* Includes major third-party lessees (including all of those who lease over 10% of the property’s rental value based on total GLA).

*d* As of June 3, 2015.
<table>
<thead>
<tr>
<th>City</th>
<th>State</th>
<th>Total</th>
<th>SHC</th>
<th>3rd Party(b)</th>
<th>Vacant</th>
<th>Significant Tenants(c)</th>
<th>Occupancy Rate(d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peoria</td>
<td>AZ</td>
<td>104,439</td>
<td>0</td>
<td>104,439</td>
<td>0</td>
<td>At Home—Garden Ridge</td>
<td>100%</td>
</tr>
<tr>
<td>Phoenix</td>
<td>AZ</td>
<td>151,197</td>
<td>0</td>
<td>151,197</td>
<td>0</td>
<td>At Home—Garden Ridge</td>
<td>100%</td>
</tr>
<tr>
<td>Orange Park</td>
<td>FL</td>
<td>84,180</td>
<td>0</td>
<td>84,180</td>
<td>0</td>
<td>Old Time Pottery</td>
<td>100%</td>
</tr>
<tr>
<td>Homewood</td>
<td>IL</td>
<td>196,125</td>
<td>0</td>
<td>196,125</td>
<td>0</td>
<td>Wal-Mart</td>
<td>100%</td>
</tr>
<tr>
<td>Lombard</td>
<td>IL</td>
<td>139,265</td>
<td>0</td>
<td>139,265</td>
<td>0</td>
<td>The Dump</td>
<td>100%</td>
</tr>
<tr>
<td>Ypsilanti</td>
<td>MI</td>
<td>99,399</td>
<td>0</td>
<td>99,399</td>
<td>0</td>
<td>At Home—Garden Ridge, Ypsilanti Real Estate Holdings, Wholesale Group of Ann Arbor</td>
<td>100%</td>
</tr>
<tr>
<td>Springfield</td>
<td>MO</td>
<td>112,896</td>
<td>0</td>
<td>112,896</td>
<td>0</td>
<td>At Home—Garden Ridge</td>
<td>100%</td>
</tr>
<tr>
<td>Greensboro</td>
<td>NC</td>
<td>173,333</td>
<td>0</td>
<td>171,633</td>
<td>1,700</td>
<td>Sears Outlet, Floor &amp; Décor, Gabriel Brothers</td>
<td>99%</td>
</tr>
<tr>
<td>Tulsa</td>
<td>OK</td>
<td>84,180</td>
<td>0</td>
<td>84,180</td>
<td>0</td>
<td>Hobby Lobby, Long John Silvers</td>
<td>100%</td>
</tr>
<tr>
<td>King Of Prussia(e)</td>
<td>PA</td>
<td>215,252</td>
<td>0</td>
<td>173,980</td>
<td>41,272</td>
<td>Primark, Dick’s Sporting Goods</td>
<td>81%</td>
</tr>
<tr>
<td>Houston</td>
<td>TX</td>
<td>134,000</td>
<td>0</td>
<td>134,000</td>
<td>0</td>
<td>At Home – Garden Ridge</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Acquired Properties**

| Total GLA (thousands) | 36,660 | 33,981 | 2,431 | 248 | 99.3% |

---

*a* These locations are not subject to the Master Lease.

*b* Includes all lessees who are not SHC, but does not include the square footage of improvements constructed on land ground-leased by SHC to other parties.

*c* Includes major third-party lessees (including all of those who lease over 10% of the property’s rental value based on total GLA).

*d* As of June 3, 2015.

*e* The King of Prussia location is ground-leased.
**JV Properties**

**GGP JV Properties**

The following properties are JV Properties owned by the GGP JV, in which Operating Partnership will have a 50% interest following the closing of the Transaction.

<table>
<thead>
<tr>
<th>Location</th>
<th>State</th>
<th>Total GLA (thousands)</th>
<th>SHC</th>
<th>3rd Party(a)</th>
<th>Vacant</th>
<th>Significant Tenants(b)</th>
<th>Occupancy Rate(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Bakersfield</td>
<td>CA</td>
<td>204.226</td>
<td>204.226</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>2. Pembroke Pines</td>
<td>FL</td>
<td>144.109</td>
<td>144.109</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>3. Oak Brook</td>
<td>IL</td>
<td>300.571</td>
<td>233.139</td>
<td>67.432</td>
<td>0</td>
<td>SHC, Pinstripes, Williams-Sonoma, Walter E Smithe Furniture</td>
<td>100%</td>
</tr>
<tr>
<td>4. Natick</td>
<td>MA</td>
<td>190.720</td>
<td>190.720</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>5. Columbia</td>
<td>MD</td>
<td>149.163</td>
<td>149.163</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>6. Minnetonka</td>
<td>MN</td>
<td>204.866</td>
<td>204.866</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>7. Paramus</td>
<td>NJ</td>
<td>192.333</td>
<td>192.333</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>8. Albuquerque</td>
<td>NM</td>
<td>166.715</td>
<td>157.650</td>
<td>9,065</td>
<td>0</td>
<td>SHC, GGP</td>
<td>100%</td>
</tr>
<tr>
<td>9. Staten Island</td>
<td>NY</td>
<td>188.831</td>
<td>115.184</td>
<td>73.647</td>
<td>0</td>
<td>SHC, Primark</td>
<td>100%</td>
</tr>
<tr>
<td>10. Norman</td>
<td>OK</td>
<td>66.876</td>
<td>66.876</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>11. Frisco</td>
<td>TX</td>
<td>162.903</td>
<td>162.903</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>12. Lynnwood</td>
<td>WA</td>
<td>177.740</td>
<td>177.740</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Simon JV Properties**

The following properties are JV Properties owned by the Simon JV, in which Operating Partnership will have a 50% interest following the closing of the Transaction.

<table>
<thead>
<tr>
<th>Location</th>
<th>State</th>
<th>Total GLA (thousands)</th>
<th>SHC</th>
<th>3rd Party(a)</th>
<th>Vacant</th>
<th>Significant Tenants(b)</th>
<th>Occupancy Rate(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Brea</td>
<td>CA</td>
<td>168.194</td>
<td>168.194</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>2. Santa Rosa</td>
<td>CA</td>
<td>165.447</td>
<td>165.447</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>3. Burlington</td>
<td>MA</td>
<td>271.237</td>
<td>197.997</td>
<td>73,240</td>
<td>0</td>
<td>SHC, Primark</td>
<td>100%</td>
</tr>
<tr>
<td>4. Ann Arbor</td>
<td>MI</td>
<td>170.568</td>
<td>170.568</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>5. Toms River</td>
<td>NJ</td>
<td>109.217</td>
<td>109.217</td>
<td>0</td>
<td>0</td>
<td>SHC, Simon</td>
<td>100%</td>
</tr>
<tr>
<td>6. Nanuet</td>
<td>NY</td>
<td>221.406</td>
<td>221.406</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>7. Tulsa</td>
<td>OK</td>
<td>150.166</td>
<td>150.166</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>8. Pittsburgh</td>
<td>PA</td>
<td>176.571</td>
<td>176.571</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>9. Austin</td>
<td>TX</td>
<td>164.554</td>
<td>164.554</td>
<td>0</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>10. Midland</td>
<td>TX</td>
<td>116.619</td>
<td>116.619</td>
<td>0</td>
<td>0</td>
<td>SHC, Verizon</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Total GLA (thousands)**

| GGP JV Properties | 2,149 | 1,999 | 150 | 0 | 100% |
| Simon JV Properties | 1,714 | 1,641 | 73 | 0 | 100% |
**Macerich JV Properties**

The following properties are JV Properties owned by the Macerich JV, in which Operating Partnership will have a 50% interest following the closing of the Transaction.

<table>
<thead>
<tr>
<th>Location</th>
<th>State</th>
<th>Total GLA (thousands)</th>
<th>SHC GLA (thousands)</th>
<th>3rd Party(a) GLA (thousands)</th>
<th>Significant Tenants(b)</th>
<th>Occupancy Rate(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Glendale</td>
<td>AZ</td>
<td>124,991</td>
<td>124,991</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>2 Chandler</td>
<td>AZ</td>
<td>141,554</td>
<td>141,554</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>3 Danbury</td>
<td>CT</td>
<td>178,516</td>
<td>108,446</td>
<td>70,070</td>
<td>SHC, Primark</td>
<td>100%</td>
</tr>
<tr>
<td>4 Deptford</td>
<td>NJ</td>
<td>191,718</td>
<td>191,718</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>5 Freehold</td>
<td>NJ</td>
<td>139,435</td>
<td>72,201</td>
<td>67,234</td>
<td>SHC, Primark</td>
<td>100%</td>
</tr>
<tr>
<td>6 Cerritos</td>
<td>CA</td>
<td>277,559</td>
<td>277,559</td>
<td>0</td>
<td>SHC, Macerich</td>
<td>100%</td>
</tr>
<tr>
<td>7 Lubbock</td>
<td>TX</td>
<td>150,630</td>
<td>150,630</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>8 Modesto</td>
<td>CA</td>
<td>148,501</td>
<td>148,501</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
<tr>
<td>9 Portland</td>
<td>OR</td>
<td>220,000</td>
<td>220,000</td>
<td>0</td>
<td>SHC</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Macerich JV Properties**

<table>
<thead>
<tr>
<th>Location</th>
<th>State</th>
<th>Total GLA (thousands)</th>
<th>SHC GLA (thousands)</th>
<th>3rd Party(a) GLA (thousands)</th>
<th>Significant Tenants(b)</th>
<th>Occupancy Rate(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1,573</td>
<td>1,436</td>
<td>137</td>
<td>0</td>
<td>100%</td>
</tr>
</tbody>
</table>

**All Properties (including JV)**

<table>
<thead>
<tr>
<th>Location</th>
<th>State</th>
<th>Total GLA (thousands)</th>
<th>SHC GLA (thousands)</th>
<th>3rd Party(a) GLA (thousands)</th>
<th>Significant Tenants(b)</th>
<th>Occupancy Rate(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>42,096</td>
<td>39,056</td>
<td>2,791</td>
<td>248</td>
<td>99.4%</td>
</tr>
</tbody>
</table>

a Includes all lessees who are not SHC, but does not include the square footage of improvements constructed on land ground-leased by the GGP JV, the Simon JV or the Macerich JV, as applicable to other parties.

b Includes major third-party lessees (including all of those who lease over 10% of the property’s rental value based on total GLA).

c As of June 3, 2015.

**Operating Data**

The following table sets forth for each of the Acquired Properties categories the occupancy rate expressed as a percentage and the expected average effective annual rental per square foot according to the terms of the Master Lease and other leases in place as of June 3, 2015. Prior to this point, almost all of the Acquired Properties were owned and occupied by Sears Holdings.

**Occupancy Rate**

<table>
<thead>
<tr>
<th>Location</th>
<th>North(a)</th>
<th>East(b)</th>
<th>South(c)</th>
<th>West(d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>As of May 22, 2015</td>
<td>98.6%</td>
<td>99.6%</td>
<td>99.5%</td>
<td>99.9%</td>
</tr>
</tbody>
</table>

**Average Effective Annual Rental Rate per Square Foot**

<table>
<thead>
<tr>
<th>Location</th>
<th>North(a)</th>
<th>East(b)</th>
<th>South(c)</th>
<th>West(d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>As of May 22, 2015</td>
<td>$3.81</td>
<td>$5.10</td>
<td>$4.90</td>
<td>$5.20</td>
</tr>
</tbody>
</table>


b East – Connecticut, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, West Virginia

c South – Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, New Mexico, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas

d West – Arizona, California, Hawaii, Nevada, Oregon
Properties Under Development

Immediately following the Transaction, we do not expect to have significant active construction ongoing at any of the Acquired Properties (with the exception of the properties listed below), subject to any construction which may be undertaken by or on behalf of third-party tenants in accordance with Third-Party Leases. On November 10, 2014, Sears Holdings announced plans for a re-development of its property in Aventura, Florida (listed as #7 in the list of properties included under “Our Portfolio / Properties” in this section) into a mixed-use development, and entitlement for this project is currently underway.

In addition, construction work is ongoing at the following properties in order to meet the needs of the specified third-party tenants. We expect that these projects will be completed by mid-2016. The projected total cost for the ongoing construction work listed below is approximately $55.5 million (which includes some funds already spent).

<table>
<thead>
<tr>
<th>City</th>
<th>State</th>
<th>Tenant(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anchorage AK</td>
<td></td>
<td>Nordstrom Rack</td>
</tr>
<tr>
<td>Thousand Oaks CA</td>
<td></td>
<td>Nordstrom Rack, DSW, Sports Authority</td>
</tr>
<tr>
<td>Clearwater FL</td>
<td></td>
<td>Nordstrom Rack</td>
</tr>
<tr>
<td>North Miami FL</td>
<td></td>
<td>Aldi</td>
</tr>
<tr>
<td>Burlington MA</td>
<td></td>
<td>Primark</td>
</tr>
<tr>
<td>Salem NH</td>
<td></td>
<td>Dick’s Sporting Goods</td>
</tr>
<tr>
<td>King of Prussia PA</td>
<td></td>
<td>Primark</td>
</tr>
<tr>
<td>Virginia Beach VA</td>
<td></td>
<td>Nordstrom Rack, REI, Fresh Market, DSW</td>
</tr>
</tbody>
</table>

The following locations are encumbered by executed third-party leases and are pending permitting for construction. We expect that these projects will be completed by the end 2016 (subject to necessary permitting). The budgeted cost for the work listed below is approximately $41.2 million (which includes some funds already spent).

<table>
<thead>
<tr>
<th>City</th>
<th>State</th>
<th>Tenant(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carson CA</td>
<td></td>
<td>Chipotle, Applebee’s, Smashburger, Jersey Mike’s, Chick-Fil-A</td>
</tr>
<tr>
<td>San Diego CA</td>
<td></td>
<td>Williams-Sonoma</td>
</tr>
<tr>
<td>Danbury CT</td>
<td></td>
<td>Primark</td>
</tr>
<tr>
<td>Hialeah FL</td>
<td></td>
<td>Forever 21</td>
</tr>
<tr>
<td>Freehold NJ</td>
<td></td>
<td>Primark</td>
</tr>
<tr>
<td>Middletown NJ</td>
<td></td>
<td>Investors Bank</td>
</tr>
<tr>
<td>Staten Island NY</td>
<td></td>
<td>Primark</td>
</tr>
<tr>
<td>Tulsa OK</td>
<td></td>
<td>Hobby Lobby</td>
</tr>
<tr>
<td>Houston TX</td>
<td></td>
<td>Torchy’s Tacos</td>
</tr>
<tr>
<td>Irving TX</td>
<td></td>
<td>Winco, Pollo Tropical, Taco Cabana</td>
</tr>
</tbody>
</table>

(a) JV Property

In addition, pursuant to the Master Lease, we would, upon compliance with a prescribed notice period, have a recapture right with respect to approximately 50% of the space within the Stores (subject to certain exceptions), in addition to all of any automotive centers which are free-standing or attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain portions of parking areas and common areas, leased to Sears Holdings under the Master Lease. The exercise of these rights will require us to reconfigure the affected space in cooperation with Sears Holdings, and this reconfiguration would be conducted at our own expense. In addition, we would have the further right to recapture 100% of the space within the Sears Holdings main store located on each of 21 identified Acquired Properties (excluding from such space all free-standing and “appendage” automotive care centers and all other free standing buildings located on such Acquired Properties, which are subject to a separate recapture right as described below).
While there are no present plans to exercise any of these recapture rights for specific properties, we may choose to do so from time to time in the future. See “Certain Relationships and Related Transactions—The Master Lease” for more information on these rights and the Master Lease in general.

The Master Lease

Space at all of the Acquired Properties other than the eleven Third Party Properties will be leased to Sears Holdings under the Master Lease. The Master Lease generally would be a triple net lease with respect to the space occupied by Sears Holdings and Sears Holdings’ obligation to pay rent, costs and expenses of operation, repair, and maintenance of the space occupied, and all other amounts payable under the Master Lease (including a proportionate share of common area and operating expenses, based on occupancy) would be absolute and unconditional, subject to certain exceptions. See “Certain Relationships and Related Transactions–The Master Lease.” The Master Lease would have an initial term of ten years, and Sears Holdings would, depending on the property, have between three and four options for five-year renewals of the term.

The aggregate rent for all of the Acquired Properties leased to Sears Holdings will initially be set at fair market value (which will be determined by Sears Holdings with the assistance of appraisal work completed by Cushman, taking into account the terms of the Master Lease, including the recapture and termination rights described below and other relevant factors). In each of the initial and first two renewal terms, after the first lease year, the annual rent will be increased by 2% per annum (cumulative and compounded) for each lease year over the rent for immediately preceding lease year. For properties with additional renewal options, rent for the renewal period will be set at the commencement of the renewal period at a fair market rent determined based on a customary third-party appraisal process, taking into account all the terms of the Master Lease and other relevant factors, but in no event will the renewal rent be less than the rent payable in the immediately preceding lease year.

The Master Lease will provide Sears Holdings and us with certain rights designed to increase each party’s benefits from the Transaction over time as independent entities, including Sears Holdings’ right to terminate the lease with respect to underperforming stores and our right to recapture up to approximately 50% of the space within the Stores (subject to certain exceptions), in addition to all of any automotive care centers which are free-standing or attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain portions of parking areas and common areas, at the Acquired Properties, and our additional right to recapture 100% of the space at some of the Acquired Properties. For a more detailed description of the principal provisions of the Master Lease, please see “Certain Relationships and Related Transactions—The Master Lease.”

Maintenance of the Properties

Under the Master Lease, Sears Holdings will be required to make all expenditures reasonably necessary to maintain the space occupied by Sears Holdings at the Acquired Properties in good appearance, repair and condition, subject to ordinary wear and tear. However, if we recapture space from Sears Holdings pursuant to the Master Lease, Sears Holdings will no longer be required to make such expenditures. In addition, Sears Holdings will own and be required to maintain all of its personal property located at the space occupied by Sears Holdings at the leased properties and necessary for the operation thereof in good repair and condition as is necessary to operate all the premises in compliance with applicable legal, insurance and licensing requirements and all requirements of all Property Restrictions (subject to proportionate sharing of repair and maintenance charges and other costs and expenses which are common to both the space leased by Sears Holdings and other space occupied by unrelated third-party tenants, as well as common area maintenance expenses and real property taxes with respect to space not occupied by Sears Holdings).

Mortgages, Liens or Encumbrances

Immediately following the Transaction, we expect to have mortgages secured by all 235 of our operating properties. See “Description of Indebtedness” for a description of the mortgages.
Investment Diversification

Diversification by Tenant

The following table lists the top five tenants of our properties, including the JV Properties based on annual expected rent under the Master Lease and other leases in place as of June 3, 2015:

<table>
<thead>
<tr>
<th>Tenant</th>
<th>Number of Locations</th>
<th>Annual Rent (in thousands)(^{(a)})</th>
<th>Percentage of Annual Total Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sears Holdings</td>
<td>254</td>
<td>$162,287</td>
<td>81.31%</td>
</tr>
<tr>
<td>Primark</td>
<td>5</td>
<td>$5,544</td>
<td>2.78%</td>
</tr>
<tr>
<td>Nordstrom Rack</td>
<td>4</td>
<td>$2,946</td>
<td>1.48%</td>
</tr>
<tr>
<td>At Home—Garden Ridge</td>
<td>5</td>
<td>$2,732</td>
<td>1.37%</td>
</tr>
<tr>
<td>Dick’s Sporting Goods</td>
<td>2</td>
<td>$2,564</td>
<td>1.28%</td>
</tr>
</tbody>
</table>

\(^{(a)}\) We define annual rent as annualized base rent of the lessee’s current term.

In addition to the third party tenants above, lease agreements between Sears Holdings and Lands’ End for 75 locations will be retained by Sears Holdings as a sublease under the Master Lease. However, Sears Holdings will pay as additional rent under the Master Lease (in lieu of base rent attributable to the Lands’ End space leased to Sears Holdings under the Master Lease) an amount equal to rent payments (including expenses) required to be made by Lands’ End under existing Lands’ End leases, as described further in “Certain Relationships and Related Transactions—The Master Lease.” The income from these payments is expected to represent 3.6% of our annual rental income (inclusive of income from JV Properties).

Diversification by Geography

The following table sets forth information regarding the geographic diversification of our properties (excluding JV Properties) based on annual expected rent under the Master Lease and other leases in place as of June 3, 2015:

<table>
<thead>
<tr>
<th>Location</th>
<th>Number of Properties</th>
<th>Percentage of Total Annual Rent(^{(a)})</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>38</td>
<td>20.61%</td>
</tr>
<tr>
<td>Florida</td>
<td>26</td>
<td>12.98%</td>
</tr>
<tr>
<td>New York</td>
<td>10</td>
<td>5.89%</td>
</tr>
<tr>
<td>Texas</td>
<td>13</td>
<td>5.65%</td>
</tr>
<tr>
<td>Illinois</td>
<td>11</td>
<td>4.21%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>7</td>
<td>3.98%</td>
</tr>
<tr>
<td>Virginia</td>
<td>6</td>
<td>3.79%</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>6</td>
<td>3.66%</td>
</tr>
<tr>
<td>Michigan</td>
<td>9</td>
<td>3.39%</td>
</tr>
<tr>
<td>Arizona</td>
<td>10</td>
<td>2.74%</td>
</tr>
<tr>
<td>Ohio</td>
<td>10</td>
<td>2.33%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>4</td>
<td>2.28%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>3</td>
<td>2.15%</td>
</tr>
<tr>
<td>Maryland</td>
<td>4</td>
<td>1.59%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>3</td>
<td>1.56%</td>
</tr>
<tr>
<td>Alaska</td>
<td>1</td>
<td>1.29%</td>
</tr>
<tr>
<td>Indiana</td>
<td>3</td>
<td>1.16%</td>
</tr>
<tr>
<td>Washington</td>
<td>3</td>
<td>1.15%</td>
</tr>
<tr>
<td>Location</td>
<td>Number of Properties</td>
<td>Percentage of Total Annual Rent&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>-------------------</td>
<td>----------------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>Nevada</td>
<td>3</td>
<td>1.08%</td>
</tr>
<tr>
<td>Georgia</td>
<td>2</td>
<td>1.10%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>4</td>
<td>1.08%</td>
</tr>
<tr>
<td>Missouri</td>
<td>4</td>
<td>1.05%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>2</td>
<td>1.05%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>3</td>
<td>0.99%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>2</td>
<td>0.94%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>3</td>
<td>0.87%</td>
</tr>
<tr>
<td>Iowa</td>
<td>4</td>
<td>0.87%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>3</td>
<td>0.86%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>2</td>
<td>0.84%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1</td>
<td>0.77%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>3</td>
<td>0.74%</td>
</tr>
<tr>
<td>Colorado</td>
<td>2</td>
<td>0.69%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>3</td>
<td>0.66%</td>
</tr>
<tr>
<td>Utah</td>
<td>2</td>
<td>0.64%</td>
</tr>
<tr>
<td>Oregon</td>
<td>2</td>
<td>0.60%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>3</td>
<td>0.52%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>3</td>
<td>0.50%</td>
</tr>
<tr>
<td>Kansas</td>
<td>2</td>
<td>0.48%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>2</td>
<td>0.46%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>3</td>
<td>0.44%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1</td>
<td>0.42%</td>
</tr>
<tr>
<td>Delaware</td>
<td>1</td>
<td>0.39%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1</td>
<td>0.32%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>1</td>
<td>0.30%</td>
</tr>
<tr>
<td>Idaho</td>
<td>1</td>
<td>0.27%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1</td>
<td>0.18%</td>
</tr>
<tr>
<td>Alabama</td>
<td>1</td>
<td>0.16%</td>
</tr>
<tr>
<td>Montana</td>
<td>1</td>
<td>0.13%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1</td>
<td>0.10%</td>
</tr>
<tr>
<td>Maine</td>
<td>1</td>
<td>0.09%</td>
</tr>
</tbody>
</table>

<sup>a</sup> We define annual rent as annualized base rent of the lessee’s current term.
<table>
<thead>
<tr>
<th>Location</th>
<th>Number of Properties</th>
<th>Percentage of Total Annual Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>2</td>
<td>4.96%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>1</td>
<td>4.23%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>4</td>
<td>12.84%</td>
</tr>
<tr>
<td>California</td>
<td>5</td>
<td>16.01%</td>
</tr>
<tr>
<td>Texas</td>
<td>4</td>
<td>9.43%</td>
</tr>
<tr>
<td>Oregon</td>
<td>1</td>
<td>4.33%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>2</td>
<td>9.76%</td>
</tr>
<tr>
<td>New York</td>
<td>2</td>
<td>8.05%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>1</td>
<td>2.83%</td>
</tr>
<tr>
<td>Michigan</td>
<td>1</td>
<td>2.60%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>2</td>
<td>3.10%</td>
</tr>
<tr>
<td>Illinois</td>
<td>1</td>
<td>9.27%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>1</td>
<td>2.84%</td>
</tr>
<tr>
<td>Washington</td>
<td>1</td>
<td>2.77%</td>
</tr>
<tr>
<td>Maryland</td>
<td>1</td>
<td>2.44%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>1</td>
<td>2.45%</td>
</tr>
<tr>
<td>Florida</td>
<td>1</td>
<td>2.07%</td>
</tr>
</tbody>
</table>
Lease Expirations

The following table sets forth a summary schedule of lease expirations for leases in place as of June 3, 2015 along with expected expirations under the Master Lease. The information set forth in the table assumes that tenants exercise no renewal options or early termination rights:

### Acquired Properties

<table>
<thead>
<tr>
<th>Lease Expiring in</th>
<th>Number of Leases</th>
<th>Expiring Annual Rent (in thousands)(\text{a})</th>
<th>Square Footage of Expiring Leases(b)</th>
<th>Percent of Total Expiring Annual Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remainer of 2015(c)</td>
<td>14</td>
<td>$1,277</td>
<td>78,149</td>
<td>0.74%</td>
</tr>
<tr>
<td>2016</td>
<td>20</td>
<td>$2,101</td>
<td>128,771</td>
<td>1.22%</td>
</tr>
<tr>
<td>2017</td>
<td>16</td>
<td>$2,232</td>
<td>130,757</td>
<td>1.29%</td>
</tr>
<tr>
<td>2018</td>
<td>30</td>
<td>$2,316</td>
<td>35,808</td>
<td>1.34%</td>
</tr>
<tr>
<td>2019</td>
<td>32</td>
<td>$3,642</td>
<td>384,705</td>
<td>2.11%</td>
</tr>
<tr>
<td>2020</td>
<td>34</td>
<td>$2,959</td>
<td>153,570</td>
<td>1.71%</td>
</tr>
<tr>
<td>2021</td>
<td>4</td>
<td>$1,183</td>
<td>143,474</td>
<td>0.69%</td>
</tr>
<tr>
<td>2022</td>
<td>3</td>
<td>$710</td>
<td>3,694</td>
<td>0.41%</td>
</tr>
<tr>
<td>2023</td>
<td>7</td>
<td>$6,196</td>
<td>324,294</td>
<td>3.59%</td>
</tr>
<tr>
<td>2024</td>
<td>3</td>
<td>$654</td>
<td>48,047</td>
<td>0.38%</td>
</tr>
<tr>
<td>2025 and thereafter</td>
<td>224(e)</td>
<td>$148,868</td>
<td>36,181,949</td>
<td>86.19%</td>
</tr>
<tr>
<td>Vacant</td>
<td>n/a</td>
<td>$—</td>
<td>248,127</td>
<td>0.00%</td>
</tr>
<tr>
<td>Total Owned Properties(d)</td>
<td>234</td>
<td>$168,288</td>
<td>36,444,364</td>
<td>97.44%</td>
</tr>
</tbody>
</table>

\(a\) We define annual rent as annualized base rent of Lessee's current term. Following the expiration of Lands' End lease agreements, the table assumes that SHC pays rent on space previously occupied by Lands' End at a rental rate consistent with the rest of the property.

\(b\) This figure does not include the square footage of improvements constructed on land ground-leased by SHC, to other parties.

\(c\) Expirations in this category include month-to-month leases.

\(d\) This number excludes the ground-leased property.

\(e\) Reflects number of properties subject to the Master Lease, rather than number of individual leases.

### JV Properties

<table>
<thead>
<tr>
<th>Lease Expiring in</th>
<th>Number of Leases</th>
<th>Expiring Annual Rent (in thousands)(\text{a})</th>
<th>Square Footage of Expiring Leases(b)</th>
<th>Percent of Total Expiring Annual Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remainer of 2015(c)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>2016</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>2017</td>
<td>3</td>
<td>$540</td>
<td>41,234</td>
<td>2.01%</td>
</tr>
<tr>
<td>2018</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>2019</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>2020</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>2021</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>2022</td>
<td>1</td>
<td>$200</td>
<td>0</td>
<td>74%</td>
</tr>
<tr>
<td>2023</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>2024</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>2025 and thereafter</td>
<td>31(d)</td>
<td>$26,141</td>
<td>5,377,664</td>
<td>97.23%</td>
</tr>
<tr>
<td>Vacant</td>
<td>n/a</td>
<td>0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(a\) We define annual rent as annualized base rent of Lessee’s current term. This data is based on a 50% share of annual base rent from JV Properties. Following the expiration of Lands’ End lease agreements, the table assumes that SHC pays rent on space previously occupied by Lands’ End at a rental rate consistent with the rest of the property.

\(b\) This figure does not include the square footage of improvements constructed on land ground-leased by each JV to other parties.

\(c\) Expirations in this category include month-to-month leases.

\(d\) Reflects number of properties subject to the JV Master Leases, rather than the number of individual leases.
Insurance

Upon completion of this offering, the Master Lease will require that we and/or Sears Holdings will carry commercial liability, fire, extended coverage, flood, earthquake, business interruption and rental loss insurance (and other insurance, as applicable) covering all of the properties in our portfolio under a blanket policy or policies. Subject to the requirements of our mortgages and our ground leases, we will select policy specifications and insured limits which we believe to be appropriate given the relative risk of loss, the cost of the coverage and industry practice and, in the opinion of our company’s management, the properties in our portfolio are currently, and upon completion of this offering will be, adequately insured, and where appropriate will comply with the provisions of our ground leases. We will not carry insurance for generally uninsured losses such as loss from war. In addition, we will carry earthquake insurance on our properties in an amount and with deductibles which we believe are commercially reasonable. Certain of the properties in our portfolio will be located in areas known to be seismically active. See “Risk Factors—Risks Related to Our Business and Operations—We may experience uninsured or underinsured losses, which could result in a significant loss of the capital we have invested in a property, decrease anticipated future revenues or cause us to incur unanticipated expense.”

Competition

We will compete for real property investments with other REITs, real estate partnerships or other real estate companies, private individuals, investment companies, private equity and hedge fund investors, sovereign funds, pension funds, insurance companies, lenders and other investors. In addition, revenues from our properties will be dependent on the ability of our tenants and operators to compete with other retail operators.

Some of our competitors are significantly larger and have greater financial resources and lower costs of capital than we have. Increased competition will make it more challenging to identify and successfully capitalize on acquisition opportunities that meet our investment objectives. Our ability to compete is also impacted by national and local economic trends, availability of investment alternatives, availability and cost of capital, construction and renovation costs, existing laws and regulations, new legislation and population trends.

As a landlord, we compete in the real estate market with numerous developers and owners of properties, including the shopping centers in which our properties are located. Some of our competitors have greater economies of scale, relationships with national tenants at multiple properties which are owned or operated by such competitors, have access to more resources and have greater name recognition than we do. If our competitors offer space at rental rates below the current market rates or below the rentals we currently charge, or on terms and conditions which include locations at multiple properties, we may lose our (potential) tenants and we may be pressured to reduce our rental rates or to offer substantial rent abatements, tenant improvement allowances, early termination rights or below-market renewal options in order to win new tenants and retain tenants when our leases expire. Various Property Restrictions and limitations of our ground leases may also affect our ability to compete for tenants.

Employees

We initially intend to employ approximately 15 persons. We do not expect that any of these employees will be represented by a labor union.

Legal Proceedings

In the ordinary course of our business, from time to time we expect to be subject to claims and administrative proceedings, none of which are currently outstanding which we believe would have, individually or in the aggregate, a material adverse effect on our business, financial condition and results of operations, liquidity and cash flows.
Litigation Relating to the Transactions

On May 29, 2015, a putative stockholder class action and derivative lawsuit was filed in the Delaware Court of Chancery against Sears Holdings, the members of its Board of Directors, ESL Investments, Inc. and us in connection with the proposed rights offering for and sale of certain properties to Seritage, discussed above. The derivative suit is asserted on Sears Holdings’ behalf but also names Sears Holdings as a nominal defendant. The complaint asserts class and derivative claims of breach of fiduciary duty by the members of the Sears Holdings Board and by ESL Investments, Inc., as controlling stockholder of Sears Holdings, and of aiding and abetting breaches of fiduciary duty by Seritage. The claims asserted by the plaintiff include, among other things, the allegation that Sears Holdings is selling certain properties and lease rights to Seritage at a price that is unfairly low from the point of view of Sears Holdings and that the disclosures made in connection with the rights offering are either incomplete, false or misleading. Among other forms of relief, the plaintiff seeks damages in an unspecified amount and equitable relief to enjoin the proposed transactions. We and Sears Holdings believe the allegations to be meritless and intend to defend this litigation vigorously.

Offices

Our principal executive offices are located at 3333 Beverly Road, Hoffman Estates, Illinois 60179. We may have regional offices in the future depending upon our operational needs.

Environmental Matters

Our properties will be subject to environmental laws regulating, among other things, air emissions, wastewater discharges and the handling and disposal of wastes. Certain of the properties were built during the time that asbestos-containing building materials were routinely installed in residential and commercial structures. In addition, a substantial portion of the properties we will acquire from Sears Holdings currently include, or previously included, automotive care center facilities and retail fueling facilities, and are or were subject to laws and regulations governing the handling, storage and disposal of hazardous substances contained in some of the products or materials used or sold in the automotive care center facilities (such as motor oil, fluid in hydraulic lifts, antifreeze and solvents and lubricants), the recycling/disposal of batteries and tires, air emissions, wastewater discharges and waste management. In addition to these products, the equipment in use or previously used at such properties, such as service equipment, car lifts, oil/water separators, and storage tanks, has been subject to increasing environmental regulation relating to, among other things, the storage, handling, use, disposal, and transportation of hazardous materials. The Master Lease obligates the tenant thereunder to comply with applicable environmental laws and to indemnify us if their noncompliance results in losses or claims against us, and to remove all automotive care center equipment and facilities upon the expiration or sooner termination of the Master Lease, and we expect that any future leases will include similar provisions for other operators of their respective spaces with respect to environmental matters first arising during their occupancy. An operator’s failure to comply could result in fines and penalties or the requirement to undertake corrective actions which may result in significant costs to the operator and thus adversely affect their ability to meet their obligations to us.

Pursuant to U.S. federal, state and local environmental laws and regulations, a current or previous owner or operator of real property may be required to investigate, remove and/or remediate a release of hazardous substances or other regulated materials at, or emanating from, such property. Further, under certain circumstances, such owners or operators of real property may be held liable for property damage, personal injury and/or natural resource damage resulting from or arising in connection with such releases. Certain of these laws have been interpreted to be joint and several unless the harm is divisible and there is a reasonable basis for allocation of responsibility. We also may be liable under certain of these laws for damage that occurred prior to our ownership of a property or at a site where we sent wastes for disposal. The failure to properly remEDIATE a property may also adversely affect our ability to lease, sell or rent the property or to borrow funds using the property as collateral.

In connection with the ownership of our current or past properties and any properties that we may acquire in the future, we could be legally responsible for environmental liabilities or costs relating to a release of hazardous substances or other regulated materials at or emanating from such property. We are not aware of any environmental issues that are expected to have a material impact on the operations of our properties.
MANAGEMENT

Executive Officers Following the Transaction

The following table sets forth information regarding the individuals who will serve as executive officers of Seritage Growth following the Transaction, together with their biographical information. Prior to the effectiveness of this registration statement, we will disclose those additional individuals who will serve as our executive officers following the Transaction. Subject to any employment agreements, officers serve at the pleasure of the Seritage Growth Board of Trustees.

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benjamin Schall</td>
<td>40</td>
<td>Chief Executive Officer and President, Trustee</td>
</tr>
<tr>
<td>James Bry</td>
<td>47</td>
<td>Executive Vice President of Development and Construction</td>
</tr>
<tr>
<td>Matthew E. Fernand</td>
<td>38</td>
<td>Executive Vice President and General Counsel</td>
</tr>
</tbody>
</table>

Benjamin Schall is the Chief Executive Officer and President and will be a trustee of Seritage Growth. Prior to becoming CEO and President, he served as Chief Operating Officer of Rouse Properties, Inc. from 2012 to 2015 and Senior Vice President of Vornado Realty Trust from 2003 to 2012. Mr. Schall’s extensive experience as an executive in public real estate investment trusts and in the retail real estate industry qualifies him to serve as a trustee of Seritage Growth.

James Bry will serve as Executive Vice President, Development and Construction of Seritage Growth. Prior to joining Seritage Growth, Mr. Bry was the Senior Vice President, Development & Construction at Vornado Realty Trust from 2006 to 2015 where he oversaw development and redevelopment of approximately six million square feet of its shopping malls, community centers and urban retail properties.

Matthew E. Fernand will serve as Executive Vice President and General Counsel of Seritage Growth. Prior to joining Seritage Growth, Mr. Fernand was a partner in Sidley Austin LLP’s Real Estate Group, where he practiced from 2005 to 2015 and focused on the financing, development, acquisition and disposition, and leasing of commercial properties and the formation of real estate joint ventures and partnerships.

Board of Trustees Following the Transaction

The following table sets forth information regarding the individuals who will serve on the Seritage Growth Board of Trustees following the Transaction, together with their biographical information (other than Mr. Schall’s biographical information, which is set forth above).

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>David S. Fawer</td>
<td>46</td>
<td>Trustee</td>
</tr>
<tr>
<td>Edward S. Lampert</td>
<td>52</td>
<td>Trustee</td>
</tr>
<tr>
<td>Benjamin Schall</td>
<td>40</td>
<td>Chief Executive Officer and President, Trustee</td>
</tr>
<tr>
<td>Kenneth T. Lombard</td>
<td>60</td>
<td>Trustee</td>
</tr>
<tr>
<td>John T. McClain</td>
<td>54</td>
<td>Trustee</td>
</tr>
<tr>
<td>Thomas M. Steinberg</td>
<td>58</td>
<td>Trustee</td>
</tr>
</tbody>
</table>

David S. Fawer will be a trustee of Seritage Growth. Mr. Fawer serves as Vice Chairman of OneWest Bank N.A., where he has developed and managed all aspects of the commercial real estate businesses. Mr. Fawer has over 20 years of experience in the field of commercial real estate finance, including lending, real estate equity investing, and risk management, which qualifies him to serve as a trustee of Seritage Growth.

Edward S. Lampert will be a trustee of Seritage Growth. Mr. Lampert currently serves as the Chairman and Chief Executive Officer of Sears Holdings and the Chairman and Chief Executive Officer of ESL Investments, Inc., which he founded in April 1988. He also served as Chairman of the Board of Kmart Holding Corporation, a company that emerged from bankruptcy in 2003 and was transformed into a profitable business prior to its merger with Sears, Roebuck and Co. in 2005. Mr. Lampert’s extensive experience in business and finance, and investment experience in retail companies, qualifies him to serve as a trustee of Seritage Growth.
Kenneth T. Lombard will be a trustee of Seritage Growth. Mr. Lombard is Vice Chairman, Investments and Partner for Capri Investment Group, LLC, and a member of Capri’s investment committee. Prior to that, he served as President of Starbucks Entertainment and helped launch Johnson Development Corporation in 1992, where he spent 12 years as the President and Partner. Mr. Lombard has extensive experience in business development, management, investment banking, economic development, corporate expansion and real estate investment over a career that spans three decades, which qualifies him to serve as a trustee of Seritage Growth.

John T. McClain will be a trustee of Seritage Growth. Mr. McClain served as the Chief Financial Officer of the Jones Group Inc., a leading global designer, marketer and wholesaler of over 25 brands, from July 2007 until its sale to Sycamore Partners in April 2014. From April 2014 to August 2014, he continued to provide Senior Advisor services related to financial operations to The Jones Group Inc. Prior to that, Mr. McClain held a number of roles at Avis Budget Group, Inc. formerly Cendant Corporation. He joined Cendant Corporation in September 1999, serving as the Senior Vice President, Finance & Corporate Controller until 2006. From July 2006 to 2007, Mr. McClain served as the chief accounting officer of Avis and chief operating officer of Cendant Finance Holdings. Mr. McClain previously held leadership roles at Sirius Satellite Radio Inc. and ITT Corporation. Mr. McClain also serves on the boards of directors of Lands’ End, Inc., where he is chair of the audit committee, and Nine West Holdings, Inc. Mr. McClain has over 25 years of executive financial experience, serving at high-level capacities for the retail and consumer sectors, which qualifies him to serve as a trustee of Seritage Growth.

Thomas M. Steinberg will be a trustee of Seritage Growth. Mr. Steinberg is the Founder and Chief Executive Officer of TS Partners, an international, diversified investment firm. Prior to this, Mr. Steinberg was President of Tisch Family Interests from 1996 through 2013, where he directed real estate transactions and was responsible for management of portfolios that included public equity, private equity, debt and alternative investments. Mr. Steinberg also serves on the board of directors of Gunther International, a leading producer of intelligent document finishing systems, and as a director of a number of privately held companies including KGB, Inc. (Telecommunications, Information), the largest independent directory assistance company in the world. Mr. Steinberg has over 30 years of experience in the real estate and investment space, which qualifies him to serve as a trustee of Seritage Growth.

Upon completion of this offering, the Seritage Growth Board of Trustees will consist of 6 members, including a majority of trustees who are independent within the meaning of the NYSE listing standards. Pursuant to the Seritage Growth declaration of trust, the Board of Trustees will be divided into three classes and our trustees will be elected by Seritage Growth shareholders to serve until the third annual meeting of shareholders following his or her election (other than with respect to the initial terms of the Class I and Class II trustees, which will be until the first and second annual meeting of shareholders following his or her election, respectively) and until their successors are duly elected and qualify. Upon the expiration of the term of a class of trustees, trustees in that class will be elected to serve until the third annual meeting of shareholders following their election and until their successors are duly elected and qualify. Following the completion of this offering:

- David S. Fawer and Thomas M. Steinberg will serve as Class I trustees, whose initial terms will expire at the 2016 annual meeting of shareholders and when their successors are duly elected and qualify;
- Benjamin Schall and Kenneth T. Lombard will serve as Class II trustees, whose initial terms will expire at the 2017 annual meeting of shareholders and when their successors are duly elected and qualify; and
- John T. McClain and Edward S. Lampert will serve as Class III trustees, whose initial terms will expire at the 2018 annual meeting of shareholders and when their successors are duly elected and qualify.

Any additional trusteeships resulting from an increase in the number of trustees will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of our trustees. This classification of the Seritage Growth Board of Trustees may have the effect of delaying or preventing changes in control. See “Certain Provisions of Maryland Law and of Seritage Growth’s Declaration of Trust and Bylaws—The Seritage Growth Board of Trustees.” The first annual meeting of Seritage Growth shareholders after this
offering will be held in 2016. Trustees may be removed only for cause by the affirmative vote not less than 75% of the votes of the Seritage Growth common shares and Seritage Growth non-economic shares, voting together as a single class, entitled to be cast generally in the election of trustees.

Committees of the Board of Trustees

We expect that, following the Transaction, the standing committees of the Seritage Growth Board of Trustees will consist of an audit committee, a compensation committee and a nominating and corporate governance committee.

At its first meeting, which will take place within 90 days following the completion of this offering, the Seritage Growth Board of Trustees will appoint the remaining members of our audit committee, compensation committee and nominating and corporate governance committee. Under our corporate governance guidelines, the composition of each committee must comply with the listing requirements and other rules and regulations of the NYSE, as amended or modified from time to time, and we currently anticipate that each of these committees will be comprised of three independent trustees when appointed by the Board of Trustees. Our corporate governance guidelines define “independent trustee” by reference to the rules, regulations and listing qualifications of the NYSE, which generally deem a trustee to be independent if the trustee has no relationship to us that may interfere with the exercise of the trustee’s independence from management and our company. The Board of Trustees may from time to time establish other committees to facilitate the management of our company.

Audit Committee

The duties and responsibilities of the audit committee will include the following:

- to oversee the quality and integrity of our financial statements and our accounting and financial reporting processes;
- to prepare the audit committee report required by the SEC in our annual proxy statements;
- to review and discuss with management and the independent registered public accounting firm our annual and quarterly financial statements;
- to review and discuss with management and the independent registered public accounting firm our earnings press releases;
- to appoint, compensate and oversee our independent registered public accounting firm, and pre-approve all auditing services and non-audit services to be provided to us by our independent registered public accounting firm;
- to review the qualifications, performance and independence of our independent registered public accounting firm; and
- to establish procedures for the receipt, retention and treatment of complaints received by us regarding accounting, internal accounting controls or auditing matters and the confidential, anonymous submission by our employees of concerns regarding questionable accounting or auditing matters.

John T. McClain (chair), David S. Fawer and Kenneth T. Lombard have been designated as members of the audit committee.

Compensation Committee

The duties and responsibilities of the compensation committee will include the following:

- to determine, or recommend for determination by the Board of Trustees, the compensation of our chief executive officer and other executive officers;
- to establish, review and consider employee compensation policies and procedures;
• to review and approve, or recommend to the Board of Trustees for approval, any employment contracts or similar arrangement between Seritage Growth and any executive officer of Seritage Growth;
• to review and discuss with management Seritage Growth’s compensation policies and practices and management’s assessment of whether any risks arising from such policies and practices are reasonably likely to have a material adverse effect on Seritage Growth;
• to review, monitor, and make recommendations concerning incentive compensation plans, including the use of options to purchase common shares and other equity-based plans; and
• to retain or obtain the advice of any compensation consultants, legal counsel and other compensation advisors, including responsibility for the appointment, compensation and oversight of the work of those advisors.

Kenneth T. Lombard (chair), John T. McClain and Edward S. Lampert have been designated as members of the compensation committee.

Nominating and Corporate Governance Committee

The duties and responsibilities of the nominating and corporate governance committee will include the following:
• to recommend to the Board of Trustees proposed nominees for election to the Board of Trustees by the shareholders at annual meetings, including an annual review as to the renominations of incumbents and proposed nominees for election by the Board of Trustees to fill vacancies that occur between shareholder meetings;
• to make recommendations to the Board of Trustees regarding corporate governance matters and practices; and
• to recommend members for each committee of the Board of Trustees.

David S. Fawer (chair) and Thomas M. Steinberg have been designated as members of the nominating and corporate governance committee.

Compensation of Trustees

Seritage Growth plans to adopt the Seritage Growth Trustee Compensation Program, which will provide non-employee trustees with an annual cash retainer in the amount of $100,000 for serving as a trustee of Seritage Growth. Trustees who are employees of Seritage Growth or its subsidiaries will not be entitled to receive separate or additional compensation from Seritage Growth for their services as trustee.

Compensation Committee Interlocks and Insider Participation

No member of our compensation committee will serve as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of the Seritage Growth Board of Trustees or compensation committee.

Code of Ethics

The Seritage Growth Board of Trustees will adopt a code of ethics applicable to our trustees, officers and employees, including our chief executive officer, chief financial officer and other senior officers effective as of the time of our listing on the NYSE, in accordance with applicable rules and regulations of the SEC and the NYSE. Our code of ethics will be available on our website as of the time of our listing on the NYSE.

Corporate Governance Guidelines

The Seritage Growth Board of Trustees will adopt a set of corporate governance guidelines that sets forth our policies and procedures relating to corporate governance effective as of the completion of the Transaction. Our corporate governance guidelines will be available on our website as of the time of our listing on the NYSE.
Policy and Procedures Governing Related Party Transactions

Following the completion of the Transaction, we expect that the Seritage Growth Board of Trustees will adopt policies and procedures for the review, approval or ratification of transactions with related parties. We do not currently have such a policy in place.

Limitation of Trustees’ and Officers’ Liability and Indemnification

Maryland law permits a Maryland REIT to include in its declaration of trust a provision eliminating the liability of its trustees and officers to the REIT and its shareholders for money damages, except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty that is established by a final judgment as being material to the cause of action. Seritage Growth’s declaration of trust contains a provision that eliminates the liability of Seritage Growth’s trustees and officers to the maximum extent permitted by Maryland law.

The MRL permits a Maryland REIT to indemnify and advance expenses to its trustees, officers, employees and agents to the same extent as permitted by the MGCL for directors, officers, employees and agents of a Maryland corporation. The MGCL requires a Maryland corporation (unless its charter provides otherwise) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The MGCL permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

Under the MGCL, a Maryland corporation may not indemnify a director or officer in a suit by the corporation or in its right in which the director or officer was adjudged liable to the corporation or in a suit in which the director or officer was adjudged liable on the basis that a personal benefit was improperly received. A court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct or was adjudged liable on the basis that personal benefit was improperly received. However, indemnification for an adverse judgment in a suit by the corporation or in its right, or for a judgment of liability on the basis that a personal benefit was improperly received, is limited to expenses.

In addition, the MGCL permits a Maryland corporation to advance reasonable expenses to a director or officer upon our receipt of:

- a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and
- a written undertaking by or on behalf of the director or officer to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.
Seritage Growth’s declaration of trust authorizes it to obligate it, and Seritage Growth’s bylaws obligate it, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

- any present or former trustee or officer who is made or threatened to be made a party to a proceeding by reason of his or her service in that capacity; or

- any individual who, while a trustee or officer of Seritage Growth and at its request, serves or has served as a trustee, director, officer, partner, member or manager of another real estate investment trust, corporation, partnership, joint venture, trust, limited liability company, employee benefit plan or any other enterprise and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity.

Seritage Growth’s declaration of trust and bylaws also permit us to indemnify and advance expenses to any person who served a predecessor of Seritage Growth in any of the capacities described above and to any employee or agent of our company or a predecessor of our company.

In addition, the partnership agreement of Operating Partnership provides that Seritage Growth, our trustees, officers and employees, officers and employees of Operating Partnership and any other persons whom Seritage Growth may designate are indemnified to the fullest extent permitted by law. See “Description of Partnership Agreement of Operating Partnership—Indemnification and Limitation of Liability.”

We have also entered into, or will enter into prior to the completion of this offering, indemnification agreements with each of our trustees and executive officers. The indemnification agreements provide, among other things, for indemnification to the fullest extent permitted by law and Seritage Growth’s declaration of trust and bylaws. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to trustees, officers or persons controlling Seritage Growth pursuant to the foregoing provisions, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.
EXECUTIVE COMPENSATION

We are an “emerging growth company,” as defined in the JOBS Act. As such, we are eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies. These include, but are not limited to reduced narrative and tabular disclosure obligations regarding executive compensation including the requirement to include a Compensation Discussion and Analysis.

This section presents information concerning compensation arrangements for the persons who we expect will be our named executive officers following the Transaction, to the extent that they have been identified. Effective May 4, 2015, Mr. Benjamin Schall became our Chief Executive Officer. No later than June 15, 2015, Matthew Fernand will become our General Counsel and Executive Vice President and no later than June 1, 2015, James Bry will become our Executive Vice President of Development and Construction. No historical compensation information is presented with respect to these individuals because they were not previously employees of Sears Holdings. With respect to the compensation of Messrs. Schall, Fernand and Bry following the Transaction, we have presented information below under “Seritage Growth Compensation Programs Following the Transactions.” Included in that information is a description of each of their employment agreements with Seritage Growth.

Additional information about our expected named executive officers following completion of the Transaction is set forth in “Management.”

Seritage Growth Compensation Programs Following the Transactions.

Schall Employment Agreement

On April 17, 2015, we entered into an employment agreement with Mr. Schall pursuant to which he will commence employment as our Chief Executive Officer and President with a start date of May 4, 2015. Mr. Schall’s employment agreement provides for a three-year term, subject to automatic renewal for additional one-year terms, unless either party provides no less than 120 days’ notice prior to the expiration of the applicable term or the agreement is terminated as contemplated therein.

Annual Compensation. The employment agreement provides for an annual base salary of $850,000 and an annual cash bonus of between 50% and 175% of base salary if threshold performance goals are achieved, with a target of 125% of base salary. With respect to the 2015 performance period (the “2015 bonus”), Mr. Schall’s bonus will equal at least 125% of base salary and will not be subject to proration. The employment agreement also provides for an annual equity award grant with an aggregate grant date fair market value equal to 150% of base salary, of which 50% will be a number of restricted stock units that vest ratably over three years and 50% will be a number of performance-based restricted stock units (“PRSUs”) that is subject to adjustment based on performance goals and vest at the end of the performance period established for such grant by the Seritage Growth Board of Trustees and Compensation Committee (the “annual equity awards”). If threshold performance goals are achieved, the number of annual PRSUs earned will range from 50% to 265% of the number of annual PRSUs granted, with 150% for target performance and 265% for maximum performance.

Sign-On Equity Awards. Subject to the applicable Seritage Growth Board of Trustee and Compensation Committee approvals, Mr. Schall will receive a sign-on equity grant consisting of restricted Seritage Growth common shares (the “sign-on restricted shares”) and PRSUs that will relate to Seritage Growth common shares or limited partnership interests in Operating Partnership (the “sign-on PRSUs”). The sign-on restricted shares will have a grant date fair market value of $2,000,000 and vest 25% on the date of grant and 25% on each of the first three anniversaries of Mr. Schall’s start date. The number of sign-on PRSUs will equal $3,000,000, divided by the price per share of Seritage Growth common shares pursuant to the rights offering and will be earned over a three-year period subject to the achievement of performance goals determined by the Seritage Growth Board of Trustee and Compensation Committee, with the number of PRSUs earned ranging from 50% to 150% with target performance set at 100% and maximum performance set at 150%. 50% of the sign-on PRSUs will vest as of and
settle within 60 days following the end of the performance period and the remaining 50% will vest as of and settle on the fourth anniversary of Mr. Schall’s start date, subject to Mr. Schall’s continued employment through such anniversary. Mr. Schall’s annual PRSU grant for 2015 will be made at the same time as the sign on equity awards (the “2015 PRSUs”).

Termination due to Death or Disability. Upon a termination of employment due to death or disability, Mr. Schall is entitled to: (i) a prorated annual bonus for the year of termination, calculated based on actual performance through the date of termination and (ii) full vesting of the sign-on restricted shares, sign-on PRSUs and annual equity awards; provided that performance for any outstanding PRSUs will be based on actual performance through the date of termination. Notwithstanding the foregoing, the amount of Mr. Schall’s 2015 PRSUs and 2015 bonus shall be not less than target. In the event of termination due to disability, Mr. Schall is entitled to subsidized COBRA coverage whereby his premiums costs are the active employee rate for up to 18 months.

Termination without Cause; Resignation with Good Reason. Upon a termination by us without “cause” or a resignation with “good reason,” prior to a change in control, Mr. Schall is entitled to (i) a prorated annual bonus for the year of termination, based on actual performance through the date of termination, (ii) salary continuation in an amount equal to two times the sum of base salary and target bonus in effect as of the date of termination, payable over 24 months, (iii) 18 months of welfare benefits continuation including subsidized COBRA coverage, (iv) full vesting of the sign-on restricted shares and PRSUs, (v) prorated vesting of any outstanding annual equity awards, and (vi) 12 months of outplacement services. Performance for PRSU awards that vest will be based on actual performance through the date of termination. Notwithstanding the foregoing, the amount of 2015 PRSUs and 2015 bonus shall not be prorated and shall equal no less than target.

If Mr. Schall resigns for good reason because the closing of the rights offering fails to occur prior to December 31, 2015 or the sign-on restricted share and PRSUs grants are not made, in lieu of accelerated vesting of his outstanding sign-on restricted shares and PRSUs and 2015 PRSUs, he will receive a lump sum cash payment equal to the value of such equity awards had they been issued.

Change in Control. Upon a change in control, with respect to any sign-on PRSUs and annual equity awards that are PRSUs as to which the performance period has not yet ended, the Seritage Growth Board of Trustees and Compensation Committee will calculate performance based on actual performance through the date of the change in control. If the successor entity does not assume, convert or replace unvested and outstanding sign-on restricted shares or PRSUs or annual equity awards with equity traded on the NYSE or NASDAQ, such awards will vest in full. Otherwise, such awards will continue to vest in accordance with their terms.

If Mr. Schall’s employment is terminated by us without “cause” or he resigns with “good reason,” during the 12 months following a change in control, Mr. Schall is entitled to the same benefits as if he had experienced a qualifying termination prior to a change in control, except that (i) the prorated annual bonus is measured based on performance through the date of the change in control, (ii) the cash severance multiplier for salary continuation is three and such amount is paid in a lump sum and (iii) all outstanding annual equity awards vest in full.

In the event that payments or benefits owed to Mr. Schall constitute “parachute payments” (within the meaning of Section 280G of the Code) and would be subject to the excise tax imposed by Section 4999 of the Code, such payments or benefits will be reduced to an amount that does not result in the imposition of such excise tax, but only if such reduction results in Mr. Schall receiving a higher net-after-tax amount than he would have absent such reduction.

Restrictive Covenants. Pursuant to the employment agreement, Mr. Schall is subject to a perpetual confidentiality covenant and during his employment with Seritage and 12 months immediately thereafter, a non-solicitation covenant. For the 12 month period immediately following termination of employment, Mr. Schall is also subject to a noncompetition covenant which prohibits him from rendering services to certain Seritage competitors specified in the employment agreement.
**Forfeiture Provisions.** If Mr. Schall violates the noncompete by becoming employed by a specified competitor or, in certain circumstances, Mr. Schall commits cause under the employment agreement, the COBRA subsidy will terminate and Mr. Schall is required to reimburse Seritage for salary continuation payments (or, following a change in control, for the lump sum cash severance payment).

**Definitions.** For the purposes of Mr. Schall’s employment agreement, “cause” means (i) a material breach of Mr. Schall’s duties and responsibilities that is demonstrably willful and deliberate, committed in bad faith or without reasonable belief that such breach is in the best interest of Seritage and is not remedied within a reasonable period of time following receipt of notice of such breach or (ii) conviction of a felony (excluding vehicular-related felonies).

For the purposes of Mr. Schall’s employment agreement, “good reason” means (i) a reduction of 10% or more of annual base salary, annual cash bonus and annual equity grant or if the reduction does not also apply to other Seritage senior executives, a material reduction in the foregoing, (ii) a mandatory relocation to an office more than 50 miles from Mr. Schall’s primary office location, (iii) any action or inaction that constitutes a material breach of the employment agreement, (iv) a reduction in duties, title, status or authority, (v) the closing date of the rights offering fails to occur prior to December 31, 2015, (vi) the sign-on restricted share and PRSU grants are not made, in each case, subject to notice and cure, or (vii) unless otherwise agreed, nonrenewal by Seritage Growth of the employment agreement.

**Fernand Employment Agreement**

On May 15, 2015, we entered into an employment agreement with Matthew Fernand pursuant to which he will commence employment as our General Counsel and Executive Vice President no later than June 15, 2015. Mr. Fernand’s employment agreement will remain in effect indefinitely, unless otherwise terminated.

**Annual Compensation.** Mr. Fernand’s employment agreement provides for an annual base salary of $400,000, and an annual cash bonus with a target of 75% of base salary and maximum of 100% of base salary. With respect to the 2015 performance period, Mr. Fernand’s performance bonus will equal at least $300,000. The employment agreement also provides for an annual target equity award grant with an aggregate grant date fair market value equal to 50% of base salary, and an annual maximum equity award grant value equal to 100% of base salary. 50% of the annual equity grant will consist of time-vesting RSUs and 50% will consist of performance-vesting RSUs, in each case, subject to the terms and conditions established by the Compensation Committee. With respect to fiscal year 2015, the annual grant of RSUs will have a value equal to least $200,000.

**Sign-On Bonus.** Mr. Fernand is entitled to a one-time sign-on bonus of $150,000, payable within 30 days of his start date. In the event of a termination by Seritage Growth for cause or a resignation by Mr. Fernand without good reason during the 12 months following his start date, the sign-on bonus must be repaid immediately.

**Sign-On Equity Awards.** Within 60 days following the closing date of the rights offering, Mr. Fernand will receive a sign-on equity grant consisting of RSUs that relate to Seritage Growth common stock or limited partnership interests in Operating Partnership. The sign-on RSUs will have a grant date fair market value of $350,000, of which 50% will consist of time-vesting RSUs and 50% will consist of performance-vesting RSUs, in each case, subject to the terms and conditions established by the Compensation Committee. In the event of a termination by Seritage Growth for cause or a resignation by Mr. Fernand without good reason during the 12 months following his start date, the sign-on bonus and sign-on equity awards will be forfeited.

**Termination due to Death or Disability.** Upon a termination of employment due to death or disability, Mr. Fernand is entitled to a prorated annual bonus for the year of termination, based on actual performance for the full year of termination (provided that the 2015 annual bonus is guaranteed at $300,000 if termination occurs during 2015). In the case of disability, Mr. Fernand is also entitled to 12 months of subsidized COBRA coverage, and, in the case of death or disability, to vesting of sign-on and annual RSU awards, provided that the vesting in respect of any performance-vesting equity awards shall be based on performance through the date of termination.
Termination without Cause; Resignation with Good Reason. Upon a termination by us without “cause” or a resignation by Mr. Fernand with “good reason,” Mr. Fernand shall be entitled to (i) base salary continuation for 12 months, (ii) a prorated annual bonus for the year of termination, based on actual performance for the full year of termination (provided that the 2015 annual bonus is guaranteed at $300,000 if termination occurs during 2015), (iii) 12 months of subsidized COBRA coverage, (iv) full vesting of the sign-on RSUs and (v) prorated vesting of any outstanding annual equity award grants. Performance for any performance-vesting equity awards that vest as a result of such termination will be based on actual performance through the date of termination.

Restrictive Covenants. During his employment with Seritage Growth and for 12 months thereafter, Mr. Fernand is subject to non-competition and non-solicitation covenants. Mr. Fernand is also subject to a perpetual confidentiality covenant.

Definitions. For purposes of Mr. Fernand’s employment agreement, the definition of “cause” is the same as in Mr. Schall’s employment agreement. Please see the description in “—Schall Employment Agreement—Definitions” above.

For purposes of Mr. Fernand’s employment agreement, “good reason” means a reduction of 10% or more of annual base salary, annual cash bonus and annual equity grant or if the reduction does not also apply to other Seritage senior executives, a material reduction in the foregoing, (ii) a mandatory relocation to an office more than 50 miles from the executive’s primary office location, (iii) any action or inaction that constitutes a material breach of the employment agreement, (iv) a material reduction in duties or adverse title, or (v) the sign-on bonus and sign-on equity grant are not made within the timeframes provided for in the executive’s agreement, in each case, subject to notice and cure.

Bry Employment Agreement

On May 13, 2015, we entered into an employment agreement with James Bry pursuant to which he will commence employment as our Executive Vice President of Development and Construction no later than June 1, 2015. Mr. Bry’s employment agreement will remain in effect indefinitely, unless otherwise terminated.

Annual Compensation. Mr. Bry’s employment agreement provides for an annual base salary of $350,000, and an annual cash bonus with a target of 50% of base salary and a maximum of 75% of base salary. With respect to the 2015 performance period, Mr. Bry’s annual cash bonus will equal at least $175,000. The employment agreement also provides for an annual target equity award grant with an aggregate grant date fair market value equal to 25% of Mr. Bry’s annual base salary and a maximum grant value equal to 50% of Mr. Bry’s annual base salary. 50% of the annual equity grant will consist of time-vesting RSUs and 50% will consist of performance-vesting RSUs, in each case, subject to the terms and conditions established by the Compensation Committee. With respect to fiscal year 2015, Mr. Bry’s annual RSU grant will have a value equal to at least $87,500.

Sign-On Bonus. Mr. Bry is entitled to a one-time sign-on bonus of $150,000, payable within 30 days of his start date. In the event of a termination by Seritage Growth for cause or a resignation by Mr. Bry without good reason during the 12 months following his start date, the sign-on bonus must be repaid immediately.

Sign-On Equity Awards. Within 60 days following the closing date of the rights offering, Mr. Bry will receive a sign-on equity grant consisting of restricted stock units that relate to Seritage Growth common stock. The sign-on RSUs will have a grant date fair market value of $100,000, of which 50% will consist of time-vesting RSUs and 50% will consist of performance-vesting RSUs, in each case, subject to the terms and conditions established by the Compensation Committee. In the event of a termination by Seritage Growth for cause or a resignation by Mr. Bry without good reason during the 12 months following his start date, the sign-on bonus and sign-on equity awards will be forfeited.

Termination without Cause; Resignation with Good Reason. Upon a termination by us without “cause” or resignation by Mr. Bry with “good reason,” Mr. Bry shall be entitled to (i) base salary continuation for
12 months, (ii) a prorated annual bonus for the year of termination, based on actual performance for the full year of termination (provided that the 2015 annual bonus is guaranteed at $175,000 if termination occurs during 2015), and (iii) vesting of the sign-on RSUs, provided that performance-vesting RSUs will vest based on performance through the date of termination.

Restrictive Covenants. During his employment with Seritage Growth and for 12 months thereafter, Mr. Bry is subject to non-competition and non-solicitation covenants. Mr. Bry is also subject to a perpetual confidentiality covenant.

Definitions. For purposes of Mr. Bry’s employment agreement, the definition of “cause” is the same as in Mr. Schall’s employment agreement and the definition of “good reason” is the same as in Mr. Fernand’s employment agreement. Please see descriptions above under “—Schall Employment Agreement—Definitions” and “—Fernand Employment Agreement—Definitions,” respectively.

Operating Partnership as Employer.

On June 5, 2015 or shortly thereafter, each of Messrs. Schall, Fernand and Bry will enter into a letter agreement with Seritage Growth and Operating Partnership pursuant to which Operating Partnership will agree, effective as of the closing date of the rights offering, to be the primary employer and jointly and severally liable for Seritage Growth’s liabilities and obligations under their respective employment agreements (excluding the agreement to deliver Seritage Growth equity). In addition, effective as of the closing date of the rights offering, in general, all references to Seritage Growth in the employment agreements will also be deemed to refer to Operating Partnership.

Seritage Growth 2015 Share Plan

Awards. Seritage Growth has adopted the Seritage Growth 2015 Share Plan (the “2015 Share Plan”) which allows for the grant of restricted shares, options, share appreciation rights, share units and other share-based awards to Eligible Individuals (as defined below). The 2015 Share Plan also allows for the grant of LTIP Units, which are granted with respect to the applicable partnership interest under the agreement of limited partnership for the Operating Partnership. The following is a summary of the 2015 Share Plan which is qualified in its entirety by reference to the full text of the Plan.

Shares Reserved Under the 2015 Share Plan. There are 6,500,000 shares of Seritage Growth Class A common shares, par value $0.01 per share (for purposes of this section, “shares”), reserved for issuance under the 2015 Share Plan. The shares that may be awarded under the Seritage Growth Plan are shares currently authorized but unissued, and shares which have been reacquired by us. If any restricted share award, share unit award, options, share appreciation right or other share-based award is forfeited, the underlying shares will become available for issuance again under the 2015 Share Plan. If a grant of share units, other share-based awards, options or share appreciation rights is settled in cash, the related shares will again become available for issuance. If any awards are granted in substitution for outstanding awards issued by another entity and such grants are made in connection with our acquisition of that entity, the shares underlying those substitute awards will not count against the maximum number of shares reserved for issuance under the 2015 Share Plan.

Effective Date and Termination of Plan. The 2015 Share Plan will become effective immediately prior to the closing date of the rights offering, and will continue in effect, unless earlier terminated by our Compensation Committee of the Board of Trustees (the “Compensation Committee”), until the earlier of (1) the tenth anniversary of the date the 2015 Share Plan was adopted by the Seritage Growth Board of Trustees and (2) the date on which all of the shares reserved for issuance under the 2015 Share Plan have been issued or are no longer available for use and all cash payments due under any share unit granted under the 2015 Share Plan have been paid or forfeited.

Eligible Individuals. Any employee, non-employee director or other individual providing advisory or consulting services to Seritage Growth or any of our subsidiaries (as defined in the 2015 Share Plan) as designated by the Compensation Committee (“Eligible Individual”) will be eligible to participate in the 2015 Share Plan.
Administration. The 2015 Share Plan will be administered by the Compensation Committee, to which such responsibility was delegated by the Seritage Growth Board of Trustees. The Compensation Committee has the authority to interpret the terms and intent of the 2015 Share Plan and to make all other determinations deemed equitable under the circumstances for the administration of the 2015 Share Plan. The Compensation Committee may allocate its responsibilities and powers to one or more members of the Seritage Growth Board of Trustees and may delegate all or any part of its responsibilities and powers to any one or more officers of Seritage Growth subject to applicable law. The Compensation Committee may revoke any such allocation or delegation at any time.

Terms and Conditions of Restricted Shares, Share Unit Awards and other Share-Based Awards. An award of “Restricted Shares” is a grant of shares that is subject to risk of forfeiture or other restrictions determined by the Committee. A “Share Unit” award is a right to receive a payment in cash or shares based on the fair market value of the shares underlying such award. An “Other Share-Based Award” is a grant of shares or other type of equity-based or equity-related award, including the grant of fully vested, unrestricted shares or the grant of shares in settlement of an award under an incentive program of Seritage Growth or any subsidiary, as determined by the Compensation Committee.

Restricted Shares, Shares Units and Other Share-Based Awards may be subject to one or more employment, performance or other forfeiture conditions which the Compensation Committee shall determine as appropriate. In the event of the participant’s termination of employment, the Compensation Committee may permit accelerated vesting or payment or other applicable terms. No Restricted Shares, Share Units or Other Share-Based Awards in any combination may be made in any calendar year to an Eligible Individual (except a non-employee director) representing more than 2,000,000 shares. No Restricted Shares, Share Units or Other Share-Based Awards in any combination may be made in any calendar year to a nonemployee director representing more than $1,000,000 in aggregate value of the shares at grant date. Separate and in addition to the above limits, no more than shares may be awarded in any calendar year to an Eligible Individual in settlement of an award under any incentive program of the Seritage Growth or any of its subsidiaries.

Dividends. A Restricted Share or Other Share-Based Award may include the right to receive a cash dividend with respect to the shares subject to the award. These payments may be subject to such conditions, restrictions and contingencies as the Compensation Committee establishes. If a cash dividend is paid on the shares subject to the Share Unit award, the cash dividend will be treated as reinvested in shares and will increase the number of shares subject to the Share Unit award, unless the Compensation Committee determines otherwise at the time of grant. Unless otherwise provided in the share award agreement, if a share dividend is declared on Restricted Shares or a share subject to an Other Share-Based Award, such share dividend will be treated as part of the Restricted Shares or Other Share-Based Award and will be subject to the same forfeiture conditions as the Restricted Shares or Other Share-Based Award. If a share dividend is paid on the shares subject to a Share Unit award, the dividend shall increase the number of shares subject to the Share Unit award, unless the Compensation Committee determines otherwise at the time of grant. Unless otherwise set forth in the share award agreement, Eligible Individuals will have the right to vote Restricted Shares or Shares of Other Share-Based Awards but will not have the right to vote with respect to Shares covered by a Share Unit award.

Terms and Conditions of LTIP Units. LTIP Units are intended to be profits interests in the Operating Partnership of Seritage Growth (including the Operating Partnership), and will have the rights and features set forth in the agreement of limited partnership for the operating partnership.

Terms and Conditions of Options and Share Appreciation Rights. An “Option” is a right to purchase a specified number of shares, upon the satisfaction of certain exercise conditions, at an exercise price not less than the fair market value of a share on the date the Option is granted. A “Share Appreciation Right” is a right to the appreciation in the fair market value of a share in excess of the share value for such share designated at the time of grant, which may be no less than the fair market value of a share on the grant date. The Compensation Committee may make an Option or a Share Appreciation Right subject to certain conditions, including performance-based vesting conditions. The Compensation Committee may include in the Option or Share 123
Appreciation Right agreement the right to exercise an Option or a Share Appreciation Right following a termination of employment or service. No Option or Share Appreciation Right may be exercisable more than ten years from the grant date. Upon exercise of a Share Appreciation Right, an Eligible Individual will receive a payment in cash or in shares or a combination of the two, equal to the product of (1) the number of shares underlying the Share Appreciation Right and (2) the excess of the fair market value of a share on the exercise date and the share value assigned on the date of grant. Holders of Options or Share Appreciation Rights will not be entitled to receive dividend equivalents with respect to such award. An Eligible Individual (except a non-employee director) may not be granted Options or Share Appreciation Rights representing more than 2,000,000 shares in any calendar year. A non-employee director may not be granted Options or Share Appreciation Rights in any calendar year representing more than $1,000,000 in aggregate value at grant date(s), based on the accounting value as recognized by Seritage Growth. Without the approval of shareholders, the 2015 Share Plan prohibits any other action that would be treated as a repricing of an Option or a SAR.

Performance Based Awards. If the Compensation Committee intends for an award granted under the 2015 Share Plan to qualify as performance-based compensation within the meaning of Code Section 162(m), not later than 90 days after the beginning of the performance period (but in no event after 25% of the performance period has elapsed), and while the outcome as to the performance goals is substantially uncertain, the Compensation Committee will establish objective written performance goals for such award. A participant otherwise entitled to receive an award intended to be performance-based compensation within the meaning of Code Section 162(m) will not receive a settlement of the award until the Compensation Committee determines that the applicable performance goal(s) have been attained. In exercising discretion in making this determination, the Compensation Committee may not increase the amount of the payment of an award intended to be performance-based compensation. Performance measures may be based on one or more or any combination (in any relative proportion) of the following: share price; market share; cash flow; revenue; revenue growth; earnings per share; operating earnings per share; operating earnings; earnings before interest, taxes, depreciation and amortization; return on equity; return on assets; total shareholder return; return on capital; return on investment; net income; net income per share; economic value added; market value added; store sales growth; customer and member growth, maintenance and satisfaction performance goals and employee opinion survey results measured by an independent firm; and strategic business objectives, consisting of one or more objectives based on meeting specific expense, cost or profit targets or margins, business expansion goals and goals relating to acquisitions or dispositions or leasing activities, diversification of portfolio income or re-development of assets. Each goal, with respect to a performance period, may be expressed on an absolute and/or relative basis, may be based on Seritage Growth as a whole or on any one or more business units or subsidiaries of Seritage Growth, and may be based on or otherwise employ comparisons based on internal targets, the past performance of Seritage Growth or of any one or more business units or subsidiaries of Seritage Growth, and/or the past or current performance of other companies, or an index. In establishing any performance goals, the Compensation Committee may exclude the effects of the following items, to the extent identified in our audited financial statements, including footnotes, or the Management’s Discussion and Analysis of Financial Condition and Results of Operations accompanying those financial statements: asset write-downs; litigation or claim judgments or settlements; extraordinary, unusual and/or nonrecurring items of gain or loss; gains or losses on acquisitions, dispositions or store closings; domestic pension expense; noncapital, purchase accounting items; changes in tax or accounting principles, regulations or laws; mergers or acquisitions; integration costs disclosed as merger-related; accruals for reorganization or restructuring programs; investment income or loss; foreign exchange gains and losses; and tax valuation allowances and/or tax claim judgment or settlements. To the extent the exclusion of any item affects awards intended to be performance-based compensation, the exclusion will be specified in a manner that satisfies the requirements of Code Section 162(m).

Transferability of Awards. Restricted Share, Share Unit and Other Share-Based Awards under the 2015 Share Plan are not transferable except by will or by the laws of descent and distribution, except as otherwise provided in the related share agreement. Except as otherwise provided by the Compensation Committee, no Option or Share Appreciation Right shall be transferable by an Eligible Individual other than by will or by the laws of descent and distribution.
**Corporate Transactions.** The Compensation Committee will make equitable adjustments or substitutions to reflect any corporate transactions, which may include (a) adjusting the number, kind, or class (or any combination thereof) of shares reserved for issuance under the 2015 Share Plan or underlying outstanding awards granted under the 2015 Share Plan and the grant limitations (described above), as well as applicable Option and Share Appreciation Right exercise prices, (b) replacing outstanding awards with other awards of comparable intrinsic value, as determined in the sole discretion of the Compensation Committee, (c) cancelling outstanding awards in return for a cash payment (the amount of which is as determined in the sole discretion of the Compensation Committee) other than Options and Share Appreciation Rights where the Option price or Share Appreciation Right share value exceeds the otherwise applicable fair market value, and (d) any other adjustments that the Compensation Committee determines to be equitable; provided that, with respect to the foregoing clauses (b) and (c), such value shall be based on the fair market value of the shares underlying the award at the time of the transaction. A corporate transaction includes, without limitation, any dividend (other than a cash dividend that is not an extraordinary dividend) or other distribution, any Change in Control, recapitalization, share split, reverse share split, combination of shares, reorganization, merger, consolidation, acquisition, split-up, spin-off, combination, repurchase or exchange of Shares or other securities of Seritage Growth, issuance of warrants or other rights to purchase Shares or other securities of Seritage Growth or other similar corporate transaction or event.

Upon the occurrence of a change in control, except to the extent specified in an Option, SAR or share award agreement or an employment agreement between the Eligible Individual and Seritage Growth or one of its subsidiaries (any of the foregoing agreements an “Individual Agreement”), any non-vested award will fully vest in the event of either (a) the failure by the purchasing business entity to assume or continue Seritage Growth’s rights and obligations under each award outstanding immediately prior to the change in control, or to substitute for each outstanding award a substantially equivalent award; or (b) the Eligible Individual’s termination of employment within twelve (12) months following a change in control on account of a termination by Seritage Growth (or any acquiror) for any reason other than cause (as such term is defined in and determined under the applicable individual agreement) or on account of an Eligible Individual’s resignation for good reason (if an individual agreement contains a definition of good reason). For these purposes, “change in control” means a change in control as defined in the Treasury Regulation section 1.409A-3(i)(5) which generally occurs on the date that any one person, or more than one person acting as a group, acquires ownership of shares of Seritage Growth that, together with shares held by such person or group, constitutes more than 50 percent of the total fair market value or total voting power of the shares of Seritage Growth.

**Clawback Policy.** The 2015 Share Plan provides that all shares and cash are subject to share retention, forfeiture and clawback policies established by Seritage Growth, or as required by applicable law.

**Amendment and Termination of the 2015 Share Plan.** The Seritage Growth Board of Trustees or Compensation Committee may, at any time, amend, modify, suspend or terminate the 2015 Share Plan; provided that without the approval of shareholders of Seritage Growth, no amendment or modification to the 2015 Share Plan may materially modify the 2015 Share Plan in a way that would require shareholder approval under any regulatory requirement that the Compensation Committee determines to be applicable. Furthermore, no amendment, modification, suspension or termination may, without the written consent of an affected participant or beneficiary, materially adversely affect the rights of a participant or beneficiary under any vested and outstanding award, except to the extent necessary to comply with applicable law. No amendment may modify the prohibition on repricing of Options or SARs.

**Federal Income Tax Consequences.** Under present federal income tax laws, awards granted under the 2015 Share Plan will have the following tax consequences:

**Restricted Shares, Share Units, and Other Share-Based Awards.** Restricted Shares that are subject to a substantial risk of forfeiture generally result in income recognition by the participant in an amount equal to the excess of the fair market value of the Restricted Shares over the purchase price, if any, of the Restricted Shares at the time the restrictions lapse. A recipient of Restricted Shares may make an election under Section 83(b) of the Internal Revenue Code to be taxed on the excess of the fair market value of the Restricted Shares granted,
measured at the time of grant and determined without regard to any applicable risk of forfeiture or transfer restrictions, over the purchase price, if any, of such Restricted Shares. A participant who has been granted a share award that is not subject to a substantial risk of forfeiture for federal income tax purposes will realize ordinary income in an amount equal to the fair market value of the shares at the time of grant. A recipient of Share Units or an Other Share-Based Award will generally recognize ordinary income at the time that the award is settled in an amount equal to the cash and/or fair market value of the shares received at settlement. In each of the foregoing cases, Seritage Growth will have a corresponding deduction at the same time the participant recognizes such income, provided that the award satisfies the requirements of Code Section 162(m) (described below), if applicable.

**Options.** Generally, a participant receiving an Option grant will not recognize income at the time of grant, so long as the exercise price of the Option is at least equal to the fair market value of the underlying share on the date of grant of the Option. Upon the exercise of an Option, the participant will generally recognize ordinary income equal to the excess of the then fair market value of the shares acquired over the exercise price paid. Seritage Growth will have a corresponding deduction at the same time and to the extent that the participant recognizes such income, subject to the requirements of Code Section 162(m), if applicable.

**Share Appreciation Rights.** Generally, a participant receiving a Share Appreciation Right will not recognize income at the time of grant. If the participant receives the appreciation inherent in the Share Appreciation Right in cash, the cash will be taxed as ordinary income at the time it is received. If a participant receives the appreciation inherent in a Share Appreciation Right in shares, the spread between the then current market value and the share value designated at the time of grant will be taxed as ordinary income at the time the shares are received. In either case, Seritage Growth will be entitled to a corresponding deduction when the participant recognizes such income, provided that the award satisfies the requirements of Code Section 162(m), if applicable.

**Code Section 162(m).** If Code Section 162(m) is applicable to Seritage Growth, a U.S. income tax deduction will generally be unavailable to us for annual compensation in excess of $1 million paid to our named executive officers as determined under Code Section 162(m). However, amounts that constitute “performance-based compensation under Code Section 162(m)” or that are otherwise exempt during a limited transition period ending with the first meeting of our shareholders at which our trustees are to be elected that occurs after the close of the first calendar year following the calendar year in which our offering is completed, are not counted toward the $1 million limit. In addition, because substantially all of the services rendered by our named executive officers are expected to be performed on behalf of the Operating Partnership, we anticipate that Code Section 162(m) would not generally apply to Seritage Growth. The Internal Revenue Service has issued a series of private letter rulings which indicate that compensation paid by an operating partnership to named executive officers of a REIT that serves as its general partner is not subject to limitation under Code Section 162(m), to the extent such compensation is attributable to services rendered to the operating partnership. Although we have not obtained a ruling on this issue, we believe the facts and circumstances regarding Seritage Growth and the services of our named executive officers to the Operating Partnership, as well as the ownership structure of the Operating Partnership, are analogous to the facts and circumstances that resulted in the determinations made by the Internal Revenue Service in these rulings, such that the same determinations should apply to our REIT and the Operating Partnership as well. As such, the Operating Partnership, may, in its discretion, elect to pay compensation to some or all of our named executive officers that would not, if such compensation were to be subject to Code Section 162(m), be in a form that would cause it to constitute “performance-based compensation” under Code Section 162(m). If we later determine that compensation paid by the Operating Partnership to our named executive officers is subject to Code Section 162(m), then this could result in an increase to our income subject to federal income tax and could require us to increase distributions to our shareholders in order for us to maintain our qualification as a REIT. Our Compensation Committee may, in its discretion, elect to pay compensation to some or all of our named executive officers that would not, if such compensation were to be subject to Code Section 162(m), be in a form that would cause it to constitute “performance-based compensation” under Code Section 162(m) or would cause it to become paid outside of the limited transition period described above.
The foregoing discussion is a brief summary of the U.S. federal income tax consequences under the provisions of the Code as currently in effect to Seritage Growth and the participants in the 2015 Share Plan and is not intended to be exhaustive. The discussion does not address state, local or foreign income tax rules or other U.S. tax provisions, such as estate or gift taxes. Different tax rules may apply to specific participants and transactions under the 2015 Share Plan, particularly in jurisdictions outside the United States. In addition, U.S. federal income tax laws and regulations frequently have been revised and may be changed again at any time.
CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Indemnification of Officers and Trustees

Effective upon completion of this offering, we expect to enter into an indemnification agreement with each of our trustees and executive officers as described in “Management—Indemnification and Limitation of Trustees’ and Officers’ Liability.”

The Master Lease

Most of the Acquired Properties and the space therein will be leased under the Master Lease to Sears Holdings (which will guaranty the obligations of any subsidiary pursuant to the Master Lease). Certain of the Acquired Properties or portions thereof that are currently leased to unrelated third parties will not be leased under the Master Lease but will be leased directly from us to such third parties (in some cases as a result of an assignment of such existing third-party leases from Sears Holdings to us). Lease agreements between Sears Holdings and Lands’ End will be retained by Sears Holdings for its own account under the Master Lease and will not be assigned to Operating Partnership along with the Third-Party Leases. However, Sears Holdings will pay as additional rent under the Master Lease (in lieu of base rent attributable to the Lands’ End space leased to Sears Holdings under the Master Lease) an amount equal to rent payments (including expenses, if any) required to be made by Lands’ End under existing Lands’ End lease agreements with respect to the Lands’ End space within the Acquired Properties and Operating Partnership will perform all repair, maintenance and other similar obligations of the landlord under the Lands’ End lease agreements and hold harmless Sears Holdings therefrom. Should the lease arrangements between Sears Holdings and Lands’ End terminate with respect to the Acquired Properties, Sears Holdings’ rent obligations under the Master Lease for the space previously occupied by Lands’ End will reflect the base rent (on a square footage basis) for the affected Acquired Properties. A similar arrangement applies with respect to one store in which Sears Authorized Hometown Stores occupies space.

The Master Lease generally will be a triple net lease with respect to all space which is leased thereunder to Sears Holdings, subject to proportionate sharing by Sears Holdings of repair and maintenance charges and other costs and expenses which are common to both the space leased by Sears Holdings and other space occupied by unrelated third-party tenants in the same or other buildings pursuant to Third-Party Leases, space which is recaptured pursuant to our recapture rights described below and all other space which is constructed on the properties, common area maintenance expenses, general repairs and other operating expenses, and real property taxes with respect to space not occupied by Sears Holdings. Sears Holdings’ obligation to pay rent and all other amounts payable under the Master Lease will be absolute and unconditional, subject only to certain exceptions as noted below. Leases for properties or space in properties that is leased or which may in the future be leased to unrelated third parties vary and may or may not be on net lease terms. The following description of the Master Lease does not purport to be complete and is qualified by reference to the Master Lease, which is included as an exhibit to the registration statement of which this prospectus forms a part and is incorporated by reference herein.

Term and Renewals

The Master Lease has an initial term of 10 years. Sears Holdings will, depending on the property, have between three and four options for five-year renewals of the term. The Master Lease is a unitary, non-divisible lease as to all properties, with Sears Holdings’ obligations as to each property cross-defaulted with all obligations of Sears Holdings with respect to all other properties.

Rental Amounts and Escalators

The aggregate rent for all of the Acquired Properties will initially be set at fair market value (which will be determined by Sears Holdings with the assistance of appraisal work completed by Cushman, taking into account the terms of the Master Lease, including the recapture and termination rights described below and other relevant factors). In each of the initial and first two renewal terms, after the first lease year, the annual rent will be
increased by 2% per annum (cumulative and compounded) for each lease year over the rent for the immediately
preceding lease year. For properties with additional renewal options, rent for the renewal period will be set at the
commencement of the renewal period at a fair market rent determined based on a customary third-party appraisal
process, taking into account all the terms of the Master Lease and other relevant factors, but in no event will the
rental renewal be less than the rent payable in the immediately preceding lease year.

We may at our election, for administrative, technical or other reasons (including facilitating sale or transfer
of properties) from time to time separate and remove from the Master Lease any of the leased premises and cause
Sears Holdings to enter into new leases for such premises. In such cases, the rent will be adjusted under the
Master Lease to reflect the removal of such leased premises, and the new leases will be for the rent attributable to
the removed premises, and for the remaining term and otherwise on the same terms and conditions as the Master
Lease. If the lessor under any new leases is Sears Holdings or an affiliate, such new leases will be cross-defaulted
with the Master Lease, but not otherwise.

Recapture Rights

The Master Lease will contain certain provisions that are designed to optimize the utilization of the Acquired
Properties and provide a certain degree of flexibility to the parties over the lifetime of the Master Lease. First, we
will, upon compliance with a prescribed notice period, have a recapture right with respect to approximately 50%
of the space within the Stores (subject to certain exceptions), in addition to all of any automotive care centers
which are free-standing or attached as “appendages” to the Stores, and all outparcels or outlots, as well as certain
portions of parking areas and common areas, at the Acquired Properties leased to Sears Holdings under the Master
Lease. For a complete listing of the Acquired Properties subject to these recapture rights, see “Business and
Properties—Our Portfolio / Properties.” The space subject to our recapture right will be described generally in a
separate agreement we will enter into with Sears Holdings. Upon exercising our recapture right with respect to a
property, Sears Holdings will be required after a certain time period to vacate such recaptured space, and we must
pay all costs and expenses for the separation of the recaptured space from the remaining Sears Holdings space and
will then have the ability to reconfigure and rent such space for our own account to one or more third-party tenants
we select and on terms we determine. No additional consideration will be paid to Sears Holdings in the event we
exercise our rights pursuant to the recapture right. The remaining space retained by Sears Holdings will be
configured and located such that Sears Holdings will not be materially disadvantaged in relation to the recaptured
space, and we will bear all costs of reconfiguration and division of the spaces and relocation of Sears Holdings in
the remaining space. Sears Holdings may agree to provide assistance to us related to the coordination, supervision,
and implementation of the separation work, for a fee and with general terms and conditions that are customary and
generally consistent with market terms for providing such project management services on a standalone basis.
Additionally, Sears Holdings may agree to provide us with general repairs and maintenance services related to
premises that Sears Holdings may no longer occupy pursuant to Sears Holdings’ surrender of such premises
pursuant to the terms of the Master Lease, and/or with respect to common areas that benefit both Sears Holdings’
remaining space and the recaptured space. Again, Sears Holdings will be compensated with a fee and general
terms and conditions that are customary with market terms for such services provided on a standalone basis. We
will not pay any additional consideration for the recaptured space, or the right of recapture, since our recapture
right will be a factor in the determination of the fair market rent for the original space. After recapture of any
space, Sears Holdings will thereafter cease to pay us rent and other charges for the recaptured space, and the
reduced rent and other charges payable by Sears Holdings under the Master Lease will be determined on a pro-rata
basis based on the proportion of the retained space to the space recaptured. While we will be permitted to exercise
our recapture rights all at once or in stages as to any particular property, we will not be permitted to recapture all
or substantially all of the space subject to the recapture right at more than 50 Acquired Properties during any lease
year.

With respect to 21 stores to be identified in the Master Lease, we will have the further additional right to
recapture 100% of the space within the Sears Holdings main store located on each of 21 identified Acquired
Properties (excluding from such space all free-standing and “appendage” automotive care centers and all other

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free-standing buildings located on such Acquired Properties, which are subject to a separate recapture right as described above), effectively terminating the Master Lease with respect to such properties. See the table marked “Type I Properties” under the heading “Business and Properties—Our Portfolio / Properties” for a complete listing of the 21 stores subject to these additional recapture rights, which were selected by Sears Holdings management based on their suitability for future development activity. We will be required to provide notice and make a lease termination payment to Sears Holdings equal to the greater of a specified amount to be agreed by Sears Holdings and us in connection with our entry into the Master Lease or an amount equal to 10 times the adjusted EBITDA attributable to such space within the Sears Holdings main store which is not attributable to the space subject to the separate 50% recapture right discussed above for the 12-month period ending at the end of the fiscal quarter ending immediately prior to recapturing such space. In the event of such a recapture of an entire property and any subsequent re-leasing of such property, if the property has store space that is suitable for a Sears Holdings store that we will be seeking to lease to a third party, Sears Holdings will have the right of first offer to lease such store space on terms set forth in the Master Lease. The 50 property limit on the exercise of recapture rights during any lease year does not apply to this additional recapture right.

Sears Holdings’ Termination Rights

The Master Lease will also provide for certain rights of Sears Holdings to terminate the Master Lease with respect to Acquired Properties that cease to be profitable for operation by Sears Holdings. Specifically, Sears Holdings will have the right to terminate the Master Lease with respect to an Acquired Property where the fixed rent (together with all other costs and expenses payable under the Master Lease) attributable to such Acquired Property exceeds Sears Holdings’ EBITDAR attributable thereto for any 12-month period beginning after the commencement of the lease and ending at the end of the most recent fiscal quarter. In order to terminate the Master Lease with respect to a certain property, Sears Holdings must make a payment to us of an amount equal to one year of rent (together with taxes and other expenses) with respect to such property. Such termination right, however, will be limited so that it will not have the effect of reducing the fixed rent under the Master Lease by more than 20% per annum. Once a property qualifies for this termination right, if the 20% annual limitation would prevent the exercise of the termination right, such property continues to be eligible for termination in the next period.

Other Provisions

Sears Holdings will be obligated to continuously operate a Sears Holdings store (or such store as may be re-branded and/or used for other retail uses pursuant to the Master Lease) of a minimum size specified in the Master Lease on each of the Acquired Properties where such stores operate currently (except for reasonable periods required for alterations or restoration of damage), subject to the recapture and termination rights provided above. The Master Lease will also contain customary provisions contained in master triple net leases governing the leasing of retail properties, including, among others, with respect to maintenance, restoration (and certain termination rights) in the event of) casualty and condemnation, cross-default with respect to each property in the separate Master Leases, indemnification and assumption of risk of loss, alterations and insurance. The Master Lease will contain customary provisions for the protection of mortgagees, including a provision requiring the parties to enter into a subordination, nondisturbance and attornment agreement.

Subscription, Distribution and Purchase and Sale Agreement

Through the Subscription, Distribution and Purchase and Sale Agreement, Sears Holdings will subscribe for rights to acquire Seritage Growth common shares and distribute such subscription rights to its stockholders. Pursuant to the Subscription, Distribution and Purchase and Sale Agreement, Sears Holdings will subscribe for subscription rights, each of which entitles the holder to purchase, subject to certain terms and conditions, Seritage Growth common shares. The agreement also provides for Sears Holdings to distribute these subscription rights pro rata to holders of shares of Sears Holdings common stock in connection with the rights offering. Sears’
Holdings’ obligation to close the rights offering is conditioned on the satisfaction or waiver of certain conditions. Sears Holdings will have the right to withdraw and cancel the rights offering if the board of directors of Sears Holdings determines that the offering is not in the best interest of Sears Holdings or its stockholders, among other reasons. See “The Rights Offering—Conditions, Withdrawal and Cancellation.” Costs and expenses incurred in connection with the Subscription, Distribution and Purchase and Sale Agreement prior to the closing of the Transaction will generally be paid by Sears Holdings, and costs and expenses incurred after the closing will generally be paid by the party that incurs those costs and expenses. The Subscription, Distribution and Purchase and Sale Agreement will also provide for the sale of the Acquired Properties (directly and through the sale of the Acquired Entities), as well as the JV Interests, to Operating Partnership for an aggregate purchase price in approximately $2,677.3 million (a value, which includes $2,248.3 in respect of the Acquired Properties, which amount was determined by Sears Holdings with the assistance of a third-party appraisal process conducted by Cushman, taking into account all the terms of the Master Lease and other relevant factors), less the amount of debt assumed by Operating Partnership through the purchase of the Acquired Entities, and will also specify conditions to the closing of the sale of the Acquired Properties and the JV Interests. The Subscription, Distribution and Purchase and Sale Agreement will allocate responsibility for liabilities relating to the Acquired Properties between Seritage Growth and Sears Holdings subject to the provisions of the Master Lease. It will also contain indemnification obligations between Seritage Growth and Sears Holdings. This description of the Subscription, Distribution and Purchase and Sale Agreement does not purport to be complete and is qualified by reference to the Subscription, Distribution and Purchase and Sale Agreement, which is included as an exhibit to the registration statement of which this prospectus forms a part and is incorporated by reference herein.

**Transition Services Agreement**

Pursuant to the Transition Services Agreement, SHMC, a wholly owned subsidiary of Sears Holdings, will provide certain limited services to us during the period from the closing of the Transaction through the 18-month anniversary of the closing, unless we terminate a service as described below. The services to be provided to us by SHMC will include specified facilities management, accounting, treasury, tax, information technology, risk management, human resources and related support services. Under the terms of the Transition Services Agreement, the scope and level of the facilities management services will be substantially consistent with the scope and level of the services provided in connection with the operation of the Acquired Properties by Sears Holdings prior to the closing of the Transaction. We will pay SHMC a specified fee for each of these services during the term of the Transition Services Agreement. The scope and level of other services provided will be in the nature of limited support services. SHMC will not provide us with any business managerial services or direct any of our business, financial or strategic policies or decisions.

We will have the option to terminate each of the services provided under the Transition Services Agreement at any time with at least 60 days’ prior written notice, and SHMC will also have the option to terminate the services under certain circumstances. The liability of SHMC under the Transition Services Agreement for the services it provides will generally be limited. This description of the Transition Services Agreement does not purport to be complete and is qualified by reference to the Transition Services Agreement, which is included as an exhibit to the registration statement of which this prospectus forms a part and is incorporated by reference herein.

**ESL Exchange Agreement**

Seritage Growth, Operating Partnership and ESL have entered into an exchange agreement (the “ESL Exchange Agreement”) pursuant to which ESL has the right to exchange ESL’s subscription rights that if exercised would result in ESL receiving in excess of 3.1% of the Seritage Growth common shares, together with an amount of cash equal to the aggregate amount ESL would have paid had it exercised such subscription rights in the rights offering plus the value of the Seritage Growth non-economic shares, for Seritage Growth non-economic shares having 5.4% of the voting power of Seritage Growth but not entitled to dividends or distributions and Operating Partnership units. Immediately following the closing of the Transaction, ESL is
expected to hold approximately 44.9% of the Operating Partnership units and Seritage Growth is expected to hold approximately 55.1% of the Operating Partnership units, and ESL will hold approximately 4.5% of the Seritage Growth common shares and Seritage Growth non-economic shares having 9.8% of the voting power of Seritage Growth. ESL, which is expected to hold all of the Seritage Growth non-economic shares immediately following this offering, has agreed with us that upon any sale or other transfer to a non-affiliate of any of its Operating Partnership units, it will surrender to Seritage Growth a pro rata portion of the Seritage Growth non-economic shares that it holds prior to the sale or other transfer, whereupon the surrendered Seritage Growth non-economic shares will be cancelled and the aggregate voting power of the Seritage Growth non-economic voting held by ESL proportionately reduced. This description of the ESL Exchange Agreement does not purport to be complete and is qualified by reference to the ESL Exchange Agreement, which is included as an exhibit to the registration statement of which this prospectus forms a part and is incorporated by reference herein.

**Fairholme Exchange Agreement**

Seritage Growth and FCM have entered into an exchange agreement (the “Fairholme Exchange Agreement” and, together with the ESL Exchange Agreement, the “Exchange Agreements”) pursuant to which FCM has the right, but not the obligation, to cause certain Fairholme Clients to exchange a portion of their respective subscription rights that would result in Fairholme Clients receiving, in the aggregate, in excess of approximately 11.7% of the Seritage Growth common shares outstanding immediately following this offering, for Seritage Growth non-voting shares at a purchase price of $29.58 per share (the subscription price in the rights offering) in the Non-Voting Shares Offering. The Seritage Growth non-voting shares are entitled to per-share dividends and distributions equal to those made with respect to Seritage Growth common shares but have no voting power. In addition, each Seritage Growth non-voting share will automatically convert into one Seritage Growth common share upon a transfer to any person other than an affiliate of the holder of such share. In the Fairholme Exchange Agreement, Seritage Growth understands that each Fairholme Client that is expected to hold Seritage Growth common shares immediately following this offering will vote all Seritage Growth common shares in excess of 3% of the outstanding Seritage Growth common shares in proportion to the votes of all other holders of Seritage Growth common shares. As a result, immediately following this offering, Fairholme Clients are expected to hold approximately 16.1% of the voting power of Seritage Growth, with approximately 7.1% of the voting power of Seritage Growth held by three Fairholme Clients subject to such proportional voting requirement. In addition, FCM has agreed to cause certain Fairholme Clients not to sell any Seritage Growth non-voting shares they may acquire in this offering (or any Seritage Growth common shares into which such shares have been converted) to any person or group that, after giving effect to the transfer, would hold more than 5% of the outstanding Seritage Growth common shares (other than in certain open market transactions or as approved by Seritage Growth) and, generally, not to seek to acquire control of Seritage Growth. In connection with the Fairholme Exchange Agreement, Seritage Growth is expected to grant FCM and/or certain Fairholme Clients the Excess Share Waivers. This description of the Fairholme Exchange Agreement does not purport to be complete and is qualified by reference to the Fairholme Exchange Agreement, which is included as an exhibit to the registration statement of which this prospectus forms a part and is incorporated by reference herein.

**Partnership Agreement of Operating Partnership**

Pursuant to the OP Private Placement, ESL will receive Operating Partnership units. The partnership agreement of Operating Partnership provides holders of Operating Partnership units (other than Seritage Growth and entities controlled by it) approval rights over certain change of control transactions involving Seritage Growth or Operating Partnership, sales of all or substantially all of the assets of Operating Partnership and waivers to the excess share provision in the declaration of trust of Seritage Growth until after the first six continuous months in which ESL holds less than 40% of the economic interests of Seritage Growth and Operating Partnership on a consolidated basis. In addition, the partnership agreement provides such holders (other than Seritage Growth and entities controlled by it) approval rights over certain modifications to the partnership agreement, withdrawal or succession of Seritage Growth as general partner of Operating Partnership, tax elections and certain other matters at all times. Following the closing of the OP Private Placement, ESL is
expected to hold approximately 44.9% of the Operating Partnership units and Seritage Growth is expected to hold approximately 55.1% of the Operating Partnership units. In addition, ESL will have the right to acquire additional Operating Partnership units to allow it to maintain its relative ownership interest in Operating Partnership if Operating Partnership issues additional units to Seritage Growth. As long as ESL owns a majority of the outstanding Operating Partnership units not held by Seritage Growth and entities controlled by it (and, for certain actions, until after the first six continuous months in which ESL holds less than 40% of the economic interests of Seritage Growth and Operating Partnership on a consolidated basis), its approval will be required in order for the general partner to undertake such actions. In addition, the partnership agreement of Operating Partnership provides holders of Operating Partnership units (other than Seritage Growth and entities controlled by it) the right to cause Operating Partnership to redeem each of their Operating Partnership units in exchange for cash or, at the election of Seritage Growth, common shares of Seritage Growth on a one-for-one basis. The partnership agreement of Operating Partnership will also permit ESL to transfer its Operating Partnership units to one or more underwriters to be exchanged for Seritage Growth common shares in connection with certain dispositions in order to achieve the same effect as would occur if ESL were to exchange its Operating Partnership units for Seritage Growth common shares, which may be limited under the ownership restrictions set forth in the Seritage Growth declaration of trust, and then dispose of those shares in an underwritten offering. See “Description of Partnership Agreement of Operating Partnership.”

Registration Rights Agreement with ESL

We expect to enter into a registration rights agreement with ESL (the “Registration Rights Agreement”). The Registration Rights Agreement will provide for, among other things, demand registration rights and piggyback registration rights for ESL. Pursuant to the Registration Rights Agreement and the partnership agreement of Operating Partnership, if ESL proposes to engage in an offering, it may transfer Operating Partnership units to an underwriter to be exchanged for Seritage Growth common shares before they are sold in the offering. We will also be required to indemnify ESL against losses suffered by it or certain other persons based upon any untrue statement or alleged untrue statement of any material fact contained in any registration statement, related prospectus, preliminary prospectus or free writing prospectus, or the omission or alleged omission to state therein a material fact required to be stated therein, necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, except to the extent based upon information furnished in writing by ESL specifically for use therein. This description of the Registration Rights Agreement does not purport to be complete and is qualified by reference to the Registration Rights Agreement, which is included as an exhibit to the registration statement of which this prospectus forms a part and is incorporated by reference herein.

Aggregate Consideration to Sears Holdings

As payment for the Acquired Properties, Sears Holdings will receive aggregate consideration of approximately $2,677.3 million (including the distribution of the proceeds of the debt incurred in the Financing, which will become, on a consolidated basis, indebtedness of Operating Partnership and Seritage Growth).
POLICIES WITH RESPECT TO CERTAIN ACTIVITIES

The following is a discussion of certain of our investment, financing and other policies. These policies may be amended or revised from time to time at the discretion of the Seritage Growth Board of Trustees without a vote of Seritage Growth shareholders.

Investment Policies

*Investment in Real Estate or Interests in Real Estate*

We currently intend to invest primarily in retail properties. Future investment or development activities will not be limited to any geographic area, property type or to a specified percentage of our assets. While we may diversify in terms of property locations, size and market, we do not have any limit on the amount or percentage of our assets that may be invested in any one property or any one geographic area. Seritage Growth intends to engage in such future investment activities in a manner that is consistent with the maintenance of its status as a REIT for U.S. federal income tax purposes. In addition, we may purchase or lease properties for long-term investment, expand and improve the properties we presently own or other acquired properties, or sell such properties, in whole or in part, when circumstances warrant.

We may also participate with third parties in property ownership through joint ventures or other types of co-ownership. These types of investments may permit us to own interests in larger assets without unduly restricting our diversification and, therefore, provide us with flexibility in structuring our portfolio. We will not, however, enter into a joint venture or other partnership arrangement to make an investment that would not otherwise meet our investment policies.

Equity investments in acquired properties may be subject to existing mortgage financing and other indebtedness or to new indebtedness which may be in acquired properties incurred in connection with acquiring or refinancing these investments. Debt service on such financing or indebtedness will have a priority over any distributions with respect to Seritage Growth common shares. Investments are also subject to our policy not to be treated as an investment company under the 1940 Act.

*Investments in Real Estate Mortgages*

While our current portfolio consists of, and our business objectives primarily emphasize, equity investments in retail real estate, we may, at the discretion of the Seritage Growth Board of Trustees, invest in mortgages and other types of real estate interests consistent with Seritage Growth’s qualification as a REIT. We do not presently intend to invest in mortgages or deeds of trust, but may invest in participating or convertible mortgages if we conclude that we may benefit from the gross revenues or any appreciation in value of the property. Investments in real estate mortgages run the risk that one or more borrowers may default under the mortgages and that the collateral securing those mortgages may not be sufficient to enable us to recoup our full investment.

*Securities of or Interests in Persons Primarily Engaged in Real Estate Activities and Other Issuers*

Subject to the percentage of ownership limits and gross income and asset tests necessary for REIT qualification, we may invest in securities of other REITs, other entities engaged in real estate activities or securities of other issuers, including for the purpose of exercising control over such entities.

*Development and Dispositions of Properties*

From time to time, we may engage in strategic development opportunities. These opportunities may involve redeveloping, replacing or renovating properties in our portfolio that have become economically obsolete or identifying new sites that present an attractive opportunity and complement our existing portfolio.
We do not currently intend to dispose of any of our properties, although we may do so in the future if, based upon management’s periodic review of our portfolio, real estate market conditions and other factors, the Seritage Growth Board of Trustees determines that such action would be in the best interests of our company.

**Investments in Other Securities**

We may in the future invest in additional securities, including common stock, preferred stock and bonds, although we do not currently intend to make any such investments, except for investments in cash equivalents in the ordinary course of business. Future investment activities in additional securities will not be limited to a specified percentage of our assets or to specified types of securities or industry groups.

**Financing and Leverage Policies**

We intend, when we determine appropriate from time to time, to employ leverage and to use indebtedness as a means to provide additional funds to distribute to shareholders, to acquire properties, to redevelop properties and fund other expenditures, and to refinance existing indebtedness or for corporate purposes. Seritage Growth’s declaration of trust and bylaws do not limit the amount or percentage of indebtedness that Seritage Growth may incur, nor has Seritage Growth adopted any policies addressing this. We expect, however, to be subject to certain indebtedness limitations pursuant to the restrictive covenants of our outstanding indebtedness. The Seritage Growth Board of Trustees may limit our debt incurrence to be more restrictive than its debt covenants allow and from time to time may modify these limits in light of then-current economic conditions, relative costs of debt and equity capital, market values of our properties, general conditions in the market for debt and equity securities, fluctuations in the market price of Seritage Growth common shares, growth and acquisition opportunities and other factors. If these limits are relaxed, we could become more highly leveraged, resulting in an increased risk of default on our obligations and a related increase in debt service requirements that could adversely affect our financial condition and results of operations and our ability to make distributions to Seritage Growth shareholders.

To the extent that we determine that it is necessary or appropriate to raise additional capital, we may, without shareholder approval, borrow from financial institutions or other third parties, issue debt or equity securities, including securities senior to Seritage Growth common shares, retain earnings (subject to REIT distribution requirements for U.S. federal income tax purposes), assume indebtedness, obtain mortgage financing on our owned properties, engage in a joint venture or employ a combination of these methods. The Seritage Growth Board of Trustees has the authority, without further shareholder approval, to amend Seritage Growth’s declaration of trust to increase the number of authorized common shares or preferred shares of beneficial interest and to authorize Seritage Growth to issue additional common shares or preferred shares of beneficial interest, one or more classes or series, including senior securities, in any manner, and on the terms and for the consideration, it deems appropriate, subject to applicable laws and regulations. In addition, we may offer Operating Partnership units that are redeemable for cash or Seritage Growth common shares. Except in connection with the Transaction or employment arrangements, we have not issued Seritage Growth common shares, Operating Partnership units or any other securities in exchange for property or any other purpose.

We may, to the extent we determine that it is necessary or appropriate, adopt a policy relating to the use of derivative financial instruments to hedge interest rate risks related to our borrowings. If adopted, this policy will govern our use of derivatives to manage the interest rates on our variable rate borrowings. We expect our policy to state that we will not use derivatives for speculative or trading purposes and will only enter into contracts with major financial institutions based on their credit rating and other factors. See “Risk Factors—Risks Related to Our Business and Operations—We may have future capital needs and may not be able to obtain additional financing on acceptable terms.” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources.”
Conflict of Interest Policies

In connection with this offering, we will adopt certain policies that are designed to eliminate or minimize certain potential conflicts of interest. Upon completion of this offering, the Seritage Growth Board of Trustees will establish a code of business conduct and ethics that is designed to promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between our employees, officers and trustees and our company. However, there can be no assurance that these policies or provisions of law will always be successful in eliminating the influence of such conflicts, and, if they are not successful, decisions could be made that might fail to reflect fully the interests of all shareholders.

Pursuant to the Seritage Growth bylaws and Maryland law, a contract or other transaction between us and any of our trustees or between us and any other corporation or other entity in which any of our trustees is a director or has a material financial interest is not void or voidable solely on the grounds of such common directorship or interest, the presence of such trustee at the meeting of the board or committee at which the contract or transaction is authorized, approved or ratified or the counting of the trustee’s vote in favor thereof; provided that:

- the fact of the common directorship or interest is disclosed or known to the Seritage Growth Board of Trustees (or a committee of the Board of Trustees), and the Board of Trustees (or such committee) authorizes, approves or ratifies the transaction or contract by the affirmative vote of a majority of disinterested trustees, even if the disinterested trustees constitute less than a quorum;
- the fact of the common directorship or interest is disclosed or known to Seritage Growth shareholders entitled to vote thereon, and the transaction or contract is authorized, approved or ratified by a majority of the votes cast by the shareholders entitled to vote other than the votes of shares owned of record or beneficially by the interested trustee or corporation, firm or other entity; or
- the transaction or contract is fair and reasonable to us.

Policies with Respect to Other Activities

We have not made any loans to third parties and do not intend to engage in significant lending activities, although we do not have a policy limiting our ability to make loans to third parties and we may do so in the future, including, without limitation, offering purchase money financing in connection with the sale of properties and making loans to, or guaranteeing indebtedness of, joint ventures in which we participate. We have not engaged in trading, underwriting or agency distribution or sale of securities of other issuers and do not intend to do so. The Seritage Growth Board of Trustees does not currently intend to cause us to repurchase any Seritage Growth common shares, although it has the power to do so. At all times, we intend to make investments in such a manner as to qualify as a REIT, unless because of circumstances or changes in the Code or the Treasury regulations, the Seritage Growth Board of Trustees determines that it is no longer in our best interests to qualify as a REIT.

Reporting Policies

We intend to make available to Seritage Growth shareholders our annual reports, including our audited financial statements. After this offering, we will become subject to the information reporting requirements of the Exchange Act. Pursuant to those requirements, we will be required to file annual and periodic reports, proxy statements and other information, including audited financial statements, with the SEC. For so long as we are an “emerging growth company” under the JOBS Act and while we remain a non-accelerated filer, however, we may take advantage of provisions that, among other things, reduce certain reporting requirements as compared to other public companies.
PRINCIPAL SHAREHOLDERS

Prior to this offering, Benjamin Schall our Chief Executive Officer and President owned all of our outstanding stock.

The following table sets forth the beneficial ownership of Seritage Growth common shares, Seritage Growth non-economic shares and Seritage Growth non-voting shares as it would be after the completion of this offering, as well as the Seritage Private Placements, the Non-Economic Shares Private Placement and the OP Private Placement, assuming that the subscription rights are exercised in full by all stockholders of Sears Holdings (or, in the case of the maximum portion of the subscription rights held by each of ESL and certain Fairholme Clients permitted to be exchanged under their respective Exchange Agreements, exchanged for Operating Partnership units and Seritage Growth non-economic shares, and for Seritage Growth non-voting shares, respectively) as of the record date and in light of the provisions of Seritage Growth’s declaration of trust regarding restrictions on ownership, calculated as of June 8, 2015, by:

- each person who we know beneficially owns more than 5% of Sears Holdings common stock;
- each of our trustees;
- each of our named executive officers; and
- all trustees and executive officers as a group.

Unless otherwise indicated, the address for each beneficial owner who is also a trustee or executive officer is c/o Seritage Growth, 3333 Beverly Road, Hoffman Estates, Illinois 60179. See “Management” for a discussion regarding our trustees and executive officers.
Beneficial ownership is determined in accordance with the rules and regulations of the SEC. As indicated below, in computing the number of shares beneficially owned by a person and the percentage ownership of that person, common shares subject to options held by that person that are currently exercisable within 60 days of the determination date are deemed outstanding. These shares, however, are not deemed outstanding for the purposes of computing the percentage ownership of any other person. Except as indicated, and subject to the applicable community property laws, the shareholders named in the table have sole voting and investment power with respect to the shares shown as beneficially owned by them.

<table>
<thead>
<tr>
<th>Name of Beneficial Owner</th>
<th>Common Shares Class A</th>
<th>Non-Economic Shares Class B</th>
<th>Non-Voting Shares Class C</th>
<th>% of Total Voting Power</th>
<th>% Economic Rights (Class A and Class C Shares)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ESL Investments, Inc. and related entities(2)</td>
<td>959,133 4.54%</td>
<td>1,231,125 100%</td>
<td>— —</td>
<td>9.80%</td>
<td>3.20%</td>
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<tr>
<td>Fairholme Capital Management, L.L.C. and related entities(4)</td>
<td>3,589,908 16.97%</td>
<td>— —</td>
<td>9,527,198 100%</td>
<td>16.05%</td>
<td>11.7%</td>
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<td>Force Capital Management, LLC(6)</td>
<td>5,643,449%</td>
<td>— —</td>
<td>— —</td>
<td>12.63%</td>
<td>9.6%</td>
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<tr>
<td>Trustees, proposed trustees and executive officers:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Robert A. Riecker</td>
<td>*</td>
<td>—</td>
<td>—</td>
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<td>*</td>
</tr>
<tr>
<td>Benjamin Schall</td>
<td>100</td>
<td>*</td>
<td>—</td>
<td>—</td>
<td>*</td>
</tr>
<tr>
<td>Jeffrey Stollenwerck</td>
<td>*</td>
<td>*</td>
<td>—</td>
<td>—</td>
<td>*</td>
</tr>
<tr>
<td>David S. Fawer</td>
<td>*</td>
<td>—</td>
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<td>*</td>
</tr>
<tr>
<td>Edward S. Lampert</td>
<td>959,133 4.54%</td>
<td>1,231,125 100%</td>
<td>— —</td>
<td>9.80%</td>
<td>3.20%</td>
</tr>
<tr>
<td>Kenneth T. Lombard</td>
<td>*</td>
<td>—</td>
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<td>—</td>
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<tr>
<td>John T. McClain</td>
<td>*</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>*</td>
</tr>
<tr>
<td>Kenneth T. Lombard</td>
<td>*</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>*</td>
</tr>
<tr>
<td>All directors, proposed directors and executive officers as a group (8 persons)</td>
<td>959,233</td>
<td>1,231,125 100%</td>
<td>— —</td>
<td>9.80%</td>
<td>3.20%</td>
</tr>
</tbody>
</table>

* Less than one percent

(1) Based on 106,555,779 shares of Sears Holdings common stock outstanding as of March 9, 2015.

(2) Based on the Schedule 13D/A filed by the following persons reporting their ownership in Sears Holdings as of February 25, 2015, as updated by a subsequent Form 4 filing on March 3, 2015. The persons consist of ESL Investments, Inc., a Delaware corporation (“Investments”); Edward S. Lampert; ESL Institutional Partners, L.P., a Delaware limited partnership (“Institutional”); CRK Partners, LLC, a Delaware limited liability company (“CRK LLC”); ESL Partners, L.P., a Delaware limited partnership (“Partners”); SPE I Partners, LP, a Delaware limited partnership (“SPE Partners”); SPE Master I, LP, a Delaware limited partnership (“SPE Master”); RBS Partners, L.P., a Delaware limited partnership (“RBS”); and RBS
Investment Management, L.L.C., a Delaware limited liability company (“RBSIM”). Mr. Lampert is the Chairman, Chief Executive Officer and Director of Investments and a limited partner of RBS. Investments is the general partner of RBS, the sole member of CRK LLC and the manager of RBSIM. RBS is the general partner of Partners, SPE Partners and SPE Master. RBSIM is the general partner of Institutional. The address of these persons is 200 Greenwich Avenue, Greenwich, CT 06830.

(3) Investments has sole voting power and sole dispositive power as to 31,268,742 shares of Sears Holdings (which includes 4,830,470 shares that may be acquired within 60 days upon the exercise of warrants to purchase shares) and shared dispositive power as to 30,991,842 shares of Sears Holdings (which includes 5,700,163 shares that may be acquired within 60 days upon the exercise of warrants to purchase shares); Edward S. Lampert has sole voting power as to 62,260,584 shares of Sears Holdings (which includes 10,530,633 shares that may be acquired within 60 days upon the exercise of warrants to purchase shares), sole dispositive power as to 31,268,742 shares of Sears Holdings (which includes 4,830,470 shares that may be acquired within 60 days upon the exercise of warrants to purchase shares) and shared dispositive power as to 30,991,842 shares of Sears Holdings (which includes 5,700,163 shares that may be acquired within 60 days upon the exercise of warrants to purchase shares); CRK LLC has sole voting power and sole dispositive power as to 887 shares of Sears Holdings (which includes 140 shares that may be acquired within 60 days upon the exercise of warrants to purchase shares); RBS has sole voting power and sole dispositive power as to 31,255,514 shares of Sears Holdings (which includes 4,828,219 shares that may be acquired within 60 days upon the exercise of warrants to purchase shares) and shared dispositive power as to 30,991,842 shares of Sears Holdings (which includes 5,700,163 shares that may be acquired within 60 days upon the exercise of warrants to purchase shares); Partners has sole voting power and sole dispositive power as to 26,820,859 shares of Sears Holdings (which includes 4,828,219 shares that may be acquired within 60 days upon the exercise of warrants to purchase shares) and shared dispositive power as to 30,991,842 shares of Sears Holdings (which includes 5,700,163 shares that may be acquired within 60 days upon the exercise of warrants to purchase shares); Institutional has sole voting power and sole dispositive power as to 12,341 shares of Sears Holdings (which includes 2,111 shares that may be acquired within 60 days upon the exercise of warrants to purchase shares); SPE Partners has sole voting power and sole dispositive power as to 2,494,783 shares of Sears Holdings; and SPE Master has sole voting power and sole dispositive power as to 1,939,872 shares of Sears Holdings.

(4) Based on the Schedule 13D/A filed by Fairholme Capital Management, L.L.C., Bruce R. Berkowitz and Fairholme Funds, Inc. reporting their ownership in Sears Holdings as of February 25, 2015, as updated by a subsequent Form 4 filing on May 15, 2015. The address of these persons is 4400 Biscayne Boulevard, 9th Floor, Miami, FL 33137.

(5) The shares of Sears Holdings common stock are owned, in the aggregate, by Bruce R. Berkowitz and various investment vehicles managed by Fairholme Capital Management, L.L.C. (“FCM”). FCM disclosed shared voting power as to 20,601,973 shares of Sears Holdings and shared dispositive power as to 25,452,373 shares of Sears Holdings. Fairholme Funds, Inc. disclosed shared voting power and shared dispositive power as to 16,160,773 shares of Sears Holdings, of which 14,212,673 shares are owned by The Fairholme Fund and 1,948,100 shares are owned by The Fairholme Allocation Fund, each a series of Fairholmke Funds, Inc. Bruce R. Berkowitz disclosed sole voting power and sole dispositive power as to 913,000 shares of Sears Holdings, shared voting power as to 20,601,973 shares of Sears Holdings and shared dispositive power as to 25,452,373 shares of Sears Holdings. Because Mr. Bruce R. Berkowitz, in his capacity as the Managing Member of FCM or as President of Fairholme Funds, Inc., has voting or dispositive power over all shares beneficially owned by FCM, he is deemed to have beneficial ownership of all of the shares.

(6) Beneficial ownership is based on the Schedule 13G filed by Force Capital Management, LLC (“Force Capital”) reporting its ownership as of December 31, 2014. The address for Force Capital is 767 Fifth Avenue, 12th Floor, New York, NY 10153.

(7) The shares (which includes 5,829,543 shares of Sears Holdings subject to certain options) are owned directly by Force Capital. Force Capital has disclosed sole voting power and sole dispositive power as to 7,178,364 shares of Sears Holdings.
DESCRIPTION OF SHARES OF BENEFICIAL INTEREST

The following summary of the terms of the Seritage Growth shares of beneficial interest does not purport to be complete and is qualified in its entirety by reference to Seritage Growth’s declaration of trust and bylaws. Copies of Seritage Growth’s declaration of trust and bylaws are filed as exhibits to the registration statement of which this prospectus is a part. See “Where You Can Find More Information.”

General

The Seritage Growth declaration of trust provides that we may issue up to 100,000,000 Class A common shares of beneficial interest, $0.01 par value per share, referred to as “Seritage Growth common shares” or “common shares,” up to 5,000,000 Class B common shares of beneficial interest, $0.01 par value per share, referred to as “Seritage Growth non-economic shares,” up to 50,000,000 Class C common shares of beneficial interest, $0.01 par value per share, referred to as “Seritage Growth non-voting shares,” and 10,000,000 preferred shares of beneficial interest, $0.01 par value per share. The declaration of trust authorizes a majority of the entire Seritage Growth Board of Trustees, without shareholder approval, to amend Seritage Growth’s declaration of trust to increase or decrease the aggregate number of shares that we are authorized to issue or the number of authorized shares of any class or series of shares of beneficial interest. Upon completion of this offering, the Non-Economic Shares Private Placement and the Seritage Private Placements, 21,118,438 Seritage Growth common shares, 1,231,125 Seritage Growth non-economic shares, 9,527,198 Seritage Growth non-voting shares and no preferred shares of beneficial interest are expected to be issued and outstanding. Under Maryland law, Seritage Growth shareholders generally are not liable for our debts or obligations solely as a result of their status as shareholders.

Seritage Growth Common Shares

All of the Seritage Growth common shares and Seritage Growth non-voting shares offered by this prospectus and Seritage Growth non-economic shares issued in the Non-Economic Shares Private Placement will be duly authorized, and, when issued, will be fully paid and nonassessable. Subject to the preferential rights, if any, of holders of any other class or series of Seritage Growth shares of beneficial interest and to the provisions of Seritage Growth’s declaration of trust relating to the restrictions on ownership and transfer of its shares of beneficial interest, holders of Seritage Growth common shares and Seritage Growth non-voting shares are entitled to receive distributions when authorized by the Board of Trustees and declared by Seritage Growth out of assets legally available for distribution to shareholders and will be entitled to share ratably in assets legally available for distribution to shareholders in the event of Seritage Growth’s liquidation, dissolution or winding up after payment of or adequate provision for all of its known debts and liabilities. Holders of Seritage Growth non-economic shares are not entitled to any regular or special dividend payments or other distributions, including any dividends or other distributions declared or paid with respect to Seritage Growth common shares and Seritage Growth non-voting shares or any other class or series of Seritage Growth shares of beneficial interest, and are not entitled to receive any distributions in the event of Seritage Growth’s liquidation, dissolution or winding up.

Subject to the provisions of Seritage Growth’s declaration of trust regarding the restrictions on ownership and transfer of Seritage Growth shares of beneficial interest and except as may be otherwise specified in the terms of any class or series of Seritage Growth shares of beneficial interest, each outstanding Seritage Growth common share entitles the holder to one vote and each Seritage Growth non-economic share entitles the holder to one vote on each matter on which holders of Seritage Growth common shares are entitled to vote; provided, however, that upon any transfer of a Seritage Growth non-economic share to any person other than an affiliate of the initial holder, such shares shall thereafter entitle the holder thereof to one one-hundredth of a vote on each matter on which holders of Seritage Growth common shares are entitled to vote on all matters submitted to a vote of shareholders, including the election of trustees, and, except as may be provided with respect to any other class or series of Seritage Growth shares of beneficial interest, the holders of Seritage Growth common shares and Seritage Growth non-economic shares, voting together as a single class, will possess the exclusive voting power, provided that the holders of Seritage Growth non-economic shares will have exclusive voting rights with respect to amendments to the Seritage
Growth declaration of trust that would materially and adversely affect any right or voting power of the Seritage Growth non-economic shares. The holders of Seritage Growth non-voting shares will have no voting rights except with regard to amendments to Seritage Growth’s declaration of trust that would materially and adversely affect any of the rights of the Seritage Growth non-voting shares.

The Seritage Growth Board of Trustees will be divided into three classes of trustees, with the classes to be as nearly equal in number as possible. As a result, approximately one-third of the Board of Trustees will be elected at each annual meeting of shareholders. In addition, Seritage Growth’s bylaws provide that trustees will be elected by a vote of 75% of the votes of the Seritage Growth common shares and Seritage Growth non-economic shares, voting together as a single class, entitled to be cast in both contested and uncontested elections. In the event that an incumbent trustee does not receive a sufficient percentage of votes entitled to be cast for election, he or she will continue to serve on the Board of Trustees until a successor is duly elected and qualifies. The classification of trustees and the requirement that trustee nominees receive a vote of at least 75% of the votes of the Seritage Growth common shares and Seritage Growth non-economic shares, voting together as a single class, entitled to be cast to be elected may have the effect of making it more difficult for shareholders to change the composition of the Board of Trustees. Other than with respect to the initial term of the Class I and Class II trustees, each trustee will hold office until the third annual meeting following his or her election and until his or her successor is duly elected and qualified or until his earlier death, resignation or removal. Except as otherwise provided in setting the terms of any class or series of shares, vacancies on the Board of Trustees may be filled only by the affirmative vote of a majority of the remaining trustees, although less than a quorum, and any individual elected to fill a vacancy will serve for the remainder of the full term of the trusteeship in which the vacancy occurred and until his or her successor is duly elected and qualifies. Subject to the rights, if any, of holders of any class or series of preferred shares, trustees may be removed only for cause by the affirmative vote of not less than 75% of the votes of Seritage Growth common shares and Seritage Growth non-economic shares, voting together as a single class, entitled to be cast generally in the election of trustees.

Holders of Seritage Growth common shares and Seritage Growth non-economic shares and, except for the conversion rights discussed below, holders of Seritage Growth non-voting shares have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and have no preemptive rights to subscribe for any securities of our company. Subject to the provisions of Seritage Growth’s declaration of trust regarding the restrictions on ownership and transfer of its shares of beneficial interest, Seritage Growth common shares and Seritage Growth non-voting shares will have equal distribution, liquidation and other rights.

The Seritage Growth declaration of trust provides that (i) in the event the number of issued and outstanding Seritage Growth common shares is increased or decreased as a result of any share distribution, share split, reverse share split or certain other changes, the number of votes per Seritage Growth non-economic share shall be adjusted to preserve the then existing voting power of the holders of Seritage Growth non-economic shares and (ii) in the event the number of issued and outstanding Seritage Growth common shares is increased or decreased as a result of any share split, reverse share split or certain other changes, the number of Seritage Growth non-voting shares shall be adjusted to preserve the holders of Seritage Growth non-voting shares then existing economic rights.

ESL, which will hold all of the Seritage Growth non-economic shares immediately following this offering, has agreed with us that upon any sale or other transfer to a non-affiliate of any of its Operating Partnership units, it will surrender to Seritage Growth a pro rata portion of the Seritage Growth non-economic shares that it holds prior to the sale or other transfer, whereupon the surrendered Seritage Growth non-economic shares will be cancelled and the aggregate voting power of the Seritage Growth non-economic shares held by ESL proportionally reduced.

In addition, the Seritage Growth declaration of trust provides that (i) upon any transfer of a Seritage Growth non-economic share to any person other than an affiliate of the holder of such share, such Seritage Growth non-economic share will thereafter be entitled to only one-one hundredth of a vote per share and (ii) upon any
transfer of a Seritage Growth non-voting share to any person other than an affiliate of the holder of such share, such Seritage Growth non-voting share shall automatically convert into one Seritage Growth common share.

Power to Increase or Decrease Authorized Shares, Reclassify Unissued Shares and Issue Additional Common Shares and Preferred Shares of Beneficial Interest

The Seritage Growth declaration of trust authorizes the Board of Trustees, with the approval of a majority of the entire Board of Trustees and without shareholder approval, to amend Seritage Growth’s declaration of trust to increase or decrease the aggregate number of shares of beneficial interest or the number of shares of any class or series of shares of beneficial interest that Seritage Growth is authorized to issue. In addition, the declaration of trust authorizes the Board of Trustees to authorize the issuance from time to time of shares of beneficial interest of any class or series, including preferred shares.

The Seritage Growth declaration of trust also authorizes the Board of Trustees to classify and reclassify any unissued common shares or preferred shares of beneficial interest into other classes or series of shares of beneficial interest, including one or more classes or series of shares of beneficial interest that have priority over Seritage Growth common shares, Seritage Growth non-economic shares and Seritage Growth non-voting shares with respect to voting rights, distributions or upon liquidation, and authorize us to issue the newly classified shares. Prior to the issuance of shares of each new class or series of shares of beneficial interest, the Board of Trustees is required by Maryland law and by Seritage Growth’s declaration of trust to set, subject to the provisions of Seritage Growth’s declaration of trust regarding the restrictions on ownership and transfer of shares of beneficial interest, the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each class or series. Therefore, the Board of Trustees could authorize the issuance of common shares or preferred shares of beneficial interest with terms and conditions that could have the effect of delaying, deferring or preventing a change in control or other transaction that might involve a premium price for Seritage Growth common shares or otherwise be in the best interests of Seritage Growth shareholders. No preferred shares of beneficial interest are presently outstanding, and we have no present plans to issue any such preferred shares.

We believe that the power of the Seritage Growth Board of Trustees (i) to approve amendments to the declaration of trust to increase or decrease the number of authorized common shares or the number of authorized shares of any class or series of Seritage Growth shares of beneficial interest, (ii) to authorize us to issue additional authorized but unissued common shares or preferred shares of beneficial interest and to classify or reclassify unissued common shares or preferred shares of beneficial interest and (iii) thereafter to authorize us to issue such classified or reclassified shares will provide us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise.

Restrictions on Ownership and Transfer

In order for us to qualify to be taxed as a REIT under the Code, Seritage Growth shares of beneficial interest must be owned by 100 or more persons during at least 335 days of a taxable year of 12 months (other than the first year for which an election to qualify as a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the outstanding Seritage Growth shares of beneficial interest (after taking into account options to acquire shares of beneficial interest) may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities such as qualified pension plans) during the last half of a taxable year (other than the first year for which an election to be a REIT has been made).

In addition, rent from related party tenants (generally, a tenant of a REIT owned, actually or constructively, 10% or more by (1) the REIT or (2) a 10% owner of the REIT) is not qualifying income for purposes of the gross income tests under the Code (the “related party tenant rule”). To qualify to be taxed as a REIT, we must satisfy other requirements as well. See “U.S. Federal Income Tax Considerations.”
Seritage Growth’s declaration of trust contains restrictions on the ownership and transfer of Seritage Growth shares of beneficial interest that are intended to assist us in complying with these requirements. The relevant sections of Seritage Growth’s declaration of trust provide that, subject to the exceptions described below, from and after the completion of this offering, no person or entity may own, or be deemed to own, beneficially or by virtue of the applicable constructive ownership provisions of the Code, more than 9.6%, in value or in number of shares, whichever is more restrictive, of all outstanding shares, or all outstanding common shares (including Seritage Growth common shares, Seritage Growth non-economic shares and Seritage Growth non-voting shares), of beneficial interest of Seritage Growth (the “ownership limits”). We refer to the person or entity that, but for operation of the ownership limits or another restriction on ownership and transfer of Seritage Growth common shares as described below, would beneficially own or constructively own Seritage Growth common shares in violation of such limits or restrictions and, if appropriate in the context, a person or entity that would have been the record owner of such Seritage Growth common shares as a “prohibited owner.”

The constructive ownership rules under the Code are complex and may cause shares of beneficial interest owned beneficially or constructively by a group of related individuals and/or entities to be owned beneficially or constructively by one individual or entity. As a result, the acquisition of less than 9.6% of the outstanding shares of beneficial interest of Seritage Growth (or the acquisition by an individual or entity of an interest in an entity that owns, beneficially or constructively, such shares), could, nevertheless, cause that individual or entity, or another individual or entity, to own beneficially or constructively shares of beneficial interest of Seritage Growth in excess of the ownership limits. In addition, a person that did not acquire more than 9.6% of the outstanding shares of beneficial interest of Seritage Growth may become subject to these restrictions if repurchases by us cause such person’s holdings to exceed 9.6% of all outstanding shares, or all outstanding common shares (including Seritage Growth common shares, Seritage Growth non-economic shares and Seritage Growth non-voting shares), of beneficial interest of Seritage Growth.

Pursuant to the Seritage Growth declaration of trust, the Board of Trustees, in its sole and absolute discretion, may exempt, prospectively or retroactively, a particular shareholder from either or both of the ownership limits or establish a different limit on ownership (the “excepted holder limit”) if the Board of Trustees determines that:

• no individual’s beneficial or constructive ownership of Seritage Growth shares of beneficial interest will result in our being “closely held” under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify to be taxed as a REIT;

• no person shall constructively own Seritage Growth shares of beneficial interest to the extent that such person’s constructive ownership will cause any of Seritage Growth’s income that would otherwise qualify as “rents from real property” for purposes of Section 856(d) of the Code to fail to qualify as such; and

• such shareholder does not and represents that it will not own, actually or constructively, an interest in a tenant of ours (or a tenant of any entity owned or controlled by us, including Operating Partnership) that would cause us to own, actually or constructively, more than a 9.8% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant (or the Board of Trustees limits sole and absolute discretion, determines that revenue derived from such tenant will not affect our ability to qualify to be taxed as a REIT).

Any violation or attempted violation of the representations or undertakings discussed above will result in such shareholder’s shares being automatically transferred to a charitable trust. As a condition of granting the waiver or establishing the excepted holder limit, the Seritage Growth Board of Trustees may require an opinion of counsel or a ruling from the IRS, in either case in form and substance satisfactory to the Board of Trustees, in its sole discretion, in order to determine or ensure Seritage Growth’s status as a REIT and such representations and undertakings from the person requesting the exception as the Board of Trustees may require.
in its sole discretion to make the determinations above. The Board of Trustees may impose such conditions or restrictions as it deems appropriate in connection with granting such a waiver or establishing an excepted holder limit.

The Seritage Growth Board of Trustees is expected to grant exemptions from the ownership limits to FCM and/or certain Fairholme Clients to permit certain Fairholme Clients to own up to 20% of the Seritage Growth non-voting shares outstanding immediately following this offering (referred to, collectively, as the “Excess Share Waivers”).

At any time, the Board of Trustees may from time to time increase or decrease the ownership limits for all other persons, unless, after giving effect to such increase, five or fewer individuals could beneficially own, in the aggregate, more than 49.9% in value of our outstanding shares of beneficial interest or we would otherwise fail to qualify as a REIT. A reduced ownership limit will not apply to any person or entity whose percentage ownership of common shares (including Seritage Growth common shares, Seritage Growth non-economic shares and Seritage Growth non-voting shares) of beneficial interest, or all shares of beneficial interest, as applicable, of Seritage Growth is, at the effective time of such reduction, in excess of such decreased ownership limit, equals or falls below the decreased ownership limit, but any further acquisition of shares of beneficial interest of Seritage Growth will violate the decreased ownership limit.

Upon the completion of this offering, Seritage Growth’s declaration of trust will further prohibit:

- any person from beneficially or constructively owning, applying certain attribution rules of the Code, Seritage Growth common shares that would result in our being “closely held” under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise cause us to fail to qualify to be taxed as a REIT;
- any person from transferring Seritage Growth common shares if the transfer would result in Seritage Growth common shares being beneficially owned by fewer than 100 persons (determined with reference to the rules of attribution under Section 544 of the Code);
- any person from constructively owning Seritage Growth common shares to the extent that such constructive ownership would cause any of our income that would otherwise qualify as “rents from real property” for purposes of Section 856(d) of the Code to fail to qualify as such; and
- any person from beneficially owning or constructively owning Seritage Growth common shares to the extent such ownership would result in our failing to qualify as a “domestically controlled qualified investment entity” within the meaning of Section 897(h) of the Code.

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of Seritage Growth common shares that will or may violate either or both of the ownership limits or any of the other restrictions on ownership and transfer of Seritage Growth shares of beneficial interest described above, or who would have owned Seritage Growth common shares transferred to the charitable trust as described below, must immediately give notice to Seritage Growth of such event or, in the case of an attempted or proposed transaction, give Seritage Growth at least 15 days’ prior written notice and provide Seritage Growth with such other information as it may request in order to determine the effect of such transfer on Seritage Growth’s status as a REIT. The foregoing restrictions on ownership and transfer of Seritage Growth shares of beneficial interest will not apply if the Board of Trustees determines that it is no longer in Seritage Growth’s best interests to attempt to qualify, or to continue to qualify, to be taxed as a REIT or that compliance with the restrictions and limits on ownership and transfer of Seritage Growth shares of beneficial interest described above is no longer required in order for us to qualify to be taxed as a REIT.

If any purported transfer of Seritage Growth common shares or any other event would otherwise result in any person violating the ownership limits or any other restriction on ownership and transfer of Seritage Growth common shares described above, then that number of shares (rounded up to the nearest whole share) that would
cause the violation will be automatically transferred to, and held by, a trust for the exclusive benefit of one or more charitable organizations selected by us, and the intended transferee or other prohibited owner will acquire no rights in the shares. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other event that results in a transfer to the trust. If the transfer to the trust as described above is not automatically effective, for any reason, to prevent violation of the applicable ownership limit or any other restriction on ownership and transfer of Seritage Growth common shares described above, then Seritage Growth’s declaration of trust provides that the transfer of the shares will be null and void and the intended transferee will acquire no rights in such shares.

Seritage Growth common shares held in the trust will be issued and outstanding shares. The prohibited owner will not benefit economically from ownership of any Seritage Growth common shares held in the trust and will have no rights to distributions and no rights to vote or other rights attributable to the Seritage Growth common shares held in the trust. The trustee of the trust will exercise all voting rights and receive all distributions with respect to shares held in the trust for the exclusive benefit of the charitable beneficiary of the trust. Any distribution made before we discover that the shares have been transferred to a trust as described above must be repaid by the recipient to the trustee upon demand by us. Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee will have the authority to rescind as void any vote cast by a prohibited owner before our discovery that the shares have been transferred to the trust and to recast the vote in accordance with the desires of the trustee acting for the benefit of the charitable beneficiary of the trust. However, if we have already taken irreversible corporate action, then the trustee may not rescind and recast the vote.

Seritage Growth common shares transferred to the trustee will be deemed offered for sale to us, or our designee, at a price per share equal to the lesser of (i) the price paid by the prohibited owner for the shares (or, in the case of a devise or gift, the market price at the time of the devise or gift), or (ii) the market price on the date we, or our designee, accepts such offer. We may reduce the amount so payable to the prohibited owner by the amount of any distribution that we made to the prohibited owner before we discovered that the shares had been automatically transferred to the trust and that are then owed by the prohibited owner to the trustee as described above, and we may pay the amount of any such reduction to the trustee for the benefit of the charitable beneficiary. We have the right to accept such offer until the trustee has sold the Seritage Growth common shares held in the trust as discussed below. Upon a sale to us, the interest of the charitable beneficiary in the shares sold terminates, and the trustee must distribute the net proceeds of the sale to the prohibited owner and must distribute any distributions held by the trustee with respect to such shares to the charitable beneficiary.

If we do not buy the shares, the trustee must, within 20 days of receiving notice from us of the transfer of shares to the trust, sell the shares to a person or entity designated by the trustee who could own the shares without violating either of the ownership limits or the other restrictions on ownership and transfer of Seritage Growth shares of beneficial interest. After the sale of the shares, the interest of the charitable beneficiary in the shares sold will terminate and the trustee must distribute to the prohibited owner an amount equal to the lesser of (i) the price paid by the prohibited owner for the shares (or, if the prohibited owner did not give value for the shares in connection with the event causing the shares to be held in the trust (for example, in the case of a gift, devise or other such transaction), the market price of the shares on the day of the event causing the shares to be held in the trust) and (ii) the sales proceeds (net of any commissions and other expenses of sale) received by the trust for the shares. The trustee may reduce the amount payable to the prohibited owner by the amount of any distribution that we paid to the prohibited owner before we discovered that the shares had been automatically transferred to the trust and that are then owed by the prohibited owner to the trustee as described above. Any net sales proceeds in excess of the amount payable to the prohibited owner must be paid immediately to the charitable beneficiary, together with any distributions thereon. In addition, if, prior to the discovery by us that shares of beneficial interest have been transferred to a trust, such shares are sold by a prohibited owner, then such shares will be deemed to have been sold on behalf of the trust and, to the extent that the prohibited owner received an amount for or in respect of such shares that exceeds the amount that such prohibited owner was entitled to receive, such excess amount will be paid to the trustee upon demand. The prohibited owner has no rights in the shares held by the trustee.
In addition, if the Seritage Growth Board of Trustees determines that a transfer or other event has occurred that would violate the restrictions on ownership and transfer of Seritage Growth shares of beneficial interest described above or that a person or entity intends to acquire or has attempted to acquire beneficial or constructive ownership of any Seritage Growth common shares in violation of the restrictions on ownership and transfer of Seritage Growth shares of beneficial interest described above, the Board of Trustees shall take such action as it deems advisable to refuse to give effect to or to prevent such transfer or other event, including, but not limited to, causing us to redeem Seritage Growth common shares, refusing to give effect to the transfer on our books or instituting proceedings to enjoin the transfer or other event.

Every person or entity who will be a beneficial or constructive owner of 5% or more (or such lower percentage as required by the Code or the regulations promulgated thereunder) in number or value of Seritage Growth shares of beneficial interest, whichever is more restrictive within 30 days after the end of each taxable year, and within 30 days of initially reaching such threshold must give Seritage Growth written notice stating the shareholder’s name and address, the number of shares of each class and series of Seritage Growth shares of beneficial interest that the shareholder beneficially or constructively owns and a description of the manner in which the shares are held. Each such owner must provide to Seritage Growth in writing such additional information as we may request in order to determine the effect, if any, of the shareholder’s beneficial ownership on Seritage Growth’s status as a REIT and to ensure compliance with the applicable ownership limits. In addition, any person or entity that is a beneficial owner or constructive owner of Seritage Growth common shares and any person or entity (including the shareholder of record) who is holding Seritage Growth common shares for a beneficial owner or constructive owner must provide to us such information as we may request in order to determine Seritage Growth’s status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance and to ensure compliance with the ownership limits.

Any certificates representing Seritage Growth common shares will bear a legend referring to the restrictions on ownership and transfer of Seritage Growth shares of beneficial interest described above and elsewhere in this prospectus.

These restrictions on ownership and transfer of Seritage Growth shares of beneficial interest will take effect upon consummation of this offering and will not apply if the Seritage Growth Board of Trustees determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT or that compliance is no longer required in order for us to qualify as a REIT.

Non-Economic Shares

Following the Non-Economic Shares Private Placement, ESL will hold Seritage Growth non-economic shares having % of the voting power of Seritage Growth. However, these shares will not be entitled to receive distributions when authorized by the Board of Trustees and declared by Seritage Growth, nor will they be entitled to share ratably in assets legally available for distribution to shareholders in the event of Seritage Growth’s liquidation, dissolution or winding up after payment of or adequate provision for all of its known debts and liabilities.

Non-Voting Shares

Following this offering, it is expected that Fairholme Clients will hold 9,527,198 Seritage Growth non-voting shares having identical preferences, rights, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption as the Seritage Growth common shares; provided that in the event that the Seritage Growth Board of Trustees authorizes and Seritage Growth declares a regular or special dividend payment or other distribution in the form of Seritage Growth common shares, the holders of Seritage Growth non-voting shares shall be entitled to receive Seritage Growth non-voting shares in lieu of such Seritage Growth common shares and provided further, that the holders of Seritage Growth non-voting shares will have no voting rights except with regard to amendments to Seritage Growth’s declaration of trust that would materially
and adversely affect any of the rights of the Seritage Growth non-voting shares. In addition, each Seritage Growth non-voting share will automatically convert into one Seritage Growth common share upon a transfer to any person other than an affiliate of the holder of such share.

Stock Exchange Listing

We intend to apply to list the Seritage Growth common shares on the NYSE under the symbol “SRG”.

Transfer Agent and Registrar

The transfer agent and registrar for the common shares of beneficial interest of Seritage Growth will be Computershare Trust Company, N.A.
CERTAIN PROVISIONS OF MARYLAND LAW AND OF SERITAGE GROWTH’S DECLARATION OF TRUST AND BYLAWS

The following summary of certain provisions of Maryland law and of Seritage Growth’s declaration of trust and bylaws does not purport to be complete. Copies of Seritage Growth’s declaration of trust and bylaws are filed as exhibits to the registration statement of which this prospectus is a part. See “Where You Can Find More Information.”

The Seritage Growth Board of Trustees

The Board of Trustees of Seritage Growth will initially consist of six trustees, and the number of trustees thereafter may be fixed only by a majority of the entire Board of Trustees. Following the completion of this offering, the current Chairman and Chief Executive Officer of Sears Holdings will initially be a member of the Seritage Growth Board of Trustees. The remaining trustees will be independent as determined by stock exchange rules.

In accordance with the terms of Seritage Growth’s declaration of trust, the Board of Trustees is divided into three classes of as nearly equal size as possible, with the trustees of each class serving until the third annual meeting of shareholders after their election and until their successors are duly elected and qualify. At each annual meeting of shareholders, upon the expiration of the term of a class of trustees, the successor to each such trustee in the class will be elected to serve from the time of election and qualification until the third annual meeting following his or her election and until his or her successor is duly elected and qualifies.

Seritage Growth’s declaration of trust and bylaws provide that the number of our trustees may be established, increased or decreased only by a majority of the entire Board of Trustees but, unless our bylaws are amended, may not be more than 15.

Election of Trustees; Removals; Vacancies

Seritage Growth’s bylaws provide that trustees will be elected by a vote of at least 75% of the votes of the Seritage Growth common shares and Seritage Growth non-economic shares, voting together as a single class, entitled to be cast in both contested and uncontested elections. In the event that an incumbent trustee does not receive a sufficient percentage of votes entitled to be cast for election, he or she will continue to serve on the Board of Trustees until a successor is duly elected and qualifies.

Seritage Growth’s declaration of trust provides that, subject to the rights, if any, of holders of any class or series of preferred shares of beneficial interest to elect or remove one or more trustees, our trustees may be removed only for cause, as such term is defined in our declaration of trust, and only by the affirmative vote of not less than 75% of the votes of Seritage Growth common shares and Seritage Growth non-economic shares, voting together as a single class, entitled to be cast generally in the election of trustees.

We have elected by a provision of Seritage Growth’s declaration of trust to be subject to provisions of Maryland law requiring that, except as otherwise provided in the terms of any class or series of Seritage Growth shares of beneficial interest, vacancies on the Board of Trustees may be filled only by a majority of the remaining trustees, even if the remaining trustees do not constitute a quorum, and that any individual elected to fill a vacancy will serve for the remainder of the full term of the trusteeship in which the vacancy occurred and until his or her successor is duly elected and qualifies.

Business Combinations

Under certain provisions of the MGCL applicable to Maryland REITs, certain “business combinations” (including a merger, consolidation, statutory share exchange and, in certain circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities) between a Maryland REIT and an interested
shareholder (defined generally as any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the Maryland REIT’s outstanding voting shares of beneficial interest or an affiliate or associate of the Maryland REIT who, at any time during the two-year period immediately prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then-outstanding shares of beneficial interest of the Maryland REIT) or an affiliate of such an interested shareholder are prohibited for five years after the most recent date on which the interested shareholder becomes an interested shareholder. Thereafter, any such business combination must generally be recommended by the board of trustees of the Maryland REIT and approved by the affirmative vote of at least (i) 80% of the votes entitled to be cast by the holders of outstanding voting shares of beneficial interest of the REIT, voting together as a single class, and (ii) two-thirds of the votes entitled to be cast by holders of voting shares of beneficial interest of the Maryland REIT, other than shares held by the interested shareholder with whom (or with whose affiliate) the business combination is to be effected or held by an affiliate or associate of the interested shareholder, unless, among other conditions, the Maryland REIT’s common shareholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the interested shareholder for its shares. A person is not an interested shareholder under the statute if the board of trustees exempted or approved in advance the transaction by which the person otherwise would have become an interested shareholder. A Maryland REIT’s board of trustees may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board of trustees.

Pursuant to the statute, the Seritage Growth Board of Trustees has by resolution exempted business combinations (a) between us and (i) Sears Holdings or its affiliates or (ii) ESL or FCM and/or Fairholme Clients or their respective affiliates and (b) between us and any other person, provided that in the latter case the business combination is first approved by the Seritage Growth Board of Trustees (including a majority of our trustees who are not affiliates or associates of such person). Consequently, the five-year prohibition and the supermajority vote requirements will not apply to a business combination between us and Sears Holdings, ESL or FCM and/or Fairholme Clients or their respective affiliates or to a business combination between us and any other person, in the latter case, if the Board of Trustees has first approved the combination. As a result, any person described in the preceding sentence may be able to enter into business combinations with us that may not be in the best interests of Seritage Growth shareholders, without compliance with the supermajority vote requirements and other provisions of the statute. We cannot assure you that the Seritage Growth Board of Trustees will not amend or repeal this resolution in the future.

Control Share Acquisitions

The MGCL provides with regards to Maryland REITs that holders of “control shares” of a Maryland REIT acquired in a “control share acquisition” have no voting rights with respect to such shares except to the extent approved by the affirmative vote of at least two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquirer, an officer of the Maryland REIT or an employee of the Maryland REIT who is also a trustee of the Maryland REIT are excluded from shares entitled to vote on the matter.

“Control shares” are voting shares of beneficial interest that, if aggregated with all other such shares owned by the acquirer, or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing trustees within one of the following ranges of voting power:

- one-tenth or more but less than one-third;
- one-third or more but less than a majority; or
- a majority or more of all voting power.

Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained shareholder approval or shares acquired directly from the Maryland REIT. A “control share acquisition” means the acquisition of issued and outstanding control shares, subject to certain exceptions.
A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses and making an “acquiring person statement” as described in the MGCL), may compel the board of trustees to call a special meeting of shareholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the Maryland REIT may itself present the question at any shareholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an “acquiring person statement” as required by the statute, then, subject to certain conditions and limitations, the Maryland REIT may redeem any or all of the control shares (except those for which voting rights have previously been approved) for fair value determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquirer or, if a meeting of shareholders is held at which the voting rights of such shares are considered and not approved, as of the date of such meeting. If voting rights for control shares are approved at a shareholders meeting and the acquirer becomes entitled to vote a majority of the shares entitled to vote, all other shareholders may exercise appraisal rights. The fair value of the shares as determined for purposes of such appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The control share acquisition statute does not apply to shares acquired in a merger, consolidation or statutory share exchange if the Maryland REIT is a party to the transaction or acquisitions approved or exempted by the declaration of trust or bylaws of the Maryland REIT.

Seritage Growth’s bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of Seritage Growth common shares. This provision may be amended or eliminated at any time in the future by the Seritage Growth Board of Trustees.

Subtitle 8

Subtitle 8 of Title 3 of the MGCL (“Subtitle 8”) permits a Maryland REIT with a class of equity securities registered under the Exchange Act and at least three independent trustees to elect to be subject, by provision in its declaration of trust or bylaws or a resolution of its board of trustees and notwithstanding any contrary provision in the declaration of trust or bylaws, to any or all of five provisions of the MGCL that provide, respectively, for:

- a classified board of trustees;
- a two-thirds vote requirement for removing a trustee;
- a requirement that the number of trustees be fixed only by vote of the board of trustees;
- a requirement that a vacancy on the board of trustees be filled only by the remaining trustees in office for the remainder of the full term of the class of trustees in which the vacancy occurred; and
- a majority requirement for the calling of a shareholder-requested special meeting of shareholders.

Seritage Growth’s declaration of trust provides that, effective at such time as we are able to make a Subtitle 8 election, vacancies on the Board of Trustees may be filled only by a majority of the remaining trustees and that trustees elected by the Board of Trustees to fill vacancies will serve for the remainder of the full term of the class of trustees in which the vacancy occurred. Through provisions in the declaration of trust and bylaws unrelated to Subtitle 8, we (i) have a classified board of trustees, (ii) vest in the Board of Trustees the exclusive power to fix the number of trusteeships and (iii) provide that only our chairman, our chief executive officer, president or our Board of Trustees, may call a special meeting. Under the declaration of trust, trustees may be removed only for cause by the affirmative vote of not less than 75% of the votes of the Seritage Growth common shares and Seritage Growth non-economic shares, voting together as a single class, entitled to be cast generally in the election of trustees.
Special Meetings of Shareholders

Pursuant to Seritage Growth’s bylaws, the chairman, the chief executive officer, the president or the Board of Trustees may call a special meeting of Seritage Growth shareholders. Under the provisions of Seritage Growth’s bylaws, a special meeting of Seritage Growth shareholders may not be called by shareholders.

Shareholder Actions by Unanimous Consent

Under the Seritage Growth declaration of trust and bylaws, shareholder action may be taken only at an annual or special meeting of shareholders or by unanimous consent in lieu of a meeting.

Approval of Extraordinary REIT Action; Amendment of Declaration of Trust and Bylaws

Under Maryland law, a Maryland REIT generally may not terminate, amend its declaration of trust, merge, convert, sell all or substantially all of its assets or engage in a statutory share exchange, unless advised by its board of trustees and approved by the affirmative vote of shareholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter, unless the REIT provides in its declaration of trust for approval of these matters by a lesser percentage, but not less than a majority of all of the votes entitled to be cast on the matter. The Seritage Growth declaration of trust does not provide for a lesser percentage.

Seritage Growth’s declaration of trust and bylaws provide that the Board of Trustees will have the exclusive power to make, alter, amend or repeal any provision of Seritage Growth’s bylaws.

Advance Notice of Trustee Nominations and New Business

Seritage Growth’s bylaws provide that nominations of individuals for election as trustees and proposals of business to be considered by shareholders at any annual meeting may be made only (1) pursuant to notice of the meeting, (2) by or at the direction of the Board of Trustees or (3) by any shareholder who was a shareholder of record at the time of giving the notice required by Seritage Growth’s bylaws and at the time of the meeting, who is entitled to vote at the meeting in the election of each of the individuals so nominated or on such other proposed business and who has complied with the advance notice procedures of Seritage Growth’s bylaws. Shareholders generally must provide notice to our secretary not earlier than the 150th day or later than the close of business on the 120th day before the first anniversary of the date of our proxy statement for the preceding year’s annual meeting.

Only the business specified in the notice of the meeting may be brought before a special meeting of Seritage Growth shareholders. Nominations of individuals for election as trustees at a special meeting of shareholders may be made only (1) by or at the direction of the Board of Trustees or (2) if the special meeting has been called in accordance with Seritage Growth’s bylaws for the purpose of electing trustees, by a shareholder who is a shareholder of record both at the time of giving the notice required by Seritage Growth’s bylaws and at the time of the special meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the advance notice procedures of Seritage Growth’s bylaws. Shareholders generally must provide notice to Seritage Growth’s secretary not earlier than the 120th day before such special meeting or later than the later of the close of business on the 90th day before the special meeting or the tenth day after the first public announcement of the date of the special meeting and the nominees of Seritage Growth’s Board of Trustees to be elected at the meeting.

A shareholder’s notice must contain certain information specified by Seritage Growth’s bylaws about the shareholder, its affiliates and any proposed business or nominee for election as a trustee, including information about the economic interest of the shareholder, its affiliates and any proposed nominee in Seritage Growth.
Corporate Opportunities

Seritage Growth’s declaration of trust provides that if any trustee or officer of Seritage Growth who is also a director, officer, employee or agent of Sears Holdings ESL or FCM or their respective affiliates acquires knowledge of a potential business opportunity, Seritage Growth renounces, on behalf of us and our subsidiaries, any potential interest or expectation in, or right to be offered or participation in, such opportunity, and the trustee may exploit the opportunity or offer it to others, unless the trustee first became aware of it solely as a direct result of his or her capacity as a trustee or officer of Seritage Growth. Seritage Growth is financially able and not prohibited from undertaking the opportunity, it is in the line of business and of practical advantage to Seritage Growth, and Seritage Growth has an interest or reasonable expectancy in the opportunity.

Forum Selection Clause

Seritage Growth’s bylaws provide that, unless we consent in writing to the selection of an alternative forum, the Circuit Court for Baltimore City, Maryland, or, if that court does not have jurisdiction, the United States District Court for the District of Maryland, Baltimore Division, will be the sole and exclusive forum for (a) any derivative action or proceeding brought on our behalf, (b) any action asserting a claim of breach of any duty owed by any of our trustees, officers or other employees to us or to our shareholders, (c) any action asserting a claim against us or any of our trustees, officers or other employees arising pursuant to any provision of the MGCL, the MRL or Seritage Growth’s declaration of trust or bylaws or (d) any action asserting a claim against us or any of our trustees, officers or other employees that is governed by the internal affairs doctrine.

REIT Qualification

The Seritage Growth declaration of trust provides that the Board of Trustees may authorize the company to revoke or otherwise terminate its REIT election, without approval of Seritage Growth shareholders, if it determines that it is no longer in Seritage Growth’s best interests to attempt to qualify, or to continue to qualify, as a REIT.

Limitation of Trustees’ and Officers’ Liability and Indemnification

Maryland law permits a Maryland REIT to include in its declaration of trust a provision eliminating the liability of its trustees and officers to the REIT and its shareholders for money damages, except for liability resulting from (i) actual receipt of an improper benefit or profit in money, property or services or (ii) active and deliberate dishonesty that is established by a final judgment and that is material to the cause of action. Seritage Growth’s declaration of trust contains a provision that eliminates the liability of our trustees and officers to the maximum extent permitted by Maryland law.

The MRL permits a Maryland REIT to indemnify and advance expenses to its trustees, officers, employees and agents to the same extent as permitted by the MGCL for directors, officers, employees and agents of a Maryland corporation. The MGCL requires a Maryland corporation (unless its charter provides otherwise) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The MGCL permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.
Under the MGCL, a Maryland corporation may not indemnify a director or officer in a suit by the corporation or in its right in which the director or officer was adjudged liable to the corporation or in a suit in which the director or officer was adjudged liable on the basis that personal benefit was improperly received. A court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct or was adjudged liable on the basis that a personal benefit was improperly received. However, indemnification for an adverse judgment in a suit by us or in our right, or for a judgment of liability on the basis that a personal benefit was improperly received, is limited to expenses.

In addition, the MGCL permits a Maryland corporation to advance reasonable expenses to a director or officer upon receipt of:

• a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and

• a written undertaking by or on behalf of the director or officer to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

Seritage Growth’s declaration of trust authorizes it to obligate itself, and Seritage Growth’s bylaws obligate it, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

• any present or former trustee or officer who is made or threatened to be made a party to, or witness in, a proceeding by reason of his or her service in that capacity; or

• any individual who, while a trustee or officer of our company and at our request, serves or has served as a trustee, director, officer, partner, member or manager of another real estate investment trust, corporation, partnership, joint venture, trust, limited liability company, employee benefit plan or any other enterprise and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity.

Seritage Growth’s declaration of trust and bylaws also permit it to indemnify and advance expenses to any person who served a predecessor of Seritage Growth in any of the capacities described above and to any employee or agent of Seritage Growth or a predecessor of Seritage Growth.

Effective upon completion of this offering, we will enter into indemnification agreements with each of our trustees and executive officers that provide for indemnification to the maximum extent permitted by Maryland law. See “Management—Limitation of Trustees’ and Officers’ Liability and Indemnification.”

Insofar as the foregoing provisions permit indemnification of trustees, officers or persons controlling us for liability arising under the Securities Act, we have been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.
DESCRIPTION OF PARTNERSHIP AGREEMENT OF OPERATING PARTNERSHIP

The following summary of the terms of the partnership agreement of Operating Partnership does not purport to be complete and is qualified in its entirety by reference to the partnership agreement. A copy of the partnership agreement is filed as an exhibit to the registration statement of which this prospectus is a part and incorporated by reference herein. See “Where You Can Find More Information.”

Management of Operating Partnership

Operating Partnership is a Delaware limited partnership that was formed on April 22, 2015. Seritage Growth is the sole general partner of Operating Partnership, and we intend to conduct substantially all of our business in or through Operating Partnership. In connection with this offering, we will enter into the partnership agreement of Operating Partnership. The provisions of the partnership agreement described below and elsewhere in this prospectus will be in effect after the completion of this offering.

As the sole general partner of Operating Partnership, we will exercise exclusive and complete responsibility and discretion in its day-to-day management and control. We can cause Operating Partnership to enter into major transactions, including acquisitions, distributions, creation of and investments in new subsidiaries, incurrences of indebtedness, dispositions and refinancings, subject to certain limited exceptions. The limited partners of Operating Partnership, which, following the completion of the OP Private Placement and this offering, will include ESL, may not transact business for, or participate in the management activities or decisions of, our operating partnership, except as provided in the partnership agreement and as required by applicable law. Seritage Growth may not be removed as general partner by the limited partners. The partnership agreement limits the ability of each of Seritage Growth and Operating Partnership to engage in certain change of control transactions as more fully described below.

Transferability of Interests

Seritage Growth, as general partner of Operating Partnership, may not voluntarily withdraw from Operating Partnership or transfer or assign all or any portion of its interest in Operating Partnership (other than a transfer to a wholly owned subsidiary of Seritage Growth) without the consent of partners (other than Seritage Growth and entities controlled by it) holding a majority of all the outstanding Operating Partnership units held by all partners (other than Seritage Growth and entities controlled by it) entitled to vote on or consent to the matter. A limited partner may not sell, assign, encumber or otherwise dispose of its Operating Partnership units without the general partner’s consent during the 12-month period following such limited partner’s acquisition of such Operating Partnership units, other than to family members or trusts for their exclusive benefit, to a charity or trust for the benefit of a charity, to entities that are controlled by the limited partner, its family members or affiliates, or to a lending institution that is not an affiliate of the limited partner as collateral for a bona fide loan, subject to certain limitations. In addition, all transfers must be made only to “accredited investors” as defined under Rule 501 of the Securities Act and are subject to other limitations and conditions set forth in the partnership agreement. Limited partners may also pledge their interests in Operating Partnership to one or more banks or lending institutions (which are not affiliates of the pledging limited partner). The transfer of such Operating Partnership units pursuant to the lender’s or financial institution’s enforcement of its remedies under the applicable financing documents is permitted by the partnership agreement of Operating Partnership.

Amendments to the Partnership Agreement

Amendments to the partnership agreement of Operating Partnership may be proposed by the general partner or limited partners holding a majority of the Operating Partnership units then held by limited partners. All amendments to the partnership agreement require the approval of Seritage Growth, as general partner, and generally partners holding a majority of the Operating Partnership units then held by partners (including Seritage Growth and entities controlled by it) entitled to vote on or consent to such matter. However, Seritage Growth, as
general partner, will have the power to unilaterally make certain amendments to the partnership agreement of Operating Partnership without obtaining the approval of any other partners as may be required to:

- add to its obligations as general partner or surrender any right or power granted to it as general partner for the benefit of the limited partners;
- reflect the admission, substitution or withdrawal of partners or termination of Operating Partnership in accordance with the terms of, and subject to the exceptions set forth in, the partnership agreement;
- reflect a change of an inconsequential nature or that does not adversely affect the limited partners in any respect;
- satisfy any requirements, conditions or guidelines of federal or state law;
- reflect changes that are reasonably necessary for Seritage Growth to maintain its status as a REIT or to satisfy REIT requirements;
- reflect the issuance of additional Operating Partnership units in accordance with the terms of, and subject to the exceptions set forth in, the partnership agreement;
- make certain modifications to the manner in which capital accounts are adjusted, computed or maintained, or net income or net loss are allocated;
- set forth or amend the designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption of any additional class or series of partnership interest permitted to be issued under the partnership agreement; or
- modify, if Operating Partnership is the surviving partnership in an approved change of control transaction, certain provisions of the partnership agreement to provide the holders of interests in such surviving partnership rights that are consistent with the partnership agreement.

Subject to certain exceptions, amendments that would, among other things, convert a limited partner into a general partner (except in connection with a permitted transfer of the general partner’s interest), modify the limited liability of a limited partner, adversely alter a partner’s right to receive any distributions or allocations of profits or losses, adversely alter or modify the redemption rights of limited partners and qualifying assignees (or amend these restrictions) must be approved by each limited partner that would be adversely affected by such amendment, unless the amendment or action affects all partners holding the same class or series of Operating Partnership units on a uniform or pro rata basis and is approved by a majority of the partners of such class or series.

Restrictions on General Partner’s Authority; Change of Control Transactions

Seritage Growth, as general partner, may not take any action in contravention of an express prohibition or limitation contained in the partnership agreement of Operating Partnership, including:

- any action that would make it impossible to carry on the ordinary business of Operating Partnership, except as otherwise provided in the partnership agreement;
- admitting any person as a partner, except as otherwise provided in the partnership agreement;
- performing any act that would subject a limited partner to liability not contemplated in the partnership agreement or under the Delaware Revised Uniform Limited Partnership Act; or
- entering into any contract, mortgage loan or other agreement that expressly prohibits or restricts Seritage Growth or Operating Partnership from performing their respective specific obligations in connection with a redemption of Operating Partnership units as described below or expressly prohibits or restricts the ability of a limited partner to exercise its redemption rights in full without the written consent of such limited partner.
In addition, pursuant to the partnership agreement of Operating Partnership, without the consent of partners (other than Seritage Growth and entities controlled by it) holding a majority of all the outstanding Operating Partnership units held by all partners (other than Seritage Growth and entities controlled by it) entitled to vote on or consent to the matter, neither Seritage Growth nor Operating Partnership may engage in, or cause or permit:

- at any time:
  - an amendment, modification or termination of the partnership agreement, except as explicitly permitted therein;
  - a transfer of any portion of Seritage Growth’s partnership interest or admission into the partnership of any additional or successor general partner (other than to us or one of Seritage Growth’s wholly owned subsidiaries);
  - a voluntary withdrawal of Seritage Growth as general partner except in connection with a permitted transfer of its entire interest to an entity that will become the new general partner;
  - a general assignment for the benefit of creditors, appointment or acquiescence in the appointment of a custodian, receiver or trustee for all or any part of the assets of Operating Partnership;
  - the commencement of any proceeding for bankruptcy by Operating Partnership;
  - the adoption of any plan of liquidation or termination of Seritage Growth;
  - any other direct or indirect transfer of all or any portion of Seritage Growth’s partnership interest in Operating Partnership, other than certain permitted transfers to affiliated entities;

- until after the first six continuous months in which ESL holds less than 40% of the economic interests of Seritage Growth and Operating Partnership on a consolidated basis:
  - a sale, lease, exchange or other transfer of all or substantially all of the assets of Seritage Growth or Operating Partnership, whether in a single transaction or a series of related transactions;
  - any direct or indirect transfer of all or any portion of Seritage Growth’s interest in Operating Partnership in connection with, or any other occurrence of:
    - a merger, consolidation, conversion or other combination or extraordinary transaction involving Seritage Growth or Operating Partnership;
    - a reclassification, recapitalization or change of the outstanding Seritage Growth common shares (other than a change in par value, or from par value to no par value, or as a result of a share split, share dividend or similar subdivision);
    - a “change of control” of Seritage Growth, which will be deemed to occur if (1) any person becomes the beneficial owner of 30% or more of Seritage Growth’s voting securities, (2) Seritage Growth is a party to a merger, conversion, consolidation, share exchange, reorganization, sale of assets or other similar extraordinary transaction, or a proxy contest, as a consequence of which proxy contest members of the Seritage Growth Board of Trustees in office immediately prior to such transaction or event constitute less than a majority of the Board of Trustees thereafter, or (3) during any period of two consecutive years, individuals who at the beginning of such period constituted the Seritage Growth Board of Trustees (including for this purpose any new trustee whose election or nomination for election by Seritage Growth’s shareholders was approved by a vote of at least two-thirds of the trustees then still in office who were trustees at the beginning of such period, other than following a proxy contest or other non-consensual attempt to influence or modify the Board of Trustees) cease for any reason to constitute at least a majority of the Seritage Growth Board of Trustees; or
    - a waiver of the ownership limits set forth in the Seritage Growth declaration of trust.
Distributions to Holders of Operating Partnership Units

The partnership agreement of Operating Partnership provides that holders of Operating Partnership units are generally entitled to receive distributions on a pro rata basis in accordance with their respective Operating Partnership units (subject to the rights of the holders of any class of preferred partnership interests that may be authorized and issued after this offering).

Redemption/Exchange Rights

A limited partner or an assignee will have the right, to require Operating Partnership to redeem part or all of its Operating Partnership units that it has held for at least 12 months in exchange for cash. Alternatively, at the election of Seritage Growth, the Operating Partnership units may be redeemed for Seritage Growth common shares on a one-for-one basis, subject to adjustment in the event of share splits, share dividends, distributions of warrants or share rights, specified extraordinary distributions and similar events. If Seritage Growth elects to redeem Operating Partnership units for Seritage Growth common shares the issuance of such common shares will be subject to the ownership limits set forth in Seritage Growth’s declaration of trust. Any redemption or exchange would increase Seritage Growth’s percentage ownership interest in Operating Partnership.

Pursuant to provisions of the partnership agreement of Operating Partnership and our Registration Rights Agreement with ESL, ESL will be permitted to transfer its Operating Partnership units that it has held for at least 12 months to one or more underwriters to be exchanged for Seritage Growth common shares in connection with certain dispositions in order to achieve the same effect as would occur if ESL were to exchange its Operating Partnership units for Seritage Growth common shares, which may be limited under the ownership restrictions set forth in the Seritage Growth declaration of trust, and then dispose of those shares in an underwritten offering.

Issuance of Units, Shares or Other Securities

Seritage Growth, as general partner of Operating Partnership, has the power to cause the issuance of additional Operating Partnership units in one or more classes or series, subject to certain exceptions and limitations in the partnership agreement. These additional units interests may include preferred partnership units.

Capital Contributions

The partnership agreement of Operating Partnership provides that Seritage Growth, as general partner, may authorize the issuance of additional partnership interests in exchange for such capital contributions, if any, as the general partner may approve, subject to certain exceptions and limitations in the partnership agreement. Under the partnership agreement, Seritage Growth is generally obligated to contribute the net proceeds received from any offering of Seritage Growth shares of beneficial interest as additional capital to Operating Partnership in exchange for additional Operating Partnership units. The partnership agreement also provides that Seritage Growth may make additional capital contributions, including contributions of properties, to Operating Partnership in exchange for additional Operating Partnership units, subject to certain exceptions and limitations in the partnership agreement. If Seritage Growth contributes additional capital and receives additional Operating Partnership units in exchange for a capital contribution, Seritage Growth’s percentage interest in Operating Partnership will be increased on a proportionate basis based on the amount of the additional capital contribution and the value of Operating Partnership at the time of the contribution. In addition, if Seritage Growth contributes additional capital and receives additional Operating Partnership units for the capital contribution, the capital accounts of the partners may be adjusted upward or downward to reflect any unrealized gain or loss attributable to the properties as if there were an actual sale of the properties at the fair market value thereof. In addition, for as long as ESL owns Operating Partnership units, it will have the preemptive right to maintain its overall economic interest of Seritage Growth and the Operating Partnership on a consolidated basis. In the case that we issue additional shares of beneficial interest, Operating Partnership must give ESL the right to purchase additional Operating Partnership units such that ESL may maintain its economic interest. No other person has any preemptive, preferential or other similar right with respect to making additional capital contributions or loans to Operating Partnership or the issuance or sale of any Operating Partnership units or other partnership interests.
Subject to certain limitations set forth in the partnership agreement, Operating Partnership could issue preferred partnership interests in connection with acquisitions of property or otherwise. Any such preferred partnership interests would have priority over common partnership interests with respect to distributions from Operating Partnership, including the partnership interests that Seritage Growth owns.

Limited partners will have the right to acquire additional Operating Partnership units in order to allow them to maintain their relative ownership interests in Operating Partnership if Operating Partnership issues additional units to Seritage Growth.

**Borrowing by the Operating Partnership**

Seritage Growth, as general partner, may cause Operating Partnership to (or to cause subsidiaries of Operating Partnership to) borrow money and to issue and guarantee debt as Seritage Growth deems necessary for the conduct of the activities of Operating Partnership. Such debt may be secured, among other things, by mortgages, deeds of trust, liens or encumbrances on the properties of Operating Partnership (or any applicable subsidiaries).

**Tax Matters**

Seritage Growth, as general partner, is the tax matters partner of Operating Partnership and therefore has the authority under the Code to handle tax audits on behalf of Operating Partnership. In addition, Seritage Growth, as general partner, has the authority to arrange for the preparation and filing of Operating Partnership’s tax returns and to make tax elections under the Code on behalf of Operating Partnership.

**Allocations of Net Income and Net Losses to Partners**

The net income or net loss of our Operating Partnership will generally be allocated to the general partner and the limited partners of Operating Partnership in accordance with their respective ownership of Operating Partnership units. However, in some cases, gains or losses may be disproportionately allocated to partners who have contributed property to or guaranteed debt of Operating Partnership. The allocations described above are subject to special allocations relating to depreciation deductions and to compliance with the provisions of Sections 704(b) and 704(c) of the Code and the associated Treasury regulations.

**Operations**

Seritage Growth, as general partner, intends to manage Operating Partnership in a manner that will enable Seritage Growth to maintain its qualification as a REIT and to minimize any U.S. federal income tax liability. The partnership agreement of Operating Partnership provides that Operating Partnership will assume and pay when due, or reimburse Seritage Growth for payment of, all costs and expenses relating to the operations of or for the benefit of Operating Partnership.

**Term**

Operating Partnership will continue in full force and effect until dissolved in accordance with its terms or as otherwise provided by law.
Indemnification and Limitation of Liability

To the extent permitted by applicable law, the partnership agreement of Operating Partnership provides for indemnification of Seritage Growth, our trustees, officers and employees, employees of our Operating Partnership and any other persons whom the general partner may designate from and against any and all claims arising from or that relate to the operations of Operating Partnership in which any indemnitee may be involved, or is threatened to be involved, as a party or otherwise unless:

- it is established that the act or omission of the indemnitee constituted fraud, intentional harm or gross negligence on the part of the indemnitee;
- the claim is brought by the indemnitee (other than to enforce the indemnitee’s rights to indemnification or advance of expenses); or
- the indemnitee is found to be liable to Operating Partnership, and then only with respect to each such claim.

Partners of Operating Partnership, including Seritage Growth, as general partner, are not liable to Operating Partnership or its partners except for willful misconduct or recklessness, and no trustee, officer or agent of the general partner, and none of Seritage Growth’s trustees, officers or agents have any duties directly to Operating Partnership or its partners, and will not be liable to Operating Partnership or its partners for money damages by reason of their service as such.
DESCRIPTION OF INDEBTEDNESS

We summarize below the principal terms expected in respect of the Financing. This summary is not a complete description of all of the terms of the relevant agreements. As the final terms have not been agreed upon, the final terms may differ from those set forth herein and any such differences may be significant.

In connection with this offering, we expect one or more of the Acquired Entities, presently wholly-owned subsidiaries of Sears Holdings, to enter into one or more mortgage or mezzanine loan agreements (the “Loan Agreements”), providing for:

• term loans in an initial principal amount of approximately $1.16 billion (collectively, the “Term Loans”); and

• a $100 million future funding facility, which we expect to be available to us to finance redevelopment of the Acquired Properties from time to time (the “Future Funding Facility”) subject to satisfaction of certain conditions.

We expect that the net proceeds from the Term Loans will be distributed to a wholly owned subsidiary of Sears Holdings immediately prior to the consummation of the rights offering and that, simultaneously with the consummation of the rights offering, Operating Partnership will purchase the Acquired Entities, subject to the Term Loans as partial consideration for the acquisition of the Acquired Entities. Amounts borrowed and repaid under the Future Funding Facility will not be available to be re-borrowed.

Entrance into the Loan Agreements is subject to satisfaction of the conditions precedent contained in the Commitment or obtaining the Financing from alternative sources, and there can be no assurance that the Loan Agreements will be entered into in the manner, on the terms or on the timetable described herein or at all. This offering is not expressly contingent on the Loan Agreements, however Sears Holdings reserves the right to withdraw and cancel the rights offering if the board of directors of Sears Holdings determines that market conditions are such that it is not advisable to consummate the rights offering (which could occur if, among other things, we do not receive sufficient proceeds from this offering, the other equity sales contemplated hereby or the Financing).

All obligations under the mortgage Loan Agreement are expected to be secured by mortgages on, and other security interests in, substantially all of the assets of the borrower or borrowers thereunder, which is expected to include all of the Acquired Properties, and by a pledge of the JV Interests (or one or more subsidiaries of Operating Partnership formed to hold the JV Interests). All obligations under the mezzanine Loan Agreement are expected to be secured by a pledge of the equity interests in the mortgage borrowers and in the subsidiaries that own the JV Interests. In addition, as described in the following paragraph, Seritage Growth and Operating Partnership will be joint and several recourse carve-out guarantors of the Term Loans and the Future Funding Facility.

All obligations under the Loan Agreements are expected to be non-recourse to the borrowers, the pledgors of the JV Interests and the guarantors thereunder, except that (i) the borrowers and the guarantors will be liable, on a joint and several basis, for losses incurred by the lenders in respect of certain matters customary for commercial real estate loans, including misappropriation of funds and certain environmental liabilities and (ii) the indebtedness under the Loan Agreements will be fully recourse to the borrowers and guarantors upon the occurrence of certain events customary for commercial real estate loans, including without limitation prohibited transfers, prohibited liens and bankruptcy.

All outstanding principal and interest under the Loan Agreements is expected to be due and payable on the date that is four years after the closing date of the Loan Agreements, subject to two one-year extension options which we expect will be available subject to payment of an extension fee and satisfaction of certain other conditions. We expect that the commitment in respect of the Future Funding Facility will expire on June 30, 2017 if not fully drawn by such date. We do not expect that either the Term Loans or the draws on the Future Funding Facility will require scheduled amortization.
We expect that the indebtedness under Loan Agreements will not be prepayable, other than mandatorily upon the sale of Acquired Properties, during the first year after the closing of the Financing. Thereafter, prepayments (other than a complete refinancing of the loans) will be capped at 50% of the aggregate principal amount of the loans under the Loan Agreements and will be subject to payment of a “spread maintenance” prepayment premium. We expect that the Loan Agreements will limit the ability of the Operating Partnership and its subsidiaries to sell Acquired Properties, whether entirely, or by sale or contribution to a joint venture to which Operating Partnership or a subsidiary may become party. In connection with sale of any Acquired Property permitted under the Loan Agreements, the borrowers will be required to make a mandatory prepayment of the loans at a release price assigned to such property under the Loan Agreements.

Our projected average monthly interest payment over the course of the initial term of the Term Loan will be approximately $6 million. The actual monthly interest payment will depend on the movement of 1-Month LIBOR. At the closing of the Financing, we have agreed to purchase a LIBOR interest rate cap agreement at an agreed strike rate.

We expect the Loan Agreements to contain affirmative and negative covenants, restrictions and events of default customary for commercial real estate mortgage and mezzanine loans. We expect such restrictions to include cash flow sweep provisions based on certain metrics of our financial and operating performance, including in the case that “Debt Yield” (the ratio of net operating income for the borrowers under the Loan Agreements to their debt) is less than 11.0% or if we fail to achieve certain thresholds for tenant diversification. If a cash flow sweep period is triggered under the Loan Agreements we expect that we will be constrained in our ability to use cash generated by the Acquired Properties (which comprise substantially all of our assets as of the closing date) to pay dividends and distributions to holders of Operating Partnership units and Seritage Growth common shares. We also expect the borrowers under the Loan Agreements to make certain representations and warranties and covenants regarding the ownership and operation of the Acquired Properties and standard special purpose bankruptcy remote entity covenants designed to preserve the separateness of the borrowers from Seritage Growth and the Operating Partnership in the event of a bankruptcy action. Upon the occurrence of an event of default under the Loan Agreements, we expect the lenders thereunder will be permitted to take the following actions: (i) accelerate the maturity date of the loan obligations, (ii) foreclose on any or all of the mortgages and other collateral securing the mortgage loan (or equity pledges and other collateral securing any mezzanine loans) and (iii) apply amounts on deposit in the reserve accounts provided for under the Loan Agreements to pay the debt thereunder.
THE RIGHTS OFFERING

The Subscription Rights

Sears Holdings is distributing to the record holders of its common stock as of the record date, transferable subscription rights to purchase Seritage Growth common shares at a price of $29.58 per share. Each holder of record of Sears Holdings common stock will receive one subscription right allowing the holder to subscribe for one half of one Seritage Growth common share on the terms set forth in this offering, for each share of common stock owned by that holder as of 5:00 p.m., New York City time, on June 11, 2015, the record date, except that holders of Sears Holdings’ restricted stock that is unvested as of the record date will receive cash awards in lieu of subscription rights. Each subscription right is a contractual obligation of Seritage Growth that will entitle the holder to purchase from Seritage Growth one half of one Seritage Growth common shares. Each subscription right entitles the holder to a basic subscription right and an over-subscription privilege. The subscription rights entitle the holders of subscription rights to purchase an aggregate of 53,298,899 Seritage Growth common shares for an aggregate purchase price of $1,576,581,444.

Sears Holdings may withdraw and cancel the rights offering if, at any time prior to its expiration, the board of directors of Sears Holdings determines, in its sole discretion, that the rights offering is not in the best interest of Sears Holdings or its stockholders, or that market conditions are such that it is not advisable to consummate the rights offering. If Sears Holdings cancels the rights offering, it will issue a press release notifying stockholders of the cancellation, and the subscription agent will return all subscription payments to the subscribers, without interest or penalty, as soon as practicable.

In addition, in this offering, Seritage Growth is offering 9,527,198 Seritage Growth non-voting shares, in lieu of certain Class A Common Shares to certain Fairholme Clients at a price of $29.58 per share (the subscription price for the rights offering). In light of regulatory and tax considerations, Seritage Growth and FCM have entered into an agreement giving FCM the right to cause certain Fairholme Clients to exchange a portion of its subscription rights for the Seritage Growth non-voting shares. See “Certain Relationships and Related Transactions—ESL Exchange Agreement” and “Certain Relationships and Related Transactions—Fairholme Exchange Agreement.” This offering also includes 9,527,198 Seritage Growth common shares that may be issued from time to time upon conversion of the Seritage Growth non-voting shares. See “Description of Shares of Beneficial Interest—Non-Voting Shares.”

This discussion of the rights offering does not include a discussion of the OP Private Placement or the Non-Economic Shares Private Placement (each of which is discussed in more detail in “Certain Relationships and Related Transactions—Exchange Agreements”).

In addition, this discussion of the rights offering does not include a discussion of the Seritage Private Placements. Seritage Growth and GGP have entered into an investment agreement (the “GGP Investment Agreement”) pursuant to which Seritage Growth will issue and sell to GGP, concurrently with the closing of the rights offering and subject to the satisfaction of certain other related closing conditions, 1,125,760 Seritage Growth common shares at a price of $29.58 per share (the subscription price for the rights offering), for an aggregate purchase price of $33.3 million (except that the number of Seritage Growth common shares and aggregate purchase price will be reduced to the extent the shares purchased would constitute more than 4% of the aggregate value of the common shares of beneficial interest of Seritage Growth immediately following the closing of this offering). Likewise, Seritage Growth and Simon have entered into an investment agreement (the “Simon Investment Agreement” and, together with the GGP Investment Agreement, the “Investment Agreements”) pursuant to which Seritage Growth will issue and sell to Simon, concurrently with the closing of the rights offering and subject to the satisfaction of certain other related closing conditions, 1,125,760 Seritage Growth common shares at a price of $29.58 per share (the subscription price for the rights offering), for an aggregate purchase price of $33.3 million (subject to reduction in the same manner as provided in the GGP Investment Agreement). The shares to be issued and sold in the Seritage Private Placements are not registered as part of, and are in addition to the Seritage Growth common shares offered in, the rights offering. This description of the Investment Agreements does not purport to be complete and is qualified by reference to the Investment
Agreements, each of which is filed as an exhibit to the registration statement of which this prospectus forms a part and is incorporated by reference herein.

Holders of subscription rights (other than ESL and Fairholme Clients) will not have the right to participate in the OP Private Placement, the Non-Economic Shares Private Placement or the Non-Voting Shares Offering and will not be entitled to purchase Seritage Growth non-economic shares or Seritage Growth non-voting shares.

Basic Subscription Right. With your basic subscription right, you may purchase from Seritage Growth one half of one Seritage Growth common share per subscription right, subject to delivery of the required documents and payment of the subscription price of $29.58 per whole share, before the rights offering expires. You may exercise all or a portion of your basic subscription right, or you may choose not to exercise any of your subscription rights. If you do not exercise your basic subscription rights in full (after giving effect to any purchases or sales of subscription rights prior to the time of such exercise), you will not be entitled to purchase any shares under your over-subscription privilege.

The number of shares issuable upon the exercise of the basic subscription right will be rounded down to the nearest whole share.

For example, if you owned 1,000 shares of Sears Holdings common stock on the record date, you would have received 1,000 subscription rights and would have the right to purchase 500 Seritage Growth common shares for $29.58 per whole share.

Sears Holdings will credit your account or the account of your nominee record holder with Seritage Growth common shares that you purchased with the basic subscription right as soon as practicable after the rights offering has expired.

All Seritage Growth common shares purchased pursuant to the exercise of the subscription rights will be issued by way of direct registration in book-entry form. Registration in book-entry form refers to a method of recording share ownership when no physical share certificates are issued.

Restrictions on Ownership. To assist us in complying with the limitations on the concentration of ownership of REIT shares imposed by the Code, among other purposes, Seritage Growth’s declaration of trust provides for restrictions on ownership and transfer of Seritage Growth shares of beneficial interest, including, subject to certain exceptions, prohibitions on any person actually or constructively owning more than 9.6% in value or in number, whichever is more restrictive, of all outstanding shares, or all outstanding common shares (including Seritage Growth common shares, Seritage Growth non-economic shares and Seritage Growth non-voting shares), of beneficial interest of Seritage Growth. A person that did not acquire more than 9.6% of outstanding Seritage Growth shares, including pursuant to the rights offering, may become subject to Seritage Growth’s declaration of trust restrictions if repurchases by Seritage Growth cause such person’s holdings to exceed such ownership limits.

Over-subscription Privilege. If you purchase all Seritage Growth common shares available to you pursuant to your basic subscription rights, you may also choose to purchase from Seritage Growth a portion of any Seritage Growth common shares that other holders of subscription rights do not purchase through the exercise of their basic subscription rights, subject to the ownership limits set forth in Seritage Growth’s declaration of trust. Only holders who fully exercise all of their basic subscription rights, after giving effect to any purchases or sales of subscription rights by them prior to such exercise, may participate in the over-subscription privilege. ESL and Fairholme Clients may participate in the over-subscription privilege; however, in light of tax and regulatory restrictions, ESL and FCM have entered into agreements with us giving ESL and Fairholme Clients the right to purchase interests in us in the ESL Private Placement and the Non-Voting Shares Offering. Seritage Growth common shares with respect to any subscription rights exchanged in the ESL Private Placement and the Non-Voting Shares Offering will not be sold in this offering and will not be available as part of the over-subscription process.
If you wish to exercise your over-subscription privilege, you must indicate on your rights certificate, or the form provided by your nominee if your Sears Holdings shares are held in the name of a nominee, how many additional Seritage Growth common shares you would like to purchase pursuant to your over-subscription privilege, and provide payment as described below.

Minimum Subscription Condition. It is a condition to this offering that the offering be fully subscribed (including taking into account any exchanges by ESL or any Fairholme Client) which the Sears Holdings board of directors, at its sole discretion, may waive.

Seritage Growth common shares will be allocated in the rights offering as follows:

- First, shares will be allocated to holders of rights who exercise their basic subscription rights at a ratio of a common share per exercised subscription right.
- Second, any remaining shares that were eligible to be purchased in the rights offering will be allocated among the holders of rights who exercise the over-subscription privilege, in accordance with the following formula:
  - Each holder who exercises the over-subscription privilege will be allocated a percentage of the remaining shares equal to the percentage that results from dividing (i) the number of basic subscription rights which that holder exercised by (ii) the number of basic subscription rights which all holders who wish to participate in the over-subscription privilege exercised. Such percentage could result in the allocation of more or fewer over-subscription shares than the holder requested to purchase through the exercise of the over-subscription privilege.
    - For example, if Stockholder A holds 200 subscription rights and Stockholder B holds 300 subscription rights and they are the only two stockholders who exercise the over-subscription privilege, Stockholder A will be allocated 40% and Stockholder B will be allocated 60% of all remaining shares available. (Example A)
    - Third, if the allocation of remaining shares pursuant to the formula described above in the second step would result in any holder receiving a greater number of common shares than that holder subscribed for pursuant to the over-subscription privilege, then such holder will be allocated only that number of shares for which the holder over-subscribed.
      - For example, if Stockholder A is allocated 100 shares pursuant to the formula described above but subscribed for only 40 additional shares pursuant to the over-subscription privilege, Stockholder A’s allocation would be reduced to 40 shares. (Example B)
- Fourth, any common shares that remain available as a result of the allocation described above being greater than a holder’s over-subscription request (the 60 additional shares in Example B above) will be allocated among all remaining holders who exercised the over-subscription privilege and whose initial over-subscription allocations were less than the number of shares they requested. This second allocation will be made pursuant to the same formula described above and repeated, if necessary, until all available Seritage Growth common shares have been allocated or all over-subscription requests have been satisfied in full.

However, in no circumstance will any holder (other than Fairholme Clients, which are expected to receive the Excess Share Waivers) be allocated common shares pursuant to the over-subscription privilege to the extent such allocation would result in such holder beneficially owning 9.6% or more of the outstanding shares of beneficial interest of Seritage Growth (as calculated for certain federal income tax purposes), nor will any holder, other than ESL and Fairholme Clients, participate in the OP Private Placement, the Non-Economic Shares Private Placement or the Non-Voting Shares Offering. See “Certain Relationships and Related Transactions—ESL Exchange Agreement” and “Certain Relationships and Related Transactions—Fairholme Exchange Agreement.”

To properly exercise your over-subscription privilege, you must deliver the subscription payment related to your over-subscription privilege before the rights offering expires. Because we will not know the total number of
unsubscribed Seritage Growth common shares before the rights offering expires, if you wish to maximize the number of Seritage Growth common shares you purchase pursuant to your over-subscription privilege, you will need to deliver payment in an amount equal to the aggregate subscription price for the maximum number of shares that could be available to you at the time you exercise your basic subscription rights (i.e., the aggregate payment for both your basic subscription right and for all additional shares you desire to purchase pursuant to your over-subscription request). Any excess subscription payments received by the subscription agent, including payments for additional shares you requested to purchase pursuant to the over-subscription privilege but which were not allocated to you, will be returned, without interest or penalty, promptly following the expiration of the rights offering.

The number of shares issuable upon the exercise of the over-subscription privilege will be rounded down to the nearest whole share. Computershare Trust Company, N.A., our subscription agent for the rights offering, will determine, in its sole discretion, the over-subscription allocation based on the formula described above.

We can provide no assurances that you will actually be entitled to purchase the number of Seritage Growth common shares issuable upon the exercise of your over-subscription privilege in full at the expiration of the rights offering. Sears Holdings will not be able to satisfy any orders for shares pursuant to the over-subscription privilege if all holders of rights exercise their basic subscription rights in full.

Reasons for the Transaction

Sears Holdings believes that the Transaction would provide, among other things, financial and operational benefits to both Seritage Growth and Sears Holdings, including, but not limited to, the following expected benefits:

- **Additional Liquidity and Financial Flexibility.** The Transaction is intended to monetize a portion of Sears Holdings’ real estate assets in a manner that provides current value to Sears Holdings while allowing Sears Holdings to continue to operate in its existing store locations and creating significant flexibility and potential upside for both us and Sears Holdings. Specifically, the Transaction will provide Sears Holdings the ability to rationalize certain of its real estate holdings in a deliberate and considered manner, immediately gain increased liquidity, and subsequently rationalize a portion of its rental costs to the extent its stores become unprofitable below certain levels.

- **Additional Strategic Opportunities.** We will immediately have an income stream from an existing tenant, with enhanced flexibility as a lessor due to the ability to recapture substantial amounts of space from Sears Holdings and diversify its tenant mix by leasing recaptured space to other tenants. As a REIT, Seritage Growth will generally not pay income taxes on income that is distributed to shareholders, and will be required to distribute at least 90% of its REIT taxable income to shareholders. Sears Holdings expects the Transaction to facilitate strategic expansion opportunities for us by providing us with the ability to pursue transactions with other operators that would not pursue transactions with Sears Holdings as a current competitor and to diversify into different businesses.

- **Business-Appropriate Capital Structure.** The Transaction will create an independent equity structure that will afford us direct access to capital markets and facilitate our ability to effect future real estate acquisitions utilizing Seritage Growth common shares and Operating Partnership units.

- **Focused Management.** The Transaction will allow management of each of Sears Holdings and Seritage Growth to devote time and attention to the development and implementation of corporate strategies and policies that are based on the specific business characteristics of the respective companies, and to design more tailored compensation structures that better reflect these strategies, policies and business characteristics. Our separate equity-based compensation arrangements should more closely align the interests of management with the interests of shareholders and more directly incentivize our employees and attract new talent.

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Distinct Investment Opportunities. The Transaction will provide investors with two distinct and targeted investment opportunities. Since the subscription rights are being distributed at no charge to Sears Holdings’ existing stockholders, stockholders will have the choice to acquire a stake in Seritage Growth in addition to retaining their existing Sears Holdings stake.

Conditions, Withdrawal and Cancellation

Sears Holdings’ obligation to close the rights offering is conditioned on the satisfaction or waiver of the following conditions:

- the Sears Holdings board of directors (and a special transaction committee thereof) shall have authorized and approved the Transaction and not withdrawn such authorization and approval, and shall have declared the dividend of the subscription rights to Sears Holdings stockholders;
- each of the agreements to be entered into governing the Transaction shall have been executed by each party thereto and all the actions required to be performed prior to the closing of the rights offering shall have been completed;
- the SEC shall have declared effective our registration statement on Form S-11, of which this prospectus is a part, under the Securities Act, and no stop order suspending the effectiveness of the registration statement shall be in effect, and no proceedings for such purpose shall be pending before or threatened by the SEC;
- the overall minimum subscription of Seritage Growth common shares (resulting in gross proceeds, together with the proceeds of the ESL Private Placement, if ESL elects to exchange subscription rights, of $839.2) required to complete this offering is fulfilled;
- Seritage Growth common shares and the subscription rights shall have been accepted for listing on the NYSE or another national securities exchange or quotation system approved by Sears Holdings, subject to official notice of issuance;
- no order, injunction or decree issued by any governmental authority of competent jurisdiction or other legal restraint or prohibition preventing consummation of the Transaction shall be in effect, and no other event outside the control of Sears Holdings shall have occurred or failed to occur that prevents the consummation of the Transaction;
- the individuals listed as members of the post-Transaction Board of Trustees of Seritage Growth in this prospectus shall have been duly elected and qualified, and such individuals shall be the members of the Board of Trustees immediately after the Transaction;
- prior to the Transaction, Sears Holdings shall deliver or cause to be delivered to Seritage Growth resignations, effective as of immediately after the Transaction, of each individual who will be an officer or trustee of Seritage Growth after the Transaction and who is an officer or director of Sears Holdings immediately prior to the Transaction;
- immediately prior to the Transaction, the Seritage Growth Declaration of trust and bylaws, each in substantially the form filed as an exhibit to the registration statement of which this prospectus forms a part, shall be in effect; and
- the closing of the sale of the Acquired Properties and the JV Interests from Sears Holdings to us (which is subject to certain additional conditions) shall have occurred contemporaneously with the closing of the rights offering.

The fulfillment of the foregoing conditions will not create any obligation on the part of Sears Holdings to close the rights offering.

In addition, Sears Holdings reserves the right to withdraw and cancel the rights offering if, at any time prior to the expiration of the rights offering, the board of directors of Sears Holdings determines, in its sole discretion,
that the offering is not in the best interest of Sears Holdings or its stockholders, or that market conditions are such that it is not advisable to consummate the rights offering. If Sears Holdings cancels the rights offering, it will issue a press release notifying stockholders of the cancellation by the close of business, New York City time, on the last business day of the previously announced subscription period.

If Sears Holdings cancels the rights offering, all affected subscription rights will expire without value, and all subscription payments received by the subscription agent will be returned, without interest, as soon as practicable.

If Sears Holdings cancels the rights offering and you have not exercised any rights, the subscription rights will expire, be of no value and cease to be exercisable for Seritage Growth common shares. If you purchase subscription rights during the subscription period and Sears Holdings cancels the rights offering, you will lose the entire purchase price paid to acquire such subscription rights; however, any subscription payments that you paid and that were received by the subscription agent will be returned to you, without interest or penalty, as soon as practicable. See “Risk Factors—Risks Related to the Offering—Sears Holdings may cancel the rights offering at any time prior to the expiration of the rights offering and in such case neither Sears Holdings nor the subscription agent will have any obligation to you except to return your exercise payments.”

Effect of the Rights Offering on Outstanding Common Stock of Sears Holdings

The issuance of Seritage Growth common shares and Seritage Growth non-voting shares in this offering will not affect the number of shares of Sears Holdings common stock you own or your percentage ownership of Sears Holdings. Holders of common stock of Sears Holdings that do not exercise their subscription rights to purchase Seritage Growth common shares will no longer retain an ownership interest in the assets and liabilities transferred to us following the completion of this offering, as the common stock of Sears Holdings will no longer reflect the activities, assets or liabilities transferred to us. In addition, the trading price of Sears Holdings common stock immediately following this offering may be higher or lower than immediately prior to this offering.

Assuming the subscription rights are exercised in full (or, in the case of the maximum portion of the subscription rights held by each of ESL and certain Fairholme Clients permitted to be exchanged under their respective Exchange Agreements, exchanged for Operating Partnership units and Seritage Growth economic shares, and for Seritage Growth non-voting shares, respectively), we expect to receive gross cash proceeds of approximately $2,677.3 million (including the distribution of the proceeds of the debt incurred in the Financing, which will be assumed by Operating Partnership) as a result of the sale of Seritage Growth common shares and Seritage Growth non-voting shares in this offering, the sale of Seritage Growth common shares in the Seritage Private Placements, the sale of Seritage Growth non-economic shares in the Non-Economic Shares Private Placement and the sale of Operating Partnership units in the OP Private Placement. We intend to use the proceeds from this offering, the Seritage Private Placements and the ESL Private Placement, together with the assumption of the indebtedness incurred in the Financing, to pay the purchase price to Sears Holdings for the Acquired Entities and the JV Interests, with remaining proceeds used for working capital and other general purposes.

Method of Exercising Subscription Rights

The exercise of subscription rights is irrevocable and may not be cancelled or modified. You may exercise your subscription rights as follows:

Subscription by Registered Holders. If you are a registered holder of Sears Holdings common stock, the number of Seritage Growth common shares you may purchase pursuant to your basic subscription right will be indicated on the rights certificate that you receive. You may exercise your subscription rights by properly completing and executing the rights certificate and forwarding it, together with your full payment, to the subscription agent at the address given below under “—Subscription Agent and Information Agent,” to be received before 5:00 p.m., New York City time, on July 2, 2015.
Subscription by Beneficial Owners. If you are a beneficial owner of shares of Sears Holdings common stock that are registered in the name of a broker, dealer, custodian bank or other nominee, you will not receive a rights certificate. Instead, the DTC will electronically issue one subscription right to your nominee record holder for every share of Sears Holdings common stock that you own as of the record date. If you are not contacted by your nominee, you should promptly contact your nominee in order to subscribe for Seritage Growth common shares in the rights offering.

Subscription by Purchasers of Subscription Rights. If you purchase subscription rights during the subscription period through a broker, dealer, custodian bank or other nominee, you will not receive a rights certificate. Instead, your broker, dealer, custodian bank or other nominee must exercise the subscription rights on your behalf. If you wish to exercise your subscription rights and purchase Seritage Growth common shares through the rights offering, you should contact your nominee as soon as possible. Please follow the instructions of your nominee. Your nominee may establish a deadline that may be before the expiration date of the rights offering.

If you purchase subscription rights during the subscription period directly from a registered holder of Sears Holdings common stock, you should contact the subscription agent as soon as possible regarding the exercise of your subscription rights. Please follow the instructions of the subscription agent in order to properly exercise your subscription rights.

Payment Method

Your payment of the subscription price must be made in U.S. dollars for the full number of common shares that you wish to acquire in the rights offering by cashier’s or certified check drawn upon a United States bank payable to the subscription agent at the address set forth below under the heading “Subscription Agent and Information Agent.” Your payment must be delivered to the subscription agent prior to the expiration of the rights offering. Personal checks and wire transfers will not be accepted. Payment received after the expiration of the rights offering will not be honored, and the subscription agent will return your payment to you, without interest or penalty, as soon as practicable.

You should carefully read and strictly follow the instruction letter and any other documents accompanying the rights certificate. Do not send subscription documents, rights certificates or payments directly to us or to Sears Holdings. Sears Holdings will not consider your subscription received until the subscription agent has received delivery of a properly completed and duly executed rights certificate and payment of the full subscription amount. The risk of delivery of all subscription documents, rights certificates and payments is borne by the holders of subscription rights, not by the subscription agent, Sears Holdings or us. If sent by mail, we recommend that you send those rights certificates and payments by overnight courier or by registered mail, properly insured, with return receipt requested, and that you allow a sufficient number of days to ensure delivery to the subscription agent.

If you hold your shares of Sears Holdings common stock in the name of a custodian bank, broker, dealer or other nominee and wish to purchase Seritage Growth common shares, you should contact your nominee as soon as possible regarding the exercise of the subscription rights and the payment for the Seritage Growth common shares.

Medallion Guarantee May Be Required

Your signature on your rights certificate must be guaranteed by an eligible institution, such as a member firm of a registered national securities exchange or a member of the Financial Industry Regulatory Authority, Inc., or a commercial bank or trust company having an office or correspondent in the United States, subject to standards and procedures adopted by the subscription agent, unless:

- you provide on the rights certificate that shares are to be delivered to you as record holder of those subscription rights; or
- you are an eligible institution.
Missing or Incomplete Subscription Information

If you hold your shares of Sears Holdings common stock in the name of a custodian bank, broker, dealer or other nominee, the nominee will exercise the subscription rights on your behalf in accordance with your instructions. Your nominee may establish a deadline that may be before the 5:00 p.m., New York City time, July 2, 2015 expiration date that Sears Holdings has established for the rights offering. If you send a payment that is insufficient to purchase the number of common shares you requested, or if the number of shares you requested is not specified in the forms, the payment received will be applied to exercise your subscription rights to the fullest extent possible based on the amount of the payment received, subject to the availability of shares under the over-subscription privilege and the elimination of fractional shares. Any excess subscription payments received by the subscription agent will be returned, without interest, as soon as practicable following the expiration of the rights offering.

Expiration Date and Extension

The subscription period, during which you may exercise your subscription rights, expires at 5:00 p.m., New York City time, on July 2, 2015, which is the expiration of the rights offering. If you do not exercise your subscription rights before that time, your subscription rights will expire and will no longer be exercisable. Sears Holdings will not be required to sell Seritage Growth common shares to you if the subscription agent receives your rights certificate or your subscription payment after that time. Sears Holdings has the option to extend the rights offering, although it does not presently intend to do so. Sears Holdings may extend the rights offering by giving oral or written notice to the subscription agent before the rights offering expires, but in no event will we extend the rights offering beyond July 17, 2015. If Sears Holdings elects to extend the rights offering, it will issue a press release announcing the extension no later than 9:00 a.m., New York City time, on the next business day after the most recently announced expiration date of the rights offering.

If you hold your shares of Sears Holdings common stock in the name of a broker, dealer, custodian bank or other nominee, the nominee will exercise the subscription rights on your behalf in accordance with your instructions. Please note that the nominee may establish a deadline that may be before the 5:00 p.m., New York City time, July 2, 2015 expiration date that Sears Holdings has established for the rights offering.

Determination of Subscription Price

In determining the subscription price, the board of directors of Sears Holdings considered, among other things, (1) the opinion of Duff & Phelps, LLC, which it engaged to act as a financial advisor in connection with the Transaction, (2) the appraisal reports of Cushman & Wakefield, which assisted in valuing the Acquired Properties, (3) the desirability of broad participation in the rights offering by Sears Holdings’ stockholders and of the development of a trading market for both the subscription rights and Seritage Growth common shares, (4) the fair market value of the Acquired Properties and the JV Interests purchased in the Transaction, including the terms of the Master Lease, and (5) Seritage Growth’s liquidity needs and the aggregate amount of proceeds to be paid to Sears Holdings pursuant to the Transaction if the rights offering were fully subscribed.

Subscription Agent and Information Agent

The subscription agent for this offering is Computershare Trust Company, N.A. The address to which rights certificates and payments should be mailed or overnight courier is provided below. If sent by mail, we recommend that you send documents and payments by registered mail, properly insured, with return receipt requested, and that you allow a sufficient number of days to ensure delivery to the subscription agent. Do not send or deliver these materials to Sears Holdings or to us.

If you deliver subscription documents or rights certificates in a manner different than that described in this prospectus, Sears Holdings may not honor the exercise of your subscription rights.
If your Sears Holdings shares are held in the name of a broker, dealer or other nominee, you should send your subscription documents and subscription payment to that nominee.

If you are the record holder, you should send your subscription documents, rights certificate and subscription payment by first class mail or courier service to:

By Registered Certified or Express Mail:  By Overnight Courier:
Computershare                  Computershare
c/o Voluntary Corporate Actions c/o Voluntary Corporate Actions
P.O. Box 43011                  250 Royall Street
Providence, RI 02940-3011       Suite V
                                Canton, MA 02021

You should direct any questions or requests for assistance concerning the method of subscribing for the Seritage Growth common shares or for additional copies of this prospectus to the information agent, Georgeson Inc., by calling (866) 257-5415 (toll-free).

Fees and Expenses

Sears Holdings is not charging any fee or sales commission to issue the subscription rights to you or to issue shares to you if you exercise your rights. If you exercise your subscription rights through the record holder of your shares, you are responsible for paying any commissions, fees, taxes or other expenses your record holder may charge you. We will pay all reasonable fees charged by Computershare Trust Company, N.A., as the subscription agent and Georgeson Inc., as the information agent.

No Fractional Shares

All common shares will be sold at a purchase price of $29.58 per whole share. We will not issue fractional shares. The number of shares issuable upon the exercise of the basic subscription rights and the over-subscription privileges will be rounded down to the nearest whole share. Any excess subscription payments received by the subscription agent will be returned, without interest, as soon as practicable.

Notice to Nominees

If you are a broker, dealer, custodian bank or other nominee holder that holds shares of Sears Holdings common stock for the account of others on the record date, you should notify the beneficial owners of the shares for whom you are the nominee of the rights offering as soon as possible to learn their intentions with respect to exercising their subscription rights. You should obtain instructions from the beneficial owners of Sears Holdings common stock. If a registered holder of Sears Holdings common stock so instructs, you should complete the rights certificate and submit it to the subscription agent with the proper subscription payment by the expiration date. You may exercise the number of subscription rights to which all beneficial owners in the aggregate otherwise would have been entitled had they been direct holders of Sears Holdings common stock on the record date, provided that you, as a nominee record holder, make a proper showing to the subscription agent by submitting the form entitled “Nominee Holder Certification,” which is provided with your rights offering materials. If you did not receive this form, you should contact the subscription agent to request a copy.

Beneficial Owners

If you are a beneficial owner of shares of Sears Holdings common stock and will receive your subscription rights through a broker, dealer, custodian bank or other nominee, we will ask your nominee to notify you of the rights offering. If you wish to exercise your subscription rights, you will need to have your nominee act for you, as described above. To indicate your decision with respect to your subscription rights, you should follow the instructions of your nominee. If you wish instead to obtain a separate rights certificate, you should contact your nominee as soon as possible and request that a rights certificate be issued to you. You should contact your
nominee if you do not receive notice of the rights offering, but you believe you are entitled to participate in the
eights offering. Neither we nor Sears Holdings is responsible if you do not receive the notice by mail or otherwise
from your nominee or if you receive notice without sufficient time to respond to your nominee by the deadline
established by your nominee, which may be before the 5:00 p.m., New York City time, July 2, 2015 expiration
date.

Transferability of Subscription Rights

The subscription rights are transferable during the course of the subscription period. We intend to apply to
list the subscription rights for trading on the NYSE under the symbol “SRGRT” and we currently expect that
they will begin to trade on a when-issued basis on the date of this prospectus and will continue to trade until
4:00 p.m., New York City time, on June 26, 2015, the fourth business day prior to the expiration date of this
rights offering (or, if the offer is extended, on the fourth business day immediately prior to the extended
expiration date). As a result, you may transfer or sell your subscription rights if you do not want to exercise them
to purchase Seritage Growth common shares. However, the subscription rights are a new issue of securities with
no prior trading market, and both the liquidity of the trading market for the subscription rights and their market
value are uncertain.

If you are a beneficial owner of shares of Sears Holdings common stock on the record date or will receive
your subscription rights through a broker, dealer, custodian bank or other nominee, Sears Holdings will ask your
broker, dealer, custodian bank or other nominee to notify you of the rights offering. If you wish to sell your
subscription rights, in addition to any other procedures your broker, custodian bank or other nominee may
require, you must deliver your order to sell to your broker, custodian bank or other nominee such that it will be
actually received prior to 4:00 p.m., New York City time, on June 26, 2015, the fourth business day prior to the
June 26, 2015 expiration date of this rights offering.

If you are a registered holder of Sears Holdings common stock as of the record date and receive a rights
certificate, you may take your rights certificate to a broker and request to sell the rights represented by the
certificate. The broker will instruct you as to what is required to sell your subscription rights.

Validity of Subscriptions

Sears Holdings will resolve all questions regarding the validity and form of the exercise of your subscription
rights, including time of receipt and eligibility to participate in the rights offering. Such determination will be
final and binding. Once made, subscriptions and directions are irrevocable, and Sears Holdings will not accept
any alternative, conditional or contingent subscriptions or directions. Sears Holdings reserves the absolute right
to reject any subscriptions or directions not properly submitted or the acceptance of which would be unlawful.
You must resolve any irregularities in connection with your subscriptions before the subscription period expires,
unless Sears Holdings waives them in its sole discretion. Neither we, Sears Holdings nor the subscription agent is
under any duty to notify you or your representative of defects in your subscriptions. A subscription will be
considered accepted, subject to Sears Holdings’ right to withdraw and cancel the rights offering, only when the
subscription agent receives a properly completed and duly executed rights certificate and any other required
documents and the full subscription payment. Sears Holdings’ interpretations of the terms and conditions of the
rights offering will be final and binding.

Escrow Arrangements; Return of Funds

The subscription agent will hold funds received in payment for shares in escrow in a segregated bank
account pending completion of the rights offering. The subscription agent will hold this money in escrow until
the rights offering is completed or is withdrawn and cancelled. If the rights offering is cancelled for any reason,
all subscription payments received by the subscription agent will be returned, without interest or penalty, as soon
as practicable.
Shareholder Rights
You will have no rights as a holder of the Seritage Growth common shares that you purchase in the rights offering until your account or the account of your nominee is credited with the Seritage Growth common shares purchased in the rights offering.

Foreign Stockholders
We will not mail this prospectus or any rights certificates to holders of Sears Holdings common stock on the record date whose address of record is outside the United States and Canada, or is an Army Post Office (APO) address or Fleet Post Office (FPO) address. Foreign stockholders will be sent written notice of the rights offering by the subscription agent. The subscription agent will hold the rights certificates to which those holders’ subscription rights relate for the account of these stockholders. To exercise their subscription rights, foreign stockholders must send a letter of instruction indicating the number of subscription rights to be exercised, together with payment of the subscription price for each common share subscribed for, to the subscription agent.

The subscription agent must receive the letter of instruction, together with payment of the subscription price at or prior to 5:00 p.m., New York City time, on July 2, 2015. The stockholder must demonstrate to the satisfaction of the subscription agent and Sears Holdings, such as by providing a legal opinion from local counsel, that the exercise of such subscription rights does not violate the laws of the jurisdiction of such stockholder. If no instructions are received by the subscription agent prior to 5:00 p.m., New York City time, on July 2, 2015, the subscription rights will expire, have no value, and cease to be exercisable for Seritage Growth common shares. See “Risk Factors—Risks Related to the Offering—If you receive but do not sell or exercise the subscription rights before they expire, you may be subject to adverse U.S. federal income tax consequences.” The rights offering is not being made in any state or other jurisdiction in which it would be unlawful to do so. We are not selling to, or accepting any offers from, foreign stockholders to purchase subscription rights if such stockholders are a resident of any such state or other jurisdiction.

No Revocation or Change
Once you submit the rights certificate or have instructed your nominee of your subscription request, you are not allowed to revoke or change the exercise or request a refund of monies paid. All exercises of subscription rights are irrevocable, even if you learn information about us that you consider to be unfavorable. You should not exercise your subscription rights unless you are certain that you wish to purchase Seritage Growth common shares at the subscription price.

Material U.S. Federal Income Tax Treatment of Rights Distribution
For a discussion of the material U.S. federal income tax considerations relating to the receipt, sale, exercise, expiration and cancellation of the subscription rights, see “U.S. Federal Income Tax Considerations.” Stockholders should consult their own tax advisors regarding the U.S. federal, state and local and non-U.S. income, estate and other tax considerations relating to the receipt, sale, exercise, expiration and cancellation of the subscription rights in light of their particular circumstances.

No Recommendation to Rights Holders
Neither Sears Holdings nor Seritage Growth, nor their respective boards, is making any recommendation regarding the exercise of the subscription rights or the purchase, retention or sale of Sears Holdings common stock or Seritage Growth common shares. Neither we nor Sears Holdings can predict the price at which Seritage Growth common shares will trade after this offering. The market price for Seritage Growth common shares may decrease to an amount below the subscription price, and if you purchase common shares at the subscription price, you may not be able to sell the shares in the future at the same price or a higher price. You should make your investment decision based on your assessment of our business and financial condition, its prospects for the future, the terms of the rights offering and the information contained in, or incorporated by reference into, this prospectus. See “Risk Factors” for a discussion of some of the risks involved in investing in Seritage Growth common shares.
Listing

The subscription rights are transferable, and Sears Holdings intends to apply to list the subscription rights for trading on the NYSE under the symbol “SRGRT”; however, we cannot assure you that a market for the subscription rights will develop. We intend to apply to list Seritage Growth common shares for trading on the NYSE under the symbol “SRG”.

Treatment of Common Stock Held in Employee Savings Plans

The Savings Plans offer an employer stock fund through which participants (current and former Sears Holdings employees) may invest in Sears Holdings common stock. The applicable trust of each Savings Plan will, on behalf of each participant, receive one subscription right for each full share of Sears Holdings common stock held in the Sears Holdings stock fund under the applicable Savings Plan as of the record date. If necessary Sears Holdings will apply to the U.S. Department of Labor requesting that it grant a prohibited transaction exemption, effective as of the date of the distribution of the subscription rights, with respect to the acquisition, holding and disposition of the subscription rights by the Savings Plans. The prohibited transaction exemption may be necessary because the Savings Plans are not permitted to hold an employer-issued security that is not “qualifying” within the meaning of Section 407(d)(5) of the Employee Retirement Income Security Act of 1974, and the subscription rights may be considered employer-issued securities that are not “qualifying.” If the exemption is necessary but not granted, Sears Holdings may be required to take appropriate remedial action. It is anticipated that an independent fiduciary will be engaged for each Savings Plan to determine whether and/or when to exercise or sell the subscription rights on behalf of the trusts of the Savings Plans, subject to the terms of any prohibited transaction exemption. Proceeds from the exercise or sale of the subscription rights will be credited to the Sears Holdings Stock Fund and reflected in the unit value of that fund, in accordance with the Savings Plans and related trust documents.
FAIRNESS OPINION AND APPRAISALS

Opinion of Duff & Phelps, LLC

Sears Holdings engaged Duff & Phelps to render an opinion as to (i) the fairness, from a financial point of view, to (a) Sears Holdings and/or (b) Sears Holdings, Sears and Kmart on a combined basis, as the case may be, of the total $2.719 billion cash consideration to be received by affiliates of Sears Holdings at closing of the Transaction; and (ii) the fairness, from a financial point of view, to Sears Holdings of the Base Rent (as defined in the Master Lease among affiliates of Seritage Growth, as Landlord, and Kmart Operations, LLC and Sears Operations, LLC, as Tenants), taking into consideration in the determination of the Base Rent the material economic terms of Section 1.6 Nonprofitable Property (the “Opt-Out Feature”), Section 1.7 Recapture Space, Section 1.8 Landlord’s Termination Right as to Additional Recapture Space (the material economic terms of Sections 1.7 and 1.8 collectively, the “Recapture Feature”) and Section 1.9 Landlord’s Termination Right as to 100% Recapture Property (the “Redevelopment Feature”) of the Master Lease.

As a leading global independent provider of financial advisory and investment banking services, Duff & Phelps is regularly engaged in the valuation of businesses and securities and the preparation of opinions in connection with mergers, acquisitions, spin-offs, financings, and other strategic transactions.

On June 5, 2015, Duff & Phelps delivered its analysis and opinion to the board of directors of Sears Holdings that, subject to the assumptions, qualifications, and limitations set forth therein, (i) the total $2.719 billion cash consideration to be received by affiliates of Sears Holdings at closing of the Transaction is fair from a financial point of view to (a) Sears Holdings and/or (b) Sears Holdings, Sears and Kmart on a combined basis, as the case may be; and (ii) the Base Rent, taking into consideration in the determination of the Base Rent the Opt-Out Feature, the Recapture Feature and Redevelopment Feature, is fair from a financial point of view to Sears Holdings. Duff & Phelps was not requested to express, and does not express, any opinion as to: (i) the fairness, from a financial point of view or otherwise, of all or any part of the Transaction to Seritage Growth, (ii) the fairness or advisability of the rights offering, or (iii) whether or not you should exercise any or all of your subscription rights or buy, hold or sell any Sears Holdings common stock or Seritage Growth common shares.

The full text of the written opinion of Duff & Phelps, which sets forth, among other things, assumptions made, procedures followed, matters considered and qualifications and limitations of the review undertaken in rendering the opinion, is attached as Exhibit 99.7 to the registration statement of which this prospectus forms a part. You are urged to read the opinion carefully and in its entirety prior to making any investment decision.

The following is a summary of the material analyses performed by Duff & Phelps in connection with rendering its opinion. Duff & Phelps noted that the analyses have been designed specifically for the opinion and are not intended to apply to any other purposes. While this summary describes the analyses and factors that Duff & Phelps deemed material in its opinion, it does not purport to be a comprehensive description of all analyses and factors considered by Duff & Phelps. The opinion is based on the comprehensive consideration of the various analyses performed. This summary is qualified in its entirety by reference to the full text of the opinion attached as Exhibit 99.7 to this prospectus.

In arriving at its opinion, Duff & Phelps did not attribute any particular weight to any particular analysis or factor considered by it, but rather made qualitative judgments as to the significance and relevance of each analysis and factor. Several analytical methodologies were employed by Duff & Phelps in its analyses, and no one single method of analysis should be regarded as critical to the overall conclusion reached by Duff & Phelps, nor does the order of the analyses described represent relative importance or weight given to those analyses by Duff & Phelps. Each analytical technique has inherent strengths and weaknesses, and the nature of the available information may further affect the value of particular techniques. Accordingly, Duff & Phelps believes that its analyses must be considered as a whole and that selecting portions of its analyses and the factors considered by Duff & Phelps, without considering all analyses and factors in their entirety, could create a misleading or
incomplete view of the evaluation process underlying the Duff & Phelps opinion. The conclusion reached by
Duff & Phelps, therefore, is based on the application of Duff & Phelps’ own experience and judgment to all
analyses and factors considered by Duff & Phelps, taken as a whole.

Duff & Phelps has consented to the use of its opinion in this prospectus. In giving such consent, Duff &
Phelps does not thereby admit that they are in the category of persons whose consent is required under Section 7
of the Securities Act of 1933.

Scope of Duff & Phelps’ Analysis

In connection with its opinion, Duff & Phelps made such reviews, analyses and inquiries as it has deemed
necessary and appropriate under the circumstances. Duff & Phelps also took into account its assessment of
general economic, market and financial conditions, as well as its experience in securities and business valuation,
in general, and with respect to similar transactions, in particular. Duff & Phelps’ procedures, investigations, and
financial analysis with respect to the preparation of its Opinion included, but were not limited to, the items
summarized below:

- Reviewed the following documents:
  - Sears Holdings’ annual report and audited financial statements on Form 10-K filed with the Securities
    and Exchange Commission for the fiscal year ended January 31, 2015;
  - Seritage Growth’s Form S-11 filed with the Securities and Exchange Commission on April 1, 2015, as
    amended from time to time through the date of Duff & Phelps’ opinion;
  - Financial projections for Seritage Growth for the fiscal years 2015 through 2024, provided to us by
    management of Sears Holdings and Seritage Growth (the “Management Projections”);
  - Detailed information regarding Sears Holdings’ real estate assets to be sold to Seritage Growth in the
    Transaction, as of the date the Duff & Phelps’ opinion, including, but not limited to, property address,
    square footage, ownership type, material lease terms and material ground lease terms;
  - Real property appraisal reports of Sears Holdings’ real estate assets to be sold to Seritage Growth in the
    Transaction prepared by Cushman & Wakefield, Inc. and its affiliates in connection with the
    Transaction;
  - Form of the Master Lease by and among Seritage SRC Finance LLC and Seritage KMT Finance LLC,
    as Landlord, and Kmart Operations, LLC and Sears Operations, LLC, as Tenant;
  - The Amended and Restated Limited Liability Company Agreement of GS Portfolio Holdings LLC
    dated as of March 31, 2015 by and between GGP-SRC Member, LLC and Sears;
  - The Amended and Restated Limited Liability Company Agreement of SPS Portfolio Holdings LLC
    dated as of April 13, 2015 by and between SPG Portfolio Member, LLC and Sears;
  - The Amended and Restated Limited Liability Company Agreement of MS Portfolio LLC dated as of
    April 30, 2015 by and between Macerich SJV LLC and Sears;
  - The Master Lease and Sublease by and among GS Portfolio Holdings LLC, Landlord, and Sears,
    Tenant, dated March 31, 2015;
  - The Master Lease by and among SPS Portfolio Holdings LLC, Landlord, and Sears, Tenant, dated
    April 13, 2015;
  - The Master Lease by and between MS Portfolio LLC, Landlord, and Sears, Tenant, dated April 30,
    2015;
  - The Form of Subscription, Distribution and Purchase and Sale Agreement;
• Form of Transition Services Agreement, by and between Seritage Growth Properties, L.P. and Sears Holdings Management Corporation;
• Form of Loan Agreement by and among Seritage SRC Finance LLC and Seritage KMT Finance LLC, as borrower, Seritage GS Holdings LLC, Seritage SPS Holdings LLC and Seritage MS Holdings LLC, as JV Pledger, and JPMorgan Chase, National Association, as lender; and
• Various business and financial overview presentations and other information regarding Sears Holdings and Seritage Growth and the Transaction.
• Discussed the information referred to above and the background and other elements of the Transaction with the management of Sears Holdings and Seritage Growth;
• Reviewed the historical trading price and trading volume of Sears Holdings’ publicly traded securities and the publicly traded securities of certain other companies that Duff & Phelps deemed relevant;
• Discussed with management of Sears Holdings and Seritage Growth their plans and intentions with respect to the management and operation of Seritage Growth;
• Performed certain valuation and comparative analyses using generally accepted valuation and analytical techniques including a discounted cash flow analysis and an analysis of selected public companies that Duff & Phelps deemed relevant; and
• Conducted such other analyses and considered such other factors as Duff & Phelps deemed appropriate.

Certain Assumptions made by Duff & Phelps

In its review and analysis, and in arriving at its opinion, Duff & Phelps made certain assumptions and representations and relied on certain information that Duff & Phelps obtained from Sears Holdings management in each case with Sears’ Holdings consent. In particular, Duff & Phelps, with Sears Holdings’ consent:
• Relied upon the accuracy, completeness, and fair presentation of all information, data, advice, opinions and representations obtained from public sources or provided to it from private sources, including management of Sears Holdings and Seritage Growth, and did not independently verify such information;
• Relied upon the fact that Sears Holdings and the Board of Directors have been advised by counsel as to all legal matters with respect to the Transaction, including whether all procedures required by law to be taken in connection with the Transaction have been duly, validly and timely taken;
• Assumed, without independently verifying, that the Management Projections and other financial forecasts and projections furnished to Duff & Phelps were reasonably prepared and based upon the best currently available information and good faith judgment of the person furnishing the same, and Duff & Phelps expresses no opinion with respect to the Management Projections or any other such estimates, evaluations, forecasts or projections or any of their underlying assumptions;
• Assumed that information supplied and representations made by the management of Sears Holdings and Seritage Growth regarding Seritage Growth and the Transaction are substantially accurate;
• Assumed that the final versions of all documents reviewed by Duff & Phelps in draft form conform in all material respects to the drafts reviewed;
• Assumed that there has been no material change in the assets, liabilities, financial condition, results of operations, business, or prospects of Seritage Growth (after giving effect to the Transaction) since the date of the most recent financial statements and other information made available to Duff & Phelps, and that there is no information or facts that would make the information reviewed by Duff & Phelps incomplete or misleading;
• Assumed that all of the conditions required to implement the Transaction will be satisfied and that the Transaction will be completed in accordance with the Subscription, Distribution and Purchase and Sale Agreement without any amendments thereto or any waivers of any terms or conditions thereof; and
• Assumed that the consideration received by Sears Holdings in connection with the establishment of and contribution of properties to the GGP JV, Simon JV and Macerich JV was, from a financial point of view, fair to Sears Holdings.

Duff & Phelps advised Sears Holdings that to the extent that any of the foregoing assumptions or any of the facts on which the Duff & Phelps opinion is based proves to be untrue in any material respect, the Duff & Phelps opinion should not be relied upon. Furthermore, in its analysis and in connection with the preparation of its opinion, Duff & Phelps noted that it made numerous assumptions with respect to industry performance, general business, market and economic conditions and other matters, many of which are beyond the control of any party involved in the separation.

Summary of Financial Analyses by Duff & Phelps

The following is a summary of the material financial analyses used by Duff & Phelps in connection with its opinion. Duff & Phelps used generally accepted valuation analyses to estimate the enterprise value of Seritage Growth on a going-concern basis, which is equal to the value of the 235 Acquired Properties (and excluding the JV Properties), and then added the values of the JV Interests and certain other assets to arrive at a range of cash consideration to be received by Sears Holdings in the Transaction. Duff & Phelps used generally accepted valuation analyses in its analysis of the Base Rent taking into consideration the Opt-Out Feature, Recapture Feature and Redevelopment Feature. Additionally, Duff & Phelps reviewed the real property appraisal reports of Sears Holdings’, Sears’s and Kmart’s real estate assets, excluding the JV Interests and JV Properties, prepared by Cushman & Wakefield in connection with the Transaction, including the market rent assumptions and the as-leased and “go-dark” valuation conclusions within the Cushman & Wakefield appraisals.

The financial analyses summarized below include information presented in tabular format. In order to fully understand the financial analyses used by Duff & Phelps, the tables must be read together with the text of each summary. The tables alone do not constitute a complete description of the financial analyses. Rather, the analyses listed in the tables and described below must be considered as a whole; considering any portion of such analyses or factors considered, without considering all analyses and factors, could create a misleading or incomplete view of the process underlying Duff & Phelps’ opinion.

Discounted Cash Flow Analysis

A discounted cash flow analysis is a valuation methodology used to derive a valuation of a business enterprise by calculating the “present value” of estimated future cash flows. “Present value” refers to the current value of future cash flows, and is obtained by discounting projected future cash flows by a discount rate that takes into account macro-economic assumptions and estimates of risk, the opportunity cost of capital, expected returns and other appropriate factors. Duff & Phelps performed a discounted cash flow analysis by adding (1) the present value of projected “free cash flows” for the 235 Acquired Properties (excluding the JV Properties) using market rents included in the Cushman & Wakefield analyses (i.e., no discount applied to rent) for the ten years ending on or around June 30, 2024 to (2) the present value of the “terminal value” as of June 30, 2024. “Free cash flow” is defined as cash that is available to either reinvest or to distribute to all security holders and “terminal value” refers to the value of all future cash flows at a particular point in time. Duff & Phelps estimated the “terminal value” using a perpetuity growth formula. Duff & Phelps discounted the resulting free cash flows and terminal value using a weighted average cost of capital range of 9.25% to 11.25%, derived from the Capital Asset Pricing Model, a model commonly used in discounted cash flow analysis, and other factors.

The discounted cash flow analysis indicated a range of enterprise values for Seritage Growth of $2.130 billion to $2.715 billion.
Selected Public Companies Analysis and Selected M&A Transactions Analysis

Selected Public Companies Analysis. The Selected Public Companies Analysis compares a subject company to a group of publicly traded companies that investors may consider similar to the subject company, and applies valuation multiples to the subject company’s financial performance metrics based on the qualitative and quantitative comparison. Comparative factors include, but are not limited to, historical and projected growth and volatility in earnings and factors that affect the riskiness of future cash flows. Duff & Phelps compared Seritage Growth to 9 publicly traded companies, divided into two groups:

- **Retail and Commercial-Focused REITs**
  - Agree Realty Corp.
  - National Retail Properties, Inc.
  - One Liberty Properties Inc.
  - Realty Income Corporation
  - Spirit Realty Capital, Inc.

- **Diversified and Specialty REITs**
  - EPR Properties
  - Gaming and Leisure Properties, Inc.
  - Lexington Realty Trust
  - W.P. Carey Inc.

Duff & Phelps noted that none of the public companies utilized in its analysis are identical to Seritage Growth. Accordingly, a complete valuation analysis cannot be limited to a quantitative review of the selected companies and involves complex considerations and judgments concerning differences in financial and operating characteristics of such companies, as well as other factors that could affect their value relative to that of Seritage Growth.

Duff & Phelps used publicly available historical financial data and equity research estimates as compiled by Capital IQ to calculate certain valuation ratios for the public companies listed in the table above. Duff & Phelps analyzed historical and projected revenues, earnings before interest, taxes, depreciation, and amortization (“EBITDA”), and funds from operations (“FFO”) for each of the publicly traded companies. Duff & Phelps then analyzed the peer group’s trading multiples of enterprise value to their respective reported and forecasted (as available) EBITDA, and revenue, and stock price to FFO and adjusted FFO (“AFFO”). Duff & Phelps also analyzed the peer group’s dividend yields, earnings and FFO payout ratios and implied capitalization rates (“Implied Cap Rates”). The tables below summarize such analysis.

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<th><strong>EV / 2015P EBITDA</strong></th>
<th><strong>EV / 2016P EBITDA</strong></th>
<th><strong>EV / LTM Revenue</strong></th>
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<td><strong>Retail and Commercial-Focused REITs</strong></td>
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</tr>
<tr>
<td><strong>Diversified and Specialty REITs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>12.6x</td>
<td>12.9x</td>
<td>12.1x</td>
<td>10.28x</td>
<td>10.33x</td>
<td>10.10x</td>
</tr>
<tr>
<td>Median</td>
<td>15.3x</td>
<td>14.8x</td>
<td>13.7x</td>
<td>11.82x</td>
<td>11.51x</td>
<td>11.49x</td>
</tr>
<tr>
<td>High</td>
<td>16.9x</td>
<td>16.0x</td>
<td>15.8x</td>
<td>13.14x</td>
<td>15.23x</td>
<td>14.93x</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th><strong>P / LTM FFO</strong></th>
<th><strong>P / 2015P FFO</strong></th>
<th><strong>P / 2016P FFO</strong></th>
<th><strong>P / LTM AFFO</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Retail and Commercial-Focused REITs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>14.2x</td>
<td>12.9x</td>
<td>12.1x</td>
<td>13.3x</td>
</tr>
<tr>
<td>Median</td>
<td>17.9x</td>
<td>13.4x</td>
<td>12.6x</td>
<td>18.1x</td>
</tr>
<tr>
<td>High</td>
<td>18.1x</td>
<td>17.3x</td>
<td>16.4x</td>
<td>19.4x</td>
</tr>
<tr>
<td><strong>Diversified and Specialty REITs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>9.0x</td>
<td>9.0x</td>
<td>8.7x</td>
<td>9.6x</td>
</tr>
<tr>
<td>Median</td>
<td>16.2x</td>
<td>13.6x</td>
<td>13.0x</td>
<td>17.2x</td>
</tr>
<tr>
<td>High</td>
<td>17.2x</td>
<td>15.6x</td>
<td>15.0x</td>
<td>19.3x</td>
</tr>
</tbody>
</table>

178
Retail and Commercial-Focused REITs

<table>
<thead>
<tr>
<th></th>
<th>Dividend Yield</th>
<th>Earnings Payout Ratio</th>
<th>FFO Payout Ratio</th>
<th>Implied Cap Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>4.4%</td>
<td>90.3%</td>
<td>76.9%</td>
<td>5.9%</td>
</tr>
<tr>
<td>Median</td>
<td>5.9%</td>
<td>130.9%</td>
<td>82.6%</td>
<td>6.9%</td>
</tr>
<tr>
<td>High</td>
<td>7.0%</td>
<td>188.1%</td>
<td>85.4%</td>
<td>8.8%</td>
</tr>
</tbody>
</table>

Diversified and Specialty REITs

<table>
<thead>
<tr>
<th></th>
<th>Dividend Yield</th>
<th>Earnings Payout Ratio</th>
<th>FFO Payout Ratio</th>
<th>Implied Cap Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>4.4%</td>
<td>120.1%</td>
<td>84.2%</td>
<td>7.6%</td>
</tr>
<tr>
<td>Median</td>
<td>5.9%</td>
<td>127.2%</td>
<td>89.0%</td>
<td>8.5%</td>
</tr>
<tr>
<td>High</td>
<td>7.2%</td>
<td>230.1%</td>
<td>93.8%</td>
<td>9.7%</td>
</tr>
</tbody>
</table>

Source: Bloomberg, Capital IQ, SEC filings; “P” = Median equity analyst projection
EV = Enterprise Value = Market Capitalization plus Debt, Preferred Stock and Non-Controlling Interest, less Cash
Multiples calculated using stock prices as of May 27, 2015
LTM = Latest twelve months ended on or around March 31, 2015

Selected M&A Transactions Analysis. The Selected M&A Transaction Analysis compares a subject company to target companies involved in the selected merger and acquisition transactions that investors may consider similar to the subject company, and applies valuation multiples to the subject company’s financial performance metrics based on the qualitative and quantitative comparison. The selection of the M&A transactions, shown in the table below, was based on, among other things, the target company’s industry, the relative size of the transaction compared to Seritage Growth and the availability of public information related to the transaction. The selected transactions’ indicated enterprise value to LTM EBITDA multiples ranged from 14.4x to 26.1x with a median of 20.0x. Indicated price to FFO multiples ranged from 13.8x to 23.2x with a median of 18.1x.

<table>
<thead>
<tr>
<th>Date Announced</th>
<th>Target Name</th>
<th>Acquirer Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 19, 2013</td>
<td>CapLease, Inc.</td>
<td>American Realty Capital Properties, Inc.</td>
</tr>
<tr>
<td>August 19, 2012</td>
<td>American Realty Capital Trust, Inc.</td>
<td>Realty Income Corporation</td>
</tr>
</tbody>
</table>

Duff & Phelps noted that none of the targets in the M&A transactions utilized in its analysis are identical to Seritage Growth. Accordingly, a complete valuation analysis cannot be limited to a quantitative review of the selected companies and involves complex considerations and judgments concerning differences in financial and operating characteristics of such companies, as well as other factors that could affect their value relative to that of Seritage Growth.

Summary of Selected Public Companies Analysis and Selected M&A Transactions Analysis. Duff & Phelps selected valuation multiples of various financial metrics for Seritage Growth based on the projected financial performance of Seritage Growth, as well as other factors, as compared to the selected public companies and the targets in the selected M&A transactions analysis in order to estimate a range of enterprise values for Seritage Growth.

Duff & Phelps selected valuation multiples of 13.5x to 16.5x 2015P EBITDA and 13.0x to 16.0x 2016P EBITDA. The range of enterprise values for Seritage Growth implied by Duff & Phelps’ selection of valuation multiples was $2.135 billion to $2.620 billion.
Summary of Valuation Analysis Conclusion

The concluded range of enterprise values for Seritage Growth that Duff & Phelps derived from its valuation analyses was $2.135 billion to $2.670 billion. After adding the aggregate value of the JV Interests and certain other assets of $436.0 million, the concluded range of gross proceeds to Sears Holdings was $2.571 billion to $3.106 billion.

Summary of Base Rent Analysis

Absent the Redevelopment, Recapture and Opt-Out Features in the Master Lease, the tenant would be expected to pay market rents (i.e., no discount to market rent). Since the discount to market rent is attributable to these lease provisions, estimating the option value of these provisions provides a basis to estimate an appropriate discount to market rents attributable to such provision.

Recapture and Opt-Out Feature Analysis

Duff & Phelps performed a discounted cash flow analysis on the projected cash flows for Seritage Growth using market rents (i.e., no discount applied to rent) to estimate a value without the Recapture or Opt-Out Features. Next, Duff & Phelps performed a discounted cash flow analysis under a range of recapture and opt-out scenarios to estimate a range of values associated with these features. Based on the differences in the aggregate values under these scenarios, Duff & Phelps determined a range of discounts to market rent to offset the value of the Recapture and Opt-Out Features.

Recapture and Opt-Out Feature Analysis Summary

($ in millions)

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>DCF Value based on Market Rent</td>
<td>$1,953</td>
</tr>
<tr>
<td>Normalized Annual Market Rent</td>
<td>$173</td>
</tr>
<tr>
<td>Implied Capitalization Rate</td>
<td>8.87%</td>
</tr>
<tr>
<td>Recapture Feature</td>
<td></td>
</tr>
<tr>
<td>Total Value including Recapture Feature Scenario</td>
<td>$2,157 - $2,361</td>
</tr>
<tr>
<td>Value of Recapture Feature</td>
<td>$204 - $409</td>
</tr>
<tr>
<td>Rent Discount to offset Value of Recapture Feature</td>
<td>15.6% - 34.2%</td>
</tr>
<tr>
<td>Opt-Out Feature</td>
<td></td>
</tr>
<tr>
<td>Total Value including Opt-out Feature Scenario</td>
<td>$1,891 - $1,867</td>
</tr>
<tr>
<td>Value of Opt-out Feature</td>
<td>$61 - $86</td>
</tr>
<tr>
<td>Rent Premium to offset value of Opt-out Feature</td>
<td>5.2% - 7.2%</td>
</tr>
</tbody>
</table>

Redevelopment Feature Analysis

Duff & Phelps performed a discounted cash flow analysis on the projected cash flows for Seritage Growth using market rents (i.e., no discount applied to rent) to estimate a value without a Redevelopment Feature. Next, Duff & Phelps reviewed the Cushman & Wakefield “go-dark” analyses for the 21 properties subject to the Redevelopment Feature. Based on the differences in the aggregate values based on market rents and the Cushman & Wakefield “go-dark” analyses, Duff & Phelps determined a discount to market rent to offset the value of the Redevelopment Feature.
Redevelopment Feature Analysis Summary
($ in millions)

<table>
<thead>
<tr>
<th>Redevelopment Feature</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>DCF Value based on Market Rent</td>
<td>$436</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Normalized Annual Market Rent</td>
<td>$36</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Implied Capitalization Rate</td>
<td>8.19%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Go-dark Value</td>
<td>$512 - $576</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Value of Redevelopment Feature</td>
<td>$76 - $140</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rent Discount to offset Value of Redevelopment Feature</td>
<td>19.9% - 36.6%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Assumes zero premium for Opt-Out Feature for the 21 Redevelopment Feature properties.
2. Per Cushman & Wakefield “go-dark” analyses.

Summary of Base Rent Analysis Conclusion

A summary of Duff & Phelps’ concluded range of net discounts to market rent for the Recapture Feature offset by the Opt-Out Feature, and discount for the Redevelopment Feature is provided in the table below.

<table>
<thead>
<tr>
<th>Rent (Discount)/Premium Summary</th>
<th>Low</th>
<th>Midpoint</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recapture Space Feature Discount</td>
<td>(15.6%)</td>
<td>(24.9%)</td>
<td>(34.2%)</td>
</tr>
<tr>
<td>Opt-Out Feature Premium</td>
<td>5.2%</td>
<td>6.2%</td>
<td>7.2%</td>
</tr>
<tr>
<td>Net Rent (Discount)/Premium</td>
<td>(10.5%)</td>
<td>(18.7%)</td>
<td>(27.0%)</td>
</tr>
<tr>
<td>Redevelopment Feature Discount¹</td>
<td>(19.9%)</td>
<td>(28.3%)</td>
<td>(36.6%)</td>
</tr>
</tbody>
</table>

1. Assumes zero premium for Opt-Out Feature for the 21 Redevelopment Feature properties.

Certain Qualifications and Limitations of the Duff & Phelps Opinion

Duff & Phelps prepared its opinion effective as of June 5, 2015. The opinion is necessarily based upon market, economic, financial and other conditions as they existed and can be evaluated as of the date of the opinion, and Duff & Phelps disclaims any undertaking or obligation to advise any person of any change in any fact or matter affecting its opinion which may come or be brought to the attention of Duff & Phelps after the effective date of the opinion.

Duff & Phelps did not conduct a physical inspection of any of Seritage Growth’s specific assets or liabilities (contingent or otherwise), and Duff & Phelps did not conduct any other independent appraisal of any of Seritage Growth’s specific assets or liabilities (contingent or otherwise). Duff & Phelps has not been requested to, and did not, (i) initiate any discussions with, or solicit any indications of interest from, third parties with respect to the Transaction, the assets, businesses or operations of Seritage Growth, or any alternatives to the Transaction, (ii) negotiate the terms of the Transaction, or (iii) advise the Board of Directors or any other party with respect to alternatives to the Transaction.

Duff & Phelps is not expressing any opinion as to the market price or value of Seritage Growth’s common shares or Sears Holdings’ common stock (or anything else) after the announcement or the consummation of the Transaction. The opinion should not be construed as an appraisal, valuation opinion, credit rating, solvency opinion, an analysis of Seritage Growth’s or Sears Holdings’ credit worthiness, as tax advice, or as accounting advice. Duff & Phelps has not made, and assumes no responsibility to make, any representation, or render any opinion, as to any legal matter.

In rendering the opinion, Duff & Phelps is not expressing any opinion with respect to the amount or nature of any compensation to any of Sears Holdings’ or Seritage Growth’s officers, directors, or employees, or any class of such persons, relative to the consideration to be received by Sears Holdings in the Transaction, or with respect to the fairness of any such compensation.
The opinion was furnished for the use and benefit of Sears Holdings and the board of directors of Sears Holdings in connection with their consideration of the Transaction and is not intended to, and does not, confer any rights or remedies upon any other person, and is not intended to be used, and may not be used, by any other person or for any other purpose, without Duff & Phelps’ express consent. The opinion (i) does not address the merits of the underlying business decision to enter into the Transaction versus any alternative strategy or transaction; (ii) does not address any transaction related to the Transaction; (iii) is not a recommendation as to how the board of directors of Sears Holdings or any stockholder should vote or act with respect to any matters relating to the Transaction, or whether to proceed with the Transaction or any related transaction, and (iv) does not indicate that the cash consideration received, nor the Base Rent, are the best possibly attainable under any circumstances; instead, it merely states whether the cash consideration and the Base Rent in the Transaction are within a range suggested by certain financial analyses. The opinion does not address the fairness of the Transaction to Sears Holdings’ stockholders or to Seritage Growth and does not address whether any stockholder of Sears Holdings should buy, hold or sell any securities of Sears Holdings or Seritage Growth or exercise or refrain from exercising any subscription right under the Transaction. The opinion should not be construed as creating any fiduciary duty on the part of Duff & Phelps to any party.

**Fees and Expenses, Prior Relationships**

Sears Holdings’ engagement letter with Duff & Phelps provides that, for the opinion, Duff & Phelps is entitled to receive $1,600,000. In addition, Sears Holdings has agreed to reimburse Duff & Phelps for its out-of-pocket expenses and to indemnify and hold harmless Duff & Phelps and its affiliates and any other person, director, employee or agent of Duff & Phelps or any of its affiliates, or any person controlling Duff & Phelps or its affiliates, for certain losses, claims, damages, expenses and liabilities relating to or arising out of services provided by Duff & Phelps as financial advisor to Sears Holdings’ board of directors. The terms of the fee arrangement with Duff & Phelps, which Sears Holdings and Duff & Phelps believe are customary in transactions of this nature, were negotiated at arm’s length between Sears Holdings and Duff & Phelps, and the Sears Holdings board of directors is aware of these fee arrangements. No portion of Duff & Phelps’ fee was contingent on either the conclusions reached in its opinion or the consummation of the separation or any other transaction. During the two years preceding the date of the opinion, Duff & Phelps is acting as financial advisor to Sears Holdings and its board of directors in other capacities in connection with the Transaction, has acted as a financial advisor to Sears Holdings and its board of directors in connection with several valuation matters and has rendered financial opinions to the board of directors of Sears Holdings in connection with certain other transactions, and may also act as a financial advisor to Sears Holdings and/or Seritage Growth in the future.

**Cushman Appraisals**

**Overview of Work.** Sears Holdings retained Cushman & Wakefield (“Cushman”) to assist in evaluating and valuing the subject real estate portfolio in light of all the terms of the Master Lease, among other services. Sears Holdings selected Cushman because Cushman is an experienced independent valuation consulting firm.

Cushman provided appraisals valuing each of the Acquired Properties. Each appraisal estimated the value of the property and related rent as of June 1, 2015, in light of all the terms of the Master Lease and other relevant factors. This required collecting primary and secondary data relevant to each subject property. Rental data was analyzed, and a physical inspection of each subject property was made. In addition, the general regional economy as well as the specifics of the subject properties local area was investigated.
Reference to said appraisal reports herein is for information purposes only. Cushman has certified in its appraisal reports that, to the best of its knowledge, the reports were prepared in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.

Summary of Approaches and Methodologies Employed. Cushman reported that there are three generally accepted approaches to developing an opinion of value: the cost approach, the sales comparison approach, and the income capitalization approach. Cushman considered each approach in its appraisal of each Acquired Property to develop an opinion of the market value of each property. Cushman included or eliminated an approach to value based on the approach’s applicability to the property type being valued and the quality of information available. When more than one approach is used, each approach is judged based on its applicability, reliability, and the quantity and quality of its data. A final value opinion is chosen that either corresponds to one of the approaches to value, or is a correlation of all the approaches used in the appraisal.

The following summary describes each approach.

Cost Approach. The cost approach is based on the proposition that an informed purchaser would pay no more for the subject property than the cost to produce a substitute property with equivalent utility. In the cost approach, the appraiser forms an opinion of the cost of all improvements, depreciating them to reflect any value loss from physical, functional and external causes. Land value, entrepreneurial profit and depreciated improvement costs are then added, resulting in an opinion of value for the subject property.

Sales Comparison Approach. In the sales comparison approach, sales of comparable properties are adjusted for differences to estimate a value for the subject property. A unit of comparison such as price per square foot of building area is typically used to value the property. Adjustments are then applied to the unit of comparison from an analysis of comparable sales, and the adjusted unit of comparison is then used to derive an opinion of value for the subject property.

Income Capitalization Approach. In the income capitalization approach the income-producing capacity of a property is estimated. Deductions are then made for factors which may include vacancy, collection loss and operating expenses. The resulting net operating income is divided by an overall capitalization rate to derive an opinion of value for the subject property. The capitalization rate represents the relationship between net operating income and value.

Assumptions. Cushman included a number of assumptions that may have affected the results of the appraisals. Cushman reported that the appraisals assume that Sears Holdings enters into a master lease agreement with Seritage Growth substantially on the terms described herein. Since, under the Master Lease, Seritage Growth has the right to recapture up to 50% of the space leased by Sears Holdings, and up to 100% of the space at locations identified as Type I Properties herein (see “Business and Properties—Our Portfolio / Properties”), and since Sears Holdings, as the tenant, also has the right to terminate the lease subject to certain restrictions and conditions, Cushman analyzed the prospective market value of each Acquired Properties in light of all the terms of the Master Lease and other relevant factors. Cushman surveyed investors as to their opinion of the impact of the terms of the Master Lease, and additionally consulted a financial analysis from Duff & Phelps regarding the impact of the terms of the Master Lease.

Summary of Appraisals. Subject to the assumptions and limitations contained in the appraisal reports, Cushman concluded that the portfolio of Acquired Properties had an estimated stabilized market value of $2.290 million, which reflects a value giving effect to certain third-party leases that are expected to commence following the Transaction, less the capital expenditures necessary to prepare the leased space for these parties.

Compensation of Appraiser. Cushman’s fee for the appraisals was approximately $2.42 million. Sears Holdings paid for the costs of the appraisals. In addition, Cushman has certified that its compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, or the attainment of a stipulated result.
Sears Holdings does not, and Seritage does not intend to, as a matter of course, make public long-term projections as to future revenues, earnings or other results due to, among other reasons, the uncertainty of the underlying assumptions and estimates. However, Seritage Growth is including this unaudited prospective financial information that was made available to Duff & Phelps as part of the Management Projection in connection with the evaluation of the Transactions. The inclusion of this information should not be regarded as an indication that either Seritage Growth or Sears Holdings considered, or now considers, it to be necessarily predictive of actual future results.

The unaudited prospective financial information is subjective in many respects. As a result, there can be no assurance that the prospective results will be realized, or that actual results will not be significantly higher or lower than estimated. Since the unaudited prospective financial information covers multiple years, such information by its nature becomes less predictive with each successive year. Seritage Growth shareholders are urged to review the entirety of this prospectus, including risk factors with respect to the business of Seritage Growth. See also “Special Note Regarding Forward-Looking Statements.” The unaudited prospective financial information was not prepared with a view toward public disclosure, nor was it prepared with a view toward compliance with published guidelines of the SEC, the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of prospective financial information, or GAAP. Neither the independent registered public accounting firm of Seritage Growth, nor any other independent accountants, have compiled, examined or performed any procedures with respect to the unaudited prospective financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information, or its achievability. The reports of the independent registered public accounting firm of Seritage Growth contained in the Audited Combined Statement of Investments of Real Estate Assets, Audited Combined Statement of Investments of Real Estate Assets of JV Properties and Audited Balance Sheet of Seritage Growth Properties, which are included elsewhere in this document, relate to the historical financial information of Seritage Growth. They do not extend to the unaudited prospective financial information and should not be read to do so. Furthermore, the unaudited prospective financial information does not take into account any circumstances or events occurring after the date it was prepared.

The following table presents selected unaudited prospective financial data for the fiscal years ending 2015 through 2025:

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Revenues</td>
<td>$262</td>
<td>276</td>
<td>288</td>
<td>300</td>
<td>312</td>
<td>325</td>
<td>338</td>
<td>351</td>
<td>364</td>
<td>377</td>
<td>390</td>
</tr>
<tr>
<td>Net Income</td>
<td>$8</td>
<td>17</td>
<td>25</td>
<td>32</td>
<td>39</td>
<td>47</td>
<td>54</td>
<td>62</td>
<td>70</td>
<td>77</td>
<td>102</td>
</tr>
<tr>
<td>EBITDA (1)</td>
<td>$206</td>
<td>190</td>
<td>198</td>
<td>204</td>
<td>212</td>
<td>220</td>
<td>227</td>
<td>235</td>
<td>242</td>
<td>250</td>
<td>274</td>
</tr>
</tbody>
</table>

(1) EBITDA is defined as earnings before interest expense, taxes, depreciation and amortization.

In preparing the foregoing unaudited projected financial information, Seritage Growth made a number of assumptions regarding, among other things, recapture rates, interest rates, corporate financing activities, including amount and timing of the issuance of senior and secured debt, Seritage Growth common share price appreciation, and the timing and amount of common share issuances, annual dividend payments, the amount of income taxes paid, and the amount of general and administrative costs.

No assurances can be given that the assumptions made in preparing the above unaudited prospective financial information will accurately reflect future conditions. The estimates and assumptions underlying the unaudited prospective financial information involve judgments with respect to, among other things, future economic, competitive, regulatory and financial market conditions, and future business decisions which may not be realized, and that are inherently subject to significant business, economic, competitive and regulatory uncertainties and contingencies, including, among others, risks and uncertainties described under “Risk Factors” and “Special Note Regarding Forward-Looking Statements,” all of which are difficult to predict, and many of which are beyond the control of Seritage Growth. There can be no assurance that the underlying assumptions will
prove to be accurate or that the projected results will be realized, and actual results likely will differ, and may differ materially, from those reflected in the unaudited prospective financial information.

In addition, although presented with numerical specificity, the above unaudited prospective financial information reflects numerous assumptions and estimates as to future events made by the management of Sears Holdings that the management of Sears Holdings believed were reasonable at the time the unaudited prospective financial information was prepared.

Readers of this document are cautioned not to place undue reliance on the unaudited prospective financial information set forth above. No representation is made by Seritage Growth or Sears Holdings or any other person to any Seritage Growth shareholder regarding the ultimate performance of Seritage Growth compared to the information included in the above unaudited prospective financial information. The inclusion of unaudited prospective financial information in this document should not be regarded as an indication that such prospective financial information will be an accurate prediction of future events, and such information should not be relied on as such.

SERITAGE GROWTH DOES NOT INTEND TO UPDATE OR OTHERWISE REVISE THE ABOVE UNAUDITED PROSPECTIVE FINANCIAL INFORMATION TO REFLECT CIRCUMSTANCES EXISTING AFTER THE DATE WHEN MADE OR TO REFLECT THE OCCURRENCE OF FUTURE EVENTS, EVEN IN THE EVENT THAT ANY OR ALL OF THE ASSUMPTIONS UNDERLYING SUCH PROSPECTIVE FINANCIAL INFORMATION ARE NO LONGER APPROPRIATE, EXCEPT AS MAY BE REQUIRED BY LAW.
SHARES ELIGIBLE FOR FUTURE SALE

Immediately prior to the rights offering, there was no public market for Seritage Growth common shares. Sales of substantial amounts of Seritage Growth common shares in the public market could adversely affect prevailing market prices of Seritage Growth common shares. Some Seritage Growth common shares will not be available for sale for a certain period of time after this offering because they are subject to legal restrictions on resale, some of which are described below. Sales of substantial amounts of common shares in the public market after these restrictions lapse, or the perception that these sales could occur, could adversely affect the prevailing market price of Seritage Growth common shares and our ability to raise equity capital in the future.

Sales of Restricted Securities

Assuming that the subscription rights are exercised in full by all stockholders of Sears Holdings as of the record date and the Seritage Private Placements are completed concurrently with the closing of this offering, we expect that approximately 18,866,899 Seritage Growth common shares and 9,527,200 Seritage Growth non-voting shares outstanding immediately following this offering will be freely tradable without restriction in the public markets, except for approximately 959,215 Seritage Growth common shares which are held by “affiliates,” as that term is defined in Rule 144 under the Securities Act, and that approximately 211,184 Seritage Growth common shares will be “restricted securities,” as that term is defined in Rule 144 under the Securities Act. Seritage Growth common shares held by affiliates or that are restricted securities may only be sold in compliance with the limitations described below. “Restricted securities” (as defined in Rule 144 under the Securities Act) and other Seritage Growth shares of beneficial interest purchased by our affiliates in this offering may be sold in the public market only pursuant to an effective registration statement under the Securities Act or if the sale qualifies for an exemption from registration such as the exemptions afforded by Section 4(1) of the Securities Act or Rule 144 thereunder, which rule is summarized below. In addition, we expect that approximately 1,231,125 Seritage Growth non-economic shares will be outstanding immediately following the rights offerings.

We have granted each of GGP and Simon certain demand and piggyback registration rights with respect to the Seritage Growth common shares to be purchased by each of them in the Seritage Private Placements under the GGP Investment Agreement and the Simon Investment Agreement, respectively, to the extent such common shares are not eligible to be sold or disposed of in accordance with Rule 144 under the Securities Act we have also agreed to indemnify each of GGP and Simon (in the event of a registration under their respective Investment Agreements) against losses suffered by their or certain other persons based upon any untrue statement or alleged untrue statement of any material fact contained in any registration statement, related prospectus, preliminary prospectus or free writing prospectus, or the omission of alleged omission to state therein a material fact required to be stated therein, necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, except to the extent based upon information furnished in writing by GGP or Simon, as applicable, specifically for use therein.

In addition, the Registration Rights Agreement with ESL will provide for, among other things, demand registration rights and piggyback registration rights for ESL. Pursuant to provisions of the partnership agreement of Operating Partnership and our Registration Rights Agreement with ESL, ESL will be permitted to transfer its Operating Partnership units to one or more underwriters to be exchanged for Seritage Growth common shares in connection with certain dispositions in order to achieve the same effect as would occur if ESL were to exchange its Operating Partnership units for Seritage Growth common shares, which may be limited under the ownership and transfer restrictions set forth in the Seritage Growth declaration of trust, and then dispose of those shares in an underwritten offering.

Rule 144

In general, under Rule 144 of the Securities Act as currently in effect, once we have been subject to public company reporting requirements for at least 90 days, a person who is not deemed to have been one of our affiliates for purposes of the Securities Act at any time during 90 days preceding a sale and who has beneficially
owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates, is entitled to sell such shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then such person is entitled to sell such shares without complying with any of the requirements of Rule 144.

In general, under Rule 144, as currently in effect, our affiliates or persons selling shares on behalf of our affiliates are entitled to sell within any three-month period beginning 90 days after the date of this prospectus, a number of Seritage Growth common shares that does not exceed the greater of:

• 1% of the number of shares of the class then outstanding, which will equal approximately 211,184 shares immediately after completion of this offering; or

• the average weekly trading volume in Seritage Growth common shares on the NYSE during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such a sale, subject to restrictions.

Rule 144 also provides that a person who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has for at least six months beneficially owned Seritage Growth common shares that are restricted securities, will be entitled to freely sell such Seritage Growth common shares subject only to the availability of current public information regarding us. A person who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has beneficially owned for at least one year Seritage Growth common shares that are restricted securities, will be entitled to freely sell such Seritage Growth common shares under Rule 144 without regard to the current public information requirements of Rule 144.
Material U.S. Federal Income Tax Considerations of the Rights Offering

The following is a discussion of certain material U.S. federal income tax considerations relating to the receipt, sale, exercise, expiration and cancellation of the subscription rights to Stockholders (as defined below). This discussion is based on the Code, U.S. Treasury regulations promulgated or proposed thereunder and administrative and judicial interpretations thereof, all as in effect on the date hereof, and all of which are subject to change, possibly with retroactive effect, or to different interpretation. This discussion does not address all of the U.S. federal income tax considerations that may be relevant to specific Stockholders in light of their particular circumstances or to Stockholders subject to special treatment under U.S. federal income tax law (such as banks, insurance companies, dealers in securities or other Stockholders that generally mark their securities to market for U.S. federal income tax purposes, tax-exempt entities, retirement plans, regulated investment companies, real estate investment trusts, certain former citizens or residents of the United States, Stockholders that hold Sears Holdings common stock or subscription rights as part of a straddle, hedge, conversion or other integrated transaction, Stockholders that do not hold their Sears Holdings common stock or subscription rights as capital assets, Stockholders that would not (upon exercise the subscription rights) hold the Seritage Growth common shares as capital assets, Stockholders that received Sears Holdings common stock in connection with the performance of services, and Stockholders that have a “functional currency” other than the U.S. dollar, and U.S. Stockholders that beneficially own 5% or more of Sears Holdings common stock (as calculated by reference to the attribution rules applicable under Section 856(d) of the Code). This discussion does not address any U.S. state or local or non-U.S. tax considerations or any U.S. federal estate, gift or alternative minimum tax considerations. Except as noted below, this discussion assumes that the subscription rights will not be cancelled by Sears Holdings.

As used in this discussion, the term “U.S. Stockholder” means a beneficial owner of Sears Holdings common stock who received subscription rights by reason of holding Sears Holdings common stock and who, for U.S. federal income tax purposes, is (1) an individual who is a citizen or resident of the United States, (2) a corporation created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (3) an estate the income of which is subject to U.S. federal income tax regardless of its source or (4) a trust (x) with respect to which a court within the United States is able to exercise primary supervision over its administration and one or more United States persons have the authority to control all of its substantial decisions or (y) that has in effect a valid election under applicable U.S. Treasury regulations to be treated as a United States person. As used in this discussion, the term “Non-U.S. Stockholder” means a beneficial owner of Sears Holdings common stock that received subscription rights by reason of holding Sears Holdings common stock and that, for U.S. federal income tax purposes, is (1) an individual who is neither a citizen nor a resident of the United States, (2) a corporation that is not created or organized in or under the laws of the United States, any state thereof, or the District of Columbia, (3) an estate that is not subject to U.S. federal income tax on income from non-U.S. sources which is not effectively connected with the conduct of a trade or business within the United States or (4) a trust unless (x) it is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all of its substantial decisions or (y) it has in effect a valid election under applicable U.S. Treasury regulations to be treated as a United States person. “Stockholder” refers to a U.S. Stockholder or a Non-U.S. Stockholder.

The U.S. federal income tax considerations relating to the receipt, sale, exercise, expiration and cancellation of the subscription rights to an entity that is treated as a partnership for U.S. federal income tax purposes will depend in part upon the status and activities of such entity and the particular partner. Any such entity should consult its own tax advisor regarding the U.S. federal income tax considerations applicable to it and its partners relating to the receipt, sale, exercise, expiration and cancellation of the subscription rights.

We believe that the treatment of the receipt, sale, exercise, expiration and cancellation of the subscription rights for U.S. federal income tax purposes is not entirely clear. The uncertainty is attributable to a variety of
factors, including the limited authorities that address such treatment, the ability of Sears Holdings to withdraw or cancel the rights offering if certain conditions are met, and the possibility that there will not be a market for the subscription rights. The discussion below assumes (as we believe should be the case) that, for U.S. federal income tax purposes, the distribution of the subscription rights is treated as a distribution of rights to acquire Seritage Growth common shares occurring on the distribution date and such rights are property. The discussion below also assumes that if no market develops for the subscription rights, the subscription rights will nevertheless have an ascertainable fair market value for U.S. federal income tax purposes on the date of distribution, but that such value may be nominal. The tax consequences to a Stockholder may differ from the tax consequences discussed below if the IRS or a court ultimately determines otherwise. To the extent that tax reporting is applicable to us or Sears Holdings, we and Sears Holdings each intend to report the tax consequences in accordance with the tax treatment discussed below.

No ruling on the treatment of the receipt, sale, exercise, expiration and cancellation of the subscription rights for U.S. federal income tax purposes has been or will be sought from the IRS with respect to any of the U.S. federal income tax considerations discussed below, and no assurance can be given that the IRS will not take a position contrary to the discussion below.

STOCKHOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE U.S. FEDERAL, STATE AND LOCAL AND NON-U.S. INCOME, ESTATE AND OTHER TAX CONSIDERATIONS RELATING TO THE RECEIPT, SALE, EXERCISE, EXPIRATION AND CANCELLATION OF THE SUBSCRIPTION RIGHTS IN LIGHT OF THEIR PARTICULAR CIRCUMSTANCES.

**Tax Consequences to U.S. Stockholders**

*Receipt of Subscription Rights*

A U.S. Stockholder that receives a subscription right in respect of a share of Sears Holdings common stock should generally have taxable dividend income equal to the fair market value (if any) of such right on the date of its distribution from Sears Holdings to the extent it is made from Sears Holdings’ current or accumulated earnings and profits (as determined under U.S. federal income tax principles). If such fair market value exceeds Sears Holdings’ current and accumulated earnings and profits, such excess generally should be treated first as a tax-free return of capital to the extent of (and will be applied against and reduce, but not below zero) the U.S. Stockholder’s adjusted tax basis in such share of Sears Holdings common stock. Any excess will generally be treated as capital gain realized on the sale or other taxable disposition of shares of Sears Holdings common stock. We anticipate that Sears Holdings’ current and accumulated earnings and profits will exceed the aggregate fair market value (if any) of the subscription rights on the date of their distribution.

The dividend income attributable to the receipt of a subscription right will be includable in a U.S. Stockholder’s gross income on the day actually or constructively received by the U.S. Stockholder. Dividend income received by individual U.S. Stockholders generally should qualify as “qualified dividend income” eligible for reduced rates of taxation, provided that such individual U.S. Stockholder satisfies certain minimum holding period requirements. Dividends received by a corporate U.S. Stockholder will generally be eligible for the dividends received deduction if the U.S. Stockholder meets the holding period and other requirements for the dividends received deduction.

If a U.S. Stockholder does not sell subscription rights to fund any tax required to be paid as a result of the distribution of the subscription rights, such U.S. Stockholder will have to pay any such tax from other sources. If a U.S. Stockholder does sell subscription rights to fund any such tax, the proceeds may, depending on the sale price, be greater or less than the amount of such tax, and the U.S. Stockholder will have to pay any shortfall from other sources.
Sale of Subscription Rights

Upon the sale of the subscription rights received in respect of Seritage Growth common shares, a U.S. Stockholder generally should recognize short-term capital gain or loss equal to the difference between the amount realized on such sale and the U.S. Stockholder’s adjusted tax basis in the subscription rights sold. A U.S. Stockholder’s adjusted tax basis in a subscription right should generally equal its fair market value (if any) on the date of its distribution.

Exercise of Subscription Rights

A U.S. Stockholder should generally not recognize any gain or loss upon the exercise of a subscription right. A U.S. Stockholder’s initial tax basis in each share of Seritage Growth common shares acquired upon the exercise of a subscription right should generally equal the sum of (1) the U.S. Stockholder’s adjusted tax basis in such right and (2) the subscription price paid for such share.

Expiration of Subscription Rights

If a subscription right expires without being exercised by a U.S. Stockholder, the U.S. Stockholder should generally recognize a short-term capital loss in an amount equal to such U.S. Stockholder’s adjusted tax basis (if any) in such right. Capital losses are generally available to offset only capital gain (except, to the extent of up to $3,000 of capital loss per year, in the case of a non-corporate U.S. Stockholder) and therefore generally cannot be used to offset any dividend income arising from the receipt of a subscription right or other income.

Cancellation of the Rights Offering

There is no authority that specifically addresses the tax treatment of a U.S. Stockholder that receives, sells or exercises a subscription right if Sears Holdings subsequently cancels the rights offering. Certain authorities suggest that a U.S. Stockholder who receives a subscription right and does not sell or otherwise dispose of such right may not be taxed on the receipt or cancellation of such right if the receipt and cancellation occur in the same taxable year. However, the scope of those authorities is unclear and Sears Holdings and applicable withholding agents are likely to take the position, for information reporting and backup withholding purposes, that the treatment described above under “—Receipt of Subscription Rights” and below under “—Information Reporting and Backup Withholding” continue to apply to such a U.S. Stockholder.

If a U.S. Stockholder has taxable dividend income upon the receipt of a subscription right, even though Sears Holdings subsequently cancels the rights offering, the U.S. Stockholder should generally have a short-term capital loss upon the cancellation of the subscription right in an amount equal to such U.S. Stockholder’s adjusted tax basis (if any) in such right.

Information Reporting and Backup Withholding

Under certain circumstances, information reporting and/or backup withholding may apply to U.S. Stockholders with respect to the distribution of the subscription rights, unless an applicable exemption is satisfied. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a U.S. Stockholder’s U.S. federal income tax liability if the required information is furnished by the U.S. Stockholder on a timely basis to the IRS. If backup withholding tax applies to the distribution of the subscription rights to a U.S. Stockholder, the Stockholder’s broker (or other applicable withholding agent) will be required to remit any such backup withholding tax in cash to the IRS. Depending on the circumstances, the broker (or other applicable withholding agent) may obtain the funds necessary to remit any such backup withholding tax by asking the U.S. Stockholder to provide the funds, by using funds in the U.S. Stockholder’s account with the broker or by selling (on the U.S. Stockholder’s behalf) all or a portion of the subscription rights or by another means (if any) available.
**Tax Consequences to Non-U.S. Stockholders**

**Receipt of Subscription Rights**

A Non-U.S. Stockholder that receives a subscription right in respect of a share of Sears Holdings common stock should generally have taxable dividend income equal to the fair market value (if any) of such right on the date of its distribution from Sears Holdings to the extent it is made from Sears Holdings’ current or accumulated earnings and profits (as determined under U.S. federal income tax principles). If such fair market value exceeds Sears Holdings’ current and accumulated earnings and profits, such excess generally should be treated first as a tax-free return of capital to the extent of (and will be applied against and reduce, but not below zero) the Non-U.S. Stockholder’s adjusted tax basis in such share of Sears Holdings common stock. Any excess will generally be treated as gain realized on the sale or other taxable disposition of shares of Sears Holdings common stock and will be treated as described below. We anticipate that Sears Holdings’ current and accumulated earnings and profits will exceed the aggregate fair market value (if any) of the subscription rights on the date of their distribution.

A distribution of subscription rights treated as a dividend on Sears Holdings common stock for U.S. federal income tax purposes that is received by or for the account of a Non-U.S. Stockholder generally will be subject to U.S. federal withholding tax at the rate of 30%, or at a lower rate if provided by an applicable tax treaty, unless such dividends are effectively connected with the Non-U.S. Stockholder’s conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, are attributable to a permanent establishment of the Non-U.S. Stockholder in the United States).

A distribution of subscription rights treated as a dividend for U.S. federal income tax purposes paid to a Non-U.S. Stockholder with respect to such Non-U.S. Stockholder’s shares of Sears Holdings common stock that is effectively connected with such Non-U.S. Stockholder’s conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, is attributable to a permanent establishment of the Non-U.S. Stockholder in the United States) generally will not be subject to U.S. federal withholding tax, provided that the Non-U.S. Stockholder complies with applicable certification and other requirements. Instead, such dividends generally will be subject to U.S. federal income tax on a net income basis and at the graduated U.S. federal income tax rates in the same manner as if such Non-U.S. Stockholder were a U.S. person. A Non-U.S. Stockholder that is a corporation may also be subject to an additional “branch profits tax” at a rate of 30%, or such lower rate as may be specified by an applicable income tax treaty, on its “effectively connected earnings and profits” for the taxable year, subject to certain adjustments.

Subject to the discussion below under “—Information Reporting and Backup Withholding,” and “—Recent Legislation,” a Non-U.S. Stockholder generally should not be subject to U.S. federal income tax or withholding tax on any excess of the fair market value of a subscription right in respect of a share of Sears Holdings common stock over the sum of (1) Sears Holdings’ current and accumulated earnings and profits, and (2) the Non-U.S. Stockholder’s adjusted tax basis in such share of Sears Holdings common stock unless:

- the gain is effectively connected with the Non-U.S. Stockholder’s conduct of a trade or business within the United States (and, if required by an applicable tax treaty, is attributable to a permanent establishment of the Non-U.S. Stockholder in the United States), in which event such Non-U.S. Stockholder generally will be subject to U.S. federal income tax on such gain in substantially the same manner as a U.S. holder (except as provided by an applicable tax treaty) and, if it is a corporation, may also be subject to a branch profits tax at the rate of 30% (or a lower rate if provided by an applicable tax treaty); or
- the Non-U.S. Stockholder is an individual who is present in the United States for 183 days or more in the taxable year of the receipt of the subscription right and certain other conditions are satisfied (except as provided by an applicable tax treaty), in which event such Non-U.S. Stockholder generally will be subject to U.S. federal income tax at a 30% rate, or at a lower rate if provided by an applicable treaty, but which may be offset by U.S. source capital losses, if any, of the Non-U.S. Stockholder.
Sale of Subscription Rights

Subject to the discussion below under “—Information Reporting and Backup Withholding,” and “—Recent Legislation,” a Non-U.S. Stockholder generally should not be subject to U.S. federal income tax or withholding tax on any gain recognized on the sale of the subscription rights unless:

- such gain is effectively connected with the Non-U.S. Stockholder’s conduct of a trade or business within the United States (and, if required by an applicable tax treaty, is attributable to a permanent establishment of the Non-U.S. Stockholder in the United States), in which event such Non-U.S. Stockholder generally will be subject to U.S. federal income tax on such gain in substantially the same manner as a U.S. holder (except as provided by an applicable tax treaty) and, if it is a corporation, may also be subject to a branch profits tax at the rate of 30% (or a lower rate if provided by an applicable tax treaty);

- such Non-U.S. Stockholder is an individual who is present in the United States for 183 days or more in the taxable year of such sale and certain other conditions are met (except as provided by an applicable treaty), in which event such Non-U.S. Stockholder generally will be subject to U.S. federal income tax on such gain at a 30% rate (or a lower rate if provided by an applicable tax treaty), but may offset such gain by such Non-U.S. Stockholder’s U.S. source capital losses, if any; or

- Seritage Growth is or has been a “United States real property holding corporation” for U.S. federal income tax purposes at any time during the shorter of (1) the five-year period ending on the date of such sale and (2) such Non-U.S. Stockholder’s holding period with respect to the subscription rights, and certain other conditions are met.

Generally, a corporation is a “United States real property holding corporation” if the fair market value of its United States real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests and its other assets used or held for use in a trade or business (all as determined for U.S. federal income tax purposes). We expect that 50% or more of our assets will consist of such real property interests. Even if the foregoing 50% test is met, however, Seritage Growth common shares will not constitute a U.S. real property interest (“USRPI”) (and a sale of subscription rights by a Non-U.S. Stockholder generally will not be subject to U.S. federal income taxation under the Foreign Investment in Real Property Tax Act of 1980 (“FIRPTA”)), if we are a “domestically controlled qualified investment entity.” A domestically controlled qualified investment entity includes a REIT, less than 50% of value of which is held, directly or indirectly, by non-U.S. stockholders at all times during a specified testing period. As described above, Seritage Growth’s declaration of trust contains restrictions designed to protect its status as a “domestically controlled qualified investment entity,” and we believe that we will be and will remain a domestically controlled qualified investment entity, and that a sale of subscription rights should not be subject to taxation under FIRPTA. However, no assurance can be given that we will remain a domestically controlled qualified investment entity.

In the event that we are not a domestically controlled qualified investment entity, but Seritage Growth common shares are “regularly traded,” as defined by applicable Treasury regulations, on an established securities market, a Non-U.S. Stockholder’s sale of subscription rights nonetheless also would not be subject to tax under FIRPTA as a sale of a USRPI, provided that the selling Non-U.S. Stockholder held 5% or less of our outstanding common shares at any time during a prescribed testing period. We expect that Seritage Growth common shares will be regularly traded on an established securities market.

If gain on the sale of subscription rights were subject to taxation under FIRPTA, the Non-U.S. Stockholder would be required to file a U.S. federal income tax return and would be subject to the same treatment as a U.S. Stockholder with respect to such gain, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of non-resident alien individuals. Moreover, in order to enforce the collection of the tax, the purchaser of the subscription right could be required to withhold 10% of the purchase price and remit such amount to the IRS.
Exercise of Subscription Rights

A Non-U.S. Stockholder generally should not recognize any gain or loss upon the exercise of a subscription right. A Non-U.S. Stockholder’s initial tax basis in each share of Seritage Growth common shares acquired upon exercise of a subscription right generally should equal the sum of (1) the Non-U.S. Stockholder’s adjusted tax basis in such right and (2) the subscription price paid for such share. A Non-U.S. Stockholder’s adjusted tax basis in a subscription right should generally equal its fair market value (if any) on the date of its distribution.

Expiration of Subscription Rights

If a subscription right expires without being exercised by a Non-U.S. Stockholder, the Non-U.S. Stockholder should generally recognize a short-term capital loss in an amount equal to such Non-U.S. Stockholder’s adjusted tax basis (if any) in such right. A Non-U.S. Stockholder generally cannot deduct capital losses, except to the extent effectively connected with a trade or business in the United States.

Cancellation of the Rights Offering

There is no authority that specifically addresses the tax treatment of a Non-U.S. Stockholder that receives, sells or exercises a subscription right if Sears Holdings subsequently cancels the rights offering. However, certain authorities suggest that a Non-U.S. Stockholder who receives a subscription right and does not sell or otherwise dispose of such right may not be taxed on the receipt or cancellation of such right if the receipt and cancellation occur in the same taxable year. However, the scope of those authorities is unclear and Sears Holdings and applicable withholding agents are likely to take the position, for information reporting, backup withholding and withholding tax purposes, that the treatment described above under “—Receipt of Subscription Rights” and below under “—Information Reporting and Backup Withholding” continue to apply to such a Non-U.S. Stockholder. Such a Non-U.S. Stockholder should consult its tax advisor as to whether to seek a refund of any such backup withholding or withholding tax from the U.S. Internal Revenue Service.

If a Non-U.S. Stockholder has taxable dividend income upon the receipt of a subscription right even though Sears Holdings subsequently cancels the rights offering, the Non-U.S. Stockholder should generally have a short-term capital loss upon the cancellation of the subscription right in an amount equal to such Non-U.S. Stockholder’s adjusted tax basis (if any) in such right. A Non-U.S. Stockholder generally cannot deduct capital losses, except to the extent effectively connected with a trade or business in the United States.

Information Reporting and Backup Withholding

To the extent the distribution of subscription rights is treated as a dividend to a Non-U.S. Stockholder, the amount of such dividend, and the amount of any tax withheld from such dividend, generally must be reported annually to the IRS and to such Non-U.S. Stockholder. These reporting requirements apply regardless of whether withholding was reduced or eliminated by an applicable income tax treaty. This information may also be made available to the tax authorities in the country in which a Non-U.S. Stockholder resides or is established pursuant to the provisions of a specific treaty or agreement with such tax authorities.

Under certain circumstances, information reporting and/or backup withholding may apply to a Non-U.S. Stockholder with respect to the distribution of the subscription rights, unless such Non-U.S. Stockholder certifies under penalties of perjury that it is not a United States person (generally by providing an IRS Form W-8BEN or W-8BEN-E) or otherwise establishes an exemption. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a Non-U.S. Stockholder’s U.S. federal income tax liability if the required information is furnished by the Non-U.S. Stockholder on a timely basis to the IRS. If backup withholding tax applies to the distribution of the subscription to a Non-U.S. Stockholder, the Stockholder’s broker (or other applicable withholding agent) will be required to remit any such backup withholding tax in cash to the IRS. Depending on the circumstances, the broker (or other applicable withholding
agent) may obtain the funds necessary to remit any such backup withholding tax by asking the Non-U.S. Stockholder to provide the funds, by using funds in the Non-U.S. Stockholder’s account with the broker or by selling (on the Non-U.S. Stockholder’s behalf) all or a portion of the subscription rights or by another means (if any) available.

Recent Legislation

Under recently enacted legislation and administrative guidance, a U.S. federal withholding tax of 30% generally will be imposed on certain payments made to a “foreign financial institution” (as specifically defined under these rules) unless such institution enters into an agreement with the U.S. tax authorities to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners). Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing these withholding and reporting requirements may be subject to different rules. Under the legislation and administrative guidance, a U.S. federal withholding tax of 30% generally also will be imposed on certain payments made to a non-financial foreign entity unless such entity provides the withholding agent with a certification identifying certain of its direct and indirect U.S. owners. Under certain circumstances, a Non-U.S. Stockholder may be eligible for refunds or credits of such taxes. These withholding taxes would be imposed on dividends paid with respect to shares of Sears Holdings common stock to, and on gross proceeds from the sale or other taxable disposition of shares of Sears Holdings common stock after December 31, 2016 by, foreign financial institutions or non-financial entities (including in their capacity as agents or custodians for beneficial owners of shares of Sears Holdings common stock) that fail to satisfy the above requirements. Non-U.S. Stockholders should consult with their tax advisors regarding the possible implications of this legislation on their receipt, sale, and exercise of subscription rights received pursuant to the Transaction.

U.S. Federal Income Tax Considerations of an Investment in Seritage Growth Common Shares

The following is a summary of the material U.S. federal income tax consequences of an investment in Seritage Growth common shares. For purposes of this section under the heading “U.S. Federal Income Tax Considerations,” references to “Seritage Growth,” “we,” “our” and “us” generally mean only Seritage Growth and not its subsidiaries or other lower-tier entities, except as otherwise indicated, and references to “tenants” are to persons who are treated as lessees of real property for purposes of the REIT requirements including, in general, persons who are referred to as “customers” elsewhere in this prospectus. This summary is based upon the Code, the regulations promulgated by the Treasury, rulings and other administrative pronouncements issued by the IRS, and judicial decisions, all as currently in effect, and all of which are subject to differing interpretations or to change, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position to the contrary to any of the tax consequences described below. The summary is also based upon the assumption that we and our subsidiaries and affiliated entities will operate in accordance with our and their applicable organizational documents. This summary is for general information only and is not tax advice. It does not discuss any state, local or non-U.S. tax consequences relevant to us or an investment in Seritage Growth common shares, and it does not purport to discuss all aspects of U.S. federal income taxation that may be important to a particular investor in light of its investment or tax circumstances or to investors subject to special tax rules, such as:

- banks, insurance companies, regulated investment companies, or other financial institutions;
- dealers or brokers in securities or currencies;
- partnerships, other pass-through entities and trusts, including REITs;
- persons who hold Seritage Growth common shares on behalf of other persons as nominees;
- persons who receive Seritage Growth common shares as compensation;
• persons holding Seritage Growth common shares as part of a “straddle,” “hedge,” “conversion transaction,” “synthetic security” or other integrated investment;
• persons who are subject to alternative minimum tax;

and, except to the extent discussed below:

• tax-exempt organizations; and
• foreign investors.

This summary assumes that investors will hold their common shares as a capital asset, which generally means property held for investment.

The U.S. federal income tax treatment of holders of Seritage Growth common shares depends in some instances on determinations of fact and interpretations of complex provisions of U.S. federal income tax law for which no clear precedent or authority may be available. In addition, the tax consequences to any particular shareholder of holding Seritage Growth common shares will depend on the shareholder’s particular tax circumstances. You are urged to consult your tax advisor regarding the U.S. federal, state, local, and foreign income and other tax consequences to you in light of your particular investment or tax circumstances of acquiring, holding, exchanging, or otherwise disposing of Seritage Growth common shares.

Taxation of Seritage Growth

We intend to elect to be taxed as a REIT under Sections 856 through 859 of the Code commencing with our taxable year ending December 31, 2015, upon the filing of our U.S. federal income tax return for such period. We believe that we will be organized, and we expect to operate, in such a manner as to qualify for taxation as a REIT under the applicable provisions of the Code.

In connection with the Transaction, we expect to receive an opinion of Wachtell Lipton to the effect that we are organized in conformity with the requirements for qualification and taxation as a REIT under the Code, and that our proposed method of operation will enable us to meet the requirements for qualification and taxation as a REIT commencing with our taxable year ending December 31, 2015. It must be emphasized that the opinion of Wachtell Lipton is based on various assumptions relating to our organization and operation, and is conditioned upon fact-based representations and covenants made by our management regarding our organization, assets, and income, and the present and future conduct of our business operations. While we intend to operate so that we will qualify to be taxed as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in our circumstances, no assurance can be given by Wachtell Lipton or by us that we will qualify to be taxed as a REIT for any particular year. The opinion is expressed as of the date issued. Wachtell Lipton will have no obligation to advise us or Seritage Growth shareholders of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in the applicable law. You should be aware that opinions of counsel are not binding on the IRS, and no assurance can be given that the IRS will not challenge the conclusions set forth in such opinion.

Qualification and taxation as a REIT depends on our ability to meet on a continuing basis, through actual operating results, distribution levels, and diversity of share ownership, various qualification requirements imposed upon REITs by the Code, the compliance with which will not be reviewed by Wachtell Lipton. Our ability to qualify to be taxed as a REIT also requires that we satisfy certain tests, some of which depend upon the fair market values of assets that we own directly or indirectly. Such values may not be susceptible to a precise determination. Accordingly, no assurance can be given that the actual results of our operations for any taxable year will satisfy such requirements for qualification and taxation as a REIT.
Taxation of REITs in General

As indicated above, Seritage Growth’s qualification and taxation as a REIT depends upon its ability to meet, on a continuing basis, various qualification requirements imposed upon REITs by the Code. The material qualification requirements are summarized below under “—Requirements for Qualification—General.” While we intend to operate so that Seritage Growth qualifies and continue to qualify to be taxed as a REIT, no assurance can be given that the IRS will not challenge Seritage Growth’s qualification, or that Seritage Growth will be able to operate in accordance with the REIT requirements in the future. See “—Failure to Qualify.”

Provided that we qualify to be taxed as a REIT, generally we will be entitled to a deduction for dividends that we pay and therefore will not be subject to U.S. federal corporate income tax on our net REIT taxable income that is currently distributed to Seritage Growth shareholders. This treatment substantially eliminates the “double taxation” at the corporate and shareholder levels that generally results from an investment in a C corporation. A “C corporation” is a corporation that generally is required to pay tax at the corporate level. Double taxation means taxation once at the corporate level when income is earned and once again at the shareholder level when the income is distributed. In general, the income that we generate is taxed only at the shareholder level upon a distribution of dividends to Seritage Growth shareholders.

Beginning in 2013, most U.S. shareholders that are individuals, trusts or estates are taxed on corporate dividends at a maximum U.S. federal income tax rate of 20% (the same as long-term capital gains). With limited exceptions, however, dividends from us or from other entities that are taxed as REITs are generally not eligible for this rate and will continue to be taxed at rates applicable to ordinary income. Commencing in 2013, the highest marginal non-corporate U.S. federal income tax rate applicable to ordinary income is 39.6%. See “—Taxation of Shareholders—Taxation of Taxable U.S. Shareholders—Distributions.”

Any net operating losses, foreign tax credits and other tax attributes generally do not pass through to Seritage Growth shareholders, subject to special rules for certain items such as the capital gains that we recognize. See “—Taxation of Shareholders—Taxation of Taxable U.S. Shareholders—Distributions.”

If Seritage Growth qualifies to be taxed as a REIT, it will nonetheless be subject to U.S. federal tax in the following circumstances:

- We will be taxed at regular corporate rates on any undistributed net taxable income, including undistributed net capital gains.
- We may be subject to the “alternative minimum tax” on our items of tax preference, including any deductions of net operating losses.
- If we have net income from prohibited transactions, which are, in general, sales or other dispositions of inventory or property held primarily for sale to customers in the ordinary course of business, other than foreclosure property, such income will be subject to a 100% tax. See “—Prohibited Transactions” and “—Foreclosure Property” below.
- If we elect to treat property that we acquire in connection with a foreclosure of a mortgage loan or certain leasehold terminations as “foreclosure property,” we may thereby avoid the 100% tax on gain from a resale of that property (if the sale would otherwise constitute a prohibited transaction), but the income from the sale or operation of the property may be subject to corporate income tax at the highest applicable rate (currently 35%).
- If we fail to satisfy the 75% gross income test and/or the 95% gross income test, as discussed below, but nonetheless maintain our qualification as a REIT because we satisfy other requirements, we will be subject to a 100% tax on an amount based on the magnitude of the failure, as adjusted to reflect the profit margin associated with our gross income.
- If we violate the asset tests (other than certain de minimis violations) or other requirements applicable to REITs, as described below, and yet maintain qualification as a REIT because there is reasonable cause for the failure and other applicable requirements are met, Seritage Growth may be subject to a
penalty tax. In that case, the amount of the penalty tax will be at least $50,000 per failure, and, in the case of certain asset test failures, will be determined as the amount of net income generated by the nonqualifying assets in question multiplied by the highest corporate tax rate (currently 35%) if that amount exceeds $50,000 per failure.

- If we fail to distribute during each calendar year at least the sum of (i) 85% of our ordinary income for such year, (ii) 95% of our capital gain net income for such year and (iii) any undistributed net taxable income from prior periods, we will be subject to a nondeductible 4% excise tax on the excess of the required distribution over the sum of (a) the amounts that we actually distributed and (b) the amounts we retained and upon which we paid income tax at the corporate level.

- We may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with rules relating to the composition of a REIT’s shareholders, as described below in “—Requirements for Qualification—General.”

- A 100% tax may be imposed on transactions between us and a TRS that do not reflect arm’s-length terms.

- If we acquire appreciated assets from a corporation that is not a REIT (i.e., a corporation taxable under subchapter C of the Code) in a transaction in which the adjusted tax basis of the assets in our hands is determined by reference to the adjusted tax basis of the assets in the hands of the subchapter C corporation, we may be subject to tax on such appreciation at the highest corporate income tax rate then applicable if we subsequently recognize gain on a disposition of any such assets during the ten-year period following their acquisition from the subchapter C corporation.

- The earnings of our TRSs will generally be subject to U.S. federal corporate income tax.

In addition, we and our subsidiaries may be subject to a variety of taxes, including payroll taxes and state, local, and foreign income, property, gross receipts and other taxes on our assets and operations. We could also be subject to tax in situations and on transactions not presently contemplated.

Requirements for Qualification—General

The Code defines a REIT as a corporation, trust or association:

1. that is managed by one or more trustees or directors;
2. the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;
3. that would be taxable as a domestic corporation but for its election to be subject to tax as a REIT;
4. that is neither a financial institution nor an insurance company subject to specific provisions of the Code;
5. the beneficial ownership of which is held by 100 or more persons;
6. in which, during the last half of each taxable year, not more than 50% in value of the outstanding shares or other beneficial interest is owned, directly or indirectly, by five or fewer “individuals” (as defined in the Code to include specified tax-exempt entities); and
7. that meets other tests described below, including with respect to the nature of its income and assets.

The Code provides that conditions (1) through (4) must be met during the entire taxable year, and that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a shorter taxable year. Conditions (5) and (6) need not be met during an entity’s initial tax year as a REIT (which, in our case, will be 2015). Seritage Growth’s declaration of trust will provide restrictions regarding the ownership and transfers of Seritage Growth shares of beneficial interest, which are intended to assist Seritage
Growth in satisfying the share ownership requirements described in conditions (5) and (6) above. These restrictions, however, may not ensure that we will, in all cases, be able to satisfy the share ownership requirements described in conditions (5) and (6) above. If we fail to satisfy these share ownership requirements, except as provided in the next sentence, Seritage Growth’s status as a REIT will terminate. If, however, Seritage Growth complies with the rules contained in applicable Treasury regulations that require Seritage Growth to ascertain the actual ownership of its shares and Seritage Growth does not know, or would not have known through the exercise of reasonable diligence, that it failed to meet the requirements described in condition (6) above, Seritage Growth will be treated as having met this requirement.

To monitor compliance with the share ownership requirements, Seritage Growth generally is required to maintain records regarding the actual ownership of its shares of beneficial interest. To do so, Seritage Growth must demand written statements each year from the record holders of significant percentages of Seritage Growth common shares pursuant to which the record holders must disclose the actual owners of the common shares (i.e., the persons required to include our dividends in their gross income). Seritage Growth must maintain a list of those persons failing or refusing to comply with this demand as part of its records. Seritage Growth could be subject to monetary penalties if it fails to comply with these record-keeping requirements. If you fail or refuse to comply with the demands, you will be required by Treasury regulations to submit a statement with your tax return disclosing your actual ownership of Seritage Growth common shares and other information.

In addition, an entity generally may not elect to become a REIT unless its taxable year is the calendar year. We intend to adopt December 31 as our year-end, and thereby satisfy this requirement.

Effect of Subsidiary Entities

Ownership of Partnership Interests

If we are a partner in an entity that is treated as a partnership for U.S. federal income tax purposes, such as Operating Partnership, Treasury regulations provide that we are deemed to own our proportionate share of the partnership’s assets, and to earn our proportionate share of the partnership’s income, for purposes of the asset and gross income tests applicable to REITs. Our proportionate share of a partnership’s assets and income is based on our capital interest in the partnership (except that for purposes of the 10% value test, described below, our proportionate share of the partnership’s assets is based on our proportionate interest in the equity and certain debt securities issued by the partnership). In addition, the assets and gross income of the partnership are deemed to retain the same character in our hands. Thus, our proportionate share of the assets and income of any of our subsidiary partnerships will be treated as our assets and items of income for purposes of applying the REIT requirements.

If we become a limited partner or non-managing member in any partnership or limited liability company and such entity takes or expects to take actions that could jeopardize Seritage Growth’s status as a REIT or require Seritage Growth to pay tax, we may be forced to dispose of our interest in such entity. In addition, it is possible that a partnership or limited liability company could take an action which could cause us to fail a gross income or asset test, and that we would not become aware of such action in time to dispose of our interest in the partnership or limited liability company or take otherwise corrective action on a timely basis. In that case, we could fail to qualify to be taxed as a REIT unless we were entitled to relief, as described below.

Disregarded Subsidiaries

If we own a corporate subsidiary that is a “qualified REIT subsidiary,” that subsidiary is generally disregarded as a separate entity for U.S. federal income tax purposes, and all of the subsidiary’s assets, liabilities and items of income, deduction and credit are treated as our assets, liabilities and items of income, deduction and credit, including for purposes of the gross income and asset tests applicable to REITs. A qualified REIT subsidiary is any corporation, other than a TRS (as described below), that is directly or indirectly wholly owned

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by a REIT. Other entities that are wholly owned by us, including single member limited liability companies that have not elected to be taxed as corporations for U.S. federal income tax purposes, are also generally disregarded as separate entities for U.S. federal income tax purposes, including for purposes of the REIT income and asset tests. Disregarded subsidiaries, along with any partnerships in which we hold an equity interest, are sometimes referred to herein as “pass-through subsidiaries.”

In the event that a disregarded subsidiary of ours ceases to be wholly owned—for example, if any equity interest in the subsidiary is acquired by a person other than us or another disregarded subsidiary of ours—the subsidiary’s separate existence would no longer be disregarded for U.S. federal income tax purposes. Instead, the subsidiary would have multiple owners and would be treated as a either a partnership or a taxable corporation. Such an event could, depending on the circumstances, adversely affect our ability to satisfy the various asset and gross income requirements applicable to REITs, including the requirements the REITs generally may not own, directly or indirectly, more than 10% of the securities of another corporation. See “—Asset Tests” and “—Income Tests.”

**Taxable REIT Subsidiaries**

In general, we may jointly elect with a subsidiary corporation, whether or not wholly owned, to treat such subsidiary corporation as a TRS. We generally may not own more than 10% of the securities of a taxable corporation, as measured by voting power or value, unless we and such corporation elect to treat such corporation as a TRS. The separate existence of a TRS or other taxable corporation is not ignored for U.S. federal income tax purposes. Accordingly, a TRS or other taxable subsidiary corporation generally is subject to corporate income tax on its earnings, which may reduce the cash flow that we and our subsidiaries generate in the aggregate and may reduce our ability to make distributions to Seritage Growth shareholders.

We are not treated as holding the assets of a TRS or other taxable subsidiary corporation or as receiving any income that the subsidiary earns. Rather, the stock issued by a taxable subsidiary corporation to us is an asset in our hands, and we treat the dividends paid to us from such taxable subsidiary corporation, if any, as income. This treatment can affect our income and asset test calculations, as described below. Because we do not include the assets and income of TRSs or other taxable subsidiary corporations on a look-through basis in determining our compliance with the REIT requirements, we may use such entities to undertake indirectly activities that the REIT rules might otherwise preclude us from doing directly or through pass-through subsidiaries. For example, we may use TRSs or other taxable subsidiary corporations to perform services or conduct activities that give rise to certain categories of income or to conduct activities that, if conducted by us directly, would be treated in our hands as prohibited transactions.

U.S. federal income tax law limits the deductibility of interest paid or accrued by a TRS to its parent REIT to assure that the TRS is subject to an appropriate level of corporate taxation. Further, the rules impose a 100% excise tax on transactions between a TRS and its parent REIT or the REIT’s tenants that are not conducted on an arm’s-length basis. We intend that all of our transactions with our TRS, if any, will be conducted on an arm’s-length basis.

**Income Tests**

In order to qualify to be taxed as a REIT, we must satisfy two gross income requirements on an annual basis. First, at least 75% of our gross income for each taxable year, excluding gross income from sales of inventory or dealer property in “prohibited transactions,” discharge of indebtedness and certain hedging transactions, generally must be derived from “rents from real property,” gains from the sale of real estate assets, interest income derived from mortgage loans secured by real property (including certain types of mortgage-backed securities), dividends received from other REITs, and specified income from temporary investments. Second, at least 95% of our gross income in each taxable year, excluding gross income from prohibited transactions, discharge of indebtedness and certain hedging transactions, must be derived from some combination
of income that qualifies under the 75% gross income test described above, as well as other dividends, interest, and gain from the sale or disposition of stock or securities, which need not have any relation to real property. Income and gain from certain hedging transactions will be excluded from both the numerator and the denominator for purposes of both the 75% and 95% gross income tests.

**Rents from Real Property**

Rents we receive from a tenant will qualify as “rents from real property” for the purpose of satisfying the gross income requirements for a REIT described above only if all of the conditions described below are met.

- The amount of rent is not based in whole or in part on the income or profits of any person. However, an amount we receive or accrue generally will not be excluded from the term “rents from real property” solely because it is based on a fixed-percentage or percentages of receipts or sales;

- Neither we nor an actual or constructive owner of 10% or more of Seritage Growth shares of beneficial ownership actually or constructively owns 10% or more of the interests in the assets or net profits of a non-corporate tenant, or, if the tenant is a corporation, 10% or more of the total combined voting power of all classes of stock entitled to vote or 10% or more of the total value of all classes of stock of the tenant. Rents we receive from such a tenant that is a TRS of ours, however, will not be excluded from the definition of “rents from real property” as a result of this condition if at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the TRS are substantially comparable to rents paid by our other tenants for comparable space. Whether rents paid by a TRS are substantially comparable to rents paid by other tenants is determined at the time the lease with the TRS is entered into, extended, and modified, if such modification increases the rents due under such lease. Notwithstanding the foregoing, however, if a lease with a “controlled TRS” is modified and such modification results in an increase in the rents payable by such TRS, any such increase will not qualify as “rents from real property.” For purposes of this rule, a “controlled TRS” is a TRS in which the parent REIT owns stock possessing more than 50% of the voting power or more than 50% of the total value of the outstanding stock of such TRS;

- Rent attributable to personal property that is leased in connection with a lease of real property is not greater than 15% of the total rent received under the lease. If this condition is not met, then the portion of the rent attributable to personal property will not qualify as “rents from real property”; and

- We generally are not permitted to operate or manage our properties or to furnish or render services to our tenants, subject to a 1% de minimis exception and except as further provided below. We are permitted, however, to perform directly certain services that are “usually or customarily rendered” in connection with the rental of space for occupancy only and are not otherwise considered “rendered to the occupant” of the property. Examples of these permitted services include the provision of light, heat, or other utilities, trash removal and general maintenance of common areas. In addition, we are permitted to employ an independent contractor from whom we derive no revenue, or a TRS that is wholly or partially owned by us, to provide both customary and non-customary property management or services to our tenants without causing the rent that we receive from those tenants to fail to qualify as “rents from real property.” Any amounts that we receive from a TRS with respect to the TRS’s provision of non-customary services will, however, be nonqualifying income under the 75% gross income test and, except to the extent received through the payment of dividends, the 95% gross income test.

We expect that the rent payments received pursuant to the Master Lease will be treated as rents from real property for purposes of the REIT gross income tests.

**Interest Income**

Interest income constitutes qualifying mortgage interest for purposes of the 75% gross income test (as described above) to the extent that the obligation upon which such interest is paid is secured by a mortgage on
real property. If we receive interest income with respect to a mortgage loan that is secured by both real property and other property, and the highest principal amount of the loan outstanding during a taxable year exceeds the fair market value of the real property on the date that we acquired or originated the mortgage loan, the interest income will be apportioned between the real property and the other collateral, and our income from the arrangement will qualify for purposes of the 75% gross income test only to the extent that the interest is allocable to the real property. Even if a loan is not secured by real property, or is undersecured, the income that it generates may nonetheless qualify for purposes of the 95% gross income test. For these purposes, the term “interest” generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term “interest” solely by reason of being based on a fixed percentage or percentages of receipts or sales.

Dividend Income

We may directly or indirectly receive distributions from TRSs or other corporations that are not REITs or qualified REIT subsidiaries. These distributions generally are treated as dividend income to the extent of the earnings and profits of the distributing corporation. Such distributions will generally constitute qualifying income for purposes of the 95% gross income test, but not for purposes of the 75% gross income test. Any dividends that we receive from another REIT, however, will be qualifying income for purposes of both the 95% and 75% gross income tests.

Fee Income

Any fee income that we earn will generally not be qualifying income for purposes of either gross income test. Any fees earned by a TRS, however, will not be included for purposes of our gross income tests.

Hedging Transactions

Any income or gain that we or our pass-through subsidiaries derive from instruments that hedge certain risks, such as the risk of changes in interest rates, will be excluded from gross income for purposes of both the 75% and 95% gross income tests, provided that specified requirements are met, including the requirement that the instrument is entered into during the ordinary course of our business, the instrument hedges risks associated with indebtedness issued by us or our pass-through subsidiary that is incurred or to be incurred to acquire or carry “real estate assets” (as described below under “—Asset Tests”), and the instrument is properly identified as a hedge along with the risk that it hedges within prescribed time periods. Certain items of income or gain attributable to hedges of foreign currency fluctuations with respect to income that satisfies the REIT gross income requirements may also be excluded from the 95% and 75% gross income tests. Most likely, income and gain from all other hedging transactions will not be qualifying income for either the 95% or 75% gross income test.

Failure to Satisfy the Gross Income Tests

If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may still qualify to be taxed as a REIT for such year if we are entitled to relief under applicable provisions of the Code. These relief provisions will be generally available if (i) our failure to meet these tests was due to reasonable cause and not due to willful neglect and (ii) following our identification of the failure to meet the 75% or 95% gross income test for any taxable year, we file a schedule with the IRS setting forth each item of our gross income for purposes of the 75% or 95% gross income test for such taxable year in accordance with Treasury regulations, which have not yet been issued. It is not possible to state whether we would be entitled to the benefit of these relief provisions in all circumstances. If these relief provisions are inapplicable to a particular set of circumstances, we will not qualify to be taxed as a REIT. Even if these relief provisions apply, and Seritage Growth retains its status as a REIT, the Code imposes a tax based upon the amount by which we fail to satisfy the particular gross income test.
Asset Tests

At the close of each calendar quarter, we must also satisfy four tests relating to the nature of our assets. First, at least 75% of the value of our total assets must be represented by some combination of “real estate assets,” cash, cash items, U.S. government securities, and, under some circumstances, stock or debt instruments purchased with new capital. For this purpose, real estate assets include interests in real property and stock of other corporations that qualify as REITs, as well as some kinds of mortgage-backed securities and mortgage loans. Assets that do not qualify for purposes of the 75% asset test are subject to the additional asset tests described below.

Second, the value of any one issuer’s securities that we own may not exceed 5% of the value of our total assets.

Third, we may not own more than 10% of any one issuer’s outstanding securities, as measured by either voting power or value. The 5% and 10% asset tests do not apply to securities of TRSs and qualified REIT subsidiaries and the 10% asset test does not apply to “straight debt” having specified characteristics and to certain other securities described below. Solely for purposes of the 10% asset test, the determination of our interest in the assets of a partnership or limited liability company in which we own an interest will be based on our proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the Code.

Fourth, the aggregate value of all securities of TRSs that we hold, together with other non-qualified assets (such as furniture and equipment or other tangible personal property, or non-real estate securities), may not, in the aggregate, exceed 25% of the value of our total assets.

Notwithstanding the general rule, as noted above, that for purposes of the REIT income and asset tests we are treated as owning our proportionate share of the underlying assets of a subsidiary partnership, if we hold indebtedness issued by a partnership, the indebtedness will be subject to, and may cause a violation of, the asset tests unless the indebtedness is a qualifying mortgage asset or other conditions are met. Similarly, although stock of another REIT is a qualifying asset for purposes of the REIT asset tests, any non-mortgage debt that is issued by another REIT may not so qualify (although such debt will not be treated as “securities” for purposes of the 10% asset test, as explained below).

Certain securities will not cause a violation of the 10% asset test described above. Such securities include instruments that constitute “straight debt,” which term generally excludes, among other things, securities having contingency features. A security does not qualify as “straight debt” where a REIT (or a controlled TRS of the REIT) owns other securities of the same issuer which do not qualify as straight debt, unless the value of those other securities constitute, in the aggregate, 1% or less of the total value of that issuer’s outstanding securities. In addition to straight debt, the Code provides that certain other securities will not violate the 10% asset test. Such securities include (i) any loan made to an individual or an estate, (ii) certain rental agreements pursuant to which one or more payments are to be made in subsequent years (other than agreements between a REIT and certain persons related to the REIT under attribution rules), (iii) any obligation to pay rents from real property, (iv) securities issued by governmental entities that are not dependent in whole or in part on the profits of (or payments made by) a non-governmental entity, (v) any security (including debt securities) issued by another REIT and (vi) any debt instrument issued by a partnership if the partnership’s income is of a nature that it would satisfy the 75% gross income test described above under “—Income Tests.” In applying the 10% asset test, a debt security issued by a partnership is not taken into account to the extent, if any, of the REIT’s proportionate interest in the equity and certain debt securities issued by that partnership.

Certain independent appraisals have been obtained that support our conclusions as to the value of our total assets and the value of certain securities, but we may not obtain such appraisals in the future to support our conclusions as to the value of our total assets or the value of any particular security or securities. Moreover, the values of some assets may not be susceptible to a precise determination, and values are subject to change in the
future. Furthermore, the proper classification of an instrument as debt or equity for U.S. federal income tax purposes may be uncertain in some circumstances, which could affect the application of the REIT asset requirements. Accordingly, there can be no assurance that the IRS will not contend that our interests in our subsidiaries or in the securities of other issuers will not cause a violation of the REIT asset tests.

However, certain relief provisions are available to allow REITs to satisfy the asset requirements or to maintain REIT qualification notwithstanding certain violations of the asset and other requirements. For example, if we should fail to satisfy the asset tests at the end of a calendar quarter such a failure would not cause us to lose Seritage Growth’s REIT qualification if (i) we satisfied the asset tests at the close of the preceding calendar quarter and (ii) the discrepancy between the value of our assets and the asset requirements was not wholly or partly caused by an acquisition of non-qualifying assets, but instead arose from changes in the relative market values of our assets. If the condition described in (ii) were not satisfied, we still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose or by making use of the relief provisions described above.

In the case of de minimis violations of the 10% and 5% asset tests, a REIT may maintain its qualification despite a violation of such requirements if (i) the value of the assets causing the violation does not exceed the lesser of 1% of the REIT’s total assets and $10,000,000 and (ii) the REIT either disposes of the assets causing the failure within six months after the last day of the quarter in which it identifies the failure, or the relevant tests are otherwise satisfied within that time frame.

Even if we did not qualify for the foregoing relief provisions, one additional provision allows a REIT which fails one or more of the asset requirements to nevertheless maintain its REIT qualification if (i) the REIT provides the IRS with a description of each asset causing the failure, (ii) the failure is due to reasonable cause and not willful neglect, (iii) the REIT pays a tax equal to the greater of (a) $50,000 per failure and (b) the product of the net income generated by the assets that caused the failure multiplied by the highest applicable corporate tax rate (currently 35%) and (iv) the REIT either disposes of the assets causing the failure within six months after the last day of the quarter in which it identifies the failure, or otherwise satisfies the relevant asset tests within that time frame.

Annual Distribution Requirements

In order to qualify to be taxed as a REIT, we are required to distribute dividends, other than capital gain dividends, to Seritage Growth shareholders in an amount at least equal to:

(i) the sum of

(a) 90% of Seritage Growth’s REIT taxable income, computed without regard to our net capital gains and the deduction for dividends paid; and

(b) 90% of our after-tax net income, if any, from foreclosure property (as described below); minus

(ii) the excess of the sum of specified items of non-cash income over 5% of Seritage Growth’s REIT taxable income, computed without regard to our net capital gain and the deduction for dividends paid.

We generally must make these distributions in the taxable year to which they relate, or in the following taxable year if declared before we timely file our tax return for the year and if paid with or before the first regular dividend payment after such declaration. These distributions will be treated as received by Seritage Growth shareholders in the year in which paid. In order for distributions to be counted as satisfying the annual distribution requirements for REITs, and to provide us with a REIT-level tax deduction, the distributions must not be “preferential dividends.” A dividend is not a preferential dividend if the distribution is (i) pro rata among all outstanding shares within a particular class and (ii) in accordance with any preferences among different classes of shares as set forth in our organizational documents.
To the extent that we distribute at least 90%, but less than 100%, of Seritage Growth’s REIT taxable income, as adjusted, we will be subject to tax at ordinary corporate tax rates on the retained portion. We may elect to retain, rather than distribute, some or all of our net long-term capital gains and pay tax on such gains. In this case, we could elect for Seritage Growth shareholders to include their proportionate shares of such undistributed long-term capital gains in income, and to receive a corresponding credit for their share of the tax that we paid. Seritage Growth shareholders would then increase the adjusted basis of their common shares by the difference between (i) the amounts of capital gain dividends that we designated and that they include in their taxable income, minus (ii) the tax that we paid on their behalf with respect to that income.

To the extent that in the future we may have available net operating losses carried forward from prior tax years, such losses may reduce the amount of distributions that we must make in order to comply with the REIT distribution requirements. Such losses, however, will generally not affect the tax treatment to Seritage Growth shareholders of any distributions that are actually made. See “—Taxation of Shareholders—Taxation of Taxable U.S. Shareholders—Distributions.”

If we fail to distribute during each calendar year at least the sum of (i) 85% of our ordinary income for such year, (ii) 95% of our capital gain net income for such year and (iii) any undistributed net taxable income from prior periods, we will be subject to a non-deductible 4% excise tax on the excess of such required distribution over the sum of (a) the amounts actually distributed, plus (b) the amounts of income we retained and on which we have paid corporate income tax.

We expect that Seritage Growth’s REIT taxable income will be less than our cash flow because of depreciation and other non-cash charges included in computing REIT taxable income. Accordingly, we anticipate that we generally will have sufficient cash or liquid assets to enable us to satisfy the distribution requirements described above. However, from time to time, we may not have sufficient cash or other liquid assets to meet these distribution requirements due to timing differences between the actual receipt of income and actual payment of deductible expenses, and the inclusion of income and deduction of expenses in determining our taxable income. In addition, we may decide to retain our cash, rather than distribute it, in order to repay debt, acquire assets, or for other reasons. If these timing differences occur, we may borrow funds to pay dividends or pay dividends through the distribution of other property (including Seritage Growth common shares) in order to meet the distribution requirements, while preserving our cash.

If our taxable income for a particular year is subsequently determined to have been understated, we may be able to rectify a resultant failure to meet the distribution requirements for a year by paying “deficiency dividends” to shareholders in a later year, which may be included in our deduction for dividends paid for the earlier year. In this case, Seritage Growth may be able to avoid losing REIT qualification or being taxed on amounts distributed as deficiency dividends, subject to the 4% excise tax described above. We will be required to pay interest based on the amount of any deduction taken for deficiency dividends.

For purposes of the 90% distribution requirement and excise tax described above, any dividend that we declare in October, November or December of any year and that is payable to a shareholder of record on a specified date in any such month will be treated as both paid by us and received by the shareholder on December 31 of such year, provided that we actually pay the dividend before the end of January of the following calendar year.

**Prohibited Transactions**

Net income that we derive from a prohibited transaction is subject to a 100% tax. The term “prohibited transaction” generally includes a sale or other disposition of property (other than foreclosure property, as discussed below) that is held as inventory or primarily for sale to customers in the ordinary course of a trade or business. We intend to conduct our operations so that no asset that we own (or are treated as owning) will be treated as, or having been, held as inventory or for sale to customers, and that a sale of any such asset will not be
treated as having been in the ordinary course of our business. Whether property is held as inventory or “primarily for sale to customers in the ordinary course of a trade or business” depends on the particular facts and circumstances. No assurance can be given that any property that we sell will not be treated as inventory or property held for sale to customers, or that we can comply with certain safe-harbor provisions of the Code that would prevent such treatment. The 100% tax does not apply to gains from the sale of property that is held through a TRS or other taxable corporation, although such income will be subject to tax in the hands of the corporation at regular corporate rates. We intend to structure our activities to avoid prohibited transaction characterization.

Like-Kind Exchanges

We may dispose of properties in transactions intended to qualify as like-kind exchanges under the Code. Such like-kind exchanges are intended to result in the deferral of gain for U.S. federal income tax purposes. The failure of any such transaction to qualify as a like-kind exchange could require us to pay federal income tax, possibly including the 100% prohibited transaction tax, depending on the facts and circumstances surrounding the particular transactions.

Derivatives and Hedging Transactions

We may enter into hedging transactions with respect to interest rate exposure on one or more of our assets or liabilities. Any such hedging transactions could take a variety of forms, including the use of derivative instruments such as interest rate swap contracts, interest rate cap or floor contracts, futures or forward contracts, and options. Except to the extent provided by Treasury regulations, any income from a hedging transaction we enter into (i) in the normal course of our business primarily to manage risk of interest rate changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, to acquire or carry real estate assets, which is clearly identified as specified in Treasury regulations before the close of the day on which it was acquired, originated, or entered into, including gain from the sale or disposition of a position in such a transaction and (ii) primarily to manage risk of currency fluctuations with respect to any item of income or gain that would be qualifying income under the 75% or 95% income tests which is clearly identified as such before the close of the day on which it was acquired, originated, or entered into, will not constitute gross income for purposes of the 75% or 95% gross income test. To the extent that we enter into hedging transactions that are not described in the preceding clause (i) or (ii), the income from these transactions is likely to be treated as non-qualifying income for purposes of both the 75% and 95% gross income tests. Moreover, to the extent that a position in a hedging transaction has positive value at any particular point in time, it may be treated as an asset that does not qualify for purposes of the REIT asset tests. We intend to structure any hedging transactions in a manner that does not jeopardize our qualification as a REIT. We may conduct some or all of our hedging activities (including hedging activities relating to currency risk) through a TRS or other corporate entity, the income from which may be subject to U.S. federal income tax, rather than by participating in the arrangements directly or through pass-through subsidiaries. No assurance can be given, however, that our hedging activities will not give rise to income or assets that do not qualify for purposes of the REIT tests, or that our hedging activities will not adversely affect our ability to satisfy the REIT qualification requirements.

Foreclosure Property

Foreclosure property is real property and any personal property incident to such real property (i) that we acquire as the result of having bid in the property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after a default (or upon imminent default) on a lease of the property or a mortgage loan held by us and secured by the property, (ii) for which we acquired the related loan or lease at a time when default was not imminent or anticipated and (iii) with respect to which we made a proper election to treat the property as foreclosure property. We generally will be subject to tax at the maximum corporate rate (currently 35%) on any net income from foreclosure property, including any gain from the disposition of the foreclosure property, other than income that would otherwise be qualifying income for
purposes of the 75% gross income test. Any gain from the sale of property for which a foreclosure property election has been made will not be subject to the 100% tax on gains from prohibited transactions described above, even if the property would otherwise constitute inventory or dealer property. We do not anticipate receiving any income from foreclosure property that does not qualify for purposes of the 75% gross income test.

**Penalty Tax**

Any redetermined rents, redetermined deductions or excess interest we generate will be subject to a 100% penalty tax. In general, redetermined rents are rents from real property that are overstated as a result of any services furnished to any of our tenants by a TRS, and redetermined deductions and excess interest represent any amounts that are deducted by a TRS for amounts paid to us that are in excess of the amounts that would have been deducted based on arm’s-length negotiations or if the interest payments were at a commercially reasonable rate. Rents that we receive will not constitute redetermined rents if they qualify for certain safe harbor provisions contained in the Code.

**Failure to Qualify**

If we fail to satisfy one or more requirements for REIT qualification other than the income or asset tests, we could avoid disqualification as a REIT if our failure is due to reasonable cause and not to willful neglect and we pay a penalty of $50,000 for each such failure. Relief provisions are also available for failures of the income tests and asset tests, as described above in “—Income Tests” and “—Asset Tests.”

If we fail to qualify for taxation as a REIT in any taxable year, and the relief provisions described above do not apply, we would be subject to tax, including any applicable alternative minimum tax, on our taxable income at regular corporate rates. We cannot deduct distributions to shareholders in any year in which we are not a REIT, nor would we be required to make distributions in such a year. In this situation, to the extent of current and accumulated earnings and profits (as determined for U.S. federal income tax purposes), distributions to shareholders would be taxable as regular corporate dividends. Such dividends paid to U.S. shareholders that are individuals, trusts and estates may be taxable at the preferential income tax rates (i.e., the 20% maximum U.S. federal rate) for qualified dividends. In addition, subject to the limitations of the Code, corporate distributees may be eligible for the dividends received deduction. Unless we are entitled to relief under specific statutory provisions, we would also be disqualified from re-electing to be taxed as a REIT for the four taxable years following the year during which we lost our qualification. It is not possible to state whether, in all circumstances, we would be entitled to this statutory relief.

**Taxation of Shareholders**

*Taxation of Taxable U.S. Shareholders*

The following is a summary of certain U.S. federal income tax consequences of the ownership and disposition of Seritage Growth common shares applicable to taxable U.S. shareholders. A “U.S. shareholder” is any holder of Seritage Growth common shares that is, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation (or entity treated as a corporation for U.S. federal income tax purposes) created or organized in the United States or under the laws of the United States, or of any state thereof, or the District of Columbia;
- an estate, the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust if a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. fiduciaries have the authority to control all substantial decisions of the trust.
If a partnership, including for this purpose any entity that is treated as a partnership for U.S. federal income tax purposes, holds Seritage Growth common shares, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. An investor that is a partnership and the partners in such partnership should consult their tax advisors about the U.S. federal income tax consequences of the acquisition, ownership and disposition of Seritage Growth common shares.

**Distributions**

So long as we qualify to be taxed as a REIT, the distributions that we make to our taxable U.S. shareholders out of current or accumulated earnings and profits (as determined for U.S. federal income tax purposes) that we do not designate as capital gain dividends will generally be taken into account by such shareholders as ordinary income and will not be eligible for the dividends received deduction for corporations. With limited exceptions, our dividends are not eligible for taxation at the preferential income tax rates (i.e., the 20% maximum U.S. federal income tax rate) for qualified dividends received by most U.S. shareholders that are individuals, trusts and estates from taxable C corporations. Such shareholders, however, are taxed at the preferential rates on dividends designated by and received from REITs to the extent that the dividends are attributable to:

- income retained by the REIT in the prior taxable year on which the REIT was subject to corporate level income tax (less the amount of tax);
- dividends received by the REIT from TRSs or other taxable C corporations; or
- income in the prior taxable year from the sales of “built-in gain” property acquired by the REIT from C corporations in carryover basis transactions (less the amount of corporate tax on such income).

Distributions that we designate as capital gain dividends will generally be taxed to our U.S. shareholders as long-term capital gains, to the extent that such distributions do not exceed our actual net capital gain for the taxable year, without regard to the period for which the shareholder that receives such distribution has held its common shares. We may elect to retain and pay taxes on some or all of our net long-term capital gains, in which case we may elect to apply provisions of the Code that treat our U.S. shareholders as having received, solely for tax purposes, our undistributed capital gains, and the shareholders as receiving a corresponding credit for taxes that we paid on such undistributed capital gains. See “—Taxation of Seritage Growth” and “—Annual Distribution Requirements.” Corporate shareholders may be required to treat up to 20% of some capital gain dividends as ordinary income. Long-term capital gains are generally taxable at maximum U.S. federal rates of 20% in the case of U.S. shareholders that are individuals, trusts and estates, and 35% in the case of U.S. shareholders that are corporations. Capital gains attributable to the sale of depreciable real property held for more than 12 months are subject to a 25% maximum U.S. federal income tax rate for taxpayers who are taxed as individuals, to the extent of previously claimed depreciation deductions.

Distributions in excess of our current and accumulated earnings and profits (as determined for U.S. federal income tax purposes) will generally represent a return of capital and will not be taxable to a shareholder to the extent that the amount of such distributions does not exceed the adjusted basis of the shareholder’s shares in respect of which the distributions were made. Rather, the distribution will reduce the adjusted basis of the shareholder’s shares. To the extent that such distributions exceed the adjusted basis of a shareholder’s shares, the shareholder generally must include such distributions in income as long-term capital gain if the shares have been held for more than one year, or short-term capital gain if the shares have been held for one year or less. In addition, any dividend that we declare in October, November or December of any year and that is payable to a shareholder of record on a specified date in any such month will be treated as both paid by us and received by the shareholder on December 31 of such year, provided that we actually pay the dividend before the end of January of the following calendar year.

To the extent that we have available net operating losses and capital losses carried forward from prior tax years, such losses may reduce the amount of distributions that we must make in order to comply with the REIT distribution requirements. See “—Taxation of Seritage Growth” and “—Annual Distribution Requirements.”
Such losses, however, are not passed through to shareholders and do not offset income of shareholders from other sources, nor would such losses affect the character of any distributions that we make, which are generally subject to tax in the hands of shareholders to the extent that we have current or accumulated earnings and profits (as determined for U.S. federal income tax purposes).

Dispositions of Seritage Growth Common Shares

If a U.S. shareholder sells or disposes of Seritage Growth common shares, it will generally recognize gain or loss for U.S. federal income tax purposes in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale or other disposition, and the shareholder’s adjusted tax basis in the common shares. In general, capital gains recognized by individuals, trusts and estates upon the sale or disposition of Seritage Growth common shares will be subject to a maximum U.S. federal income tax rate of 20% if the common shares are held for more than one year, and will be taxed at ordinary income rates (of up to 39.6%) if the common shares are held for one year or less. Gains recognized by shareholders that are corporations are subject to U.S. federal income tax at a maximum rate of 35%, whether or not such gains are classified as long-term capital gains. Capital losses recognized by a shareholder upon the disposition of Seritage Growth common shares that were held for more than one year at the time of disposition will be considered long-term capital losses, and are generally available only to offset capital gain income of the shareholder but not ordinary income (except in the case of individuals, who may also offset up to $3,000 of ordinary income each year). In addition, any loss upon a sale or exchange of Seritage Growth common shares by a shareholder who has held the shares for six months or less, after applying holding period rules, will be treated as a long-term capital loss to the extent of actual or deemed distributions that we make that are required to be treated by the shareholder as long-term capital gain.

If an investor recognizes a loss upon a subsequent disposition of Seritage Growth common shares or other securities in an amount that exceeds a prescribed threshold, it is possible that the provisions of Treasury regulations involving “reportable transactions” could apply, with a resulting requirement to separately disclose the loss-generating transaction to the IRS. These regulations, though directed towards “tax shelters,” are broadly written and apply to transactions that would not typically be considered tax shelters. The Code imposes significant penalties for failure to comply with these requirements. You should consult your tax advisor concerning any possible disclosure obligation with respect to the receipt or disposition of Seritage Growth common shares or securities or transactions that we might undertake directly or indirectly. Moreover, you should be aware that we and other participants in the transactions in which we are involved (including their advisors) might be subject to disclosure or other requirements pursuant to these regulations.

Passive Activity Losses and Investment Interest Limitations

Distributions that we make and gains arising from the sale or exchange by a U.S. shareholder of Seritage Growth common shares will not be treated as passive activity income. As a result, shareholder will not be able to apply any “passive losses” against income or gain relating to Seritage Growth common shares. To the extent that distributions we make do not constitute a return of capital, they will be treated as investment income for purposes of computing the investment interest limitation.

Taxation of Non-U.S. Shareholders

The following is a summary of certain U.S. federal income and estate tax consequences of the ownership and disposition of Seritage Growth common shares applicable to non-U.S. shareholders. A “non-U.S. shareholder” is any holder of Seritage Growth common shares other than a partnership or U.S. shareholder.

Ordinary Dividends

The portion of dividends received by non-U.S. shareholders that (i) is payable out of our earnings and profits, (ii) is not attributable to capital gains that we recognize and (iii) is not effectively connected with a U.S.
trade or business of the non-U.S. shareholder, will be subject to U.S. withholding tax at the rate of 30%, unless reduced or eliminated by treaty.

In general, non-U.S. shareholders will not be considered to be engaged in a U.S. trade or business solely as a result of their ownership of Seritage Growth common shares. In cases where the dividend income from a non-U.S. shareholder’s investment in Seritage Growth common shares is, or is treated as, effectively connected with the non-U.S. shareholder’s conduct of a U.S. trade or business, the non-U.S. shareholder generally will be subject to U.S. federal income tax at graduated rates, in the same manner as U.S. shareholders are taxed with respect to such dividends. Such effectively connected income must generally be reported on a U.S. income tax return filed by or on behalf of the non-U.S. shareholder. The income may also be subject to a branch profits tax at the rate of 30% (unless reduced or eliminated by treaty) in the case of a non-U.S. shareholder that is a corporation.

Non-Dividend Distributions

Unless Seritage Growth common shares constitute a USRPI, distributions that we make which are not dividends out of our earnings and profits will not be subject to U.S. income tax. If we cannot determine at the time a distribution is made whether or not the distribution will exceed current and accumulated earnings and profits, the distribution will be subject to withholding at the rate applicable to dividends. The non-U.S. shareholder may seek a refund from the IRS of any amounts withheld if it is subsequently determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits. If Seritage Growth stock constitutes a USRPI, as described below, distributions that we make in excess of the sum of (i) the shareholder’s proportionate share of our earnings and profits, plus (ii) the shareholder’s basis in its common shares, will be taxed under FIRPTA, at the rate of tax, including any applicable capital gains rates, that would apply to a U.S. shareholder of the same type (e.g., an individual or a corporation, as the case may be), and the collection of the tax will be enforced by a withholding at a rate of 10% of the amount by which the distribution exceeds the shareholder’s share of our earnings and profits.

Capital Gain Dividends

Under FIRPTA, a distribution that we make to a non-U.S. shareholder, to the extent attributable to gains from dispositions of USRPIs that we held directly or through pass-through subsidiaries, or USRPI capital gains, will, except as described below, be considered effectively connected with a U.S. trade or business of the non-U.S. shareholder and will be subject to U.S. income tax at the rates applicable to U.S. individuals or corporations, without regard to whether we designate the distribution as a capital gain dividend. See above under “—Ordinary Dividends” for a discussion of the consequences of income that is effectively connected with a U.S. trade or business. In addition, we will be required to withhold tax equal to 35% of the maximum amount that could have been designated as USRPI capital gain dividends. Distributions subject to FIRPTA may also be subject to a branch profits tax at the rate of 30% (unless reduced or eliminated by treaty) in the hands of a non-U.S. shareholder that is a corporation. A distribution is not attributable to USRPI capital gain if we held an interest in the underlying asset solely as a creditor. Capital gain dividends received by a non-U.S. shareholder that are attributable to dispositions of our assets other than USRPIs are not subject to U.S. federal income or withholding tax, unless (i) the gain is effectively connected with the non-U.S. shareholder’s U.S. trade or business, in which case the non-U.S. shareholder would be subject to the same treatment as U.S. shareholders with respect to such gain, except that a non-U.S. shareholder that is a corporation may also be subject to a branch profits tax at the rate of 30% (unless reduced or eliminated by treaty), or (ii) the non-U.S. shareholder is a nonresident alien individual who was present in the United States for 183 days or more during the taxable year and has a “tax home” in the United States, in which case the non-U.S. shareholder will incur a 30% tax on his capital gains. We expect that a significant portion of our assets will be USRPIs.

A capital gain dividend that would otherwise have been treated as a USRPI capital gain will not be so treated or be subject to FIRPTA, and generally will not be treated as income that is effectively connected with a U.S. trade or business, and instead will be treated in the same manner as an ordinary dividend (see “—Ordinary
Dividends”), if (i) the capital gain dividend is received with respect to a class of shares that is regularly traded on an established securities market located in the United States and (ii) the recipient non-U.S. shareholder does not own more than 5% of that class of shares at any time during the year ending on the date on which the capital gain dividend is received. We anticipate that Seritage Growth common shares will be “regularly traded” on an established securities exchange.

**Dispositions of Seritage Growth Common Shares**

Unless Seritage Growth common shares constitute a USRPI, a sale of the common shares by a non-U.S. shareholder generally will not be subject to U.S. taxation under FIRPTA. Subject to certain exceptions discussed below, Seritage Growth common shares will be treated as a USRPI if 50% or more of our assets throughout a prescribed testing period consist of interests in real property located within the United States, excluding, for this purpose, interests in real property solely in a capacity as a creditor. We expect that 50% or more of our assets will consist of USRPIs.

Even if the foregoing 50% test is met, however, Seritage Growth common shares will not constitute a USRPI if we are a “domestically controlled qualified investment entity.” A domestically controlled qualified investment entity includes a REIT, less than 50% of value of which is held, directly or indirectly, by non-U.S. shareholders at all times during a specified testing period. As described above, Seritage Growth’s declaration of trust contains restrictions designed to protect Seritage Growth’s status as a “domestically controlled qualified investment entity,” and we believe that we will be and will remain a domestically controlled qualified investment entity, and that a sale of Seritage Growth common shares should not be subject to taxation under FIRPTA. However, no assurance can be given that we will be or will remain a domestically controlled qualified investment entity.

In the event that we are not a domestically controlled qualified investment entity, but Seritage Growth common shares are “regularly traded,” as defined by applicable Treasury regulations, on an established securities market, a non-U.S. shareholder’s sale of Seritage Growth common shares nonetheless also would not be subject to tax under FIRPTA as a sale of a USRPI, provided that the selling non-U.S. shareholder held 5% or less of our outstanding common shares at any time during a prescribed testing period. We expect that Seritage Growth common shares will be regularly traded on an established securities market.

If gain on the sale of Seritage Growth common shares were subject to taxation under FIRPTA, the non-U.S. shareholder would be required to file a U.S. federal income tax return and would be subject to the same treatment as a U.S. shareholder with respect to such gain, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of non-resident alien individuals. Moreover, in order to enforce the collection of the tax, the purchaser of the common shares could be required to withhold 10% of the purchase price and remit such amount to the IRS.

Gain from the sale of Seritage Growth common shares that would not otherwise be subject to FIRPTA will nonetheless be taxable in the United States to a non-U.S. shareholder in two cases: (i) if the non-U.S. shareholder’s investment in the common shares is effectively connected with a U.S. trade or business conducted by such non-U.S. shareholder, the non-U.S. shareholder will be subject to the same treatment as a U.S. shareholder with respect to such gain, except that a non-U.S. shareholder that is a corporation may also be subject to a branch profits tax at a rate of 30% (unless reduced or eliminated by treaty), or (ii) if the non-U.S. shareholder is a nonresident alien individual who was present in the United States for 183 days or more during the taxable year and has a “tax home” in the United States, the nonresident alien individual will be subject to a 30% tax on the individual’s capital gain. In addition, even if we are a domestically controlled qualified investment entity, upon disposition of Seritage Growth common shares (subject to the 5% exception applicable to “regularly traded” shares described above), a non-U.S. shareholder may be treated as having gain from the sale or exchange of a USRPI if the non-U.S. shareholder (a) disposes of Seritage Growth common shares within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been
treated as gain from the sale or exchange of a USRPI and (b) acquires, or enters into a contract or option to acquire, other Seritage Growth common shares within 30 days after such ex-dividend date.

Non-U.S. shareholders are urged to consult their tax advisors regarding the U.S. federal, state, local and foreign income and other tax consequences of owning Seritage Growth common shares.

Taxation of Tax-Exempt Shareholders

Tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts, generally are exempt from U.S. federal income taxation. However, they may be subject to taxation on their unrelated business taxable income (“UBTI”). While some investments in real estate may generate UBTI, the IRS has ruled that dividend distributions from a REIT to a tax-exempt entity do not constitute UBTI. Based on that ruling, and provided that (i) a tax-exempt shareholder has not held Seritage Growth common shares as “debt financed property” within the meaning of the Code (i.e., where the acquisition or holding of the property is financed through a borrowing by the tax-exempt shareholder) and (ii) the common shares are not otherwise used in an unrelated trade or business, distributions that we make and income from the sale of the common shares generally should not give rise to UBTI to a tax-exempt shareholder.

Tax-exempt shareholders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, and qualified group legal services plans exempt from U.S. federal income taxation under sections 501(c)(7), (c)(9), (c)(17) and (c)(20) of the Code are subject to different UBTI rules, which generally require such shareholders to characterize distributions that we make as UBTI.

In certain circumstances, a pension trust that owns more than 10% of the Seritage Growth common shares could be required to treat a percentage of any dividends received from us as UBTI if we are a “pension-held REIT.” We will not be a pension-held REIT unless (i) we are required to “look through” one or more of our pension trust shareholders in order to satisfy the REIT “closely-held” test and (ii) either (a) one pension trust owns more than 25% of the value of the Seritage Growth common shares or (b) one or more pension trusts, each individually holding more than 10% of the value of the common shares, collectively own more than 50% of the value of the common shares. Certain restrictions on ownership and transfer of Seritage Growth common shares generally should prevent a tax-exempt entity from owning more than 10% of the value of Seritage Growth common shares and generally should prevent us from becoming a pension-held REIT.

Tax-exempt shareholders are urged to consult their tax advisors regarding the U.S. federal, state, local and foreign income and other tax consequences of owning the Seritage Growth common shares.

Other Tax Considerations

Legislative or Other Actions Affecting REITs

The present U.S. federal income tax treatment of REITs may be modified, possibly with retroactive effect, by legislative, judicial or administrative action at any time. The REIT rules are constantly under review by persons involved in the legislative process and by the IRS and the Treasury which may result in statutory changes as well as revisions to regulations and interpretations. Changes to the U.S. federal tax laws and interpretations thereof could adversely affect an investment in Seritage Growth common shares.

Medicare 3.8% Tax on Investment Income

For taxable years beginning after December 31, 2012, certain U.S. shareholders who are individuals, estates or trusts and whose income exceeds certain thresholds will be required to pay a 3.8% Medicare tax on dividends and certain other investment income, including capital gains from the sale or other disposition of Seritage Growth common shares.
Foreign Account Tax Compliance Act

Under recently enacted legislation and administrative guidance, a U.S. federal withholding tax of 30% generally will be imposed on certain payments made to a “foreign financial institution” (as specifically defined under these rules) unless such institution enters into an agreement with the U.S. tax authorities to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners). Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing these withholding and reporting requirements may be subject to different rules. Under the legislation and administrative guidance, a U.S. federal withholding tax of 30% generally also will be imposed on certain payments made to a non-financial foreign entity unless such entity provides the withholding agent with a certification identifying certain of its direct and indirect U.S. owners. Under certain circumstances, a non-U.S. shareholder may be eligible for refunds or credits of such taxes. These withholding taxes would be imposed on dividends paid with respect to Seritage Growth common shares to, and on gross proceeds from the sale or other taxable disposition of Seritage Growth common shares after December 31, 2016 by, foreign financial institutions or non-financial entities (including in their capacity as agents or custodians for beneficial owners of Seritage Growth common shares) that fail to satisfy the above requirements. Non-U.S. shareholders should consult with their tax advisors regarding the possible implications of this legislation on their ownership and disposition of Seritage Growth common shares.

State, Local and Foreign Taxes

We and our subsidiaries and shareholders may be subject to state, local or foreign taxation in various jurisdictions, including those in which we or they transact business, own property or reside. Our state, local or foreign tax treatment and that of Seritage Growth shareholders may not conform to the U.S. federal income tax treatment discussed above. Any foreign taxes that we incur do not pass through to shareholders as a credit against their U.S. federal income tax liability. Prospective investors should consult their tax advisors regarding the application and effect of state, local and foreign income and other tax laws on an investment in Seritage Growth common shares.
PLAN OF DISTRIBUTION

Seritage Growth will offer the Seritage Growth common shares under the terms of the transferable subscription rights that Sears Holdings will distribute to its stockholders as of the record date. Seritage Growth will offer the Seritage Growth non-voting shares to certain Fairholme Clients. FCM has entered into the Fairholme Exchange Agreement, pursuant to which FCM has the right, but not the obligation, to cause certain Fairholme Clients to exchange a portion of their respective subscription rights for the Seritage Growth non-voting shares at a price per share of $29.58 (the subscription price for the rights offering). This offering also includes 9,527,198 Seritage Growth common shares that may be issued from time to time upon conversion of the Seritage Growth non-voting shares. See “Description of Shares of Beneficial Interest—Non-Voting Shares.” There is no managing or soliciting dealer for this offering and neither Sears Holdings nor Seritage Growth will pay any kind of fee for the solicitation of the exercise of the rights.

We intend to list the subscription rights for trading under the symbol “SRGRT” on the NYSE. The listing on the NYSE is subject to the fulfillment of all listing requirements of the NYSE. If the listing requirements are fulfilled, we expect that the subscription rights will be listed on the NYSE on the date of this prospectus. The subscription rights are transferable during the course of the subscription period. We expect that most holders of subscription rights, including Sears Holdings’ directors and officers, may freely transfer their rights subject to applicable volume and manner of sale restrictions under Rule 144.

The subscription rights will cease trading at 4:00 p.m., New York time, on June 26, 2015, the business fourth day prior to the scheduled expiration date of the rights offering, unless Sears Holdings terminates or extends the rights offering.

Sears Holdings will be an “underwriter” within the meaning of Section 2(a)(11) of the Securities Act with respect to the sale of Seritage Growth common shares. Because Sears Holdings will be an underwriter, Sears Holdings will be subject to the prospectus delivery requirements of the Securities Act and will be subject to certain statutory liabilities, including, but not limited to, under the Securities Act and the Exchange Act.

There is currently no established public market for Seritage Growth common shares. We intend to apply to list the Seritage Growth common shares on the NYSE under the symbol “SRG” and expect that trading will begin the first trading day after the completion of the rights offering.

In connection with the agreement to enter into the GGP JV and the Simon JV, respectively, each of GGP and Simon agreed to acquire 1,125,760 Seritage Growth common shares at a price per share equal to the subscription price for the rights offering, for an aggregate purchase price of $33.3 million for each of GGP and Simon, in the Seritage Private Placements. Seritage Growth will issue and sell these Seritage Growth common shares to each of GGP and Simon concurrently with the closing of the rights offering, subject to the satisfaction of certain other related closing conditions. The shares to be issued and sold in the Seritage Private Placements are not registered as part of, and are in addition to the Seritage Growth common shares offered in, the rights offering.
LEGAL MATTERS

Certain legal matters will be passed upon for us by Wachtell, Lipton, Rosen & Katz. Venable LLP will issue an opinion to us regarding certain matters of Maryland law, including the validity of the common shares of beneficial interest offered hereby.

EXPERTS

The Combined Statement of Investments of Real Estate Assets to be Acquired by Seritage Growth Properties as of December 31, 2014 and the related financial statement schedule included in this Prospectus have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such Combined Statement of Investments and financial statement schedule are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

The Combined Statement of Investments of Real Estate Assets of JV Properties to be Acquired by Seritage Growth Properties as of December 31, 2014 and the related financial statement schedule included in this Prospectus have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such Combined Statement of Investments and financial statement schedule are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

The balance sheet of Seritage Growth Properties as of June 3, 2015 (Formation Date) included in this Prospectus has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such balance sheet is included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-11 under the Securities Act with respect to the common shares offered hereby. This prospectus does not contain all of the information set forth in the registration statement and the exhibits and schedules thereto. For further information with respect to us and Seritage Growth common shares, reference is made to the registration statement and the exhibits and any schedules filed therewith. Statements contained in this prospectus as to the contents of any contract or other document referred to are not necessarily complete and in each instance, if such contract or document is filed as an exhibit, reference is made to the copy of such contract or other document filed as an exhibit to the registration statement, each statement being qualified in all respects by such reference. A copy of the registration statement, including the exhibits and schedules thereto, may be read and copied at the SEC’s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Information on the operation of the Public Reference Room may be obtained by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an internet website that contains reports, proxy statements and other information about issuers, like us, that file electronically with the SEC. The address of that site is www.sec.gov.

AS A RESULT OF THIS OFFERING, WE WILL BECOME SUBJECT TO THE INFORMATION AND REPORTING REQUIREMENTS OF THE EXCHANGE ACT, AND WILL FILE ANNUAL, QUARTERLY AND OTHER PERIODIC REPORTS AND PROXY STATEMENTS AND WILL MAKE AVAILABLE TO SERITAGE GROWTH SHAREHOLDERS QUARTERLY REPORTS FOR THE FIRST THREE QUARTERS OF EACH FISCAL YEAR CONTAINING UNAUDITED INTERIM FINANCIAL INFORMATION.
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Combined Statement of Investments of Real Estate Assets as of March 31, 2015 (unaudited) and December 31, 2014 F-3
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Audited Combined Statement of Investments of Real Estate Assets of JV Properties:
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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors of
Sears Holdings Corporation
Hoffman Estates, Illinois

We have audited the accompanying combined statement of investments (the “combined statement”) of real estate assets to be acquired by Seritage Growth Properties as of December 31, 2014. Our audit also included the financial statement schedule listed in the Index to the financial statements. This combined statement and financial statement schedule are the responsibility of Sears Holdings Corporation (the “Company”) management. Our responsibility is to express an opinion on this combined statement and financial statement schedule based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the combined statement is free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting as it relates to the combined statement. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting as it relates to the combined statement. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the combined statement, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall combined statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, such combined statement presents fairly, in all material respects, real estate assets to be acquired by Seritage Growth Properties as of December 31, 2014, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic combined financial statement taken as a whole, presents fairly in all material respects the information set forth therein.

/s/ Deloitte & Touche LLP

Chicago, Illinois
May 26, 2015
## Combined Statement of Investments of Real Estate Assets to be Acquired by Seritage Growth Properties

(inaudited)  

<table>
<thead>
<tr>
<th>Assets</th>
<th>March 31, 2015</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land, buildings and improvements, net</td>
<td>$1,297,656</td>
<td>$1,307,808</td>
</tr>
</tbody>
</table>

See accompanying notes to the Combined Statement of Investments of Real Estate Assets to be Acquired by Seritage Growth Properties.
Notes to Combined Statement of Investments of Real Estate Assets to be Acquired by Seritage Growth Properties

Note 1—Business

Seritage Growth Properties (“Seritage Growth”) is a newly formed company that was organized in Maryland. Seritage Growth will conduct its operations through Seritage Growth Properties, L.P. (“Operating Partnership”), a Delaware limited partnership that was formed on April 22, 2015.

Pursuant to a proposed transaction, Seritage Growth will hold directly or indirectly 235 of the properties associated with Sears Holdings Corporation (“Sears Holdings”). The proposed transaction will include the acquisition of 235 properties owned (or ground-leased) from Sears Holdings, the leaseback of most of these properties to Sears Holdings and the consummation of a rights offering and private placement to Sears Holdings’ stockholders. Seritage Growth’s primary business following the transaction will consist of acquiring, financing and owning real estate property to be leased to retailers. Initially, Seritage Growth’s primary tenant will be Sears Holdings under a Master Lease.

Sears Holdings Corporation is the parent company of Kmart Holdings Corporation (“Kmart”) and Sears, Roebuck and Co. (“Sears”). Sears Holdings is an integrated retailer that operates a national network of stores with 1,725 full-line and specialty retail stores in the United States.

The accompanying Combined Statement of Investments of Real Estate Assets to be Acquired by Seritage Growth Properties (“Combined Statement of Investments”) reflects certain owned real estate of 234 retail facilities and one retail facility subject to a ground lease, that will be acquired by and ground lease transferred to Seritage Growth from affiliates of Sears Holdings. The portfolio of 235 properties consists of approximately 36.7 million square feet of building space and is broadly diversified by location across 49 states and Puerto Rico. The properties consist of 84 properties operated under the Kmart brand, 140 properties operated under the Sears brand, and eleven properties leased entirely to third parties.

Note 2—Summary of Significant Accounting Policies

Basis of Presentation

The accompanying Combined Statement of Investments reflects the 235 properties directly attributable to Sears Holdings’ real estate holdings to be owned by Seritage Growth pursuant to the transaction. All intercompany balances have been eliminated in combination. The Combined Statement of Investments is prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”) as established by the Financial Accounting Standards Board (“FASB”) in the Accounting Standards Codification (“ASC”) including modifications issued under Accounting Standards Updates (“ASU”). The statement has been derived from the accounting records of Sears Holdings using the historical basis of assets of Sears Holdings. Management believes the assumptions underlying the Combined Statement of Investments are reasonable. However, the Combined Statement of Investments included herein may not necessarily reflect Seritage Growth’s financial position in the future or what their financial position would have been had Seritage Growth operated independently from Sears Holdings at the date presented.

Use of Estimates

Seritage Growth has made a number of estimates, judgments and assumptions that affect the reported amounts of assets in the Combined Statement of Investments. Estimates are required in order for us to prepare our Combined Statement of Investments in conformity with GAAP. Significant estimates, judgments and assumptions are required in a number of areas, including, but not limited to, determining the useful lives of real estate properties and evaluating the impairment of long-lived assets. Seritage Growth has based these estimates, judgments and assumptions on historical experience and various other factors that it believes to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions and conditions.
Land, Buildings and Improvements

Land and buildings are recorded at cost, less accumulated depreciation. Additions and substantial improvements are capitalized and include expenditures that materially extend the useful lives of existing facilities. Maintenance and repairs that do not materially improve or extend the lives of the respective assets are expensed as incurred.

Depreciation expense is recorded over the estimated useful lives of the respective assets using the straight-line method for financial statement purposes. The range of lives is generally 20 to 50 years for buildings and improvements.

Impairment of Long-Lived Assets

In accordance with accounting standards governing the impairment or disposal of long-lived assets, the carrying value of long-lived assets, including land, buildings and improvements, and definite-lived intangible assets, is evaluated whenever events or changes in circumstances indicate that a potential impairment has occurred relative to a given asset or assets. Factors that could result in an impairment review include, but are not limited to, a current period cash flow loss combined with a history of cash flow losses, current cash flows that may be insufficient to recover the investment in the property over the remaining useful life, a projection that demonstrates continuing losses associated with the use of a long-lived asset, significant changes in the manner of use of the assets, or significant changes in business strategies. An impairment loss is recognized when the estimated undiscounted cash flows expected to result from the use of the asset plus net proceeds expected from disposition of the asset (if any) are less than the carrying value of the asset. When an impairment loss is recognized, the carrying amount of the asset is reduced to its estimated fair value as determined based on quoted market prices or through the use of other valuation techniques.

Note 3—Land, Buildings and Improvements

Land, buildings and improvements, net of accumulated depreciation consists of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2015 (unaudited)</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>$ 718,720</td>
<td>$ 718,720</td>
</tr>
<tr>
<td>Buildings and improvements</td>
<td>1,302,076</td>
<td>1,293,867</td>
</tr>
<tr>
<td>Gross land, buildings and improvements</td>
<td>2,020,796</td>
<td>2,012,587</td>
</tr>
<tr>
<td>Less: accumulated depreciation</td>
<td>(723,140)</td>
<td>(704,779)</td>
</tr>
<tr>
<td>Land, buildings and improvements, net</td>
<td>$1,297,656</td>
<td>$1,307,808</td>
</tr>
</tbody>
</table>

Note 4—Concentration of Credit Risks

Concentrations of credit risks arise when a number of operators, tenants, or obligors related to Sears Holdings’ investments are engaged in similar business activities, or activities in the same geographic region, or having similar economic features that would cause their ability to meet contractual obligations, including those to Seritage Growth, to be similarly affected by changes in economic conditions. Following the transaction, substantially all of Seritage Growth’s real estate properties will be leased to Sears Holdings, and the majority of Seritage Growth’s rental revenues will be derived from the Master Lease. Sears Holdings is a publicly traded company and is subject to the informational filing requirements of the Securities and Exchange Act of 1934, as amended, and is required to file periodic reports on Form 10-K and Form 10-Q with the Securities and Exchange Commission; refer to edgar.gov for Sears Holdings Corporation publicly-available financial information. Other than Seritage Growth’s tenant concentration, management believes the current portfolio is reasonably diversified by geographical location and does not contain any other significant concentration of credit risks. Seritage Growth’s portfolio of 235 properties is diversified by location across 49 states and Puerto Rico.
**Note 5—Related Party Disclosure**

Edward S. Lampert is Chairman and Chief Executive Officer of Holdings and is the Chairman and Chief Executive Officer of ESL Investments, Inc., and related entities (collectively “ESL”). ESL beneficially owned approximately 49% of Holdings’ outstanding common stock at December 31, 2014.

For purposes of funding the purchase price for the acquisition of 235 properties from Sears Holdings, Seritage Growth will enter into an agreement with Sears Holdings to subscribe for Seritage Growth shares and Sears Holdings will distribute such rights to its stockholders, including ESL.

**Note 6—Subsequent Events**

Events subsequent to December 31, 2014 were evaluated through May 26, 2015 and no events were identified requiring further disclosure in this audited Combined Statement of Investments.

Events subsequent March 31, 2015 were evaluated through May 26, 2015 and no events were identified requiring further disclosure in this unaudited Combined Statement of Investments.
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors of
Sears Holdings Corporation
Hoffman Estates, Illinois

We have audited the accompanying combined statement of investments (the “combined statement”) of real estate assets of JV properties to be acquired by Seritage Growth Properties as of December 31, 2014. Our audit also included the financial statement schedule listed in the Index to the financial statements. This combined statement and financial statement schedule are the responsibility of Sears Holdings Corporation (the “Company”) management. Our responsibility is to express an opinion on this combined statement and financial statement schedule based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the combined statement is free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting as it relates to the combined statement. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting as it relates to the combined statement. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the combined statement, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall combined statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, such combined statement presents fairly, in all material respects, real estate assets of JV properties to be acquired by Seritage Growth Properties as of December 31, 2014, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic combined financial statement taken as a whole, presents fairly in all material respects the information set forth therein.

/s/ Deloitte & Touche LLP

Chicago, Illinois
May 26, 2015
### Combined Statement of Investments of Real Estate Assets of JV Properties to be Acquired by Seritage Growth Properties

(in thousands)

<table>
<thead>
<tr>
<th>Assets</th>
<th>(unaudited)</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>March 31, 2015</td>
<td></td>
</tr>
<tr>
<td>Land, buildings and improvements, net</td>
<td>$239,541</td>
<td>$242,578</td>
</tr>
<tr>
<td>Below-market ground leases, net</td>
<td>944</td>
<td>947</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td><strong>$240,485</strong></td>
<td><strong>$243,525</strong></td>
</tr>
</tbody>
</table>

See accompanying notes to the Combined Statement of Investments of Real Estate Assets of JV Properties to be Acquired by Seritage Growth Properties.
Notes to Combined Statement of Investments of Real Estate Assets of JV Properties to be Acquired by Seritage Growth Properties

Note 1—Business

Seritage Growth Properties (‘‘Seritage Growth’’) is a newly formed company that was organized in Maryland. Seritage Growth will conduct its operations through Seritage Growth Properties, L.P. (‘‘Operating Partnership’’), a Delaware limited partnership that was formed on April 22, 2015.

Pursuant to a proposed transaction, Seritage Growth will hold indirectly 31 of the properties associated with Sears Holdings Corporation (‘‘Sears Holdings’’). The proposed transaction will include the acquisition of the GGP JV Interest in twelve properties, the Simon JV Interest in ten properties, and the Macerich JV Interest in nine properties (collectively, the ‘‘JV Properties’’), the leaseback of most of these properties by the JVs to Sears Holdings and the consummation of a rights offering and private placement to Sears Holdings’ stockholders. Seritage Growth’s primary business following the transaction will consist of acquiring, financing and owning real estate property to be leased to retailers. Initially, through its investments in the JVs, Seritage Growth’s primary tenant will be Sears Holdings under a Master Lease.

Sears Holdings Corporation is the parent company of Kmart Holdings Corporation (‘‘Kmart’’) and Sears, Roebuck and Co. (‘‘Sears’’). Sears Holdings is an integrated retailer that operates a national network of stores with 1,725 full-line and specialty retail stores in the United States.

The accompanying Combined Statement of Investments of Real Estate Assets of JV Properties to be Acquired by Seritage Growth Properties (‘‘Combined Statement of Investments’’) reflects certain owned real estate of 28 retail facilities, one retail facility subject to a ground lease, and two retail facilities subject to leases, that were acquired by and ground leases and leases transferred to the JVs from affiliates of Sears Holdings during April 2015. The portfolio of 31 properties is broadly diversified by location across 17 states. The properties consist of properties operated under the Sears brand.

Note 2—Summary of Significant Accounting Policies

Basis of Presentation

The accompanying Combined Statement of Investments reflects the 31 properties directly attributable to Sears Holdings’ real estate holdings to be owned indirectly through JV interests by Seritage Growth pursuant to the transaction. All intercompany balances have been eliminated in combination. The Combined Statement of Investments is prepared in conformity with accounting principles generally accepted in the United States of America (‘‘GAAP’’) as established by the Financial Accounting Standards Board (‘‘FASB’’) in the Accounting Standards Codification (‘‘ASC’’) including modifications issued under Accounting Standards Updates (‘‘ASU’’). The statement has been derived from the accounting records of Sears Holdings using the historical basis of assets of Sears Holdings. Management believes the assumptions underlying the Combined Statement of Investments are reasonable. However, the Combined Statement of Investments included herein may not necessarily reflect Seritage Growth’s financial position in the future or what their financial position would have been had Seritage Growth operated independently from Sears Holdings at the date presented.

Use of Estimates

Seritage Growth has made a number of estimates, judgments and assumptions that affect the reported amounts of assets in the Combined Statement of Investments. Estimates are required in order for us to prepare our Combined Statement of Investments in conformity with GAAP. Significant estimates, judgments and assumptions are required in a number of areas, including, but not limited to, determining the useful lives of real estate properties and evaluating the impairment of long-lived assets. Seritage Growth has based these estimates, judgments and assumptions on historical experience and various other factors that it believes to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions and conditions.
Land, Buildings and Improvements

Land and buildings are recorded at cost, less accumulated depreciation. Additions and substantial improvements are capitalized and include expenditures that materially extend the useful lives of existing facilities. Maintenance and repairs that do not materially improve or extend the lives of the respective assets are expensed as incurred.

Depreciation expense is recorded over the estimated useful lives of the respective assets using the straight-line method for financial statement purposes. The range of lives is generally 20 to 50 years for buildings and improvements.

Below-Market Ground Leases

Below-market ground leases are recorded based on their acquisition date fair value and are amortized over the remaining lives of the respective ground leases.

Impairment of Long-Lived Assets

In accordance with accounting standards governing the impairment or disposal of long-lived assets, the carrying value of long-lived assets, including land, buildings and improvements, and definite-lived intangible assets, is evaluated whenever events or changes in circumstances indicate that a potential impairment has occurred relative to a given asset or assets. Factors that could result in an impairment review include, but are not limited to, a current period cash flow loss combined with a history of cash flow losses, current cash flows that may be insufficient to recover the investment in the property over the remaining useful life, a projection that demonstrates continuing losses associated with the use of a long-lived asset, significant changes in the manner of use of the assets, or significant changes in business strategies. An impairment loss is recognized when the estimated undiscounted cash flows expected to result from the use of the asset plus net proceeds expected from disposition of the asset (if any) are less than the carrying value of the asset. When an impairment loss is recognized, the carrying amount of the asset is reduced to its estimated fair value as determined based on quoted market prices or through the use of other valuation techniques.

Note 3—Land, Buildings and Improvements

Land, buildings and improvements, net of accumulated depreciation consists of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2015 (unaudited)</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>$ 132,243</td>
<td>$ 132,243</td>
</tr>
<tr>
<td>Buildings and improvements</td>
<td>266,045</td>
<td>265,220</td>
</tr>
<tr>
<td>Gross land, buildings and improvements</td>
<td>398,288</td>
<td>397,463</td>
</tr>
<tr>
<td>Less: accumulated depreciation</td>
<td>(158,747)</td>
<td>(154,885)</td>
</tr>
<tr>
<td>Land, buildings and improvements, net</td>
<td>$ 239,541</td>
<td>$ 242,578</td>
</tr>
</tbody>
</table>

Note 4—Below-Market Ground Leases

The following summarizes our below-market ground leases (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2015 (unaudited)</th>
<th>December 31, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below-market ground leases</td>
<td>$1,066</td>
<td>$1,066</td>
</tr>
<tr>
<td>Less: accumulated amortization</td>
<td>(122)</td>
<td>(119)</td>
</tr>
<tr>
<td>Below-market ground leases, net</td>
<td>$ 944</td>
<td>$ 947</td>
</tr>
</tbody>
</table>
The expected amortization for below-market ground leases for the years ending is as follows (in thousands):

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015 (remainder)</td>
<td>$9</td>
</tr>
<tr>
<td>2016</td>
<td>12</td>
</tr>
<tr>
<td>2017</td>
<td>12</td>
</tr>
<tr>
<td>2018</td>
<td>12</td>
</tr>
<tr>
<td>2019</td>
<td>12</td>
</tr>
<tr>
<td>Thereafter</td>
<td>887</td>
</tr>
</tbody>
</table>

**Note 5—Concentration of Credit Risks**

Concentrations of credit risks arise when a number of operators, tenants, or obligors related to Sears Holdings’ investments are engaged in similar business activities, or activities in the same geographic region, or having similar economic features that would cause their ability to meet contractual obligations, including those to Seritage Growth, to be similarly affected by changes in economic conditions. Following the transaction, substantially all of Seritage Growth’s real estate properties within the joint ventures will be leased to Sears Holdings, and the majority of Seritage Growth’s rental revenues will be derived from the Master Lease. Sears Holdings is a publicly traded company and is subject to the informational filing requirements of the Securities and Exchange Act of 1934, as amended, and is required to file periodic reports on Form 10-K and Form 10-Q with the Securities and Exchange Commission; refer to edgar.gov for Sears Holdings Corporation publicly-available financial information. Other than Seritage Growth’s tenant concentration, management believes the current portfolio is reasonably diversified by geographical location and does not contain any other significant concentration of credit risks. Seritage Growth’s portfolio of 31 properties is diversified by location across 17 states.

**Note 6—Related Party Disclosure**

Edward S. Lampert is Chairman and Chief Executive Officer of Holdings and is the Chairman and Chief Executive Officer of ESL Investments, Inc., and related entities (collectively “ESL”). ESL beneficially owned approximately 49% of Holdings’ outstanding common stock at December 31, 2014.

For purposes of funding the purchase price for the acquisition of the JV Interests from Sears Holdings, Seritage Growth will enter into an agreement with Sears Holdings to subscribe for Seritage Growth shares and Sears Holdings will distribute such rights to its stockholders, including ESL.

**Note 7—Subsequent Events**

Events subsequent to December 31, 2014 were evaluated through May 26, 2015 and no events were identified requiring further disclosure in this audited Combined Statement of Investments.

Events subsequent March 31, 2015 were evaluated through May 26, 2015 and no events were identified requiring further disclosure in this unaudited Combined Statement of Investments.
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors of
Sears Holdings Corporation
Hoffman Estates, Illinois

We have audited the accompanying balance sheet of Seritage Growth Properties (the “Company”) as of June 3, 2015 (Formation Date). This balance sheet is the responsibility of the Company’s management. Our responsibility is to express an opinion on this balance sheet based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the balance sheet is free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the balance sheet, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall balance sheet presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, such balance sheet presents fairly, in all material respects, the financial position of Seritage Growth Properties as of June 3, 2015 (Formation Date), in conformity with accounting principles generally accepted in the United States of America.

/s/ Deloitte & Touche LLP

Chicago, Illinois
June 8, 2015
### Seritage Growth Properties
#### Balance Sheet
June 3, 2015 (Formation Date)

**Assets**
- Cash: $2,958
- **Total assets**: $2,958

**Shareholder’s Equity**
- Common shares, $0.01 par value, 1,000,000 shares authorized, 100 shares issued and outstanding: $1
- Additional paid-in capital: 2,957
- **Total Shareholder’s Equity**: $2,958

See accompanying notes to the Balance Sheet.
Note 1—Business

Seritage Growth Properties (“Seritage Growth”) is a newly formed company that was organized in Maryland on June 3, 2015. Seritage Growth conducts its operations through Seritage Growth Properties, L.P. (“Operating Partnership”), a Delaware limited partnership that was formed on April 22, 2015. Under Seritage Growth’s Declaration of Trust, as amended, Seritage Growth, with the approval of a majority of the Board of Trustees and without any action by the shareholders of Seritage Growth, may amend the Declaration of Trust from time to time to increase or decrease the aggregate number of shares or the number of shares of any class or series that Seritage Growth has the authority to issue.

Seritage Growth has filed a Registration Statement on Form S-11 with the Securities and Exchange Commission with respect to a proposed rights offering to stockholders of Sears Holdings Corporation (“Sears Holdings”) of common shares of Seritage Growth. Following the Transaction, Seritage Growth will be a publicly traded, self-administered, self-managed REIT primarily engaged in the real property business through its investment in Operating Partnership. Initially, Operating Partnership’s portfolio will consist of 235 properties (the “Acquired Properties”) owned (or, in a few cases, ground-leased) by Sears Holdings as of the date of this prospectus, and the JV Interests, which will be sold to Operating Partnership in the Transaction. Operating Partnership will then lease (or sublease) a substantial majority of the space at all but eleven of the Acquired Properties back to Sears Holdings under one or more master lease agreements (collectively, the “Master Lease”), with the remainder of such space leased to third-party tenants.

Note 2—Summary of Significant Accounting Policies

Basis of Presentation

The accompanying Balance Sheet is prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”).

Seritage Growth generally will not be subject to U.S. federal income taxes on its taxable income to the extent that it annually distributes at least 100% of its taxable income to shareholders and maintains its intended qualification as a REIT.

Offering Costs

In connection with this offering, Sears Holdings has or will incur legal, accounting, and related costs, which will be reimbursed by Seritage Growth upon the consummation of this offering. Such costs will be deferred and will be recorded as a reduction of proceeds of the offering, or expensed if the offering is not consummated. Through the date the balance sheet was available to be issued, Sears Holdings has incurred offering costs of $16.4 million, of which $7.4 million are expected to be reimbursed by Seritage Growth.

Organization Costs

Organization costs, incurred by Sears Holdings, are comprised of the legal and professional fees associated with the formation of Seritage Growth, which will be reimbursed by Seritage Growth upon consummation of the offering. Organization costs are expensed as incurred. Through the date the balance sheet was available to be issued, Sears Holdings has incurred organization costs of $2.2 million, of which $0.7 million are expected to be reimbursed by Seritage Growth upon the consummation of this offering.

Note 3—Shareholder’s Equity

Seritage Growth has been capitalized with the issuance of 100 shares of Common Stock (with $0.01 par value) for a total of $2,958.
Note 4—Income Taxes

Seritage Growth intends to elect to be taxed as a real estate investment trust ("REIT") as defined under Section 856(c) of the Internal Revenue Code (the “Code”), commencing with its taxable year ending December 31, 2015. To qualify as an REIT, Seritage Growth must meet certain organizational, income, asset and distribution tests. Accordingly, Seritage Growth will generally not be subject to corporate U.S. federal or state income tax to the extent that it makes qualifying distributions to its shareholders and provided it satisfies on a continuing basis, through actual investment and operating results, the REIT requirements including certain asset, income, distribution and share ownership tests. Seritage Growth currently intends to comply with these requirements and maintain REIT status. However, Seritage Growth may still be subject to federal excise tax, as well as foreign taxes and certain state and local income and franchise taxes.

Note 5—Related Party Disclosure

Edward S. Lampert is Chairman and Chief Executive Officer of Sears Holdings and is the Chairman and Chief Executive Officer of ESL Investments, Inc., and related entities (collectively “ESL”). ESL beneficially owned approximately 49% of Sears Holdings’ outstanding common stock (based on publicly available information as of April 2, 2015).

For purposes of funding the purchase price for the acquisition of 235 properties and the JV Interests from Sears Holdings, Seritage Growth will enter into an agreement with Sears Holdings to subscribe for Seritage Growth shares and Sears Holdings will distribute such rights to its stockholders, including ESL.

Note 6—Legal Proceedings

In accordance with accounting standards regarding loss contingencies, Seritage Growth accrues an undiscounted liability for those contingencies where the incurrence of a loss is probable and the amount can be reasonably estimated, and we disclose the amount accrued and the amount of a reasonably possible loss in excess of the amount accrued, if such disclosure is necessary for our financial statements to not be misleading. Seritage Growth does not record liabilities when the likelihood that the liability has been incurred is probable but the amount cannot be reasonably estimated, or when the liability is believed to be only reasonably possible or remote.

On May 29, 2015, a putative stockholder class action and derivative lawsuit was filed in the Delaware Court of Chancery against the members of Sears Holdings’ Board of Directors, ESL Investments, Inc. and Seritage Growth in connection with the proposed rights offering for and sale of certain properties to Seritage Growth, discussed in Note 1. The complaint asserts class and derivative claims of breach of fiduciary duty by the members of the Sears Holdings’ Board of Directors and by ESL Investments, Inc., as controlling stockholder of Sears Holdings, and of aiding and abetting breaches of fiduciary duty by Seritage Growth. Among other forms of relief, the plaintiff seeks equitable relief to enjoin the proposed Transaction. Seritage Growth believes the allegations to be meritless and intends to defend this litigation vigorously.

Note 7—Subsequent Events

Events subsequent to June 3, 2015 were evaluated through June 8, 2015 and no events were identified requiring further disclosure in this audited Balance Sheet.
## Properties to Be Acquired by Seritage Growth Properties

**SCHEDULE III—REAL ESTATE AND ACCUMULATED DEPRECIATION**

**DECEMBER 31, 2014**

(Dollars in thousands)

<table>
<thead>
<tr>
<th>Name of Center</th>
<th>Location</th>
<th>Encumbrances</th>
<th>Land</th>
<th>Buildings and Improvements</th>
<th>Land</th>
<th>Buildings and Improvements</th>
<th>Gross Amount at Which Carried at Close of Period</th>
<th>Accumulated Depreciation</th>
<th>Date Acquired</th>
<th>Life Upon Which Depreciation is Computed</th>
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<tbody>
<tr>
<td>Stand-Alone Location</td>
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<td>Date Acquired</td>
<td>Life Upon Which Depreciation is Computed</td>
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<td>1,092 d</td>
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<td>1,092 d</td>
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<td>Buildings and Improvements</td>
<td>Total</td>
<td>Accumulated Depreciation</td>
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<td>Life Upon Which Depreciation is Computed</td>
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<td>Plaza Guaynabo</td>
<td>Guaynabo, PR</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>567</td>
<td>567</td>
<td>(90)</td>
<td>a</td>
<td>c</td>
</tr>
<tr>
<td>Revsville (Bayamon) Towne Center</td>
<td>Bayamon, PR</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>403</td>
<td>403</td>
<td>(91)</td>
<td>a</td>
<td>c</td>
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<tr>
<td>Stand-Alone Location</td>
<td>Algona, IA</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>569</td>
<td>1,897</td>
<td>(181)</td>
<td>a</td>
<td>c</td>
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<td>Webster City Plaza</td>
<td>Webster City, IA</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>408</td>
<td>1,301</td>
<td>(259)</td>
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<td>c</td>
</tr>
<tr>
<td>Midtown Shopping Center</td>
<td>Madawaska, ME</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>203</td>
<td>2,045</td>
<td>(488)</td>
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<td>c</td>
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<td>Stand-Alone Location</td>
<td>Cullman, AL</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>718</td>
<td>1,608</td>
<td>(299)</td>
<td>a</td>
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</tr>
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<td>Stand-Alone Location</td>
<td>Sault Ste. Marie, MI</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>831</td>
<td>777</td>
<td>(242)</td>
<td>a</td>
<td>c</td>
</tr>
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<td>Stand-Alone Location</td>
<td>Leavenworth, KS</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>423</td>
<td>2,128</td>
<td>(556)</td>
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</tr>
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<td>Stand-Alone Location</td>
<td>Russellville, AR</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>443</td>
<td>2,049</td>
<td>(472)</td>
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<td>c</td>
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<td>Countryside Shopping Center</td>
<td>Mount Pleasant, PA</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>491</td>
<td>1,510</td>
<td>(559)</td>
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<td>Eastern Commons Shopping Center</td>
<td>Henderson, NV</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>24</td>
<td>24</td>
<td>(9)</td>
<td>a</td>
<td>c</td>
</tr>
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<td>The Mall at Rockingham Park</td>
<td>Salem, NH</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>3,521</td>
<td>10,462</td>
<td>(7,109)</td>
<td>a</td>
<td>c</td>
</tr>
<tr>
<td>Paddock Mall</td>
<td>Ocala, FL</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>4,396</td>
<td>5,334</td>
<td>(3,076)</td>
<td>a</td>
<td>c</td>
</tr>
<tr>
<td>Stand-Alone Location</td>
<td>St Paul, MN</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>4,212</td>
<td>2,471</td>
<td>(263)</td>
<td>a</td>
<td>c</td>
</tr>
<tr>
<td>Square One Mall</td>
<td>Saugus, MA</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>3,800</td>
<td>9,882</td>
<td>(6,122)</td>
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<td>c</td>
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<td>Valley View Center</td>
<td>Valley View, TX</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>3,717</td>
<td>10,125</td>
<td>(7,027)</td>
<td>a</td>
<td>c</td>
</tr>
<tr>
<td>Corbin’s Corner</td>
<td>West Hartford, CT</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>3,093</td>
<td>6,447</td>
<td>(4,119)</td>
<td>a</td>
<td>c</td>
</tr>
<tr>
<td>Memorial City SC</td>
<td>Memorial, TX</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>2,328</td>
<td>10,854</td>
<td>(6,912)</td>
<td>a</td>
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</tr>
<tr>
<td>Overlake Plaza</td>
<td>Redmond-Overlake Pk, WA</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>4,053</td>
<td>11,142</td>
<td>(7,449)</td>
<td>a</td>
<td>c</td>
</tr>
<tr>
<td>Westland Shopping Center</td>
<td>Lakewood, CO</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>2,746</td>
<td>7,050</td>
<td>(4,560)</td>
<td>a</td>
<td>c</td>
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<tr>
<td>Superstition Springs Center</td>
<td>Mesa/East, AZ</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>5,700</td>
<td>2,725</td>
<td>(1,567)</td>
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<td>c</td>
</tr>
<tr>
<td>Southridge Mall</td>
<td>Greendale, WI</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>4,586</td>
<td>9,483</td>
<td>(6,256)</td>
<td>a</td>
<td>c</td>
</tr>
<tr>
<td>Name of Center</td>
<td>Location</td>
<td>Encumbrances</td>
<td>Gross Amount at Which Carried at Close of Period(b)</td>
<td>Accumulated Depreciation</td>
<td>Date Acquired</td>
<td>Life Upon Which Depreciation is Computed</td>
<td></td>
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</tr>
<tr>
<td>Rhode Island Mall</td>
<td>Warwick, RI</td>
<td>a</td>
<td>11,375 (2,292)</td>
<td>a</td>
<td>c</td>
<td></td>
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<tr>
<td>Caguas Mall</td>
<td>Caguas, PR</td>
<td>a</td>
<td>11,495 (2,773)</td>
<td>a</td>
<td>c</td>
<td></td>
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</tr>
<tr>
<td>The Mall at Sears</td>
<td>Anchorage(Sur), AK</td>
<td>a</td>
<td>13,816 (3,320)</td>
<td>a</td>
<td>c</td>
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<tr>
<td>Stand-Alone Location</td>
<td>Chicago, IL</td>
<td>a</td>
<td>8,410 (674)</td>
<td>a</td>
<td>c</td>
<td></td>
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</tr>
<tr>
<td>Stand-Alone Location</td>
<td>Okla City/ Sequoyah, OK</td>
<td>a</td>
<td>11,277 (5,485)</td>
<td>a</td>
<td>c</td>
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<tr>
<td>University Mall</td>
<td>Pensacola, FL</td>
<td>a</td>
<td>13,798 (4,980)</td>
<td>a</td>
<td>c</td>
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<td></td>
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<tr>
<td>Metcalf South</td>
<td>Overland Pk, KS</td>
<td>a</td>
<td>8,730 (2,543)</td>
<td>a</td>
<td>c</td>
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<tr>
<td>Colomie Center</td>
<td>Albany, NY</td>
<td>a</td>
<td>30,127 (13,000)</td>
<td>a</td>
<td>c</td>
<td></td>
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<tr>
<td>Promenade in Temecula</td>
<td>Temecula, CA</td>
<td>a</td>
<td>13,499 (2,501)</td>
<td>a</td>
<td>c</td>
<td></td>
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</tr>
<tr>
<td>Clackamas Town Center</td>
<td>Happy Valley, OR</td>
<td>a</td>
<td>11,357 (4,044)</td>
<td>a</td>
<td>c</td>
<td></td>
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<tr>
<td>Maplewood Mall</td>
<td>Maplewood, MN</td>
<td>a</td>
<td>10,747 (2,295)</td>
<td>a</td>
<td>c</td>
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<tr>
<td>Stand-Alone Location</td>
<td>Shepherd, MN</td>
<td>a</td>
<td>7,824 (5,078)</td>
<td>a</td>
<td>c</td>
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</tr>
<tr>
<td>Burnsville Center</td>
<td>Burnsville, MN</td>
<td>a</td>
<td>9,672 (2,469)</td>
<td>a</td>
<td>c</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Wolfchase Galleria</td>
<td>Cordova, TN</td>
<td>a</td>
<td>12,762 (5,810)</td>
<td>a</td>
<td>c</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Pacific View Mall</td>
<td>Ventura, CA</td>
<td>a</td>
<td>18,346 (9,193)</td>
<td>a</td>
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<td></td>
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<tr>
<td>Westfield Galleria at Roseville</td>
<td>Roseville, CA</td>
<td>a</td>
<td>13,436 (3,775)</td>
<td>a</td>
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<tr>
<td>Westfield Solano</td>
<td>Fairfield, CA</td>
<td>a</td>
<td>18,163 (7,001)</td>
<td>a</td>
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<tr>
<td>Stand-Alone Location</td>
<td>Central Park, TX</td>
<td>a</td>
<td>14,354 (7,946)</td>
<td>a</td>
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<tr>
<td>Valley Plaza</td>
<td>Hollywood Valley, CA</td>
<td>a</td>
<td>21,635 (12,563)</td>
<td>a</td>
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</tr>
<tr>
<td>Stand-Alone Location</td>
<td>Santa Monica, CA</td>
<td>a</td>
<td>19,674 (9,585)</td>
<td>a</td>
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</tr>
<tr>
<td>Asheville Mall</td>
<td>Asheville, NC</td>
<td>a</td>
<td>15,959 (8,342)</td>
<td>a</td>
<td>c</td>
<td></td>
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</tr>
<tr>
<td>Stand-Alone Location</td>
<td>Memphis/ Poplar, TN</td>
<td>a</td>
<td>10,095 (5,309)</td>
<td>a</td>
<td>c</td>
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<tr>
<td>Westfield West Covina</td>
<td>Covina, CA</td>
<td>a</td>
<td>17,708 (5,375)</td>
<td>a</td>
<td>c</td>
<td></td>
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</tr>
<tr>
<td>Crystal Mall</td>
<td>Waterford, CT</td>
<td>a</td>
<td>9,785 (4,123)</td>
<td>a</td>
<td>c</td>
<td></td>
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<tr>
<td>Stand-Alone Location</td>
<td>Westwood, TX</td>
<td>a</td>
<td>12,970 (6,999)</td>
<td>a</td>
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<tr>
<td>McCain Mall</td>
<td>North Little Rock, AR</td>
<td>a</td>
<td>10,892 (4,621)</td>
<td>a</td>
<td>c</td>
<td></td>
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<tr>
<td>Manchester Center</td>
<td>Fresno, CA</td>
<td>a</td>
<td>22,812 (9,899)</td>
<td>a</td>
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<tr>
<td>North Riverside Park Mall</td>
<td>N Riverside, IL</td>
<td>a</td>
<td>9,125 (2,950)</td>
<td>a</td>
<td>c</td>
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</tr>
<tr>
<td>Westgate Village Shopping Center</td>
<td>Toledo, OH</td>
<td>a</td>
<td>10,737 (5,320)</td>
<td>a</td>
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<td></td>
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<tr>
<td>Orlando Fashion</td>
<td>Orlando, FL</td>
<td>a</td>
<td>11,973 (4,682)</td>
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<tr>
<td>Southwest Center Acres Mall</td>
<td>Ctr, TX</td>
<td>a</td>
<td>9,486 (4,582)</td>
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<td>Boise Towne Center</td>
<td>Boise, ID</td>
<td>a</td>
<td>10,492 (4,530)</td>
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<td>Lincoln Park</td>
<td>Lincoln Park</td>
<td>a</td>
<td>15,880 (6,789)</td>
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<tr>
<td>Baybrook Mall</td>
<td>Friendswood/ Baybrk, TX</td>
<td>a</td>
<td>10,164 (3,689)</td>
<td>a</td>
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<tr>
<td>Stand-Alone Location</td>
<td>Hicksville, NYC</td>
<td>a</td>
<td>19,173 (6,115)</td>
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<tr>
<td>Name of Center</td>
<td>Location</td>
<td>Encumbrances</td>
<td>Acquisition Costs(a)</td>
<td>Costs Capitalized Subsequent to Acquisition(b)</td>
<td>Gross Amount at Which Carried at Close of Period(b)</td>
<td>Accumulated Depreciation</td>
<td>Date Acquired</td>
<td>Life Upon Which Depreciation is Computed</td>
<td></td>
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<tr>
<td>Pembroke Mall</td>
<td>Virginia Beach, VA</td>
<td>a</td>
<td>5,459</td>
<td>4,549</td>
<td>10,008</td>
<td>(2,934)</td>
<td>a</td>
<td>c</td>
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<tr>
<td>Ingram Park Mall</td>
<td>Ingram, TX</td>
<td>a</td>
<td>3,264</td>
<td>7,050</td>
<td>10,314</td>
<td>(4,311)</td>
<td>a</td>
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<tr>
<td>Landmark Mall</td>
<td>Alexandria, VA</td>
<td>a</td>
<td>5,916</td>
<td>8,441</td>
<td>14,357</td>
<td>(5,513)</td>
<td>a</td>
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<td>Stand-Alone Location</td>
<td>Watchung, NYC</td>
<td>a</td>
<td>4,537</td>
<td>11,547</td>
<td>16,084</td>
<td>(7,227)</td>
<td>a</td>
<td>c</td>
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<td>Tyrone Square Mall</td>
<td>St Petersburg, FL</td>
<td>a</td>
<td>6,224</td>
<td>4,957</td>
<td>11,181</td>
<td>(3,159)</td>
<td>a</td>
<td>c</td>
<td></td>
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<tr>
<td>Stand-Alone Location</td>
<td>Riverside, CA</td>
<td>a</td>
<td>9,756</td>
<td>876</td>
<td>10,632</td>
<td>(107)</td>
<td>a</td>
<td>c</td>
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<tr>
<td>Oglethorpe Mall</td>
<td>Savannah, GA</td>
<td>a</td>
<td>4,179</td>
<td>2,526</td>
<td>6,705</td>
<td>(271)</td>
<td>a</td>
<td>c</td>
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<td></td>
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<tr>
<td>Pheasant Lane Mall</td>
<td>Nashua, NH</td>
<td>a</td>
<td>3,308</td>
<td>9,360</td>
<td>12,668</td>
<td>(5,607)</td>
<td>a</td>
<td>c</td>
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<td></td>
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<tr>
<td>Northwoods Mall</td>
<td>Chrlstn/ Northwoods, SC</td>
<td>a</td>
<td>4,609</td>
<td>2,922</td>
<td>7,531</td>
<td>(2,038)</td>
<td>a</td>
<td>c</td>
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<tr>
<td>Park Place</td>
<td>Park Mall, AZ</td>
<td>a</td>
<td>7,676</td>
<td>4,683</td>
<td>12,359</td>
<td>(2,896)</td>
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<td>Hialeah/ Westland, FL</td>
<td>a</td>
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<td>6,805</td>
<td>11,639</td>
<td>(4,338)</td>
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<td>Mall of Acadina</td>
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<td>4,162</td>
<td>10,924</td>
<td>15,086</td>
<td>(7,026)</td>
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<td>7,560</td>
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<td>12,348</td>
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<td>7,654</td>
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<td>18,267</td>
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<td>Total</td>
<td>Accumulated Depreciation</td>
<td>Date Acquired</td>
<td>Life Upon Which Depreciation is Computed</td>
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<td>a</td>
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<td>7,150</td>
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<td>13,549</td>
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<td>a</td>
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<td>4,687</td>
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<td>(3,457)</td>
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F-21
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<th>Location</th>
<th>Encumbrances</th>
<th>Land</th>
<th>Buildings and Improvements Land</th>
<th>Buildings and Improvements</th>
<th>Gross Amount at Which Carried at Close of Period</th>
<th>Accumulated Depreciation</th>
<th>Date Acquired</th>
<th>Life Upon Which Depreciation is Computed</th>
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<td>14,805</td>
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<td>7,782</td>
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<td>a c</td>
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<td>5,709</td>
<td>8,071</td>
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<td>5,673</td>
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<td>a c</td>
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<td>8,573</td>
<td>(1,653)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southgate Mall</td>
<td>Yuma, AZ</td>
<td>a a a a</td>
<td>3,232</td>
<td>3,526</td>
<td>6,758</td>
<td>(2,318)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Town Center Mall 81</td>
<td>Santa Maria, CA</td>
<td>a a a a</td>
<td>3,140</td>
<td>9,563</td>
<td>12,703</td>
<td>(6,060)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Irving Mall</td>
<td>Irving, TX</td>
<td>a a a a</td>
<td>3,017</td>
<td>811</td>
<td>3,828</td>
<td>(132)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kentucky Oaks Mall</td>
<td>Paducah, KY</td>
<td>a a a a</td>
<td>2,815</td>
<td>3,018</td>
<td>5,833</td>
<td>(1,644)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lindale Mall</td>
<td>Cedar, Rapids, IA</td>
<td>a a a a</td>
<td>3,889</td>
<td>2,977</td>
<td>6,866</td>
<td>(1,777)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prescott Gateway</td>
<td>Prescott, AZ</td>
<td>a a a a</td>
<td>3,525</td>
<td>1,459</td>
<td>4,984</td>
<td>(30)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Westfield Vancouver</td>
<td>Vancouver, WA</td>
<td>a a a a</td>
<td>2,883</td>
<td>5,009</td>
<td>7,892</td>
<td>(3,071)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stand-Alone Location</td>
<td>Melbourne, FL</td>
<td>a a a a</td>
<td>4,575</td>
<td>2,183</td>
<td>6,758</td>
<td>(1,574)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Merced Mall</td>
<td>Merced, CA</td>
<td>a a a a</td>
<td>4,640</td>
<td>5,879</td>
<td>10,519</td>
<td>(3,731)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capitola Mall</td>
<td>Santa Cruz, CA</td>
<td>a a a a</td>
<td>6,959</td>
<td>4,553</td>
<td>11,512</td>
<td>(3,055)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Janss Marketplace</td>
<td>Thousand Oaks, CA</td>
<td>a a a a</td>
<td>1,026</td>
<td>14,053</td>
<td>15,079</td>
<td>(6,315)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flagstaff Mall</td>
<td>Flagstaff, AZ</td>
<td>a a a a</td>
<td>2,775</td>
<td>1,219</td>
<td>3,994</td>
<td>(611)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Towne Mall</td>
<td>Madison-West, WI</td>
<td>a a a a</td>
<td>4,950</td>
<td>2,543</td>
<td>7,493</td>
<td>(1,556)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Mall of New Hampshire</td>
<td>Manchester, NH</td>
<td>a a a a</td>
<td>3,211</td>
<td>6,871</td>
<td>10,082</td>
<td>(4,780)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Warrenton Village</td>
<td>Warrenton, VA</td>
<td>a a a a</td>
<td>3,553</td>
<td>3,553</td>
<td>7,106</td>
<td>(2,231)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Desoto Square</td>
<td>Bradenton, FL</td>
<td>a a a a</td>
<td>3,007</td>
<td>3,007</td>
<td></td>
<td>(3,007)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fox Run Mall</td>
<td>Portsmouth, NH</td>
<td>a a a a</td>
<td>3,557</td>
<td>5,812</td>
<td>9,369</td>
<td>(3,540)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coastland Center</td>
<td>Naples, FL</td>
<td>a a a a</td>
<td>3,137</td>
<td>6,281</td>
<td>9,418</td>
<td>(3,944)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Panama City Mall</td>
<td>Panama City, FL</td>
<td>a a a a</td>
<td>4,817</td>
<td>2,837</td>
<td>7,654</td>
<td>(1,845)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Valley Mall</td>
<td>Hagerstown, MD</td>
<td>a a a a</td>
<td>2,883</td>
<td>3,411</td>
<td>6,294</td>
<td>(1,405)</td>
<td>a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shopping Center</td>
<td>Peoria, AZ</td>
<td>a a a a</td>
<td>299</td>
<td>299</td>
<td></td>
<td>(21)</td>
<td>e a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stand-Alone Location</td>
<td>Phoenix, AZ</td>
<td>a a a a</td>
<td>82</td>
<td>82</td>
<td></td>
<td>(80)</td>
<td>e a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Knmart Shopping Center</td>
<td>Orange Park, FL</td>
<td>a a a a</td>
<td>881</td>
<td>2,055</td>
<td>2,936</td>
<td>(305)</td>
<td>e a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Homewood Square Center</td>
<td>Homewood, IL</td>
<td>a a a a</td>
<td>1,206</td>
<td>696</td>
<td>1,902</td>
<td>(95)</td>
<td>e a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stand-Alone Location</td>
<td>Lombard, IL</td>
<td>a a a a</td>
<td>8,000</td>
<td>8,000</td>
<td></td>
<td>(8,000)</td>
<td>e a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stand-Alone Location</td>
<td>Ypsilanti, MI</td>
<td>a a a a</td>
<td>1,206</td>
<td>696</td>
<td>1,902</td>
<td>(95)</td>
<td>e a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kickapoo Corners</td>
<td>Springfield, MO</td>
<td>a a a a</td>
<td>881</td>
<td>2,055</td>
<td>2,936</td>
<td>(305)</td>
<td>e a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Landmark Center</td>
<td>Greensboro, NC</td>
<td>a a a a</td>
<td>1</td>
<td>1</td>
<td></td>
<td>(1)</td>
<td>e a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stand-Alone Location</td>
<td>Houston, TX</td>
<td>a a a a</td>
<td>8,000</td>
<td>8,000</td>
<td></td>
<td>(8,000)</td>
<td>e a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>King of Prussia</td>
<td>King of Prussia, PA</td>
<td>a a a a</td>
<td>10,448</td>
<td>10,448</td>
<td></td>
<td>(680)</td>
<td>e a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td>$718,720</td>
<td>$1,293,867</td>
<td>$2,012,587</td>
<td>$(704,779)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

F-22
We have prepared Schedule III – Real Estate and Accumulated Depreciation ("Schedule III") omitting certain of the required information articulated in Securities and Exchange Commission Rule 12-28 in Regulation S-X. Rule 12-28 requires property specific information for the initial cost capitalized, costs capitalized subsequent to acquisition, and the date of construction and/or acquisition; these disclosures have been omitted from Schedule III. We are unable to provide all of the disclosures as many of the Properties were constructed prior to when Sears Holdings Corporation’s current fixed asset accounting software was implemented and thus we do not have the requisite historical records readily available.

The aggregate cost of land, buildings and improvements for federal income tax purposes is approximately $1.0 billion (unaudited).

Depreciation is computed based on the estimated useful lives:

This location is operated under the Kmart brand. On May 6, 2003, Kmart Corporation emerged from reorganization proceedings under Chapter 11 of the federal bankruptcy laws. Upon emerging from bankruptcy, Kmart Holding Corporation (the successor company) applied Fresh-Start accounting which resulted in the write-down of the majority of its land, buildings and improvement balances to zero. Therefore, the gross amount at the close of the period represents capital expenditures from the period beginning from emergence from Chapter 11 of the federal bankruptcy laws through December 31, 2014.

This location was formerly operated under the Kmart brand and is currently leased entirely to third parties. Upon closing a store, Sears Holdings evaluates whether the land, buildings and improvements are recoverable, which results in the write-down of its land, buildings and improvements balances in many cases.

### Reconciliation of Real Estate

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at the beginning of the year</td>
<td>$1,992,147</td>
</tr>
<tr>
<td>Additions</td>
<td>21,705</td>
</tr>
<tr>
<td>Impairments</td>
<td></td>
</tr>
<tr>
<td>Dispositions and write-offs</td>
<td>(1,265)</td>
</tr>
<tr>
<td>Balance at end of year</td>
<td>$2,012,587</td>
</tr>
</tbody>
</table>

### Reconciliation of Accumulated Depreciation

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at the beginning of the year</td>
<td>$(632,878)</td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>(73,166)</td>
</tr>
<tr>
<td>Dispositions and write-offs</td>
<td>1,265</td>
</tr>
<tr>
<td>Balance at end of year</td>
<td>$(704,779)</td>
</tr>
</tbody>
</table>
Properties Included in Joint Ventures to be Acquired by Seritage Growth Properties

SCHEDULE III—REAL ESTATE AND ACCUMULATED DEPRECIATION

DECEMBER 31, 2014

(Dollars in Thousands)

<table>
<thead>
<tr>
<th>Name of Center</th>
<th>Location</th>
<th>Encumbrances</th>
<th>Acquisition Costs</th>
<th>Costs Capitalized Subsequent to Acquisition</th>
<th>Gross Amount at Which Carried at Close of Period</th>
<th>Accumulated Depreciation</th>
<th>Date Acquired</th>
<th>Life Upon Which Depreciation is Computed</th>
</tr>
</thead>
<tbody>
<tr>
<td>JV Properties:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alderwood Mall</td>
<td>Lynwood, WA</td>
<td>a a a a a</td>
<td>$3,053</td>
<td>$9,299</td>
<td>$12,352</td>
<td>(5,614)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Coronado Center</td>
<td>Albuquerque, NM</td>
<td>a a a a a</td>
<td>8,475</td>
<td>4,505</td>
<td>12,980</td>
<td>(2,621)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>The Mall in Columbia</td>
<td>Columbia, MD</td>
<td>a a a a a</td>
<td>6,075</td>
<td>2,954</td>
<td>9,029</td>
<td>(1,537)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Natick Collection</td>
<td>Natick, MA</td>
<td>a a a a a</td>
<td></td>
<td>11,791</td>
<td>11,791</td>
<td>(7,046)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Oakbrook Center</td>
<td>Oak Brook, IL</td>
<td>a a a a a</td>
<td>6,933</td>
<td>4,819</td>
<td>11,752</td>
<td>(487)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Paramus Park Shopping Center</td>
<td>Paramus, NJ</td>
<td>a a a a a</td>
<td>4,091</td>
<td>8,509</td>
<td>12,600</td>
<td>(5,174)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Pembroke Lakes Mall</td>
<td>Pembroke Pines, FL</td>
<td>a a a a a</td>
<td></td>
<td>173</td>
<td>173</td>
<td>(120)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Ridgedale Center</td>
<td>Minnetonka, MN</td>
<td>a a a a a</td>
<td>4,594</td>
<td>6,927</td>
<td>11,521</td>
<td>(4,156)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Staten Island Mall</td>
<td>Staten Island, NY</td>
<td>a a a a a</td>
<td>4,430</td>
<td>27,929</td>
<td>32,359</td>
<td>(17,400)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Sooner Mall</td>
<td>Norman, OK</td>
<td>a a a a a</td>
<td></td>
<td>102</td>
<td>102</td>
<td>(102)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Stonebriar Centre</td>
<td>Frisco, TX</td>
<td>a a a a a</td>
<td>800</td>
<td>7,838</td>
<td>8,638</td>
<td>(4,919)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Valley Plaza Mall</td>
<td>Bakersfield, CA</td>
<td>a a a a a</td>
<td>8,089</td>
<td>16,604</td>
<td>24,693</td>
<td>(10,941)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Brea Mall</td>
<td>Brea, CA</td>
<td>a a a a a</td>
<td>2,917</td>
<td>13,896</td>
<td>16,813</td>
<td>(8,633)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Santa Rosa Plaza</td>
<td>Santa Rosa, CA</td>
<td>a a a a a</td>
<td>5,270</td>
<td>13,321</td>
<td>18,591</td>
<td>(8,218)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Burlington Mall</td>
<td>Burlington, MA</td>
<td>a a a a a</td>
<td>8,402</td>
<td>12,481</td>
<td>20,883</td>
<td>(7,859)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Briarwood Mall</td>
<td>Ann Arbor, MI</td>
<td>a a a a a</td>
<td>6,450</td>
<td>3,406</td>
<td>9,856</td>
<td>(2,035)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Ocean County Mall</td>
<td>Toms River, NJ</td>
<td>a a a a a</td>
<td>3,653</td>
<td>4,783</td>
<td>8,436</td>
<td>(3,010)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Nanuet Mall</td>
<td>Nanuet, NY</td>
<td>a a a a a</td>
<td>4,297</td>
<td>8,285</td>
<td>12,582</td>
<td>(4,898)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Woodland Hills Mall</td>
<td>Tulsa, OK</td>
<td>a a a a a</td>
<td>4,020</td>
<td>4,378</td>
<td>8,398</td>
<td>(2,835)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Ross Park Mall</td>
<td>Pittsburgh, PA</td>
<td>a a a a a</td>
<td>2,633</td>
<td>4,725</td>
<td>7,358</td>
<td>(334)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Barton Creek Square</td>
<td>Austin, TX</td>
<td>a a a a a</td>
<td>3,474</td>
<td>8,424</td>
<td>11,898</td>
<td>(4,974)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Midland Park Mall</td>
<td>Midland, TX</td>
<td>a a a a a</td>
<td>679</td>
<td>5,075</td>
<td>5,754</td>
<td>(3,124)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Arrowhead Town Center</td>
<td>Glendale, AZ</td>
<td>a a a a a</td>
<td>4,800</td>
<td>2,273</td>
<td>7,073</td>
<td>(534)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Chandler Fashion Center</td>
<td>Chandler, AZ</td>
<td>a a a a a</td>
<td>2,156</td>
<td>8,664</td>
<td>10,820</td>
<td>(4,021)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Danbury Fair Mall</td>
<td>Danbury, CT</td>
<td>a a a a a</td>
<td>3,740</td>
<td>8,821</td>
<td>12,561</td>
<td>(4,800)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Deptford Mall</td>
<td>Deptford, NJ</td>
<td>a a a a a</td>
<td>3,873</td>
<td>12,379</td>
<td>16,252</td>
<td>(7,997)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Freehold Raceway Mall</td>
<td>Freehold, NJ</td>
<td>a a a a a</td>
<td>2,706</td>
<td>5,087</td>
<td>7,793</td>
<td>(304)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Los Cerritos Center</td>
<td>Cerritos, CA</td>
<td>a a a a a</td>
<td>12,584</td>
<td>15,658</td>
<td>28,242</td>
<td>(9,973)</td>
<td>f a c</td>
<td></td>
</tr>
<tr>
<td>Name of Center</td>
<td>Location</td>
<td>Encumbrances</td>
<td>Land Buildings and Improvements</td>
<td>Land Buildings and Improvements</td>
<td>Land Buildings and Improvements</td>
<td>Total</td>
<td>Accumulated Depreciation</td>
<td>Date Acquired</td>
</tr>
<tr>
<td>--------------------</td>
<td>----------------</td>
<td>--------------</td>
<td>---------------------------------</td>
<td>---------------------------------</td>
<td>---------------------------------</td>
<td>-------</td>
<td>--------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>South Plains Mall</td>
<td>Lubbock, TX</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>1,623</td>
<td>6,967</td>
<td>8,590</td>
</tr>
<tr>
<td>Vintage Faire Mall</td>
<td>Modesto, CA</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>8,355</td>
<td>9,116</td>
<td>17,471</td>
</tr>
<tr>
<td>Washington Square</td>
<td>Portland, OR</td>
<td>—</td>
<td>a</td>
<td>a</td>
<td>a</td>
<td>4,071</td>
<td>16,031</td>
<td>20,102</td>
</tr>
<tr>
<td><strong>Total JV Properties</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>$132,243</strong></td>
<td><strong>$265,220</strong></td>
<td><strong>$397,463</strong></td>
</tr>
</tbody>
</table>

(a) We have prepared Schedule III – Real Estate and Accumulated Depreciation (“Schedule III”) omitting certain of the required information articulated in Securities and Exchange Commission Rule 12-28 in Regulation S-X. Rule 12-28 requires property specific information for the initial cost capitalized, costs capitalized subsequent to acquisition, and the date of construction and/or acquisition; these disclosures have been omitted from Schedule III. We are unable to provide all of the disclosures as many of the Properties were constructed prior to when Sears Holdings Corporation’s current fixed asset accounting software was implemented and thus we do not have the requisite historical records readily available.

(b) The aggregate cost of land, buildings and improvements for federal income tax purposes is approximately $114 million (unaudited).

(c) Depreciation is computed based on the estimated useful lives:

(f) This location is a JV Property. The amounts are based on Sears Holdings’ historical cost basis in 100% of these properties, as opposed to the 50% interest that Seritage Growth will acquire of the JV Interests.

<table>
<thead>
<tr>
<th>Years</th>
<th>Buildings and improvements</th>
<th>20-50</th>
</tr>
</thead>
</table>

Reconciliation of Real Estate

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at the beginning of the year</td>
<td>$396,451</td>
</tr>
<tr>
<td>Additions</td>
<td>1,012</td>
</tr>
<tr>
<td>Impairments</td>
<td>—</td>
</tr>
<tr>
<td>Dispositions and write-offs</td>
<td>—</td>
</tr>
<tr>
<td>Balance at end of year</td>
<td>$397,463</td>
</tr>
</tbody>
</table>

Reconciliation of Accumulated Depreciation

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at the beginning of the year</td>
<td>$(139,324)</td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>(15,561)</td>
</tr>
<tr>
<td>Dispositions and write-offs</td>
<td>—</td>
</tr>
<tr>
<td>Balance at end of year</td>
<td>$(154,885)</td>
</tr>
</tbody>
</table>
Seritage Growth Properties

Until , 2015 (25 days after the commencement of this offering), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.
PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 31. Other Expenses of Issuance and Distribution.

The following table itemizes the expenses incurred by us in connection with the issuance and registration of the securities being registered hereunder. All amounts shown are estimates except the SEC registration fee.

SEC registration fee (1) $ 183,199
Accounting and advisory fees and expenses (1) 3,500,000
Legal fees and expenses (1) 2,000,000
Printing and engraving expenses (1) 250,000
Subscription agent, information agent and registrar fees and expenses (1) 100,000
Miscellaneous (1) 100,000

Total (1) $6,133,199

(1) Sears Holdings is bearing all expenses incurred in connection with the issuance and distribution of the securities registered under this Registration Statement.

Item 32. Sales to Special Parties.

None.

Item 33. Recent Sales of Unregistered Securities.

On June 3, 2015, Benjamin Schall, our Chief Executive Officer and President, purchased 100 shares of beneficial interest pursuant to an exemption from registration provided by Section 4(a)(2) of the Securities Act. Mr. Schall paid an aggregate of $2,958.00 for such shares, a per share price equal to the subscription price in the rights offering.

Item 34. Limitation of Trustees’ and Officers’ Liability and Indemnification.

Maryland law permits a Maryland REIT to include in its declaration of trust a provision eliminating the liability of its trustees and officers to the REIT and its shareholders for money damages, except for liability resulting from (i) actual receipt of an improper benefit or profit in money, property or services or (ii) active and deliberate dishonesty that is established by a final judgment and that is material to the cause of action. Seritage Growth’s declaration of trust contains a provision that eliminates the liability of our trustees and officers to the maximum extent permitted by Maryland law.

The MRL permits a Maryland REIT to indemnify and advance expenses to its trustees, officers, employees and agents to the same extent as permitted by the MGCL for directors, officers, employees and agents of a Maryland corporation. The MGCL requires a Maryland corporation (unless its charter provides otherwise) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The MGCL permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that:

• the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty;
• the director or officer actually received an improper personal benefit in money, property or services; or
• in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.
Under the MGCL, a Maryland corporation may not indemnify a director or officer in a suit by the corporation or in its right in which the director or officer was adjudged liable to the corporation or in a suit in which the director or officer was adjudged liable on the basis that a personal benefit was improperly received. A court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct or was adjudged liable on the basis that personal benefit was improperly received. However, indemnification for an adverse judgment in a suit by the corporation or in its right, or for a judgment of liability on the basis that a personal benefit was improperly received, is limited to expenses.

In addition, the MGCL permits a Maryland corporation to advance reasonable expenses to a director or officer upon our receipt of:

- a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and

- a written undertaking by or on behalf of the director or officer to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

Seritage Growth’s declaration of trust authorizes Seritage Growth to obligate itself, and Seritage Growth’s bylaws obligate it, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

- any present or former trustee or officer who is made or threatened to be made a party to, or witness in, a proceeding by reason of his or her service in that capacity; or

- any individual who, while a trustee or officer of the company and at the company’s request, serves or has served as a trustee, director, officer, partner, member or manager of another real estate investment trust, corporation, partnership, joint venture, trust, limited liability company, employee benefit plan or any other enterprise and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity.

Seritage Growth’s declaration of trust and bylaws also permit it to indemnify and advance expenses to any person who served a predecessor of Seritage Growth in any of the capacities described above and to any employee or agent of Seritage Growth or a predecessor of Seritage Growth.

**Item 35. Treatment of Proceeds from Stock Being Registered.**

None of the proceeds will be contributed to an account other than the appropriate capital account.
Item 36. Financial Statements and Exhibits.

(A) Financial Statements. See Index to Combined Financial Statements and the related notes thereto.

(B) Exhibits. The following exhibits are filed as part of, or incorporated by reference into, this registration statement on Form S-11:

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Form of Articles of Amendment and Restatement of Declaration of Trust of Seritage Growth Properties</td>
</tr>
<tr>
<td>3.2**</td>
<td>Form of Bylaws of Seritage Growth Properties</td>
</tr>
<tr>
<td>4.1**</td>
<td>Form of Certificate of Class A Common Share of Seritage Growth Properties</td>
</tr>
<tr>
<td>4.2**</td>
<td>Form of Rights Certificate</td>
</tr>
<tr>
<td>5.1</td>
<td>Form of Opinion of Venable LLP with respect to the securities to be registered</td>
</tr>
<tr>
<td>8.1</td>
<td>Form of Opinion of Wachtell, Lipton, Rosen &amp; Katz with respect to tax matters</td>
</tr>
<tr>
<td>10.1**</td>
<td>Form of Partnership Agreement of Seritage Growth Properties, L.P.</td>
</tr>
<tr>
<td>10.2**</td>
<td>Form of Indemnification Agreement between Seritage Growth Properties and its trustees and executive officers</td>
</tr>
<tr>
<td>10.3</td>
<td>Form of Master Lease, by and between Seritage Growth Properties, L.P. and Sears Holdings Corporation</td>
</tr>
<tr>
<td>10.4</td>
<td>Form of Subscription, Distribution and Purchase and Sale Agreement, by and between Seritage Growth Properties and Sears Holdings Corporation</td>
</tr>
<tr>
<td>10.5**</td>
<td>Form of Transition Services Agreement, by and between Seritage Growth Properties, L.P. and Sears Holdings Management Corporation</td>
</tr>
<tr>
<td>10.6</td>
<td>Form of Seritage Growth Properties 2015 Share Plan</td>
</tr>
<tr>
<td>10.7</td>
<td>Form of Registration Rights Agreement, by and between Seritage Growth Properties, Seritage Growth Properties, L.P. and ESL Investments, Inc.</td>
</tr>
<tr>
<td>10.8**</td>
<td>Employment Agreement, dated April 17, 2015, between Benjamin Schall and Seritage Growth Properties</td>
</tr>
<tr>
<td>10.9**</td>
<td>Letter Agreement, dated April 30, 2015, among Seritage Growth Properties, Seritage Growth Properties, L.P. and Benjamin Schall</td>
</tr>
<tr>
<td>10.10**</td>
<td>Letter Agreement, dated May 15, 2015, between Matthew Fernand and Seritage Growth Properties</td>
</tr>
<tr>
<td>10.11**</td>
<td>Letter Agreement, dated May 13, 2015, between James Bry and Seritage Growth Properties</td>
</tr>
<tr>
<td>10.12</td>
<td>Commitment Letter, dated as of May 27, 2015, by and among, Sears Holdings Corporation, Seritage Growth Properties and the Lender parties named therein</td>
</tr>
<tr>
<td>21.1</td>
<td>List of Subsidiaries</td>
</tr>
<tr>
<td>23.1*</td>
<td>Consent of Venable LLP (included in Exhibit 5.1)</td>
</tr>
<tr>
<td>23.2*</td>
<td>Consent of Wachtell, Lipton, Rosen &amp; Katz (included in Exhibit 8.1)</td>
</tr>
<tr>
<td>23.3</td>
<td>Consent of Deloitte &amp; Touche LLP, Independent Registered Public Accounting Firm</td>
</tr>
<tr>
<td>23.4</td>
<td>Consent of Deloitte &amp; Touche LLP, Independent Registered Public Accounting Firm</td>
</tr>
<tr>
<td>23.5</td>
<td>Consent of Deloitte &amp; Touche LLP, Independent Registered Public Accounting Firm</td>
</tr>
<tr>
<td>23.6</td>
<td>Consent of David S. Fawer to be named as a nominee</td>
</tr>
</tbody>
</table>
Item 37. Undertakings.

(a) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(1) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933.

(2) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement.

(3) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(b) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(d) The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(1) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
(2) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(3) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(4) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(e) The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

(f) Insofar as indemnification of liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(g) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance under Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4), or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and this offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that the registrant meets all of the requirements for filing on Form S-11 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Hoffman Estates, State of Illinois, on this 8th day of June, 2015.

SERITAGE GROWTH PROPERTIES

By:  /s/ Benjamin Schall

    Benjamin Schall
    Chief Executive Officer and President

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ Benjamin Schall</td>
<td>Chief Executive Officer and President</td>
<td>June 8, 2015</td>
</tr>
<tr>
<td>Benjamin Schall</td>
<td>President (Principal Executive Officer)</td>
<td></td>
</tr>
<tr>
<td>/s/ Robert A. Riecker</td>
<td>Trustee and Treasurer (Principal Financial Officer and Principal Accounting Officer)</td>
<td>June 8, 2015</td>
</tr>
</tbody>
</table>
FIRST: Seritage Growth Properties, a Maryland real estate investment trust (the “Trust”) formed under Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland (“Title 8”), desires to amend and restate its Declaration of Trust as currently in effect and as hereinafter amended and restated.

SECOND: The following provisions are all the provisions of the Declaration of Trust currently in effect and as hereinafter amended and restated:

ARTICLE I

FORMATION

The Trust is a real estate investment trust within the meaning of Title 8. The Trust shall not be deemed to be a general partnership, limited partnership, joint venture, joint stock company or a corporation but nothing herein shall preclude the Trust from being treated for tax purposes as an association or real estate investment trust under the Internal Revenue Code of 1986, as amended (the “Code”).

ARTICLE II

NAME

The name of the Trust is:

Seritage Growth Properties

Under circumstances in which the Board of Trustees of the Trust (the “Board of Trustees” or “Board”) determines that the use of the name of the Trust is not practicable, the Trust may use any other designation or name for the Trust.
ARTICLE III

PURPOSES AND POWERS

Section 3.1 Purposes. The purposes for which the Trust is formed are to engage in any lawful act or activity for which real estate investment trusts may be organized under the general laws of the State of Maryland as now or hereinafter in force including, without limitation, to invest in and to acquire, hold, manage, administer, control and dispose of property, including, without limitation or obligation, engaging in business as a real estate investment trust within the meaning of Section 856 of the Code (a “REIT”).

Section 3.2 Powers. The Trust shall have all of the powers granted to real estate investment trusts by Title 8 or any successor statute and all other powers set forth in the Declaration of Trust of the Trust (the “Declaration of Trust”) which are not inconsistent with law and are appropriate to promote and attain the purposes set forth in the Declaration of Trust.

ARTICLE IV

RESIDENT AGENT

The name of the resident agent of the Trust in the State of Maryland is The Corporation Trust Incorporated, whose post address is 351 West Camden Street, Baltimore, MD 21201. The resident agent is a Maryland corporation. The Trust may have such offices or places of business within or outside the State of Maryland as the Board of Trustees may from time to time determine.

ARTICLE V

BOARD OF TRUSTEES

Section 5.1 Powers. Subject to any express limitations contained in the Declaration of Trust or in the Bylaws of the Trust (the “Bylaws”), (a) the business and affairs of the Trust shall be managed under the direction of the Board of Trustees and (b) the Board shall have full, exclusive and absolute power, control and authority over any and all property and business of the Trust. The Board may take any action as in its sole judgment and discretion is necessary or appropriate to conduct the business and affairs of the Trust. The Declaration of Trust shall be
construed with the presumption in favor of the grant of power and authority to the Board. Any construction of the Declaration of Trust or determination made by the Board concerning its powers and authority hereunder shall be conclusive. The enumeration and definition of particular powers of the Board of Trustees included in the Declaration of Trust or in the Bylaws shall in no way be construed or deemed by inference or otherwise in any manner to exclude or limit the powers conferred upon the Board or the Trustees of the Trust (hereinafter the “Trustees”) under the general laws of the State of Maryland or any other applicable laws.

The Board, without any action by the shareholders of the Trust, shall have and may exercise, on behalf of the Trust, without limitation, the power to terminate the status under the Code of the Trust as a REIT; to determine that compliance with any restriction or limitations on ownership and transfers of shares of the Trust’s beneficial interest set forth in Article VII of the Declaration of Trust is no longer required in order for the Trust to qualify as a REIT; to adopt, amend and repeal Bylaws; to elect officers in the manner prescribed in the Bylaws; to solicit proxies from holders of shares of beneficial interest of the Trust; and to do any other acts and deliver any other documents necessary or appropriate to the foregoing powers.

Section 5.2 Number and Classification. The number of Trustees initially shall be , which number may be increased or decreased only by the Board of Trustees pursuant to the Bylaws. No reduction in the number of Trustees shall cause the removal of any Trustee from office prior to the expiration of his or her term. Each Trustee shall have the qualifications, if any, specified in the Bylaws. The names of the Trustees who shall serve until their successors are duly elected and qualify are:

[ ]

[ ]

[ ]

The Trustees shall be elected in the manner provided in the Bylaws and, subject to the second succeeding paragraph, any vacancy on the Board of Trustees may be filled in the manner provided in the Bylaws. It shall not be necessary to list in the Declaration of Trust the names and addresses of any Trustees hereinafter elected.
On the first date after which the Trust has more than one holder of Common Shares (as defined below), the Trustees (other than any Trustee elected solely by holders of one or more classes or series of Preferred Shares (as defined below)) shall be classified, with respect to the terms for which they severally serve, into three classes, one class to serve initially for a term expiring at the next succeeding annual meeting of shareholders, another class to serve initially for a term expiring at the second succeeding annual meeting of shareholders and another class to serve initially for a term expiring at the third succeeding annual meeting of shareholders, with the Trustees of each class to serve until their successors are duly elected and qualify. At each annual meeting of shareholders, the successors to the class of Trustees whose term expires at such meeting shall be elected to serve for a term expiring at the annual meeting of shareholders held in the third year following the year of their election and until their successors are duly elected and qualify.

The Trust elects, at such time as it becomes eligible to make the election provided for under Section 3-802(b) of the Maryland General Corporation Law, that, except as may be provided by the Board of Trustees in setting the terms of any class or series of Shares (as defined below), any and all vacancies on the Board of Trustees may be filled only by the affirmative vote of a majority of the remaining Trustees in office, even if the remaining Trustees do not constitute a quorum, and any Trustee elected to fill a vacancy shall serve for the remainder of the full term of the trusteeship in which such vacancy occurred and until a successor is duly elected and qualifies.

Section 5.3 Removal. Subject to the rights of holders of one or more classes or series of Preferred Shares to elect or remove one or more Trustees, a Trustee may be removed at any time, but only for cause, and then only by the affirmative vote of the holders of Shares having not less than 75% of the voting power of all Shares then-outstanding and entitled to vote generally in the election of Trustees. For the purpose of this paragraph, “cause” shall mean, with
respect to any particular Trustee, conviction of a felony or a final judgment of a court of competent jurisdiction holding that such Trustee caused demonstrable, material harm to the Trust through bad faith or active and deliberate dishonesty.

Section 5.4 Determinations by Board. The determination as to any of the following matters, made by or pursuant to the direction of the Board of Trustees shall be final and conclusive and shall be binding upon the Trust and every holder of Shares: the amount of the net income of the Trust for any period and the amount of assets at any time legally available for the payment of dividends, acquisition of Shares or the payment of other distributions on Shares; the amount of paid-in surplus, net assets, other surplus, cash flow, funds from operations, adjusted funds from operations, net profit, net assets in excess of capital, undivided profits or excess of profits over losses on sales of assets; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been, set aside, paid or discharged); any interpretation or resolution of any ambiguity with respect to any provision of the Declaration of Trust (including any of the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications or terms or conditions of redemption of any shares of any class or series of Shares) or of the Bylaws; the number of Shares of any class or series of the Trust; the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Trust or of any Shares; any matter relating to the acquisition, holding and disposition of any assets by the Trust; any interpretation of the terms and conditions of one or more agreements with any person, corporation, association, company, trust, partnership (limited or general) or other entity; the compensation of Trustees, officers, employees or agents of the Trust; or any other matter relating to the business and affairs of the Trust or required or permitted by applicable law, the Declaration of Trust or Bylaws or otherwise to be determined by the Board of Trustees.

Section 5.5 Business Opportunities. If any Trustee or officer of the Trust who is also a director, officer, employee or agent of Sears Holdings Corporation, a Delaware corporation,
ESL Investments, Inc., a Delaware corporation, or Fairholme Capital Management, LLC, a Delaware limited liability company (collectively, the “Sponsor”), or any of the Sponsor’s affiliates (each, a “Sponsor Affiliate”), acquires knowledge of a potential business opportunity, the Trust renounces, on its behalf and on behalf of its subsidiaries, any potential interest or expectation in, or right to be offered or to participate in, such business opportunity, unless it is a Retained Opportunity (as defined below). Accordingly, except for Retained Opportunities, (a) no Trustee who is also a director, officer, employee or agent of the Sponsor or a Sponsor Affiliate is required to present, communicate or offer any business opportunity to the Trust or any of its subsidiaries and (b) such Trustee, on his or her own behalf or on behalf of the Sponsor or a Sponsor Affiliate, shall have the right to hold and exploit any business opportunity, or to direct, recommend, offer, sell, assign or otherwise transfer such business opportunity to any person or entity other than the Trust and its subsidiaries.

The taking by a Trustee who is also a director, officer, employee or agent of the Sponsor or a Sponsor Affiliate for himself or herself, or the offering or other transfer to another person or entity, of any potential business opportunity, other than a Retained Opportunity, whether pursuant to the Declaration of Trust or otherwise, shall not constitute or be construed or interpreted as (a) an act or omission of the Trustee committed in bad faith or as the result of active or deliberate dishonesty or (b) receipt by the Trustee of an improper benefit, or an improper personal benefit, in money, property, services or otherwise.

The term “Retained Opportunity” shall mean any business opportunity of which a Trustee who is also a director, officer, employee or agent of the Sponsor or a Sponsor Affiliate first becomes aware solely as a direct result of his or her capacity as a Trustee or officer of the Trust and (a) which the Trust is financially able to undertake, (b) which the Trust is not prohibited by contract or applicable law from pursuing or undertaking, (c) which, from its nature, is in the line of the Trust’s business, (d) which is of practical advantage to the Trust and (e) in which the Trust has an interest or a reasonable expectancy.

Section 5.6 REIT Qualification. If the Trust elects to qualify for federal income
tax treatment as a REIT, the Board of Trustees may, in its sole and absolute discretion, take such lawful actions as it deems necessary or appropriate to preserve the qualification of the Trust as a REIT; however, if the Board of Trustees determines that it is no longer in the best interests of the Trust to continue to be qualified as a REIT, the Board of Trustees may revoke or otherwise terminate the Trust’s REIT election pursuant to Section 856(g) of the Code. The Board of Trustees, in its sole and absolute discretion, also may (a) determine that compliance with any restriction or limitation on ownership and transfers of shares of the Trust’s beneficial interest set forth in Article VII is no longer required for REIT qualification and (b) make any other determination or take any other action pursuant to Article VII.

ARTICLE VI
SHARES OF BENEFICIAL INTEREST

Section 6.1 Authorized Shares. The beneficial interest of the Trust shall be divided into shares of beneficial interest (“Shares”). The Trust has authority to issue class A common shares of beneficial interest, $0.01 par value per share (“Class A Common Shares”), class B common shares of beneficial interest, $0.01 par value per share (“Class B Common Shares”), class C common shares of beneficial interest, $0.01 par value per share (“Class C Common Shares” and, together with Class A Common Shares and the Class B Common Shares, “Common Shares”), and preferred shares of beneficial interest, $0.01 par value per share (“Preferred Shares”). If shares of one class or series are classified or reclassified into shares of another class or series of shares pursuant to this Article VI, the number of authorized shares of the former class or series shall be automatically decreased and the number of shares of the latter class or series shall be automatically increased, in each case by the number of shares so classified or reclassified, so that the aggregate number of shares of beneficial interest of all classes or series that the Trust has authority to issue shall not be more than the total number of shares of beneficial interest set forth in the second sentence of this paragraph. The Board of Trustees, with the approval of a majority of the entire Board and without any action by the shareholders of the Trust, may amend the Declaration of Trust from time to time to increase or decrease the aggregate number of Shares or the number of Shares of any class or series that the Trust has authority to issue.
Section 6.2 Definitions. For the purpose of this Section 6, the following terms shall have the following meanings:

**Affiliate.** The term “Affiliate” shall mean, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, “control” when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

**Person.** The term “Person” shall mean an individual, corporation, limited liability company, partnership, estate, trust, association, joint stock company or other entity or any government or agency or political subdivision thereof.

**Transfer.** The term “Transfer” shall mean any sale, assignment, bequest, conveyance, devise, gift (outright or in trust), pledge, encumbrance, hypothecation, mortgage, exchange, transfer or other disposition or act of alienation, whether voluntary or involuntary or by operation of law, of any Class B Common Share in a single transaction or series of transactions. The terms “Transferring” and “Transferred” shall have the correlative meanings.

Section 6.3 Class A Common Shares. Subject to the provisions of Article VII and except as may otherwise be specified in the Declaration of Trust, each Class A Common Share shall entitle the holder thereof to one vote on each matter upon which holders of Class A Common Shares are entitled to vote. The Board of Trustees may reclassify any unissued Class A Common Shares from time to time into one or more classes or series of Shares. All Class A Common Shares which shall have been issued and reacquired in any manner by the Trust shall be cancelled automatically and returned to the status of authorized but unissued Class A Common Shares.
Section 6.4 Class B Common Shares. Subject to the provisions of Article VII and except as may otherwise be specified in the Declaration of Trust, the rights, preferences, privileges and restrictions granted and imposed upon the Class B Common Shares are as follows:

Section 6.4.1 No Dividends or Other Distributions. The holders of Class B Common Shares shall not be entitled to any regular or special dividend payments or other distributions from the Trust. Without limiting the foregoing, the holders of Class B Common Shares shall not be entitled to any dividends or other distributions declared or paid with respect to the Class A Common Shares or any other Shares whether paid in the ordinary course or upon any dissolution, liquidation (voluntary or otherwise), termination or winding up of the Trust.

Section 6.4.2 Voting Rights. The holders of Class B Common Shares shall have the following voting rights:

(a) Subject to the provisions of Section 6.4.4 and Article VII and except as may otherwise be specified in the Declaration of Trust, each Class B Common Share shall entitle the holder thereof to one vote on each matter on which holders of Class A Common Shares are entitled to vote. The Class B Common Shares and Class A Common Shares shall vote together as a single class, and, except as expressly set forth in Section 6.4.6 hereof, the holders of Class B Common Shares shall have no other voting rights as a separate class or otherwise.

(b) In the event that the Trust shall (i) declare and pay a dividend or other distribution on its outstanding Class A Common Shares in Class A Common Shares, (ii) split or subdivide its outstanding Class A Common Shares or (iii) effect a reverse share split or otherwise combine its outstanding Class A Common Shares into a smaller number of Class A Common Shares, then, in each such case, the number of votes per Class B Common Share to which the holders of Class B Common Shares were entitled immediately prior to the completion of any such event specified in the foregoing clauses (i), (ii) or (iii) shall automatically and without any action on the part of the holders thereof be adjusted by multiplying such number by a fraction, (x) the numerator of which shall be the number of Class A Common
Shares issued and outstanding immediately after giving effect to such dividend, distribution, split, subdivision, reverse split or combination and (y) the denominator of which shall be the number of Class A Common Shares issued and outstanding immediately prior to such dividend, distribution, split, subdivision, reverse split or combination. Notwithstanding any other provision in the Declaration of Trust, the holders of Class B Common Shares, in the aggregate, shall not be entitled to cast more than [    ]% of the votes entitled to be cast by the holders of Class A Common Shares and Class B Common Shares, voting together as a single class, in the election of Trustees.

Section 6.4.3 Reclassification of Unissued Class B Common Shares. The Board of Trustees may reclassify any unissued Class B Common Shares from time to time into one or more classes or series of Shares.

Section 6.4.4 Transfers. Upon any Transfer of a Class B Common Share to any Person other than to an Affiliate of the holder of such Class B Common Share, such Class B Common Share shall thereafter entitle the holder thereof to one one-hundredth of a vote on each matter on which holders of Class A Common Shares are entitled to vote.

Section 6.4.5 Status of Acquired Class B Common Shares. All Class B Common Shares which shall have been issued and reacquired in any manner by the Trust shall be cancelled automatically and returned to the status of authorized but unissued Class A Common Shares.

Section 6.4.6 Amendment. So long as any Class B Common Shares remain outstanding, the affirmative vote of at least two-thirds of the votes entitled to be cast by the holders of Class B Common Shares (voting as a separate class) shall be required to amend, alter or repeal any provision of the Declaration of Trust so as to materially and adversely affect any right or voting power of the Class B Common Shares.
Section 6.5 **Class C Common Shares.** Subject to the provisions of Article VII and except as may otherwise be specified in the Declaration of Trust, the rights, preferences, privileges and restrictions granted and imposed upon the Class C Common Shares are as follows:

Section 6.5.1 **Preferences and Rights.** Except as set forth in Sections 6.5.2 and 6.5.3, the Class C Common Shares shall have identical preferences, rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption as the Class A Common Shares.

Section 6.5.2 **Dividends or Other Distributions.** Subject to the preferential rights of the holders of any class or series of Preferred Shares, if any, outstanding at any time, the holders of Class C Common Shares, on a per share basis, shall be entitled to regular and special dividend payments and other distributions from the Trust that are identical to those made to the holders of Class A Common Shares, on a per share basis; provided, that, in the event that the Board of Trustees authorizes and the Trust declares a regular or special dividend payment or other distribution in the form of Class A Common Shares, the holders of Class C Common Shares shall be entitled to, and receive, Class C Common Shares in lieu of such Class A Common Shares.

Section 6.5.3 **Voting Rights.** Holders of the Series C Common Shares shall not have any voting rights except as set forth in Section 6.5.8.

Section 6.5.4 **Adjustments.** In the event that the Trust shall (i) split or subdivide its outstanding Class A Common Shares or (ii) effect a reverse share split or otherwise combine its outstanding Class A Common Shares into a smaller number of Class A Common Shares, then, in each such case, the number of issued and outstanding Class C Common Shares shall automatically and without any action on the part of the holders thereof be adjusted by multiplying such number by a fraction, (x) the numerator of which shall be the number of Class A Common Shares issued and outstanding immediately after giving effect to such dividend, distribution, split, subdivision, reverse split or combination and (y) the denominator of which shall be the number of Class A Common Shares issued and outstanding immediately prior to such dividend, distribution, split, subdivision, reverse split or combination.

Section 6.5.5 **Reclassification of Unissued Class C Common Shares.** The Board of Trustees may reclassify any unissued Class C Common Shares from time to time into one or more classes or series of Shares.
Section 6.5.6 Transfers.

(a) Upon any Transfer of a Class C Common Share to any Person other than to an Affiliate of the holder of such Class C Common Share, such Class C Common Share shall automatically convert into one Class A Common Share.

(b) Prior to any Transfer of a Class C Common Share to any Person other than to an Affiliate of the holder of such Class C Common Share, the holder of such Class C Common Share shall deliver a written notice (the “Conversion Notice”) of the Class C Common Share(s) to be converted to the office of the transfer agent of the Trust (the “Transfer Agent”) during normal business hours and (if so required by the Trust or the Transfer Agent) an instrument of transfer, in form satisfactory to the Trust and to the Transfer Agent, duly executed by such holder or his duly authorized attorney, and funds in the amount of any applicable transfer tax (unless provision satisfactory to the Trust is otherwise made therefor), if required pursuant to Section 6.5.6(d).

(c) As promptly as practicable after the delivery of a Conversion Notice and the payment in cash of any amount required by the provisions of Sections 6.5.6(b) and (d), the Trust will deliver or cause to be delivered at the office of the Transfer Agent to or upon the written order of the holder of the Class C Common Share(s) a confirmation of book-entry transfer of shares representing the number of validly issued, fully paid and non-assessable Class A Common Shares issuable upon such conversion, issued in such name or names as such may direct. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of the delivery of the Conversion Notice, and all rights of the such holder shall cease with respect to such Class C Common Share(s) at such time and the person or persons in whose name or names the Class A Common Share(s) issued upon conversion are to be issued shall be treated for all purposes as having become the record holder or holders of such Class A Common Share(s) at such time; provided, however, that any delivery of a Conversion Notice and payment on any date when the share transfer books of the Trust shall be closed shall constitute the person or persons in whose name or names the Class A Common Share(s) are to be issued as the record holder or holders thereof for all purposes immediately prior to the close of business on the next succeeding day on which such share transfer books are open.

(d) The person or persons requesting the conversion of the Class C Common Share(s) shall pay to the Trust the amount of any tax which may be payable in respect of any transfer involved in the issuance of Class A Common Shares in connection with conversion, or shall establish to the satisfaction of the Trust that such tax has been paid.

Section 6.5.7 Status of Acquired Class C Common Shares. All Class C Common Shares which shall have been issued and reacquired in any manner by the Trust shall be cancelled automatically and returned to the status of authorized but unissued Class A Common Shares.

Section 6.5.8 Amendment. So long as any Class C Common Shares remain outstanding, the affirmative vote of at least two-thirds of the votes entitled to be cast by the holders of Class C Common Shares (voting as a separate class) shall be required to amend, alter or repeal any provision of the Declaration of Trust so as to materially and adversely affect any right of the Class C Common Shares. Each Class C Common Share shall entitle the holder thereof to one vote on any proposal subject to this Section 6.5.8.

Section 6.6 Preferred Shares. The Board of Trustees may classify any unissued Preferred Shares and reclassify any previously classified but unissued Preferred Shares of any series from time to time, into one or more series of Shares.

Section 6.7 Classified or Reclassified Shares. Prior to issuance of classified or reclassified Shares of any class or series, the Board of Trustees by resolution shall (a) designate that class or series to distinguish it from all other classes and series of Shares; (b) specify the number of Shares to be included in the class or series; (c) set, subject to the provisions of Article VII and subject to the express terms of any class or series of Shares outstanding at the time, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each class or series; and (d) cause the Trust to file articles supplementary with the State Department of Assessments and Taxation of Maryland (the “SDAT”). Any of the terms of any class or series of Shares set or changed pursuant to clause (c) of this Section 6.7 or otherwise may be made dependent.
upon facts or events ascertainable outside the Declaration of Trust (including determinations by the Board of Trustees or other facts or events within the control of the Trust) and may vary among holders thereof, provided that the manner in which such facts or variations shall operate upon the terms of such class or series of Shares is clearly and expressly set forth in the document filed with the SDAT.

Section 6.8 Authorization by Board of Share Issuance. The Board of Trustees may authorize the issuance from time to time of Shares of any class or series, whether now or hereafter authorized, or securities or rights convertible into Shares of any class or series, whether now or hereafter authorized, for such consideration (whether in cash, property, past or future services, obligation for future payment or otherwise) as the Board of Trustees may deem advisable (or without consideration in the case of a Share split or Share dividend), subject to such restrictions or limitations, if any, as may be set forth in the Declaration of Trust or the Bylaws.

Section 6.9 Dividends and Other Distributions. The Board of Trustees may from time to time authorize, and cause the Trust to declare to shareholders, such dividends or other distributions, in cash or other assets of the Trust or in securities of the Trust or from any other source as the Board of Trustees in its discretion shall determine. The Board of Trustees shall endeavor to cause the Trust to declare and pay such dividends and other distributions as shall be necessary for the Trust to qualify under the Code as a REIT; however, shareholders shall have no right to any dividend or distribution unless and until authorized by the Board and declared by the Trust. The exercise of the powers and rights of the Board of Trustees pursuant to this Section 6.9 shall be subject to the provisions of any class or series of Shares at the time outstanding. Notwithstanding any other provision in the Declaration of Trust, no determination shall be made by the Board of Trustees nor shall any transaction be entered into by the Trust which would cause any Shares or other beneficial interest in the Trust not to constitute “transferable shares” or “transferable certificates of beneficial interest” under Section 856(a)(2) of the Code or which would cause any distribution to constitute a preferential dividend as described in Section 562(c) of the Code.
Section 6.10 General Nature of Shares. All Shares shall be personal property entitling the shareholders only to those rights provided in the Declaration of Trust. The shareholders shall have no interest in the property of the Trust and shall have no right to compel any partition, division, dividend or distribution of the Trust or of the property of the Trust. The death of a shareholder shall not terminate the Trust or give his or her legal representatives any rights against other shareholders, the Trustees or the property of the Trust. The Trust is entitled to treat as shareholders only those persons in whose names Shares are registered as holders of Shares on the beneficial interest ledger of the Trust.

Section 6.11 Fractional Shares. The Trust may, without the consent or approval of any shareholder, issue fractional Shares, eliminate a fraction of a Share by rounding up or down to a full Share, arrange for the disposition of a fraction of a Share by the person entitled to it, or pay cash for the fair value of a fraction of a Share.

Section 6.12 Declaration of Trust and Bylaws. The rights of all shareholders and the terms of all Shares are subject to the provisions of the Declaration of Trust and the Bylaws. The Board of Trustees shall have the exclusive power to amend the Bylaws.

Section 6.13 Divisions of Shares. Subject to an express provision to the contrary in the terms of any class or series of beneficial interest hereafter authorized, the Board of Trustees shall have the power to divide the outstanding shares of any class or series of beneficial interest, without a vote of shareholders.

ARTICLE VII

RESTRICTION ON TRANSFER AND OWNERSHIP OF SHARES

Section 7.1 Definitions. For the purpose of this Article VII, the following terms shall have the following meanings:

Aggregate Share Ownership Limit. The term “Aggregate Share Ownership Limit” shall mean not more than 9.6% (in value or in number, whichever is more restrictive) of the aggregate of the outstanding Equity Shares, or such other percentage determined by the Board of Trustees in accordance with Section 7.2.8 of the Declaration of Trust. The value and number of...
the outstanding Equity Shares shall be determined by the Board of Trustees, which determination shall be conclusive for all purposes hereof. For the purposes of determining the percentage ownership of Equity Shares by any Person, Equity Shares that may be acquired upon conversion, exchange or exercise of any securities of the Trust Beneficially Owned or Constructively Owned by such Person, but not Equity Shares issuable with respect to the conversion, exchange or exercise of securities of the Trust held by other Persons shall be deemed to be outstanding prior to conversion, exchange or exercise.

**Beneficial Ownership.** The term “Beneficial Ownership” shall mean ownership of Equity Shares by a Person, whether the interest in Equity Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) and 856(h)(3) of the Code. The terms “Beneficial Owner,” “Beneficially Owns” and “Beneficially Owned” shall have the correlative meanings.

**Business Day.** The term “Business Day” shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to remain closed.

**Charitable Beneficiary.** The term “Charitable Beneficiary” shall mean one or more beneficiaries of the Charitable Trust as determined pursuant to Section 7.3.6, provided that each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

**Charitable Trust.** The term “Charitable Trust” shall mean any trust provided for in Section 7.3.1.

**Common Share Ownership Limit.** The term “Common Share Ownership Limit” shall mean not more than 9.6% (in value or in number of shares, whichever is more restrictive) of the aggregate number of the outstanding Common Shares, or such other percentage determined by the Board of Trustees in accordance with Section 7.2.8 of the Declaration of Trust.
The value and number of the outstanding Common Shares shall be determined by the Board of Trustees, which determination shall be conclusive for all purposes hereof. For purposes of determining the percentage ownership of Common Shares by any Person, Common Shares that may be acquired upon conversion, exchange or exercise of any securities of the Trust Beneficially Owned or Constructively Owned by such Person, but not Common Shares issuable with respect to the conversion or exercise of securities of the Trust held by other Persons, shall be deemed to be outstanding prior to conversion, exchange or exercise.

**Constructive Ownership.** The term “Constructive Ownership” shall mean ownership of Equity Shares by a Person, whether the interest in Equity Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned actually or constructively through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms “Constructive Owner,” “Constructively Owns” and “Constructively Owned” shall have the correlative meanings.

**Equity Shares.** The term “Equity Shares” shall mean Shares of all classes or series, including, without limitation, Common Shares and Preferred Shares.

**Excepted Holder.** The term “Excepted Holder” shall mean a shareholder of the Trust for whom an Excepted Holder Limit is created by this Article VII or by the Board of Trustees pursuant to Section 7.2.7.

**Excepted Holder Limit.** The term “Excepted Holder Limit” shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by this Article VII or by the Board of Trustees pursuant to Section 7.2.7 and subject to adjustment pursuant to Section 7.2.8, the percentage limit established for an Excepted Holder by the Board of Trustees pursuant to Section 7.2.7, provided, however, that the Excepted Holder Limit for an Excepted Holder shall be 9.9% in value or in number (whichever is more restrictive) of the aggregate of the outstanding Equity Shares unless, from the REIT Election Date until the Restriction Termination Date, such Excepted Holder does not Constructively Own an interest in a Tenant of the Trust (or a Tenant of any entity owned or controlled by the Trust) that would cause the Trust to
Constructively Own more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such Tenant. The value, voting power and number of the outstanding Equity Shares shall be determined by the Board of Trustees, which determination shall be conclusive for all purposes hereof.

**Exchange.** The term “Exchange” shall mean the New York Stock Exchange.

**Initial Date.** The term “Initial Date” shall mean the date after which the Trust has more than one holder of Common Shares.

**Market Price.** The term “Market Price” on any date shall mean, with respect to any class or series of outstanding Equity Shares, the Closing Price for such Equity Shares on such date. The “Closing Price” on any date shall mean the last sale price for such Equity Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Equity Shares, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the Exchange or, if such Equity Shares are not listed or admitted to trading on the Exchange, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such Equity Shares are listed or admitted to trading or, if such Equity Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if such Equity Shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such Equity Shares selected by the Board of Trustees or, in the event that no trading price is available for such Equity Shares, the fair market value of Equity Shares, as determined by the Board of Trustees, which determination shall be conclusive for all purposes hereof.
Person. The term “Person” shall mean an individual, corporation, limited liability company, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity or any government or agency or political subdivision thereof and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, and a group to which an Excepted Holder Limit applies.

Prohibited Owner. The term “Prohibited Owner” shall mean, with respect to any purported Transfer (or other event), any Person who, but for the provisions of Section 7.2.1, would Beneficially Own or Constructively Own Equity Shares in violation of the provisions of Section 7.2.1(a), and if appropriate in the context, shall also mean any Person who would have been the record owner of Equity Shares that the Prohibited Owner would have so owned.

REIT Election Date. The term “REIT Election Date” shall mean [            ] or such other date on which the Trust elects to be taxed as a REIT under the Code.

REIT. The term “REIT” shall mean a real estate investment trust within the meaning of Section 856 of the Code.

Restriction Termination Date. The term “Restriction Termination Date” shall mean the first day after the Initial Date on which the Board of Trustees determines pursuant to Sections 5.1 or 5.6 of the Declaration of Trust that it is no longer in the best interests of the Trust to attempt to, or continue to, qualify as a REIT or that compliance with the restrictions and limitations on Beneficial Ownership, Constructive Ownership and Transfers of Equity Shares set forth herein is no longer required in order for the Trust to qualify as a REIT.

SDAT. The term “SDAT” shall mean the State Department of Assessments and Taxation of Maryland.

Tenant. The term “Tenant” shall mean any Person that leases (or subleases) real property from the Trust or an entity owned or controlled by the Trust.

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Transfer. The term “Transfer” shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire Beneficial Ownership or Constructive Ownership, or any agreement to take any such action or cause any such event, of Equity Shares or the right to vote or receive dividends on Equity Shares, including (a) the granting or exercise of any option (or any disposition of any option) with respect to Equity Shares, (b) entering into any agreement for the sale, transfer or other disposition of Equity Shares, (c) any sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Equity Shares or any interest in Equity Shares or any exercise of any such conversion or exchange right and (d) Transfers of interests in other entities that result in changes in Beneficial or Constructive Ownership of Equity Shares; in each case, whether voluntary or involuntary, whether owned of record, Constructively Owned or Beneficially Owned and whether by operation of law or otherwise. The terms “Transferring” and “Transferred” shall have the correlative meanings.

Trustee. The term “Trustee” shall mean the Person unaffiliated with the Trust and a Prohibited Owner, that is appointed by the Trust to serve as trustee of the Charitable Trust.

Section 7.2 Equity Shares.

Section 7.2.1 Ownership Limitations. During the period commencing on the Initial Date and ending on the Restriction Termination Date:

(a) Basic Restrictions.

(i) (1) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Equity Shares in excess of the Aggregate Share Ownership Limit, (2) no Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Common Shares in excess of the Common Share Ownership Limit and (3) no Excepted Holder shall Beneficially Own or Constructively Own Equity Shares in excess of the Excepted Holder Limit for such Excepted Holder.

(ii) No Person shall Beneficially Own or Constructively Own Equity Shares to the extent that such Beneficial Ownership or Constructive Ownership of
Equity Shares would result in the Trust being “closely held” within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, but not limited to, Beneficial Ownership or Constructive Ownership that would result in the Trust owning (actually or Constructively) an interest in a Tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Trust from such Tenant would cause the Trust to fail to satisfy any of the gross income requirements of Section 856(c) of the Code).

(iii) No Person shall Transfer Equity Shares if, as a result of the Transfer, the Equity Shares would Beneficially Owned (determined without reference to the rules of attribution under Section 544 of the Code) by fewer than 100 Persons.

(iv) No Person shall Beneficially Own or Constructively Own Equity Shares to the extent that such Beneficial Ownership or Constructive Ownership of Equity Shares could result in the Trust failing to qualify as a “domestically controlled qualified investment entity” within the meaning of Section 897(h)(4)(B) of the Code.

(v) No Person shall Constructively Own Equity Shares to the extent that such Constructive Ownership would cause any income of the Trust that would otherwise qualify as “rents from real property” for purposes of Section 856(d) of the Code to fail to qualify as such (including, but not limited to, as a result of causing any entity that the Trust intends to treat as an “[eligible] independent contractor” within the meaning of Section 856(d)(9)(A) of the Code to fail to qualify as such).

(b) Transfer in Trust. If any Transfer of Equity Shares or any other event occurs which, if effective, would result in any Person Beneficially Owning or Constructively Owning Equity Shares in violation of Section 7.2.1(a),

(i) then that number of Equity Shares the Beneficial Ownership or Constructive Ownership of which otherwise would cause such Person to violate Section 7.2.1(a) (rounded up to the nearest whole share) shall be automatically transferred to a Charitable Trust for the exclusive benefit of a Charitable Beneficiary, as described in Section
7.3, effective as of the close of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such Equity Shares; or

(ii) if the transfer to the Charitable Trust described in clause (i) of this sentence would not be effective for any reason to prevent the violation of Section 7.2.1(a), then the Transfer of that number of Equity Shares that otherwise would cause any Person to violate Section 7.2.1(a) shall be void ab initio, and the intended transferee shall acquire no rights in such Equity Shares.

(iii) In determining which Equity Shares are to be transferred to a Charitable Trust in accordance with this Section 7.2.1(b) and Section 7.3 hereof, Equity Shares shall be so transferred to a Charitable Trust in such manner that minimizes the aggregate value of the Equity Shares that are transferred to the Charitable Trust (except to the extent otherwise provided in Section 7.2.6).

(iv) To the extent that, upon a transfer of Equity Shares pursuant to this Section 7.2.1(b), a violation of Section 7.2.1(a) would nonetheless be continuing (for example where the ownership of Equity Shares by a single Charitable Trust would result in the Equity Shares being beneficially owned (determined under the principles of Section 856(a)(5) of the Code by fewer than 100 Persons), the Equity Shares shall be transferred to that number of Charitable Trusts, each having a distinct Charitable Trustee and a Charitable Beneficiary or Beneficiaries that are distinct from those of each other Charitable Trust, such that there is no violation of any provision of Section 7.2.1(a).

Section 7.2.2 Remedies for Breach. If the Board of Trustees shall at any time determine, which determination shall be conclusive for all purposes hereof, that a Transfer or other event has taken place that results in a violation of Section 7.2.1(a) or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any Equity Shares in violation of Section 7.2.1(a) (whether or not such violation is intended), the Board of Trustees shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Trust to redeem

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Equity Shares, refusing to give effect to such Transfer on the books of the Trust or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer or attempted Transfer or other event in violation of Section 7.2.1(a) shall automatically result in the transfer to the Charitable Trust described above, and, where applicable, such Transfer (or other event) shall be void ab initio as provided above irrespective of any action (or non-action) by the Board of Trustees.

Section 7.2.3 Notice of Restricted Transfer. Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of Equity Shares that will or may violate Section 7.2.1(a), or any Person who would have owned Equity Shares that resulted in a transfer to the Charitable Trust pursuant to the provisions of Section 7.2.1(b), shall immediately give written notice to the Trust of such event or, in the case of such a proposed or attempted transaction, give at least 15 days prior written notice, and shall provide to the Trust such other information as the Trust may request in order to determine the effect, if any, of such Transfer on the Trust’s qualification (or, if prior to the REIT Election Date, expected qualification) as a REIT.

Section 7.2.4 Owners Required To Provide Information. From the Initial Date until the Restriction Termination Date:

(a) every Person who is a Beneficial Owner or Constructive Owner of more than five percent (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) in number or value of the outstanding Equity Shares (whichever is more restrictive), within 30 days after initially reaching such ownership threshold and within 30 days after the end of each taxable year, shall give written notice to the Trust stating the name and address of such owner, the number of Equity Shares Beneficially Owned or Constructively Owned and a description of the manner in which such shares are held. Each such Person shall provide to the Trust such additional information as the Trust may request in order to determine the effect, if any, of such Beneficial Ownership on the Trust’s qualification (or, if prior to the REIT Election Date, expected qualification) as a REIT and to ensure compliance with the Aggregate Share Ownership Limit and the Common Share Ownership Limit; and
(b) each Person who is a Beneficial Owner or Constructive Owner of Equity Shares and each Person (including the shareholder of record) who is holding Equity Shares for a Beneficial Owner or Constructive Owner shall provide to the Trust such information as the Trust may request in order to determine the Trust’s qualification (or, if prior to the REIT Election Date, expected qualification) as a REIT and to comply with requirements of any taxing authority or governmental authority or to determine such compliance and to ensure compliance with the Aggregate Share Ownership Limit and the Common Share Ownership Limit.

Section 7.2.5 Remedies Not Limited. Subject to Sections 5.1 and 5.6 of the Declaration of Trust, nothing contained in this Section 7.2 shall limit the authority of the Board of Trustees to take such other action as it deems necessary or advisable to protect the Trust in preserving the Trust’s qualification (or, if prior to the REIT Election Date, expected qualification) as a REIT.

Section 7.2.6 Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Section 7.2, Section 7.3 or any definition contained in Section 7.1, the Board of Trustees shall have the power to determine the application of the provisions of this Section 7.2 or Section 7.3 or any such definition with respect to any situation based on the facts known to it. In the event Section 7.2 or 7.3 requires an action by the Board of Trustees and the Declaration of Trust fails to provide specific guidance with respect to such action, the Board of Trustees shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Sections 7.1, 7.2 or 7.3. Absent a decision to the contrary by the Board of Trustees (which the Board of Trustees may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in Section 7.2.2) acquired Beneficial Ownership or Constructive Ownership of Equity Shares in violation of Section 7.2.1, such remedies (as applicable) shall apply first to the Equity Shares which, but for such remedies, would have been
actually owned by such Person, and second to Equity Shares which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such Equity Shares based upon the relative number of the Equity Shares held by each such Person.

Section 7.2.7 Exceptions.

(a) Subject to Section 7.2.1(a), the Board of Trustees, in its sole and absolute discretion, may exempt (prospectively or retroactively) a Person from the Aggregate Share Ownership Limit and the Common Share Ownership Limit, or both such limits, as the case may be, and may establish or increase an Excepted Holder Limit for such Person if:

(i) the Board of Trustees obtains such representations and undertakings from such Person as are reasonably necessary for the Board to ascertain that no individual’s Beneficial Ownership or Constructive Ownership of such Equity Shares will violate Section 7.2.1(a)(ii) or (v);

(ii) such Person does not and agrees that it will not own, actually or Constructively, an interest in a Tenant of the Trust (or a Tenant of any entity owned or controlled by the Trust) that would cause the Trust to own, actually or Constructively, more than a 9.8% interest (as set forth in Section 856(d)(2)(B) of the Code) in such Tenant and the Board of Trustees obtains such representations and undertakings from such Person as are reasonably necessary to ascertain this fact (except to the extent that the Board of Trustees in its sole and absolute discretion determines that the amount of rent derived from such Tenant is sufficiently small that the receipt of rent from such Tenant would not adversely affect the Trust’s ability to qualify as a REIT); and

(iii) such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in Sections 7.2.1 through 7.2.6) will result in such Equity Shares being automatically transferred to a Charitable Trust in accordance with Sections 7.2.1(b) and 7.3.
(b) Prior to granting any exception pursuant to Section 7.2.7(a), the Board of Trustees may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Trustees in its sole and absolute discretion, as it may deem necessary or advisable in order to determine or ensure the Trust’s qualification as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board of Trustees may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(c) Subject to Section 7.2.1(a)(ii), an underwriter or placement agent that participates in a public offering or a private placement of Equity Shares (or securities convertible into or exchangeable for Equity Shares) may Beneficially Own or Constructively Own Equity Shares (or securities convertible into or exchangeable for Equity Shares) in excess of the Aggregate Share Ownership Limit, the Common Share Ownership Limit or both such limits, but only to the extent necessary to facilitate such public offering or private placement.

(d) The Board of Trustees may only reduce the Excepted Holder Limit for an Excepted Holder: (1) with the written consent of such Excepted Holder at any time, or (2) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Aggregate Share Ownership Limit or the Common Share Ownership Limit, as the case may be. In the event that the Equity Shares Beneficially Owned or Constructively Owned by the Excepted Holder decrease to equal to or less than the Aggregate Share Ownership Limit, or the Common Shares Beneficially Owned or Constructively Owned by the Excepted Holder decrease to equal to or less than the Common Share Ownership Limit, then in either such case, the Board of Trustees may deem such Person no longer to be an Excepted Holder, after which such Person’s Excepted Holder Limit shall no longer apply.

Section 7.2.8 Increase or Decrease in Common Share Ownership or Aggregate Share Ownership Limits. Subject to Section 7.2.1(a)(ii) and this Section 7.2.8, the Board
of Trustees may from time to time increase or decrease the Aggregate Share Ownership Limit and Common Share Ownership Limit; provided, however, that a decreased Aggregate Share Ownership Limit or Common Share Ownership Limit will not be effective for any Person whose percentage ownership of Equity Shares or Common Shares, as the case may be, is in excess of such decreased Aggregate Share Ownership Limit or Common Share Ownership Limit, as applicable, until such time as such Person’s percentage of Equity Shares or Common Shares, as the case may be, equals or falls below the decreased Aggregate Share Ownership Limit or Common Share Ownership Limit, as applicable, except that until such time as such Person’s percentage of Equity Shares of Common Shares, as the case may be, falls below such decreased Aggregate Share Ownership Limit or Common Share Ownership Limit, any further acquisition of Equity Shares or Common Shares will be in violation of the Aggregate Share Ownership Limit or Common Share Ownership Limit, and, provided further, that the new Aggregate Share Ownership Limit or Common Share Ownership Limit would not allow five or fewer individuals (as defined in Section 542(a)(2) of the Code and taking into account all Excepted Holders) to Beneficially Own, in the aggregate more than 49.9% in value of the outstanding Equity Shares.

Section 7.2.9 Legend. Each certificate for Equity Shares shall bear a legend summarizing the restrictions on ownership and transfer contained in the Declaration of Trust. Instead of a legend, the certificate may state that the Trust will furnish a full statement about certain restrictions on transferability to a shareholder on request and without charge.

Section 7.3 Transfer of Equity Shares in Trust.

Section 7.3.1 Ownership in Trust. Upon any purported Transfer or other event described in Section 7.2.1(a) that would result in a transfer of Equity Shares to a Charitable Trust, such Equity Shares shall be deemed to have been transferred to the Trustee as trustee of a Charitable Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the transfer to the Charitable Trust pursuant to Section 7.2.1(b). The Trustee shall be appointed by the Trust and shall be a Person unaffiliated with the Trust and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Trust as provided in Section 7.3.6.
Section 7.3.2 Status of Shares Held by the Trustee. Equity Shares held by the Trustee shall continue to be issued and outstanding Equity Shares of the Trust. The Prohibited Owner shall have no rights in the shares held by the Trustee. The Prohibited Owner shall not benefit economically from ownership of any shares held in trust by the Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the shares held in the Charitable Trust.

Section 7.3.3 Dividend and Voting Rights. The Trustee shall have all voting rights and rights to dividends or other distributions with respect to Equity Shares held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid to a Prohibited Owner prior to the discovery by the Trust that Equity Shares have been transferred to the Trustee shall be paid with respect to such Equity Shares by the Prohibited Owner to the Trustee upon demand and any dividend or other distribution authorized but unpaid shall be paid when due to the Trustee. Any dividend or distribution so paid to the Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to shares held in the Charitable Trust and, subject to Maryland law, effective as of the date that Equity Shares have been transferred to the Trustee, the Trustee shall have the authority (at the Trustee’s sole and absolute discretion) (i) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Trust that Equity Shares have been transferred to the Trustee and (ii) to recast such vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Trust has already taken irreversible trust action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Article VII, until the Trust has received notification that Equity Shares have been transferred into a Charitable Trust, the Trust shall be entitled to rely on its share transfer and other shareholder records for purposes of preparing lists of shareholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes and determining the other rights of shareholders.
Section 7.3.4 **Sale of Shares by Trustee.** Within 20 days of receiving notice from the Trust that Equity Shares have been transferred to the Charitable Trust, the Trustee of the Charitable Trust shall sell the shares held in the Charitable Trust to a Person, designated by the Trustee, whose ownership of the shares will not violate the ownership limitations set forth in Section 7.2.1(a). Upon such sale, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Trustee shall, as provided in this Section 7.3.4, distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary. The Prohibited Owner shall receive the lesser of (1) the price paid by the Prohibited Owner for the shares or, if the Prohibited Owner did not give value for the shares in connection with the event causing the shares to be held in the Charitable Trust (e.g., in the case of a gift, devise or other such transaction), the Market Price of the shares on the day of the event causing the shares to be held in the Charitable Trust and (2) the price per share received by the Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the shares held in the Charitable Trust. The Trustee may reduce the amount payable to the Prohibited Owner by the amount of dividends and distributions which have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Trustee pursuant to Section 7.3.3 of this Article VII. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary. If, prior to the discovery by the Trust that Equity Shares have been transferred to the Trustee, such shares are sold by a Prohibited Owner, then (i) such shares shall be deemed to have been sold on behalf of the Charitable Trust and (ii) to the extent that the Prohibited Owner received an amount for such shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 7.3.4, such excess shall be paid to the Trustee upon demand.

Section 7.3.5 **Purchase Right in Shares Transferred to the Trustee.** Equity Shares transferred to the Trustee shall be deemed to have been offered for sale to the Trust, or its...
designee, at a price per share equal to the lesser of (i) the price per share in the transaction that resulted in such transfer to the Charitable Trust (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price on the date the Trust, or its designee, accepts such offer. The Trust may reduce the amount payable to the Prohibited Owner by the amount of dividend and distributions which has been paid to the Prohibited Owner and is owed by the Prohibited Owner to the Trustee pursuant to Section 7.3.3 of this Article VII. The Trust may pay the amount of such reduction to the Trustee for the benefit of the Charitable Beneficiary. The Trust shall have the right to accept such offer until the Trustee has sold the shares held in the Charitable Trust pursuant to Section 7.3.4. Upon such a sale to the Trust, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Prohibited Owner.

Section 7.3.6 Designation of Charitable Beneficiaries. By written notice to the Trustee, the Trust shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that (i) Equity Shares held in the Charitable Trust would not violate the restrictions set forth in Section 7.2.1(a) in the hands of such Charitable Beneficiary and (ii) each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code. Neither the failure of the Trust to make such designation nor the failure of the Trust to appoint the Trustee before the automatic transfer provided for in Section 7.2.1(b) shall make such transfer ineffective, provided that the Trust thereafter makes such designation and appointment.

Section 7.4 Exchange Transactions. Nothing in this Article VII shall preclude the settlement of any transaction entered into through the facilities of the Exchange or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any other provision of this Article VII and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article VII.

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Section 7.5 Enforcement. The Trust is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article VII.

Section 7.6 Non-Waiver. No delay or failure on the part of the Trust or the Board of Trustees in exercising any right hereunder shall operate as a waiver of any right of the Trust or the Board of Trustees, as the case may be, except to the extent specifically waived in writing.

ARTICLE VIII

SHAREHOLDERS

Section 8.1 Meetings. There shall be an annual meeting of the shareholders, to be held on proper notice at such time and location as shall be determined by or in the manner prescribed in the Bylaws, for the election of the Trustees, if required, and for the transaction of any other business within the powers of the Trust. Except as otherwise provided in the Declaration of Trust, special meetings of shareholders may be called in the manner provided in the Bylaws. If there are no Trustees, the officers of the Trust shall promptly call a special meeting of the shareholders entitled to vote for the election of successor Trustees. Any meeting may be postponed and adjourned and reconvened as the Trustees determine or as provided in the Bylaws.

Section 8.2 Voting Rights. Subject to the provisions of any class or series of Shares then outstanding, the shareholders shall be entitled to vote only on the following matters: (a) election of Trustees as provided in Section 5.2 and the removal of Trustees as provided in Section 5.3; (b) amendment of the Declaration of Trust as provided in Article X; (c) termination of the Trust as provided in Section 12.2; (d) merger, conversion or consolidation of the Trust to the extent a vote of the shareholders is required by Title 8, or the sale or disposition of substantially all of the property of the Trust, to the same extent as a stockholder of a Maryland corporation would be entitled to vote on such sale or disposition under the Maryland General Corporation Law; and (e) such other matters with respect to which the Board of Trustees has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to the shareholders for approval or ratification. Except with respect to the foregoing matters, no action taken by the shareholders at any meeting shall in any way bind the Board of Trustees.
Section 8.3 Preemptive and Appraisal Rights. Except as may be provided by the Board of Trustees in setting the terms of classified or reclassified Shares pursuant to Section 6.7, or as may otherwise be provided by contract approved by the Board of Trustees, no holder of Shares shall, as such holder, have any preemptive right to purchase or subscribe for any additional Shares or any other security of the Trust which it may issue or sell. Holders of Shares shall not be entitled to exercise any rights of an objecting shareholder provided for under Title 8 and Title 3, Subtitle 2 of the Maryland General Corporation Law or any successor statute unless the Board of Trustees, upon the affirmative vote of a majority of the Board of Trustees and upon such terms and conditions as specified by the Board of Trustees, shall determine that such rights apply, with respect to all or any classes or series of Shares, to one or more transactions occurring after the date of such determination in connection with which holders of such Shares would otherwise be entitled to exercise such rights.

Section 8.4 Board Approval. The submission of any action of the Trust to the shareholders for their consideration shall first be approved by the Board of Trustees.

Section 8.5 Action By Shareholders without a Meeting. Any action required or permitted to be taken at any meeting of shareholders may be taken without a meeting by the unanimous consent, in writing or by electronic transmission, of each shareholder entitled to vote in the manner permitted by statute, the Declaration of Trust or the Bylaws, as the case may be.

ARTICLE IX
LIABILITY LIMITATION, INDEMNIFICATION
AND TRANSACTIONS WITH THE TRUST

Section 9.1 Limitation of Shareholder Liability. No shareholder shall be liable for any debt, claim, demand, judgment or obligation of any kind of, against or with respect to the Trust by reason of his being a shareholder, nor shall any shareholder be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the property or the affairs of the Trust by reason of his being a shareholder.
Section 9.2 Limitation of Trustee and Officer Liability. To the maximum extent that Maryland law in effect from time to time permits limitation of the liability of trustees and officers of a real estate investment trust, no present or former Trustee or officer of the Trust shall be liable to the Trust or to any shareholder for money damages. Neither the amendment nor repeal of this Section 9.2, nor the adoption or amendment of any other provision of the Declaration of Trust inconsistent with this Section 9.2, shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption. No Trustee or officer of the Trust shall be liable to the Trust or to any shareholder for money damages except to the extent that (a) the Trustee or officer actually received an improper benefit or profit in money, property or services, for the amount of the benefit or profit in money, property or services actually received; or (b) a judgment or other final adjudication adverse to the Trustee or officer is entered in a proceeding based on a finding in the proceeding that the Trustee’s or officer’s action or failure to act was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding.

Section 9.3 Express Exculpatory Clauses in Instruments. Neither the shareholders nor the Trustees, officers, employees or agents of the Trust shall be liable under any written instrument creating an obligation of the Trust, and all persons shall look solely to the property of the Trust for the payment of any claim under or for the performance of that instrument. The omission of the foregoing exculpatory language from any instrument shall not affect the validity or enforceability of such instrument and shall not render any shareholder, Trustee, officer, employee or agent liable thereunder to any third party, nor shall the Trustees or any officer, employee or agent of the Trust be liable to anyone for such omission.

Section 9.4 Indemnification. The Trust shall have the power, to the maximum extent permitted by Maryland law in effect from time to time, to obligate itself to indemnify, and, without requiring a preliminary determination of the ultimate entitlement to indemnification,
to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to, (a) any individual who is a present or former shareholder, Trustee or officer of the Trust and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity or (b) any individual who, while a Trustee or officer of the Trust and at the request of the Trust, serves or has served as a trustee, director, officer, partner, member or manager, of another real estate investment trust, corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity from and against any claim or liability to which such person may become subject or which such person may incur by reason of his or her service in such capacity or capacities. The rights to indemnification and advancement of expenses provided in this Declaration of Trust and the Bylaws shall vest immediately upon election of a Trustee or officer. The Trust shall have the power, with the approval of its Board of Trustees, to provide such indemnification and advancement of expenses to a person who served a predecessor of the Trust in any of the capacities described in (a) or (b) above and to any employee or agent of the Trust or a predecessor of the Trust.

Section 9.5. Insurance. The Trust may maintain insurance, at its expense, to protect itself and any Trustee, officer, employee or agent of the Trust or another corporation, real estate investment trust, partnership, joint venture, trust, limited liability company or other enterprise against any such expense, liability or loss, whether or not the Trust would have the power to indemnify such person against such expense, liability or loss under Title 8.

Section 9.6. Non-Exclusivity of Rights. The indemnification and payment or reimbursement of expenses provided in this Article IX shall not be deemed exclusive of or limit in any way other rights to which any person seeking indemnification or payment or reimbursement of expenses may be or may become entitled under any statute, bylaw, resolution, insurance, agreement, vote of shareholders or disinterested Trustees or otherwise.
Section 9.7 Transactions Between the Trust and its Trustees, Officers, Employees and Agents. Subject to any express restrictions in the Declaration of Trust or adopted by the Board of Trustees in the Bylaws or by resolution, the Trust may enter into any contract or transaction of any kind with any person, including any Trustee, officer, employee or agent of the Trust or any person affiliated with a Trustee, officer, employee or agent of the Trust, whether or not any of them has a financial interest in such transaction.

Section 9.8 Amendment. Notwithstanding anything in the Declaration of Trust to the contrary, neither the amendment nor repeal of this Article IX, nor the adoption or amendment of any other provision of the Declaration of Trust or Bylaws inconsistent with this Article IX shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

ARTICLE X
AMENDMENTS

Section 10.1 General. The Trust reserves the right from time to time to make any amendment to the Declaration of Trust, now or hereafter authorized by law, including any amendment altering the terms or contract rights, as expressly set forth in the Declaration of Trust, of any Shares. All rights and powers conferred by the Declaration of Trust on shareholders, Trustees and officers are granted subject to this reservation. All references to the Declaration of Trust shall include all amendments thereto.

Section 10.2 By Trustees. The Trustees may amend the Declaration of Trust from time to time, in the manner provided by Title 8, without any action by the shareholders, (i) to qualify under the Code as a REIT or as a real estate investment trust under Title 8, (ii) in any respect in which the charter of a corporation may be amended in accordance with Section 2-605 of the Maryland General Corporation Law and (iii) as otherwise provided in the Declaration of Trust.
Section 10.3 By Shareholders. Any amendment to the Declaration of Trust (other than an amendment referred to in Section 10.2) shall be valid only if approved by the affirmative vote of at least two-thirds of all of the votes entitled to be cast on the matter.

ARTICLE XI
MERGER, CONVERSION, CONSOLIDATION OR SALE OF TRUST PROPERTY

Subject to the provisions of any class or series of Shares at the time outstanding, the Trust may (a) merge or convert the Trust into another entity, (b) consolidate the Trust with one or more other entities into a new entity or (c) sell, lease, exchange or otherwise transfer all or substantially all of the property of the Trust. Any such action must be approved (x) by the Board of Trustees and (y) if a vote of the shareholders is required, after notice to all shareholders entitled to vote on the matter, by the affirmative vote of at least two-thirds of all of the votes entitled to be cast on the matter.

ARTICLE XII
DURATION AND TERMINATION OF TRUST

Section 12.1 Duration. The Trust shall continue perpetually unless terminated pursuant to Section 12.2 or pursuant to any applicable provision of Title 8.

Section 12.2 Termination.

(a) Subject to the provisions of any class or series of Shares at the time outstanding, after approval by a majority of the entire Board of Trustees, the Trust may be terminated at any meeting of shareholders, by the affirmative vote of at least two-thirds of all the votes entitled to be cast on the matter. Upon the termination of the Trust:

(i) The Trust shall carry on no business except for the purpose of winding up its affairs.

(ii) The Trustees shall proceed to wind up the affairs of the Trust and all of the powers of the Trustees under the Declaration of Trust shall continue, including the powers to fulfill or discharge the Trust’s contracts, collect its assets, sell, convey, assign.

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exchange, transfer or otherwise dispose of all or any part of the remaining property of the Trust to one or more persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities and do all other acts appropriate to liquidate its business. The Trustees may appoint any officer of the Trust or any other person to supervise the winding up of the affairs of the Trust and delegate to such officer or such person any or all powers of the Trustees in this regard.

(iii) After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and agreements as they deem necessary for their protection, the Trust may distribute the remaining property of the Trust, in cash or in kind or partly each, among the shareholders so that after payment in full or the setting apart for payment of such preferential amounts, if any, to which the holders of any Shares at the time outstanding shall be entitled, the remaining property of the Trust shall, subject to any participating or similar rights of Shares at the time outstanding, be distributed ratably among the holders of Class A Common Shares and Class C Common Shares at the time outstanding.

(b) After termination of the Trust, the liquidation of its business and the distribution to the shareholders as herein provided, a majority of the Trustees shall execute and file with the Trust’s records a document certifying that the Trust has been duly terminated, and the Trustees shall be discharged from all liabilities and duties hereunder, and the rights and interests of all shareholders shall cease.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Governing Law. The Declaration of Trust is executed by the undersigned Trustees and delivered in the State of Maryland with reference to the laws thereof, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the State of Maryland without regard to conflicts of laws provisions thereof.
Section 13.2 Reliance by Third Parties. Any certificate shall be final and conclusive as to any person dealing with the Trust if executed by the Secretary or an Assistant Secretary of the Trust or a Trustee, and if certifying to: (a) the number or identity of Trustees, officers of the Trust or shareholders; (b) the due authorization of the execution of any document; (c) the action or vote taken, and the existence of a quorum, at a meeting of the Board of Trustees or shareholders; (d) a copy of the Declaration of Trust or of the Bylaws as a true and complete copy as then in force; (e) an amendment to the Declaration of Trust; (f) the termination of the Trust; or (g) the existence of any fact relating to the affairs of the Trust. No purchaser, lender, transfer agent or other person shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trust on its behalf or by any officer, employee or agent of the Trust.

Section 13.3 Severability. If any provision of the Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such holding shall apply only to the extent of any such invalidity or unenforceability and shall not in any manner affect, impair or render invalid or unenforceable such provision in any other jurisdiction or any other provision of the Declaration of Trust in any jurisdiction.

Section 13.4 Construction. In the Declaration of Trust, unless the context otherwise requires, words used in the singular or in the plural include both the plural and singular and words denoting any gender include all genders. The title and headings of different parts are inserted for convenience and shall not affect the meaning, construction or effect of the Declaration of Trust. In defining or interpreting the powers and duties of the Trust and its Trustees and officers, reference may be made by the Trustees or officers, to the extent appropriate and not inconsistent with the Code or Title 8, to Titles 1 through 3 of the Corporations and Associations Article of the Annotated Code of Maryland.

THIRD: The amendment to and restatement of the Declaration of Trust of the Trust as hereinabove set forth has been approved by the Board of Trustees.
FOURTH: The total number of shares of beneficial interest which the Trust had authority to issue immediately prior to this amendment and restatement was 1,000,000, consisting of 1,000,000 Common Shares, $0.01 par value per share. The aggregate par value of all shares of beneficial interest having par value was $10,000.

FIFTH: The total number of shares of beneficial interest which the Trust has authority to issue pursuant to the foregoing amendment and restatement of the Declaration of Trust is , consisting of Class A Common Shares, $0.01 par value per share, Class B Common Shares, $0.01 par value per share, Class C Common Shares, $0.01 par value per share, and Preferred Shares, $0.01 par value per share. The aggregate par value of all authorized shares of beneficial interest having par value is $ .

The undersigned President acknowledges these Articles of Amendment and Restatement to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.
IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment and Restatement to be signed in its name and on its behalf by its President and attested to by its Secretary on this day of , 2015.

ATTEST: 

_________________________ Secretary

_________________________________ (SEAL) President

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Ladies and Gentlemen:

We have served as Maryland counsel to Seritage Growth Properties, a Maryland real estate investment trust (the “Company”), in connection with certain matters of Maryland law relating to the registration by the Company of (a) up to [ ] class A common shares (the “Class A Shares”) of beneficial interest, par value $0.01 per share (“Class A Common Shares”), of the Company, (b) up to [ ] class C common shares (the “Class C Shares” and, together with the Class A Shares, the “Shares”) of beneficial interest, par value $0.01 per share (“Class C Common Shares”), of the Company and (c) up to [ ] transferable subscription rights (the “Rights”) of the Company to be distributed to the stockholders of Sears Holdings Corporation, a Delaware corporation, to purchase the Class A Shares, each covered by the above-referenced Registration Statement, and all amendments thereto (the “Registration Statement”), filed by the Company with the United States Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “1933 Act”).

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (hereinafter collectively referred to as the “Documents”):

1. The Registration Statement and the related form of prospectus included therein, substantially in the form in which it was transmitted to the Commission under the 1933 Act;

2. The Declaration of Trust of the Company (the “Declaration of Trust”), certified by the State Department of Assessments and Taxation of Maryland (the “SDAT”);

3. The form of Articles of Amendment and Restatement of the Company to be filed with the SDAT prior to the issuance of the Shares (the “Articles of Amendment and Restatement”), certified as of the date hereof by an officer of the Company;

4. The Amended and Restated Bylaws of the Company, certified as of the date hereof by an officer of the Company;
5. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;

6. Resolutions adopted by the Board of Trustees of the Company (the “Board”) relating to, among other matters, the authorization of the sale, issuance and registration of the Shares and the Rights (the “Resolutions”), certified as of the date hereof by an officer of the Company;

7. The form of Subscription Rights Certificate to subscribe for the Class A Shares (the “Rights Certificate”);

8. A certificate executed by an officer of the Company, dated as of the date hereof; and

9. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.

2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.

3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party’s obligations set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.

4. All Documents submitted to us as originals are authentic. The form and content of all Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.
5. Upon the issuance of any Shares, including Class A Shares which may be issued upon conversion or exercise of the Rights, (a) the total number of Class A Common Shares issued and outstanding will not exceed the total number of Class A Common Shares that the Company is then authorized to issue under the Articles of Amendment and Restatement, and (b) the total number of Class C Common Shares issued and outstanding will not exceed the total number of Class C Common Shares that the Company is then authorized to issue under the Articles of Amendment and Restatement. We note that, as of the date hereof, there are (a) more than [ ] Class A Common Shares and (b) more than [ ] Class C Common Shares available for issuance under the Declaration of Trust.

6. The Shares will not be issued or transferred in violation of the restrictions on transfer and ownership contained in Article VII of the Articles of Amendment and Restatement.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Company is a real estate investment trust duly formed and existing under and by virtue of the laws of the State of Maryland and is in good standing with the SDAT.

2. The issuance of the Class A Shares has been duly authorized and, when issued and paid for upon exercise of the Rights pursuant to the Resolutions and the Registration Statement, the Class A Shares will be validly issued, fully paid and nonassessable.

3. The issuance of the Class C Shares has been duly authorized and, when issued and paid for pursuant to the Resolutions and the Registration Statement, the Class C Shares will be validly issued, fully paid and nonassessable.

4. The issuance of the Rights has been duly authorized and, when issued and paid for in accordance with the Rights Certificate, the Rights will be valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

The foregoing opinion is limited to the laws of the State of Maryland and we do not express any opinion herein concerning any other law. We express no opinion as to the applicability or effect of federal or state securities laws, including the securities laws of the State of Maryland, or as to federal or state laws regarding fraudulent transfers. To the extent that any
matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Maryland, we do not express any opinion on such matter. The opinion expressed herein is subject to the effect of any judicial decision which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Registration Statement. We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act.

Very truly yours,
Ladies and Gentlemen:

We have acted as special counsel to Seritage Growth Properties, a Maryland real estate investment trust ("Seritage Growth"), in connection with (i) the acquisition by Mr. Benjamin Schall, on June 3, 2015, of all the outstanding Seritage Growth Class A common shares of beneficial interest, par value $0.01 per share (the “Seritage Growth Common Shares”) in exchange for cash in connection with the formation of Seritage Growth, (ii) the purchase by Seritage Growth of all the outstanding shares of beneficial interest in Old Seritage Growth Properties, a Maryland real estate investment trust ("Old Seritage Growth"), the general partner of Seritage Growth Properties, L.P., a Delaware limited partnership (the “Operating Partnership”), (iii) the planned distribution by Sears Holdings Corporation, a Delaware corporation (“Holdings”), to certain holders of Holdings common stock transferable subscription rights to purchase Seritage Growth Common Shares (the “Rights Offering”) pursuant to the Subscription, Distribution and Purchase and Sale Agreement (the “Agreement”), by and between Holdings and Seritage Growth, (iv) the registration of Seritage Growth Common Shares, Class B non-economic shares of beneficial interest, par value $0.01 per share, of Seritage Growth (“Non-Economic Shares”), and Class C non-voting common shares of beneficial interest, par value $0.01 per share (“Non-Voting Shares”), of Seritage Growth, pursuant to the Registration
Statement on Form S-11 (as amended or supplemented through the date hereof, the “Registration Statement”) of Seritage Growth, including the prospectus forming a part thereof, (v) the issuance and sale by Seritage Growth to each of General Growth Properties, Inc. and Simon Property Group, Inc. of Seritage Growth Common Shares at a purchase price per share equal to the subscription price in the Rights Offering, (vi) the exchange by certain clients of Fairholme Capital Management, L.L.C. (“FCM” and such clients, the “Fairholme Clients”) of subscription rights received in the Rights Offering that, if exercised, would result in such Fairholme Clients receiving, in the aggregate, in excess of 11.7% of the Seritage Growth Common Shares outstanding immediately following the Rights Offering for 9,527,198 Non-Voting Shares at a purchase price per share of $29.58, (vii) the grant by the Seritage Growth Board of Trustees to FCM and certain Fairholme Clients of certain waivers of certain ownership restrictions in the Declaration of Trust of Seritage Growth (the “Declaration of Trust”), (viii) the exchange by ESL Investments, Inc. and its affiliates, including Edward S. Lampert (collectively, “ESL”), of (A) subscription rights received in the Rights Offering that, if exercised, would result in ESL receiving in excess of 3.1% of the Seritage Growth Common Shares, (B) cash in the aggregate amount ESL would have paid had it exercised such subscription rights, and (C) cash in the value of the Non-Economic Shares for interests in the Operating Partnership and Non-Economic Shares, (ix) the purchase by the Operating Partnership of (A) 235 real estate properties (the “Purchased Properties”) owned or leased by Holdings and/or its subsidiaries and (B) the fifty percent (50%) interest in each of (1) GS Portfolio Holdings LLC, (2) SPS Portfolio Holdings LLC, and (3) MS Portfolio Holdings LLC owned by Holdings and/or its subsidiaries pursuant to the Agreement, and (x) the lease (or sublease) back of certain of the Purchased Properties or certain space therein to Holdings (and/or one or more subsidiaries of Holdings) and the assignment of certain existing third-party leases in the Purchased Properties to the Operating Partnership (and/or one or more subsidiaries of the Operating Partnership) pursuant to a master lease agreement (the “Master Lease” and, collectively, clauses (i) through (x), the “Transaction”). At your request, we are rendering our opinion concerning certain United States federal income tax matters related to Seritage Growth’s qualification for U.S. federal income tax purposes as a real estate investment trust (a “REIT”).

In providing our opinion, we have examined (i) the Agreement, (ii) the Master Lease, (iii) the written report regarding the valuation of the Non-Economic Shares received by Seritage Growth in connection with the effectiveness of the Registration Statement and dated as of the date hereof (the “Valuation”), (iv) the opinion of counsel provided to Seritage Growth regarding qualification of the Master Lease as a true lease for U.S. federal income tax purposes (the “True Lease Opinion”), (v) the other documents executed by Seritage Growth, Holdings or their applicable affiliates or subsidiaries in connection with the Transaction (collectively, with the Agreement, the Master Lease, and the True Lease Opinion, the “Transaction Documents”), (vi) the Registration Statement, (vii) the representation letter of Seritage Growth, dated as of the date hereof and delivered to us for purposes of this opinion (the “Representation Letter”), (viii) the Declaration of Trust of Seritage Growth, (ix) the Bylaws of Seritage Growth, (x) the Certificate of Limited Partnership of the Operating Partnership, (xi) the Agreement of Limited Partnership

Seritage Growth Properties
June 8, 2015
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In addition to the assumptions set forth in the Seritage Growth Representation Letter, we have assumed, also with your consent, that:

(i) all documents submitted to us as originals are authentic, all documents submitted to us as copies conform to the original documents and all relevant documents have been or will be duly and validly executed in the form presented to us, (ii) the Transaction has been or will be consummated in accordance with the provisions of the Agreement and the other Transaction Documents and as described in the Registration Statement (and no covenants or conditions described therein and affecting this opinion will be waived or modified), (iii) the statements concerning the Transaction and the parties thereto set forth in the Agreement, the other Transaction Documents, and the Registration Statement are true, complete and correct and the Registration Statement is true, complete and correct, (iv) the statements and representations (which statements and representations we have neither investigated nor verified) made by Seritage Growth in the Representation Letter is true, complete and correct, (v) any such statements and representations made in the Representation Letter that are qualified by the knowledge or belief of any person, or materiality or with comparable qualification are and will be true, complete, and correct as if made without such qualification, (vi) Seritage Growth, the Operating Partnership, Holdings, and their respective subsidiaries will treat the Transaction and certain related transactions for United States federal income tax purposes in a manner consistent with the opinions set forth below, (vii) all applicable reporting requirements have been or will be satisfied, and (viii) no action will be taken by Seritage Growth, the Operating Partnership or any of their respective subsidiaries after the date hereof that would have the effect of altering facts upon which the opinions set forth below are based. If any of the above described assumptions is untrue for any reason, or if the Transaction is consummated in a manner that is different from the manner described in the Agreement or the other Transaction Documents or the Registration Statement, our opinion as expressed below may be adversely affected. We have not made an independent investigation of all of the facts, statements, representations and covenants set forth in the Representation Letter, the Registration Statement, or in any other document. In addition, we note that Seritage Growth and the Operating Partnership may engage in transactions in connection with which we have not provided tax advice and have not reviewed, and of which we may be unaware.

Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, under currently applicable United States federal income tax law, Seritage Growth has been organized in conformity with the requirements for qualification as a REIT for United States federal income tax purposes, and Seritage Growth’s proposed method of operation, as represented by the officers and representatives of Seritage Growth, will enable Seritage Growth to satisfy the requirements for such qualification for the taxable year of Seritage Growth ending December 31, 2015.

This opinion represents our conclusion as to the application of U.S. federal income tax laws existing as of the date hereof, and we can give no assurance that subsequent legislative
enactments, administrative changes or court decisions will not modify or supersede our opinion. An opinion of counsel merely represents counsel’s judgment with respect to the probable outcome on the merits and is not binding on the Service or the courts. There can be no assurance that positions contrary to our opinion will not be taken by the Service, or that a court considering the issues would not hold contrary to such opinion. Moreover, Seritage Growth’s qualification and taxation as a REIT will depend on its ability to meet, on a continuing basis, through actual operating results, asset composition, income, distribution, and diversity of share ownership and various qualification tests imposed under the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury Regulations promulgated thereunder, and we will not review compliance with these tests on a continuing basis. Accordingly, no assurance can be given that the Seritage Growth’s actual results will satisfy such tests.

We express no opinion on any issue or matter relating to the tax consequences of the transactions contemplated by the Agreement, the other Transaction Documents, or the Registration Statement, other than the opinion set forth above. Our opinion is based on current provisions of the Code, the Treasury Regulations promulgated thereunder, published pronouncements and administrative determinations of the Service, and case law, any of which may be changed at any time with retroactive effect. This opinion is rendered as of the date hereof and any change in applicable laws or the facts and circumstances surrounding the Transaction and certain related transactions, any transactions occurring after the Rights Offering or any inaccuracy in the statements, facts, assumptions or representations upon which we have relied, may affect the continuing validity of our opinion as set forth herein. We assume no responsibility to inform Seritage Growth of any such change or inaccuracy that may occur or come to our attention.

We are furnishing this opinion solely to Seritage Growth in connection with the Transaction. This opinion may not be relied upon for any other purpose, or by any other person, without our prior written consent.

Very truly yours,

/s/ Wachtell, Lipton, Rosen & Katz

JJS/rbr
[THIS LEASE IS NOT TO BE RECORDED]

MASTER LEASE

by and among

SERITAGE SRC FINANCE LLC

and

SERITAGE KMT FINANCE LLC,

Landlord,

and

KMART OPERATIONS, LLC

and

SEARS OPERATIONS, LLC,

Tenant
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MASTER LEASE

This MASTER LEASE (this “Master Lease”) is entered into as of , 2015, by and among Seritage SRC Finance LLC and Seritage KMT Finance LLC (together with their successors and assigns, collectively, jointly and severally, “Landlord”), and Kmart Operations, LLC (“Kmart Tenant”) and Sears Operations, LLC (“Sears Tenant”) (together with their permitted successors and assigns, collectively, jointly and severally, “Tenant”).

RECITALS

Capitalized terms used in this Master Lease and not otherwise defined herein are defined in Article II hereof.

Landlord is the fee owner of those certain properties identified on Exhibit A attached hereto, as the same may be deleted from time to time as further provided herein (each a “Property”, and collectively, “Properties”). Pursuant to that certain Subscription, Distribution and Purchase and Sale Agreement, dated as of , 2015 (the “Purchase Agreement”), by and between Sears Holdings Corporation and Seritage Growth Properties, Landlord desires to lease the Demised Premises (as defined below), as one economic unit, to Tenant and Tenant desires to lease the Demised Premises, as one economic unit, from Landlord upon the terms set forth in this Master Lease.

1. As described in Section 1.2, below, this Master Lease constitutes one single, unitary, indivisible lease of the entirety of the Demised Premises and not separate or severable leases governed by similar terms. The Demised Premises constitutes one indivisible economic unit, and the Base Rent (as defined below) and all other economic and other material lease provisions have been extensively negotiated and agreed to, based on the understanding and agreement of the parties (and each of the parties has entered into this Master Lease in reliance thereon, and it is a material inducement to each of them), that the demise of all of the Demised Premises to Tenant herein is a single, unitary, indivisible, composite, and inseparable transaction. Except as expressly provided in this Master Lease for specific purposes (and then only to the extent so expressly provided), all provisions of this Master Lease apply equally and uniformly to all of the Demised Premises as one indivisible unit. The parties intend that this Master Lease shall be, and the provisions of this Master Lease shall at all times be construed, interpreted and applied so as to carry out their mutual objective to create a single, unitary, indivisible lease of all of the Demised Premises and, in particular but without limitation, that, for purposes of 11 U.S.C. Section 365, or any successor or replacement thereof or any analogous state law, or any attempt thereunder to assume, reject or assign this Master Lease in whole or in part, this Master Lease is one indivisible and nonseverable lease and executory contract dealing with one legal and economic unit and that this Master Lease must be assumed, rejected or assigned as a whole with respect to all (and only as to all) of the Demised Premises.

2. Exhibit A attached hereto also contains a list of the [224] retail stores currently operated by or under the authority of either (a) Kmart Tenant (such retail stores as may be operated by Kmart Tenant or its Affiliates from time to time, individually, a “Kmart Store,” and collectively, “Kmart Stores”), or (b) Sears Tenant (such retail stores as may be operated by Sears Tenant or its Affiliates from time to time, individually, a “Sears Store,” and collectively,
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
DEMISED PREMISES

1.1 Demised Premises. Upon and subject to the terms and conditions hereinafter set forth, Landlord leases to Tenant and Tenant leases from Landlord all of Landlord’s right, title and interest in and to the following assets and interests as described in Section 1.1 (a)-(c) below (individually and collectively, as the context may require, as one economic unit, the “Demised Premises”), further subject to the terms, covenants and conditions in Section 1.1(d)-(f) below:

(a) (i) Prior to the Multi-Tenant Occupancy Date with respect to each individual Property, all of such Property and (ii) after the Multi-Tenant Occupancy Date, the portion of each individual Property on which the Store and all Leased Improvements (as hereinafter defined) is located (but excluding, in each case, all real property which is (y) subject to a Lease (as hereinafter defined) as of the date hereof or (z) part of the Common Areas (except the Exclusive Store Areas, as hereinafter defined) (subject to Tenant’s rights to use the Common Areas as provided herein), collectively, the “Land”;

(b) (i) all buildings, structures, Fixtures (as hereinafter defined) and other improvements of every kind now or hereafter located on the Land (as the Land may be constituted before or after the Multi-Tenant Occupancy Date, as applicable), including, as applicable, the Store, all free-standing buildings and all other buildings and improvements connected thereto (including all physical entranceways to an adjacent mall to the extent located in the wall of a Store or other such building), together with (ii) prior to the Multi-Tenant Occupancy Date with respect to each individual Property, (A) all alleyways and connecting tunnels, passageways and entranceways to any adjacent malls, shopping centers or other third-party properties, sidewalks, utility pipes, conduits and lines (on-site and off-site to the extent Landlord has any interest in the same), and (B) all parking areas and roadways appurtenant to such buildings and structures (collectively, the “Leased Improvements”), provided, that “Leased Improvements” shall exclude any asset not constituting “real property” as that term is defined in Treasury Regulations § 1.856-3(d);

(c) All equipment, machinery, fixtures, and other items of property, including all components thereof, that (i) are now or hereafter located in, on or used in connection with and permanently affixed to or otherwise incorporated into the Leased Improvements and (ii) qualify as Long-Lived Assets, together with all replacements, modifications, alterations and additions thereto, and other items of real and/or personal property, including all components thereof, now and hereafter located in, on or used in connection with, and permanently affixed to or incorporated into the Leased Improvements, including all HVAC equipment, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air- and water-pollution-control, waste-disposal, air-cooling and air-conditioning.
systems and apparatus, security systems, sprinkler systems and fire- and theft-protection equipment, elevators, escalators and lifts and Environmental Equipment (the “Fixtures”), all of which, to the greatest extent permitted by law, are hereby deemed by the parties hereto to constitute real estate, together with all equipment, parts and supplies used to service, repair, maintain and equip the foregoing and all replacements, modifications, alterations and additions thereto; provided, that the foregoing shall exclude all items included within Tenant’s Property; provided, further, that “Fixtures” shall exclude any asset not constituting “real property” as that term is defined in Treasury Regulations § 1.856-3(d);

(d) The Demised Premises is leased together with and shall be subject to all of the following (individually, an “Encumbrance” and collectively, “Encumbrances”): (i) any mortgage, deed of trust, lien, charge, pledge, improvisation, security interest, defect in title, encroachment, or other matter whatsoever affecting title to any of the Demised Premises or any portion thereof or any interest therein, whether or not of record, (ii) all Operating Agreements identifying and all covenants, conditions, restrictions, declarations, easements, rights of way, rights and obligations under the Operating Agreements and other matters relating to or appertaining to the Property, the Land, the Leased Improvements, the Common Areas or affecting the Demised Premises as of the Commencement Date and such subsequent Operating Agreements, covenants, conditions, restrictions, easements, declarations and other matters as may be agreed to by Landlord (or by Tenant, with Landlord’s prior reasonable consent) so long as the same do not adversely affect the Property and otherwise are consistent with the terms and conditions of this Master Lease, in each case whether or not of record, and (iii) all Permitted Encumbrances, including any matters which would be disclosed by an inspection or accurate survey of the Demised Premises; provided, however, that Landlord shall not from and after the date of this Master Lease without Tenant’s prior written consent further encumber the Demised Premises (other than under or in connection with any Landlord Mortgages and Landlord Mortgage Documents, subject to the provisions of Article XIV) in such a manner as would materially interfere with Tenant’s use, occupancy or operation of the Demised Premises or materially increase Tenant’s obligations or liabilities or materially decrease Tenant’s rights or remedies under this Master Lease. For the avoidance of doubt, Landlord shall have the right in its reasonable discretion exercised in good faith without Tenant’s consent to grant, convey or enter into easements, covenants, restrictions, declarations, rights of way agreements, agreements in lieu of condemnation, street widening or improvement or traffic control or other similar agreements, and agreements in connection with utilities, storm and sanitary sewers drainage and similar agreements, with governmental authorities and/or utility companies and which are for the benefit of the Demised Premises or the Property or Common Areas (together with all further encumbrances which may be consented to by Tenant, “Further Encumbrances”); and

(c) Landlord shall, within a reasonable time after receipt thereof, forward to Tenant a copy of any and all default notices and/or demands received by Landlord pursuant to the Operating Agreements with respect to the Demised Premises and keep Tenant reasonably apprised with respect thereto.

1.2 Single, Unitary, Indivisible Lease. This Master Lease constitutes one single, unitary, indivisible lease of the entirety of the Demised Premises and not separate or severable leases governed by similar terms. The Demised Premises constitutes one indivisible economic unit, and the Base Rent and all other economic and other material lease provisions have been
extensively negotiated and agreed to, based on the understanding and agreement of the parties (and each of the parties has entered into this Master Lease in reliance thereon, and it is a material inducement to each of them), that the demise of all of the Demised Premises to Tenant herein is a single, unitary, indivisible, composite, and inseparable transaction. Except as expressly provided in this Master Lease for specific purposes (and then only to the extent so expressly provided), all provisions of this Master Lease apply equally and uniformly to all of the Demised Premises as one indivisible unit. An Event of Default with respect to any portion of the Demised Premises is an Event of Default as to all of the Demised Premises. The parties intend that this Master Lease shall be, and the provisions of this Master Lease shall at all times be construed, interpreted and applied so as to carry out their mutual objective to create, a single, unitary, indivisible lease of all of the Demised Premises and, in particular but without limitation, that, for purposes of 11 U.S.C. Section 365, or any successor or replacement thereof or any analogous state law, or any attempt thereunder to assume, reject or assign this Master Lease in whole or in part, this Master Lease is a single, unitary, indivisible and nonseverable lease and executory contract dealing with one legal and economic unit and that this Master Lease must be assumed, rejected or assigned as a whole with respect to all (and only as to all) of the Demised Premises. The parties may amend this Master Lease from time to time or terminate this Master Lease as to one or more Demised Premises, or separate and include one or more Demised Premises in a separate lease for technical and/or administrative reasons; but no such termination or separation shall in any way change the single, unitary, indivisible and nonseverable nature of this Master Lease and all of the foregoing provisions of this Section 1.2 shall continue to apply in full force. This Master Lease is separate and distinct from any and all other master leases or leases now or hereafter entered into between Landlord and Tenant or any of their respective Affiliates, and (except with respect to the New Leases, as hereinafter provided) no breach or default under this Master Lease, on the one hand, or any such other master leases or leases, on the other hand, shall constitute a breach or default under such other master lease or leases or this Master Lease, as the case may be.

1.3 Joint and Several Liability. (a) In furtherance of the provisions of Section 1.2, and notwithstanding any provisions herein to the contrary, including the specified obligations of Kmart Tenant with respect to the Kmart Stores and the specified obligations of Sears Tenant with respect to the Sears Stores, respectively, as provided in this Master Lease, it is understood and agreed that each Tenant Party shall be liable and responsible for the payment of all sums payable and for the performance of all obligations performable by one or more of the entities comprising Tenant, and each Tenant Party is and shall be and remain at all times jointly and severally obligated and liable as Tenant for (a) all acts, omissions, failures or refusals of the other Tenant Party to comply with its own respective obligations and the obligations of Tenant under this Master Lease or (b) any breach or default or Event of Default suffered, incurred or created by the other Tenant Party under this Master Lease ((a) and (b) collectively, “Tenant Party Breach”), and Landlord shall be entitled to enforce against Tenant, Kmart Tenant and/or Sears Tenant, individually and collectively, any and all rights and remedies under this Master Lease or otherwise available at law or in equity, including without limitation, as applicable, termination of the Master Lease, recovery of any or all of possession of the Demised Premises, recovery of all Rent and other sums and charges and monetary damages, and all injunctive and other equitable relief, in any order and in any manner as Landlord may elect in its sole discretion, in whole or in part. Without limiting the foregoing:

(1) Each and every Tenant Party Breach shall constitute a breach or default or Event of Default by Tenant under this Master Lease.
(2) Although the separate respective covenants and agreements of Kmart Tenant and Sears Tenant to exclusively and continuously use, occupy and operate the Kmart Stores and the Sears Stores, respectively, may be specifically enforced against the Tenant Party under whose authority such Store is intended to be operated, each and both of such Tenant Parties shall remain jointly and severally liable as Tenant for any Tenant Party Breach with respect to the breach or default of such covenants.

(3) Although as a matter of administrative convenience for the Parties (i) the Base Rent and Additional Charges have been determined and are intended to be assessed separately for accounting purposes with respect to the Kmart Stores and the Sears Stores, and (ii) it is contemplated that Kmart Tenant and Sears Tenant shall as a practical matter discharge their joint and several respective obligations for repair, maintenance, insurance, Alterations, Recapture Separation Work, CAM Expenses, Property Document CAM Expenses, casualty restoration and all other obligations under this Master Lease separately with respect to the Kmart Stores and the Sears Stores, which they respectively occupy, and the Common Areas with respect to each (collectively, "Premises Obligations"), Landlord shall be entitled to demand and collect all of the Base Rent and Additional Charges, and shall be entitled to demand and obtain performance of all the Premises Obligations, from either or both Kmart Tenant and/or Sears Tenant in Landlord’s sole discretion; the foregoing provisions of this Section 1.3(a)(3) shall not limit or vary any provisions of Section 1.2 or this Section 1.3.

(4) Each of Kmart Tenant and Sears Tenant hereby unconditionally and absolutely waives and relinquishes, and covenants not to claim or assert, in all cases for the express benefit of the Landlord, any and all rights of contribution, indemnity, subrogation or recovery (if any) against the other Tenant Party which may otherwise now or hereafter be available to the nonbreaching Tenant Party, of any and all amounts which Landlord may recover or be entitled to recover against one Tenant Party on account of a Tenant Party Breach by the other Tenant Party, until and unless Landlord has fully recovered and received payment of all amounts and full performance of all obligations by Tenant under this Master Lease for the entire Term to which Landlord is entitled (including all contingent obligations, indemnities and liabilities of Tenant).

(b) Each of the entities comprising Landlord shall be jointly and severally liable to Tenant for the performance of all terms, covenants, conditions and obligations of Landlord under this Master Lease.

1.4 Term. The “Term” of this Master Lease is the Initial Term plus all Renewal Terms, to the extent exercised. The initial term of this Master Lease (the “Initial Term”) shall commence on the date hereof (the “Commencement Date”) and end on the last day of the calendar month in which the tenth (10th) anniversary of the Commencement Date occurs, subject to renewal as set forth in Section 1.5.

1.5 Renewal Terms. (a) The Initial Term of this Master Lease may be extended at the option of Tenant for an aggregate of four (4) consecutive renewal terms (“Renewal Terms”)
of five (5) years each (except the fourth (4th) renewal term shall be for four (4) years) with respect to all but not less than all of the
Demised Premises which are then subject to this Master Lease, if: (i) at least three hundred sixty (360) days prior to the end of the
then-current Term, Tenant delivers to Landlord Notice that it desires to exercise its right to extend this Master Lease for one
(1) Renewal Term (a “Renewal Notice”); and (ii) no Event of Default shall have occurred and be continuing on the date Landlord
receives the Renewal Notice (the “Renewal Exercise Date”) and no Event of Default for any nonpayment of Rent shall have
occurred and be continuing on the first day of the applicable Renewal Term. During any such Renewal Term, except as otherwise
specifically provided for herein, all of the terms and conditions of this Master Lease shall remain in full force and effect. Each
Renewal Term shall commence on the expiration date of the current Term (as previously extended) and shall end on the date
immediately preceding the fifth (5th) anniversary thereof. For the avoidance of doubt, no Renewal Notice shall be effective and no
Renewal Term shall commence in the event Landlord exercises any right to terminate this Master Lease by reason of any Event of
Default which has occurred and is continuing after the Renewal Exercise Date.

(b) [Intentionally Omitted]

(c) Tenant may not exercise its option with respect to any Renewal Term unless it has validly exercised its option as to all
immediately preceding Renewal Terms.

(d) Notwithstanding the foregoing, in the event the Base Rent for any Renewal Term is subject to the determination of Fair
Market Rent, Tenant shall have the right to irrevocably revoke any Renewal Notice by Notice to Landlord (“Renewal Revocation
Notice”) given not less than the later of (x) thirty (30) days after the Fair Market Rent (if applicable) has been determined for the
Demised Premises and (y) two hundred seventy (270) days prior to the commencement of the then applicable Renewal Term, if
Tenant does not wish to renew this Master Lease after the determination of Fair Market Rent for such Renewal Term pursuant to
Article XXVI, and in such event, the Master Lease shall terminate on the last day of the then-current Term and Tenant shall not have
any further rights of renewal with respect thereto or with respect to any other Renewal Terms.

(e) Further notwithstanding the foregoing provisions of this Section 1.5 or the provisions of Section 1.6, 1.7, 1.8, or 1.9,
Tenant shall be deemed to automatically revoke the Renewal Notice, and the same shall be automatically revoked without any further
action, with respect to a Nonprofitable Property or any Recapture Space or Additional Recapture Space (but not with respect to the
remainder of the Demised Premises as to which such Renewal Notice shall remain in full force and effect) subject to any Tenant
Termination Election Notice pursuant to Section 1.6(b) given within two hundred seventy (270) days prior to the commencement of
the then applicable Renewal Term or any recapture notice given by Landlord pursuant to Section 1.6, 1.7, 1.8 or 1.9 subsequent to
such Renewal Notice and prior to the commencement of the applicable Renewal Term.
1.6 Nonprofitable Property. (a) Subject to and in accordance with all of the terms of this Section 1.6, Tenant shall have the right to terminate this Master Lease as to any Nonprofitable Property (as hereinafter defined).

(b) Subject to the annual limitation in this Section 1.6(b), if at any time during the Term after the end of the first Lease Year any Store becomes Nonprofitable (a “Nonprofitable Property”), then Tenant shall have the right to terminate this Master Lease with respect to such Nonprofitable Property by giving written Notice to Landlord of such election (a “Tenant Termination Election Notice”), which Notice shall be accompanied by an Officer’s Certificate setting forth financial data reasonably establishing that the Store is a Nonprofitable Property, and shall set forth the date for termination which shall be a regularly scheduled date for the payment of Base Rent (“Tenant Termination Election Date”) not fewer than ninety (90) days nor more than one hundred twenty (120) days after the date of the Tenant Termination Election Notice; provided, however, that the Tenant Termination Election Date shall not occur until the following conditions are met: (i) no Event of Default for any nonpayment of Rent shall have occurred and be continuing, (ii) Tenant has paid the Tenant Termination Fee (as hereinafter defined) not later than thirty (30) days prior to the Tenant Termination Election Date, as well as all other amounts due to Landlord as provided for in subsection (f) below and (iii) Tenant has substantially complied with the provisions of Sections 28.1(a), (b) and (d). The actual date on which all such conditions have been fulfilled and the Master Lease has in fact been terminated as to the Nonprofitable Property is hereafter referred to as the “Nonprofitable Property Termination Date.” Tenant shall remain liable to Landlord for the performance of the obligations set forth in Sections 28.1(c), (e) and (f), which, if not performed prior to the Nonprofitable Property Termination Date, shall be performed as expeditiously as reasonably practicable thereafter, but in no event later than one-hundred eighty (180) days following the Nonprofitable Property Termination Date (subject to reasonable extensions according to the nature of the work to be performed, further subject to additional reasonable extensions for delays due to customary acts or occurrences of force majeure), but in any such case subject to Section 1.11(d). Landlord agrees to provide access to the Nonprofitable Property as reasonably necessary for Tenant to satisfy the obligations set forth in the immediately preceding sentence provided that Landlord has approved the duration and scope of work and Tenant has provided such other information as Landlord may reasonably request. Notwithstanding any provision to the contrary herein, in no event shall Tenant remove any Alterations which are required pursuant to Legal Requirements or Insurance Requirements. For the avoidance of doubt, as further provided in Section 1.6(k), a Nonprofitable Property shall remain a Nonprofitable Property for the purposes of termination of the Master Lease with respect thereto notwithstanding any improvement in such property’s EBITDAR following any Tenant Termination Election Notice and prior to the Nonprofitable Property Termination Date.

(c) In addition to all other amounts payable pursuant to this Section 1.6, not later than thirty (30) days prior to the Nonprofitable Property Termination Date, Tenant shall pay Landlord with respect to each Nonprofitable Property as to which a Tenant Termination Election Notice has been delivered an amount equal to the sum of the Base Rent (including all increases therein) attributable to such Nonprofitable Property (as calculated in accordance with the “SHC Base Rent Adjustment” as specified in and otherwise as provided in Schedule 2 attached to the Side Letter) plus any payments under the Lands’ End Agreements or the Sears Hometown License Agreement relating to the Nonprofitable Property, in each case that would be payable for
a period (a “Calculation Period”) equal to the lesser of (x) one (1) calendar year and (y) the balance of the then-current Term (excluding unexercised renewals), in either case starting from the Nonprofitable Property Termination Date, plus all Property Charges and all other Additional Charges attributable to such Nonprofitable Property, including any Lands’ End Space and Sears Hometown Space, that would be payable during the Calculation Period, which shall be initially determined based on the amount payable during the one (1)-year period immediately preceding the Nonprofitable Property Termination Election Notice, or the most current available records therefor, subject to final adjustment when actual Property Charges and any other Additional Charges attributable to such Nonprofitable Property that are payable during the Calculation Period are known (collectively, “Termination Fee”). When the actual amount of such Property Charges and any other Additional Charges has been finally determined for the applicable Calculation Period, Landlord and Tenant shall promptly adjust such amount and refund or pay any difference to the other.

(d) From and after the Nonprofitable Property Termination Date, the Base Rent schedule attached to the Side Letter as Schedule 2 shall be adjusted downward as provided in Schedule 2 to the Side Letter. Except for such Base Rent adjustment, such termination shall not otherwise affect any other terms or conditions of this Master Lease with respect to the remainder of the Demised Premises, all of which shall remain in full force and effect.

(e) Tenant shall not have the right to exercise any termination rights in any one (1) Lease Year with respect to any Nonprofitable Properties if the effect of such termination would be to reduce the Base Rent (as then in effect from time to time) payable under the Master Lease for the immediately succeeding Lease Year by more than twenty percent (20%) from the Base Rent in effect on the first day of the then-current Lease Year without giving effect to any reduction in Base Rent since such date as a result of the exercise by Landlord of its rights pursuant to Section 1.7, 1.8 or 1.9 hereof (“Nonprofitable Property Limitation”); provided, however, that any such Nonprofitable Properties as to which termination of the Master Lease would exceed the Nonprofitable Property Limitation may be carried over to the next succeeding Lease Year in which such termination would be permitted under the Nonprofitable Property Limitation.

(f) Notwithstanding the foregoing provisions of this Section 1.6, Tenant shall not have the right to exercise any termination right with respect to any Nonprofitable Property if the same would constitute a breach or default under any Encumbrances; provided, however, that for the purpose of this Section 1.6(f) only the Landlord Mortgage shall not constitute an Encumbrance which would prevent the exercise of such termination right.

(g) On or before the date which is 30 days prior to the Tenant Termination Election Date, Tenant shall (A) deliver to Landlord an updated title commitment (“Updated Title Commitment”) with respect to the applicable Nonprofitable Property, and (B) cooperate with Landlord in obtaining (at Landlord’s option) an owner’s and/or lender’s policy of title insurance (or an endorsement reasonably satisfactory to Landlord with respect to any existing Landlord or Landlord Mortgagee title insurance policy) and an endorsement to any existing Landlord Mortgagee title insurance policy (collectively, “Current Title Policy”) from a national title insurer selected by Landlord (“Title Insurer”) in reasonable amount as reasonably determined by Landlord or Landlord Mortgagee, committing to insure or insuring, as the case
may be, Landlord’s fee title (or Landlord’s ground leasehold interest, if any) to the Nonprofitable Property and the lien of the Landlord Mortgage free and clear of all Encumbrances other than (1) Permitted Encumbrances (except for (a) Permitted Encumbrances in subdivisions (i), (ii), (iv) or (v) of the definition thereof (“Excepted Liens”), and (b) Subleases, Landlord’s ground lease, Landlord’s Mortgagee or the Title Insurer in an amount equal to not less than one hundred twenty percent (120%), or such other amount reasonably required by the Title Insurer, of the amount of all such Liens as security for the payment and discharge of such Liens, or Tenant bonds the same in accordance with applicable Legal Requirements (“Security for Excepted Liens”); or (3) any Excepted Liens to the extent Tenant deposits Cash or other security satisfactory to Landlord, Landlord’s Mortgagee or the Title Insurer in an amount equal to not less than one hundred twenty percent (120%), or such other amount reasonably required by the Title Insurer, of the amount of all such Liens as security for the payment and discharge of such Liens, or Tenant bonds the same in accordance with applicable Legal Requirements (“Security for Excepted Liens”); provided, however, that in the event the Security for Excepted Liens is inadequate to satisfy all Excepted Liens (including all reasonable costs and expenses of satisfaction, including reasonable attorneys’ fees), Tenant shall remain liable for such payment and discharge of all Excepted Liens. Upon satisfaction in full of all such Excepted Liens, any remaining balance (if any) of the Security for Excepted Liens shall be returned to Tenant without interest. Without limiting the foregoing, Tenant shall execute, acknowledge and deliver all affidavits and other documentation which the Title Insurer may reasonably require from Tenant in accordance with the Title Insurer’s customary practice.

(h) Tenant hereby agrees to pay, without duplication, all reasonable, documented out-of-pocket expenses of Landlord and Landlord Mortgagee (or any of their respective Affiliates) in connection with any actions taken pursuant to this Section 1.6, including, without limitation, reasonable costs incurred by Landlord or Landlord Mortgagee of the following nature: audits; travel; accounting services; environmental and engineering reports (limited to one consultant); property evaluations (limited to one consultant); Updated Title Commitment and all title reports and fees and expenses of Title Insurer (other than the title premiums (including endorsements) for the Current Title Policy); surveys; preparation, negotiation, execution and delivery of documents; attorneys’ fees and expenses of Landlord and Landlord Mortgagee; transfer, transfer gains, intangibles and other recording taxes; title insurance; and any amendment to any memorandum of lease, lease termination agreement, mortgage amendments and other documents reasonably requested by Landlord, any Landlord Mortgagee or the Title Insurer (and Tenant agrees to promptly execute, acknowledge and deliver the same), and document recordings and filings and fees and taxes in accordance therewith, but expressly excluding all costs and expenses of reletting or future development of such Nonprofitable Property (collectively, “Transaction Expenses”), provided that such Transaction Expenses shall not exceed $10,000 with respect to any individual Demised Premises.

(i) On or before the Tenant Termination Election Date if required by Landlord, Tenant shall cause each Lease Guarantor to execute, acknowledge and deliver to Landlord a Guaranty Amendment with respect to the remainder of the Demised Premises.

(j) After receipt of the Tenant Termination Election Notice and the Termination Fee, and subject to satisfaction of all conditions in this Section 1.6, then upon the Nonprofitable Property Termination Date, this Master Lease shall terminate as aforesaid with respect to the Nonprofitable Property only, and Tenant and Lease Guarantor shall be released
from all further liabilities with respect to the Nonprofitable Property only, which first arise or accrue after the Nonprofitable Property Termination Date, subject to all obligations of Tenant and Lease Guarantor which survive expiration and termination of the Master Lease.

(k) For the avoidance of doubt, if the Master Lease cannot be terminated with respect to any Nonprofitable Property in any Lease Year solely because of the application of the Nonprofitable Property Limitation, such Nonprofitable Property shall remain a Nonprofitable Property and shall continue to qualify as a Nonprofitable Property for purposes of future termination (regardless of future Store operations and without any updating or further certification of the original financial data or any subsequent data establishing its qualification as a Nonprofitable Property), and shall be entitled to the benefit of a Master Lease termination in any succeeding Lease Year (subject to the Nonprofitable Property Limitation applicable to such Succeeding Lease Year), such termination to occur (at Tenant’s election) at such time as the Nonprofitable Property Limitation permits such termination upon not less than ninety (90) days’ Notice by Tenant.

1.7 Recapture Space. In addition to and separate from any potential Nonprofitable Property, Tenant acknowledges and agrees that as of the date hereof each Demised Premises contains space within each Store as presently constituted which is, and/or may become, excess for the efficient operation of each Store and that may be recaptured by Landlord in its sole discretion. To optimize the utilization of any excess space, thereby increasing its rental value to Landlord, such space may be severed from this Master Lease on the terms and conditions herein. For the avoidance of doubt, for the purpose of this Section 1.7 the term “Store” shall expressly exclude all Additional Recapture Space. Accordingly, Landlord and Tenant further agree as follows:

(a) With respect to each Demised Premises, subject to the further provisions of this Section 1.7, it is the understanding and intention of the parties that at the election of Landlord the space in each Store may be physically separated into two (2) separate premises consisting of, (i) the space in which the Tenant presently intends to continue to occupy and maintain retail business operations as a Store with a reduced footprint (the aggregate amount thereof, “Tenant Retained Space”), and (ii) the remainder of the space (the “Recapture Space”) which is currently occupied by the respective Store (and which is not subject to any Lease as of the date hereof) and which may be recaptured by Landlord. Subject to the further provisions hereof, the aggregate Recapture Space shall consist generally of approximately fifty percent (50%) of the total Gross Leasable Square Footage of each Store (excluding from this calculation all Additional Recapture Space and all space which is subject to a Lease as of the date hereof), all or a portion of which shall be available for recapture by Landlord over time for its sole and exclusive use and benefit as hereinafter set forth; provided, however, that in no event shall the Tenant Retained Space at any particular Demised Premises comprise less than an aggregate of forty thousand (40,000) square feet of Gross Leasable Square Footage; provided further, however, the Gross Leasable Square Footage of any interior SAC must either be recaptured in its entirety by Landlord, or shall be excluded from the computation of 40,000 square foot minimum; provided further, however, that with respect to Lands’ End Space which is in excess of approximately twelve thousand (12,000) Gross Leasable Square Footage in any one (1) Demised Premises, such Gross Leasable Square Footage will be included in the calculation of (and may potentially reduce) the amount of the Recapture Space. By way of example only: (i) if Tenant is presently operating in eighty percent (80%) of the space in a Sears
Store (excluding any Additional Recapture Space) and twenty percent (20%) of the space is subject to a Lease as of the date hereof, the aggregate amount of Recapture Space shall consist of approximately forty percent (40%) of the space in the Sears Store (subject to the forty thousand (40,000) square-foot minimum for the Tenant Retained Space); and (ii) if a Sears Store contains one hundred thousand (100,000) Gross Leasable Square Footage and there is a Lands’ End Space of twenty thousand (20,000) Gross Leasable Square Footage, Landlord can recapture up to forty thousand (40,000) Gross Leasable Square Footage (50% of 80,000 Gross Leasable Square Footage).

(b) It is the understanding and intention of the parties that the following general principles shall govern such separation and recapture: taking into account all separations and divisions previously made in connection with all Leases as of the date of this Master Lease, the separation and division of any Store shall be accomplished such that the Tenant Retained Space as constituted from time to time, shall (i) be reasonably functional for continued use by the Kmart Tenant or Sears Tenant, as applicable, for retail operations as such operations were constituted immediately prior to the separation and recapture (excluding any occupancy or operations under any Subleases in the Tenant Retained Space); (ii) substantially comparable in size, location and utility, including exterior or mall access, windows, frontage and loading docks, and not materially disadvantaged, in comparison with the Recapture Space (for the avoidance of doubt, if Landlord recaptures portions of the Recapture Space in a series of multiple recaptures, each recapture shall result in the Tenant Retained Space from time to time having the foregoing attributes); (iii) contain or have access to certain Exclusive Store Areas which shall be designated as Common Areas on the Final Recapture Plans, which (A) are reasonably necessary or useful for the commercially viable use, operation and occupancy of the Recapture Space and the Tenant Retained Space, and (B) will not materially interfere with Tenant’s continued use and operation of the Tenant Retained Space; (iv) comply with all Legal Requirements; (v) reasonably accommodate Tenant’s needs with respect to the preparations for and implementation of Tenant’s relocation in the Tenant Retained Space; including without limitation minimization to the extent commercially reasonably practicable of disruption to Tenant’s retail operations (including with respect to multiple recaptures by Landlord of portions of the Recapture Space); and (vi) are physically separate and secure from Landlord’s or any third-party tenant’s operations, other than shared Exclusive Store Areas (“Division Principles”). Consistent with the Division Principles and subject to the further provisions of this Section 1.7, the Parties agree to work together cooperatively and in good faith to minimize to the extent commercially reasonable the costs of the Recapture Separation Work, including the cost of relocating Tenant, Lands’ End, Sears Hometown and Tenant’s occupants under the Subleases in a commercially reasonable manner.

(c) The parties have attached as Schedule 1.7(c) to the Side Letter a set of initial, incomplete, preliminary conceptual and schematic plans (“Preliminary Recapture Plans”) for each of the Stores (except for the 100% Recapture Property) which roughly outline the Recapture Space and the Tenant Retained Space, which shall be completed and further developed and refined by the Parties in accordance with the Division Principles within ninety (90) days after the Commencement Date; provided, however, that due to the particular circumstances and requirements of the individual spaces as generally shown thereon, including configurations with respect to common areas and adjacent malls, it is understood and agreed that

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the Preliminary Recapture Plans will require further notes, annotations and changes, including without limitation those which solve for particular issues of sharing window space/frontage, access, loading docks and the like in which there may be slight variations from the approximate fifty percent (50%) recapture concept as provided above. The Parties intend that the Preliminary Recapture Plans shall be subject to written changes from time to time as shall be negotiated reasonably and in good faith by the Parties, including such additional notes, annotations and changes and identification of additional Common Areas which shall be available for the shared use by the Tenant Retained Space (and all third-party Lease improvements), and the Recapture Space, and generally identifying and describing the Recapture Separation Work and promptly upon the execution of this Master Lease the Parties shall continue to work together expeditiously, continuously and in good faith to further develop and refine the Preliminary Recapture Plans and prepare and implement final plans for such physical separations in accordance with such Division Principles with respect to all Stores (such final plans as mutually agreed to in writing by the Parties, the “Final Recapture Plans”). If and to the extent the Parties determine after the Commencement Date that Preliminary Recapture Plans and Final Recapture Plans are necessary for any or all of the 100% Recapture Property, the Parties shall agree on the same in good faith in accordance with the Division Principles. Each Recapture Notice shall contain Landlord’s proposal for further refinements of the Preliminary Recapture Plans (including designation of Exclusive Store Areas as Common Areas), and the configuration, separation and division of the subject Recapture Space and the Tenant Retained Space, and Landlord and Tenant shall meet and confer from time to time as necessary or desirable to discuss Landlord’s proposal (which shall reflect the Parties’ prior discussions to the extent reasonably practicable) and the Parties shall use all good faith efforts to agree on the Final Recapture Plans for such configuration, separation and division as soon as reasonably practicable after the date hereof. Without limiting the foregoing, the work to be performed by Landlord to effectuate the separation and recapture of any Demised Premises pursuant to this Section 1.7 shall include the following:

- Construct the demising wall separating the Recapture Space and the Tenant Retained Space;
- Separate the HVAC and utilities so that the Tenant Retained Space operates on existing stand-alone facilities after the separation of such Demised Premises (including separate meters);
- Construct an exterior entrance for the Tenant Retained Space if, and only if, the Tenant Retained Space is left without an exterior entrance as a result of the layout/design of the separation, subject to full compliance with ADA and all other Legal Requirements, or as required by Subleases existing as of the Commencement Date;
- Construct new vertical transportation for the Tenant Retained Space if, and only if, the Tenant Retained Space is located on two (2) floors and is left without any vertical transportation as a result of the layout/design of the separation, subject to full compliance with ADA and all other Legal Requirements;
• Construct new restrooms for the Tenant Retained Space if, and only if, the Tenant Retained Space is left without any restrooms (or insufficient restrooms to satisfy municipal code requirements) as a result of the layout/design of the Recapture Separation Work, subject to full compliance with ADA and all other Legal Requirements; and

• Perform asbestos and other environmental remediation directly caused by the Recapture Separation Work, except to the extent expressly provided on Schedule 20.3.

Notwithstanding the foregoing, Landlord shall have no obligation to “modernize” or otherwise to do any work in connection with the Tenant Retained Space to a higher standard than the standard of the improvements and finish work in the interior of the Retained Space existing as of the Commencement Date (including with respect to HVAC and utilities), subject to any Upgrades requested by Tenant as provided below at Tenant’s sole cost and expense; provided, however, that all entrances, exits and exterior facades, treatments, signage and windows for the Tenant Retained Space and Recapture Space shall be harmonious in style, and consistent in general treatment and overall aesthetics.

(d) Landlord shall have the right in its sole discretion, at any time and from time to time upon not less than one hundred eighty (180) days’ Notice to Tenant (the “Recapture Notice,” a form of which is attached hereto as Schedule 1.7(d), which shall include a copy of the title report referred to below), subject to the further provisions of Section 1.7(j)(vi) to terminate this Master Lease with respect to the whole of the Recapture Space with respect to a particular Demised Premises or any portion thereof, on a Property by Property basis as identified in the Recapture Notice, on the earlier of (i) the date (“Proposed Recapture Date”) set forth in the Recapture Notice and (ii) the date (“Tenant Recapture Termination Date”) set forth in a Notice from Tenant after receipt of the Recapture Notice (“Tenant Recapture Termination Notice”) given not later than sixty (60) days after receipt of the Recapture Notice, which Tenant Recapture Termination Date shall be not less than ninety (90) days after receipt of the Recapture Notice. The date for the conveyance of the Recapture Space and the termination of the Master Lease with respect thereto shall occur on the earlier of (A) the Proposed Recapture Date, and (B) any Tenant Recapture Termination Date, and is referred to as the “Actual Recapture Date.” On or before the Actual Recapture Date, Tenant shall have substantially complied with the provisions of Sections 28.1(a), (b) and (d). Tenant shall remain liable to Landlord for the performance of all unperformed obligations set forth in Article XVIII, which shall be performed as expeditiously as possible following the Actual Recapture Date, but in no event later than one hundred eighty (180) days following the Actual Recapture Date (subject to reasonable extensions according to the nature of the work to be performed, further subject to additional reasonable extensions for delays due to customary acts or occurrences of force majeure). Landlord agrees to provide access to the Recapture Space as reasonably necessary for Tenant to satisfy the obligations set forth in the immediately preceding sentence provided that Landlord has approved the duration and scope of Tenant’s work and Tenant has provided such other information as Landlord may reasonably request. Tenant shall avoid any interference with the Recapture Separation Work when accessing the Recapture Space following the Actual Recapture Date in accordance with this subsection (d). Landlord shall, at its sole cost and expense, provide removable, temporary partitions or screens between the Tenant Retained Space and the
Recapture Space during the performance of the Recapture Separation Work. Notwithstanding any provision to the contrary herein, Landlord shall not have the right to recapture all or substantially all of the Recapture Space at more than fifty (50) of the individual Demised Premises in any one (1) Lease Year. In no event shall Landlord remove any Alterations which are required pursuant to Legal Requirements or Insurance Requirements.

(e) Landlord shall order a title report, at Tenant’s sole cost and expense, with respect to the Property in question from the Title Insurer which confirms that the Property is, and Tenant shall convey the Recapture Space, on the Actual Recapture Date, free and clear of all Encumbrances, in the same manner and subject to the requirements as set forth in Section 1.6(g) for the clearance of title with respect to a Nonprofitable Property. Landlord shall provide a copy of the title report to Tenant with the Recapture Notice, and Tenant shall reimburse Landlord for the cost of such title report within fifteen (15) days of receipt of an invoice from Landlord therefor.

(f) Tenant shall execute, acknowledge and deliver (without cost or expense to Landlord, other than Tenant’s reasonable, documented out-of-pocket expenses, including reasonable attorneys’ fees and expenses) to Landlord all instruments in recordable form (including assignments, bills of sale, memoranda of termination of lease and quitclaim deeds) as may be reasonably required (and prepared) by Landlord or such Title Insurer to confirm such termination of the Master Lease with respect to, and Landlord’s title to, the Recapture Space and all Leased Improvements and Fixtures comprising the same and all reasonable requests with respect to any Landlord Mortgage. Except by reason of Tenant’s Acts, and subject to Tenant’s obligations pursuant to Section 1.7(e), and further subject to the provisions hereof with respect to the Recapture Separation Work, Landlord shall reimburse Tenant for its reasonable, documented out-of-pocket costs and expenses (including reasonable attorneys’ fees and expenses) with respect to the actions required to be taken by Tenant pursuant to this Section 1.7 (other than as provided in Section 1.7(e)).

(g) At Landlord’s request and at its expense, Tenant agrees to reasonably cooperate with Landlord in obtaining a Current Title Policy (including with respect to any Landlord Mortgage) with respect to the Recapture Space, including executing, acknowledging and delivering such leasehold affidavits and documents as any Title Insurer may reasonably request. Except for Tenant’s Obligation in Section 1.7(e), the cost of all Transaction Expenses shall be borne by Landlord.

(h) Subject to the further provisions hereof, on the Actual Recapture Date, the Recapture Space with respect to the applicable Store shall automatically be severed and separated from this Master Lease and this Master Lease shall automatically terminate with respect thereto as if the Actual Recapture Date were the date set forth for the expiration of the Term as to such space, without otherwise affecting any other terms and conditions of this Master Lease with respect to the remainder of the Demised Premises, all of which shall remain in full force and effect, and Tenant and Lease Guarantor shall be released from all further liabilities with respect to the Recapture Space only, which first arise or accrue after the Actual Recapture Date subject to all obligations of Tenant which survive expiration or termination of the Master Lease; provided, however, that from and after the Actual Recapture Date with respect to any Recapture Space, the Base Rent shall be adjusted downward in accordance with the “SHC Base
Rent Adjustment” as specified in and otherwise as provided in Schedule 2 to the Side Letter, and all other charges shall be adjusted downward in accordance with, and Tenant shall pay only, Tenant’s Proportionate Share of all Property Charges, in accordance with the Recapture Notice (subject to and provided that, pending resolution of any Tenant’s disagreement (if any) with respect thereto as provided in Sections 1.7(i)(vi) and 1.7(i)(vii).

(i) On or before the Actual Recapture Date, if requested by Landlord, Tenant shall cause Lease Guarantors to execute, acknowledge and deliver to Landlord a Guaranty Amendment with respect to the remainder of the Demised Premises.

(j) From and after the date hereof and as may be required from time to time, and continuing after any Recapture Notice as may be required, Tenant and Landlord shall continue to cooperate in good faith to agree on, and to implement as soon as practicable thereafter, plans, specifications, processes and agreements (including applications for all required permits) to physically separate and divide the Recapture Space from the Tenant Retained Space, including separate entrances, exits and loading docks as Landlord or Tenant may reasonably require (“Recapture Separation Work”), and providing for (A) easements and other agreements for ingress, egress and access which are useful or necessary between said spaces, and the spaces occupied pursuant to the Leases, (B) easements and other agreements for sharing building services and facilities, building service equipment, mechanical rooms, stockrooms, elevators, escalators and other Fixtures, as appropriate, including all Exclusive Store Areas which are included in Common Areas, and (C) other joint arrangements as necessary or desirable in the reasonable and good faith judgment of the Parties to ensure the harmonious operation of the Tenant Retained Space and the Recapture Space, and all space occupied pursuant to the Leases, all in accordance with the Division Principles.

(i) Landlord shall select, in full consultation with Tenant, all architects, engineers, contractors and vendors (collectively, “Approved Vendors”) for, and shall bear all costs and expenses of, all of the foregoing and all other costs and expenses of the Recapture Separation Work, including without limitation (A) compliance with all Legal Requirements (including ADA and all new requirements of building, fire and other codes which may become applicable to any previously “grandfathered” work of construction in the Demised Premises), (B) customary insurance and all costs of asbestos remediation (including any disturbance or removal of asbestos containing materials not otherwise requiring remediation but for the work) and other environmental remediation directly caused by the Recapture Separation Work (but expressly excluding all environmental remediation required (I) with respect to Known Environmental Problems or other violations of Environmental Laws which exist on the Commencement Date or at any time during the Term (including those which become known in the course of the work) in the Tenant Retained Space or the Recapture Space, (II) in connection with the Tenant Retained Space which is not directly caused by the Recapture Separation Work, (III) in connection with all other improvements and work unrelated to the Recapture Separation Work, which Tenant performs within the Tenant Retained Space, or (IV) by Tenant’s violation of any Environmental Laws during the Term), and (C) to the extent not paid by Landlord, reimbursement of costs related to Tenant’s direct physical separation and relocation (including relocation of space related to
Subleases and all Lands’ End Space and Sears Hometown Space that are located within the Recapture Space) with respect to the Tenant Retained Space incurred and paid by Tenant after the Recapture Notice. Except as expressly set forth in this Section 1.7, all Recapture Separation Work shall be performed at the sole cost and expense of Landlord;

(ii) All Recapture Separation Work shall be done in a good and workmanlike manner with all new materials and substantially in accordance with the General Requirements and Conditions and Construction Procedures on Schedule 1.7(j)(ii) attached hereto. The Recapture Separation Work shall include installation of a new meter or meters with respect to Utility Charges for the Recapture Space.

(iii) Notwithstanding anything contained herein to the contrary, if, and to the extent that, Tenant elects to include, in the Tenant Retained Space, as part of the Recapture Separation Work, certain improvements or upgrades to Tenant’s existing Leased Improvements or Fixtures to be retained in the Tenant Retained Space (“Upgrades”), Landlord shall include such Upgrades in the Recapture Separation Work and Tenant shall be solely responsible to pay all extra or increased costs and expenses directly incurred or fairly allocable to such Upgrades. No Upgrades shall include any structural changes or Alterations without Landlord’s consent in Landlord’s sole discretion.

(iv) All Exclusive Store Areas which become a part of the Common Areas shall be used on a nonexclusive basis in common by Tenant and its Related Users (as hereinafter defined), on the one hand, and Landlord and its Related Users, on the other hand, in a manner so as not to materially interfere with, the use, occupancy or business of each other group of Related Users.

(v) At Landlord’s request, all Recapture Separation Work shall be scheduled and coordinated with the work of Landlord and/or any of its tenants in or with respect to the Recapture Space or under the Leases (and Tenant agrees to reasonably cooperate therein). All Recapture Separation Work shall be performed in a manner so as to minimize, to the extent reasonably practicable, disruption to the business and activities in all spaces affected thereby. Within a reasonable time of Landlord’s request after any Actual Recapture Date, Tenant shall assign to Landlord all of Tenant’s right, title and interest (if any), without warranty or representation, in and to all warranties, guaranties, permits, plans and specifications in Tenant’s possession at the time of such request, which relate to all Alterations or other work performed by Tenant from and after the Commencement Date in the Recapture Space; provided, however, that if such Alterations or other work also relate to any Retained Space, Tenant shall retain all nonexclusive rights of use in all such plans and specifications, and the Parties shall cooperate in good faith to bifurcate such warranties, guaranties and permits to the maximum extent feasible, or otherwise ensure that both Parties have the full benefit of such warranties, guaranties and permits to their respective spaces.
(vi) Landlord shall set forth in the Recapture Notice: (a) a description of the Tenant Retained Space, (b) the new annual Base Rent, the new Tenant’s Proportionate Share of all Property Charges, and the new monthly Installment Expenses payable by Tenant with respect to the applicable modified Demised Premises, (c) a revised Schedule 2 to the Side Letter reflecting the applicable adjustments for the applicable modified Demised Premises, and (d) a site plan showing the applicable modified Tenant Retained Space and Recapture Space. If Tenant disagrees with any of the foregoing items in Landlord’s Recapture Notice, Tenant shall send Landlord a Notice within thirty (30) days of receipt of Landlord’s Recapture Notice setting forth the nature of Tenant’s disagreement in reasonable detail, and thereafter, the Parties shall confer in good faith and mutually agree on all such items and a written statement thereof. Within thirty (30) days after the Actual Recapture Date, the Parties shall confirm the same in writing.

(vii) All disputes and disagreements between the Parties arising in connection with this Section 1.7 (including Section 1.7(j)(vi)) shall be resolved in accordance with the alternative dispute resolution provisions in accordance with Article XXIX, provided, however, that if Landlord and Tenant fail to agree on any Final Recapture Plans and the dispute is submitted for resolution under Article XXIX, then Landlord shall be entitled to proceed with a proposed recapture in accordance with the Preliminary Recapture Plans (as last modified by mutual agreement of the Parties) so long as the Conciliator or arbitrator, as the case may be, determines that they conform to, and Landlord implements the same in accordance with, the Division Principles.

(k) Landlord shall not pay any additional fee, compensation or consideration to Tenant for the right to exercise any rights to recapture any Recapture Space, the consideration therefor having been fully reflected in the Rent and other terms and conditions of this Master Lease and the purchase price for the Demised Premises paid by Landlord pursuant to the Purchase Agreement.

(l) Notwithstanding any provision to the contrary contained in this Master Lease, Landlord shall indemnify, defend and hold harmless Tenant with respect to all claims, expenses (including reasonable attorneys’ fees), damages and losses in connection with Landlord’s performance of all Recapture Separation Work (excluding all consequential damages and damages for lost revenues or profits), other than matters arising out of the negligence or willful misconduct of Tenant or any of Tenant’s Related Users.
1.8 Landlord’s Termination Right as to Additional Recapture Space. In addition to all other rights of termination and/or recapture by Landlord herein, Landlord shall have the separate independent option, in its sole discretion, and from time to time during the Term, exercisable from time to time and at any time, to terminate this Master Lease as to one hundred percent (100%) of any or all Additional Recapture Space as identified by Landlord in the Additional Recapture Space Termination Notice below (“Additional Recapture Space Termination Right”). Landlord shall not pay any additional fee, compensation or consideration to Tenant to enable exercise of any right to recapture any Additional Recapture Space, the consideration therefor having been fully reflected in the Rent and other terms and conditions of this Master Lease and the purchase price for the Demised Premises paid by Landlord pursuant to the Purchase Agreement.

(a) If Landlord elects to exercise any Additional Recapture Space Termination Right, it shall do so by giving irrevocable Notice to Tenant (“Additional Recapture Space Termination Notice,” a form of which is attached hereto as Schedule 1.8(a) which shall include a copy of the title report referred to below) identifying the specific Additional Recapture Space as to which the Master Lease is to be terminated. The date for the conveyance of such Additional Recapture Space and the termination of the Master Lease with respect thereto (the “Actual Additional Recapture Space Termination Date”) shall occur on the earlier of (i) the date which is not less than ninety (90) nor more than one hundred twenty (120) days after the date of the Additional Recapture Space Termination Notice and specified therein (“Proposed Additional Recapture Space Date”) and (ii) the date (“Tenant Additional Recapture Space Termination Date”) set forth in a Notice from Tenant after receipt of the Additional Recapture Space Termination Notice (“Tenant Additional Recapture Space Termination Notice”) given not later than sixty (60) days after receipt of the Additional Recapture Space Termination Notice, which Tenant Additional Recapture Space Termination Date shall be not less than ninety (90) days after receipt of the Additional Recapture Space Termination Notice. On or before the Actual Additional Recapture Space Termination Date, Tenant shall have substantially complied with the provisions of Sections 28.1(a), (b) and (d). Tenant shall remain liable to Landlord for the performance of all unperformed obligations set forth in Article XVIII and any other provisions of this Section 1.8, which shall be performed as expeditiously as reasonably practicable following the Actual Additional Recapture Space Termination Date, but in no event later than one hundred eighty (180) days following the Actual Additional Recapture Space Termination Date. Landlord agrees to provide access to the Additional Recapture Space as reasonably necessary for Tenant to satisfy the obligations set forth in the immediately preceding sentence (subject to reasonable extensions of time according to the nature of the work to be performed, further subject to additional reasonable extensions for delays due to customary acts or occurrences of force majeure) provided, that Landlord has approved the duration and scope of Tenant’s work and Tenant has provided such other information as Landlord may reasonably request. Tenant shall avoid any interference with the Landlord’s work when accessing the Additional Recapture Space following the Actual Additional Recapture Space Termination Date in accordance with this subsection (a). Notwithstanding any provision to the contrary herein, in no event shall Tenant remove any Alterations which are required pursuant to Legal Requirements or Insurance Requirements.

(b) On or before the Actual Additional Recapture Space Termination Date, subject to satisfaction of all conditions in this Section 1.8:

(i) Landlord shall order a title report, at Tenant’s sole cost and expense, with respect to the Property in question from the Title Insurer which confirms that the Property is, and Tenant shall convey the Additional Recapture Space, on the Actual Additional Recapture Space Termination Date, free and clear of all Encumbrances, in the same manner and subject to the requirements as set forth in Section 1.6(g) for the clearance of title with respect to a Nonprofitable Property. Landlord shall provide a copy of the title report to Tenant with the Additional Recapture Space Termination Notice, and Tenant shall reimburse Landlord for the cost of such title report within fifteen (15) days of receipt of an invoice from Landlord therefor.
(ii) Tenant shall execute, acknowledge and deliver (without cost or expense to Landlord, other than Tenant’s reasonable, documented out-of-pocket expenses, including reasonable attorneys’ fees and expenses) all title affidavits and documents reasonably requested by Title Insurer to issue to Landlord and any Landlord Mortgagee a Current Title Policy, including all instruments in recordable form (including assignments, bills of sale, memoranda of termination of lease and quitclaim deeds) as may be requested by Landlord or such Title Insurer, to confirm such termination of the Master Lease and Landlord’s title to the Additional Recapture Space and all Leased Improvements and Fixtures comprising the same. Except for Tenant’s obligations in Section 1.8(b)(i), Landlord shall be responsible for all costs and expenses in connection with the conveyance of the Additional Recapture Space, including those similar to the Transaction Expenses (as and to the extent applicable), and Landlord shall reimburse Tenant for its reasonable documented out-of-pocket costs and expenses (including reasonable attorneys’ fees and expenses) with respect thereto the actions required to be taken by Tenant in this Section 1.8.

(iii) On the Actual Additional Recapture Space Termination Date, upon the conveyance of the Additional Recapture Space to Landlord, the Additional Recapture Space shall automatically be severed and separated from this Master Lease, and this Master Lease shall automatically terminate with respect to the Additional Recapture Space, and the Master Lease shall remain unmodified and in full force and effect with respect to the remainder of the Demised Premises; provided, however, that from and after such date, the Base Rent shall be adjusted downward in accordance with the “SHC Base Rent Adjustment” as specified in and otherwise as provided in Schedule 2 to the Side Letter and all Property Charges and other charges shall be adjusted in the same manner as provided in Section 1.7(h). Except for such Base Rent adjustment, such termination shall not otherwise affect any other terms or conditions of this Master Lease with respect to the remainder of the Demised Premises, all of which shall remain in full force and effect, subject to all obligations of Tenant which survive termination of the Master Lease. On the Actual Additional Recapture Space Termination Date, Tenant shall pay all Base Rent and Additional Charges related to the applicable Additional Recapture Space which are due and payable under the Master Lease through the date of such conveyance, and the Parties shall prorate and adjust the same for any amounts which may have been prepaid or underpaid by Tenant, and shall finally adjust any amounts not yet known or ascertainable promptly after they have been determined; provided that, on the first Payment Date after the Actual Recapture Date and thereafter until and unless Tenant receives a Landlord’s Notice in Section 1.8(b)(vi), Tenant shall make the foregoing payments in an amount reasonably calculated by Tenant in good faith in accordance with the provisions of this Master Lease; provided further that, at such time as Landlord provides such Notice, Tenant shall pay in accordance with such Notice pending resolution of any disagreement (if any) with respect thereto as provided in Sections 1.8(b)(vi) and 1.8(b)(vii).
(iv) Landlord shall be solely responsible for all costs and expenses incurred in the recapture of all Additional Recapture Space, including the recapture and separation of any Appendage SAC from the remainder of the Store, together with all ancillary separation costs and expenses with respect to all facilities as are in place immediately prior to the recapture and separation, including installation of separate meters for utilities which are not currently separately metered (as and to the extent commercially reasonably practicable under the circumstances), and all fiber optics, cables and other equipment and systems which also serve the Stores. Notwithstanding any provision to the contrary contained in this Master Lease, Landlord shall indemnify and hold harmless Tenant with respect to all claims, expenses (including reasonable attorneys’ fees and expenses), damages and losses in connection with Landlord’s performance of all recapture and separation work with respect to the Additional Recapture Space (excluding all consequential damages and damages for lost revenues or profits), other than matters arising out of the negligence or willful misconduct of Tenant or Tenant’s Related Users.

(v) If required by Landlord, Tenant shall cause the Lease Guarantors to execute, acknowledge and deliver to Landlord a Guaranty Amendment with respect to the remainder of the Demised Premises.

(vi) Landlord shall set forth in the Additional Recapture Space Termination Notice: (a) a description of the Tenant Retained Space, (b) the new annual Base Rent and Tenant’s Proportionate Share of all Property Charges, and the new monthly Installment Expenses payable by Tenant with respect to the applicable modified Demised Premises, (c) a revised Schedule 2 to the Side Letter reflecting the applicable adjustments for the applicable modified Demised Premises, and (d) a site plan showing the applicable modified Tenant’s retained space and the Additional Recapture Space. If Tenant disagrees with any of the items in Landlord’s notice, the Parties shall confer in good faith and mutually agree on all such items and a written statement thereof. Within thirty (30) days after the Actual Additional Recapture Space Termination Date, the Parties shall confirm the same in writing.

(vii) All disputes and disagreements between the Parties arising in connection with this Section 1.8 (including Section 1.8(b)(vi)) shall be resolved in accordance with the alternative dispute resolution provisions in accordance with Article XXIX.
1.9 Landlord’s Termination Right as to 100% Recapture Property. Landlord shall have the several independent options, in its sole discretion, and from time to time during the Term, exercisable at any time to buy out Tenant’s entire leasehold interest in and to terminate this Master Lease as to any or all of the Demised Premises which are listed on Schedule 1.8 attached hereto (each, a “100% Recapture Property,” and collectively, the “100% Recapture Properties,” and such right, a “Landlord 100% Recapture Property Termination Right”), as follows:

If Landlord elects to exercise any Landlord 100% Recapture Property Termination Right, it shall do so by giving irrevocable Notice to Tenant (“100% Recapture Property Termination Notice,” which shall include a copy of the title report referred to below) identifying the specific 100% Recapture Property as to which the Master Lease is to be terminated, and at the election of Landlord, may include the Tenant ROFO Notice referred to below. The 100% Recapture Property Termination Notice shall confirm that the entire 100% Recapture Property Termination Fee (as provided below) has been deposited in cash in escrow by Landlord with an escrow agent mutually reasonably acceptable to Landlord and Tenant (“100% Recapture Property Termination Fee Escrow”), which escrow shall provide that such funds shall be released to Tenant automatically on the Actual 100% Property Recapture Termination Date. Such deposit in escrow shall be a condition precedent to the effectiveness of any 100% Recapture Property Termination Notice, which shall otherwise be null and void ab initio.

The date for the conveyance of the applicable Additional Recapture Space and the termination of the Master Lease with respect thereto (the “Actual 100% Property Recapture Termination Date”) shall occur on the earlier of (i) the date which is not less than one hundred twenty (120) nor more than one hundred fifty (150) days after the date of the 100% Recapture Property Termination Notice and specified therein (“Proposed 100% Recapture Property Date”) and (ii) the date (“Tenant 100% Property Recapture Termination Date”) set forth in a Notice from Tenant after receipt of the 100% Recapture Notice (“Tenant 100% Property Recapture Termination Date”) given not later than sixty (60) days after receipt of the 100% Recapture Notice, which Tenant 100% Recapture Property Termination Date shall be not less than (90) days after receipt of the 100% Recapture Notice. On or before the Actual 100% Property Recapture Termination Date, Tenant shall have substantially complied with the provisions of Sections 28.1 (a), (b) and (d). Tenant shall remain liable to Landlord for the performance of all unperformed obligations set forth in Article XXVIII, which shall be performed as expeditiously as reasonably practicable following the Actual 100% Property Recapture Termination Date, but in no event later than one hundred eighty (180) days following the Actual 100% Property Recapture Termination Date (subject to reasonable extensions of time according to the nature of the work to be performed, further subject to additional reasonable extensions for delays due to customary acts or occurrences of Force Majeure). Landlord agrees to provide access to the 100% Recapture Property as reasonably necessary for Tenant to satisfy the obligations set forth in the immediately preceding sentence provided that Landlord has approved the duration and scope of Tenant’s work and Tenant has provided such other information as Landlord may reasonably request. Tenant shall avoid any interference with the Landlord’s work when accessing the 100% Property Recapture following the Actual 100% Property Recapture Termination Date in accordance with this subsection (a). Notwithstanding any provision to the contrary herein, in no event shall Tenant remove any Alterations which are required pursuant to Legal Requirements or Insurance Requirements.
(a) On or before the Actual 100% Property Recapture Termination Date, subject to satisfaction of all conditions in this Section 1.9:

(i) Landlord shall order a title report, at Tenant’s sole cost and expense, with respect to the Property in question from the Title Insurer which confirms that the Property is, and Tenant shall convey the 100% Recapture Property, on the Actual 100% Property Recapture Termination Date, free and clear of all Encumbrances, in the same manner and subject to the requirements as set forth in Section 1.7(h) for the clearance of title with respect to a Nonprofitable Property. Landlord shall provide a copy of the title report to Tenant with the Recapture Space Termination Notice, and Tenant shall reimburse Landlord for the cost of such title report within fifteen (15) days of receipt of an invoice from Landlord therefor. At Landlord’s request and at its expense, Tenant agrees to reasonably cooperate with Landlord in obtaining a Current Title Policy (including with respect to any Landlord Mortgage) with respect to the 100% Recapture Property, including executing, acknowledging and delivering such leasehold affidavits and documents as any Title Insurer may reasonably request. The cost of all Transaction Expenses shall be borne by Landlord.

(ii) Tenant shall execute, acknowledge and deliver (without cost or expense to Landlord, other than Tenant’s reasonable, documented out-of-pocket expenses, including reasonable attorneys’ fees and expenses) all title affidavits and documents reasonably requested by Title Insurer to issue to Landlord and any Landlord Mortgagee a Current Title Policy, including all instruments in recordable form (including assignments, bills of sale, memoranda of termination of lease and quitclaim deeds) as may be requested by Landlord or such Title Insurer, to confirm such termination of the Master Lease and Landlord’s title to the 100% Recapture Property and all Leased Improvements and Fixtures comprising the same. Except for Tenant’s obligations in Section 1.9 (b)(i), Landlord shall be responsible for all costs and expenses in connection with the conveyance of the Additional Recapture Space, including those similar to the Transaction Expenses (as and to the extent applicable), and Landlord shall reimburse Tenant for its reasonable documented out-of-pocket costs and expenses (including reasonable attorneys’ fees and expenses) with respect thereto the actions required to be taken by Tenant in this Section 1.9.

(iii) On the Actual 100% Property Recapture Termination Date, upon the conveyance of the 100% Recapture Property to Landlord, the 100% Recapture Property shall automatically be severed and separated from this Master Lease, and this Master Lease shall automatically terminate with respect to the 100% Recapture Property, and the Master Lease shall remain unmodified and in full force and effect with respect to the remainder of the Demised Premises; provided, however, that from and after such date, the Base Rent shall be adjusted downward in accordance with the “SHC Base Rent Adjustment” specified in and otherwise as provided in Schedule 2 to the Side Letter. Except for such Base Rent adjustment, such termination shall not otherwise affect any other terms or conditions of this Master Lease with respect to the remainder of the Demised Premises all of which
shall remain in full force and effect, subject to all obligations of Tenant which survive termination of the Master Lease. On the Actual 100% Property Recapture Termination Date, Tenant shall pay all Base Rent and Additional Charges related to the applicable 100% Recapture Property which are due and payable under the Master Lease through the date of such conveyance, and the Parties shall prorate and adjust the same for any amounts which may have been prepaid or underpaid by Tenant, and shall finally adjust any amounts not yet known or ascertainable promptly after they have been determined.

(iv) On or before the Actual 100% Property Recapture Termination Date, subject to satisfaction of all conditions in this Section 1.9, Landlord shall pay to Tenant a termination fee (“100% Recapture Property Termination Fee”) with respect to each 100% Recapture Property an amount equal to the greater of (A) the amount specified on Schedule 1.9 to the Side Letter and (B) the product of (x) ten (10), multiplied by (y) the EBITDA of the applicable 100% Recapture Property for the twelve (12) months ending on the last day of the most recently completed fiscal quarter of Tenant’s Parent preceding the 100% Recapture Property Termination Notice attributable to the fifty percent (50%) of space located on the specified 100% Recapture Property which is not part of the Recapture Space (the parties having separately taken into account the right of Landlord to recapture fifty percent (50%) of the space (i.e., the Recapture Space) at each 100% Recapture Property). For the avoidance of doubt, for purposes of this Section 1.9(b)(iv) EBITDA shall not include any rent payable by Lands’ End or Sears Hometown or any other Affiliate of Tenant.

(v) If required by Landlord, Tenant shall cause the Lease Guarantors to execute, acknowledge and deliver to Landlord a Guaranty Amendment with respect to the remainder of the Demised Premises.

(b) In the event of Landlord’s buy-out and subsequent redevelopment in its sole discretion of any 100% Recapture Property which contains retail use, upon Landlord’s election in its sole discretion to offer for lease and market any portion of the 100% Recapture Property for lease for retail use, which comprises a space that is suitable for the operation of a Sears or Kmart store, Landlord shall give Tenant written Notice of such space which will be offered for lease (“Offer Space”) on or prior to the Actual 100% Property Recapture Termination Date, together with an architect’s site plan and rendering in reasonable detail showing the square footage, entrances and exits and all other material elements and features of the Offer Space and the remainder of the development including parking and other common areas (“Rendering”), and together with such Notice, collectively, “Tenant ROFO Notice”), in which event Tenant shall have the option for a period of sixty (60) days following the Tenant ROFO Notice (“Offer Period”) to submit a written offer to lease the Offer Space (“Tenant Offer”). Any Tenant’s Offer shall entitle Tenant to an exclusive negotiating period of thirty (30) days, during which Landlord shall not solicit or consider any other third-party offer for the subject space, so long as the Tenant Offer is made in good faith and generally consistent with market rents at the time of the offer. In considering any Tenant Offer together with any competing offers (after such thirty (30)-day period of exclusivity), Landlord may take into account each offeror’s proposed base rent (equivalent or similar to Base Rent), additional
charges (equivalent or similar to Additional Charges), credit quality, operating experience, tenant mix, intended use and other factors (including prevailing market terms) that are relevant to Landlord in maximizing value at the subject 100% Recapture Property. If Tenant and Landlord do not reach agreement on and execute a lease, or agree on all material terms and conditions for a lease and execute a binding and enforceable term sheet (after using reasonable good faith efforts to do so), within the Offer Period, Landlord shall be free to offer and/or lease the Offer Space or any part thereof on such terms as Landlord may determine and Tenant shall not have any other rights in or to the Offer Space or any part thereof or any other rights in the 100% Recapture Property. Without limiting any other provision of this Section 1.9, Landlord shall have no obligation to redevelop any 100% Recapture Property or to include any retail space therein or to offer or make available for lease in the first instance any retail space (including space suitable for a Kmart or Sears store) in any redeveloped 100% Recapture Property.

1.10 Reservation of Rights Concerning Leases and Recapture Space. Subject to the provisions of this Master Lease, the Parties acknowledge and agree that Landlord (for itself and its authorized agents, representatives, vendors and invitees and guests and tenants, as applicable) retains and reserves all rights of access, ingress and egress in, on, over and through the Demised Premises for all reasonable purposes except in case of emergencies upon reasonable notice during normal business hours in connection with, and to the fullest extent now or hereafter provided or contemplated pursuant to the terms and conditions of, (i) the existing Leases, or as may be reasonably useful or necessary for the use and occupancy of the premises under such Leases, (ii) the effectuation or evaluation of any potential recapture or property termination right provided in accordance with terms of this Master Lease (both before and following delivery of applicable notices relating thereto) and (iii) the exercise of all rights and remedies of Landlord under this Master Lease, including, without limitation, the following:

(a) From and after the Multi-Tenant Occupancy Date only, access, ingress and egress to and from each Store during normal business hours, all including any adjacent shopping center, mall, or other third-party property, parking areas or other Common Areas;

(b) From and after the Multi-Tenant Occupancy Date only, shared utilization of restrooms, stairwells, escalators and elevators, stockrooms, storage rooms, loading docks and other similar areas and facilities, according to the terms of any Leases, and as may be established by mutual agreement between Landlord and Tenant in connection with any Recapture Space and the Exclusive Store Areas, and any areas occupied under the Leases;

(c) At all times, upon reasonable prior notice to Tenant (except in the case of an emergency), maintaining, repairing, altering, servicing, adjusting and/or installing mechanical rooms, boiler rooms, telecommunications, HVAC, plumbing, electrical and other facilities and building service equipment, including all pipes, conduits, wires and other ancillary items in connection with Landlord’s right to perform maintenance and repairs as provided elsewhere in this Master Lease;

(d) From and after the Multi-Tenant Occupancy Date only, nonexclusive use, in common with Tenant, its authorized contractors, vendors, invitees and licensees of all parking areas and other Common Areas and public facilities;
(e) At all reasonable times upon reasonable notice during normal business hours, as may be necessary to comply with Landlord’s obligations under any Landlord Mortgage Document; and

(f) At all times, general access and right of entry reasonably necessary for or incidental to the exercise of all rights and remedies of Landlord in connection with the foregoing and otherwise under this Master Lease.

Landlord shall have the right to grant any of the foregoing rights to its authorized contractors, tenants, vendors, invitees and licensees. Notwithstanding the foregoing, all rights of access and entry shall be exercised reasonably and in such a manner as not to materially interfere with Tenant’s business operations at the Demised Premises or Tenant’s use of any Common Areas in connection with its business.

1.11 General Provisions. (a) Notwithstanding any provision contained herein to the contrary, with respect to any Nonprofitable Property, Recapture Space, 100% Recapture Property, Additional Recapture Space or Removal Property as to which this Master Lease is terminated, or any Demised Premises as to which the Master Lease is terminated by reason of casualty or condemnation in accordance with Article XII (“Article XII Terminated Space”) (and, collectively, “Terminated Space”), from and after the respective date of termination of the Master Lease with respect thereto, the respective Terminated Space shall no longer be a part of the Demised Premises for any and all purposes under this Master Lease and Tenant and Lease Guarantors shall be released from any and all further obligations to pay Base Rent and from all further obligations and liabilities under this Master Lease with respect to the Terminated Space which first arise or accrue from and after such termination; provided, however, that Tenant and Lease Guarantors shall remain obligated to pay and/or perform all such other amounts and obligations which are to be paid and/or performed upon the surrender or termination of the Master Lease with respect to the Terminated Space, or which survive the expiration or termination of this Master Lease.

(b) From and after the conveyance or termination of this Master Lease with respect to the Recapture Space and/or the Additional Recapture Space, as applicable, Tenant shall pay Tenant’s Proportionate Share of all Property Charges, and the Base Rent pursuant to Schedule 2 to the Side Letter, as adjusted pursuant to Section 1.7(b), Section 1.8(b)(iii), and/or Section 1.9(b)(iii), as applicable, with respect to the Tenant Retained Space.

(c) Notwithstanding any provision to the contrary contained in Section 1.6, 1.7, 1.8 or 1.9, if there shall be an Event of Default which is continuing either on the date of any Tenant Termination Election Date, any Proposed Recapture Date, any Proposed Additional Recapture Date, any Proposed 100% Recapture Property Termination Date, Nonprofitable Property Termination Date, Actual Recapture Date, Actual Additional Recapture Date, or Actual 100% Property Recapture Termination Date, or any date of any Tenant election to terminate or the actual date of termination with respect to any Article XII Terminated Space, Landlord may in its sole discretion waive any such Event of Default (and any or all other conditions to the Master Lease termination with respect thereto, as the case may be, of Section 1.6, 1.7, 1.8, 1.9 or Article III which may be dependent on or impacted by such Event of Default) solely with respect to the termination of the Master Lease as to the
(d) Notwithstanding any provision of this Master Lease to the contrary, if Tenant does not vacate any (x) Recapture Space on or before the 30th calendar day following the Actual Recapture Date, (y) Additional Recapture Space on or before the 30th calendar day following the Actual Additional Recapture Space Termination Date, or (z) 100% Recapture Property on or before the 30th calendar day following the Actual 100% Property Recapture Termination Date, then in any such case, until such time as Tenant vacates the applicable Recapture Space, Additional Recapture Space or 100% Recapture Property, as the case may be (the “Holdover Period”):

(i) Tenant shall continue to be fully responsible for the faithful performance of all of the terms set forth in this Master Lease, except Tenant shall pay as additional rent on the first day of each month during the Holdover Period for use and occupancy of the applicable Recapture Space, Additional Recapture Space and/or 100% Recapture Property (“Holdover Space”) an amount equal to the sum of (x) one and three quarters (1.75) times the Base Rent that would otherwise then be applicable to the Holdover Space plus (y) Tenant’s Proportionate Share of all Property Charges applicable to the Holdover Space for such period as if this Master Lease had not been terminated or expired with respect to the Holdover Space.

(ii) Tenant shall occupy the Holdover Space during the Holdover Period in its “as is” condition. Nothing contained in this Master Lease shall be construed as a consent by Landlord to the possession by Tenant of the Holdover Space during the Holdover Period, and Landlord, upon commencement of the Holdover Period, shall be entitled to the benefits of all legal remedies that may now be in force or may hereafter be enacted relating to immediate repossession of the Holdover Space by Landlord.
1.12 Separation of Leases. (a) From time to time, at the election of Landlord in its sole discretion, so long as there shall be no material adverse effect on Tenant, Landlord may remove one or more Properties (individually, “Removal Property,” and collectively, “Removal Properties”) from this Master Lease and place one (1) or more Removal Properties in one (1) or more separate leases with Tenant on terms and conditions substantially similar to, and in any case no less favorable to Tenant than, those set forth in this Master Lease and as otherwise provided in this Section 1.12 (individually, “New Lease,” and collectively, “New Leases”), for technical or administrative reasons or to facilitate the sale, financing or other disposition of such Removal Properties, or for another legitimate business purpose of Landlord, all as determined by Landlord in its sole discretion.

(b) If Landlord elects to so remove any Removal Properties, Landlord shall give Tenant not less than thirty (30) days’ Notice thereof (a “Removal Notice”), and Tenant shall thereafter, within said thirty (30)-day period, execute, acknowledge and deliver to Landlord (or any new owner of the Removal Properties, as designated by Landlord) at no cost or expense to Tenant, one (1) or more New Leases with respect to one (1) or more Removal Properties as determined by Landlord effective as of the date set forth in the Removal Notice (“Removal Date”) for the remaining Term and on substantially the same, and in any case no less favorable to for Tenant than, terms and conditions as this Master Lease, except for appropriate adjustments (including to Exhibits and Schedules), including as follows:

(i) Base Rent. The initial Base Rent for each Removal Property shall be computed in accordance with Schedule 2 to the Side Letter with respect to the property release/recapture amount ascribed to such Removal Property under this Master Lease as of the Removal Date and thereafter shall be increased on the same basis as provided in this Master Lease.

(ii) Tenant’s Proportionate Share. Tenant’s Proportionate Share with respect to each Removal Property shall continue to be calculated in the same manner with respect to such Removal Property as provided in this Master Lease.

(iii) Liabilities and Obligations. The New Lease shall provide that each tenant and each landlord shall be responsible for the payment, performance and satisfaction of all of the duties, obligations and liabilities of Tenant and Landlord, respectively, arising under this Master Lease, insofar as they relate to the Removal Property, that were not paid, performed and satisfied in full prior to the commencement date of the New Lease (and Tenant and Landlord under this Master Lease shall each also remain responsible for the payment, performance and satisfaction of the aforesaid duties, obligations and liabilities not paid, performed and satisfied in full prior to the commencement date of such New Lease), and shall further provide that the Tenant thereunder shall not be responsible for the payment, performance or satisfaction of any duties, obligations and liabilities of Tenant under this Master Lease first arising after the Removal Date.

(iv) Deletion of Provisions. At the election of Landlord, any one or more of the provisions of the New Lease pertaining to the REIT status of any
member of Landlord (or any Affiliate of any member of Landlord) shall be deleted. In addition, Landlord may delete and eliminate from such New Lease such provisions herein as it elects, provided such deletion and elimination do not in any material respect affect any of the obligations, liabilities, rights or remedies of Tenant under such New Lease with respect to the affected Removal Property.

(v) **Amendments to this Lease.** Upon execution of such New Lease, and effective as of the Property Removal Date, this Master Lease shall be deemed to be amended as follows: (i) the Removal Properties shall be excluded from the Demised Premises hereunder; (ii) Base Rent hereunder shall be reduced by the amount of the Base Rent allocable to the Removal Properties; and (iii) **Schedule 2** attached to the Side Letter shall be modified so as to remove the Removal Properties. Such amendments shall occur automatically and without the necessity of any further action by Landlord or Tenant, but, at Landlord’s election, the same shall be reflected in a formal amendment to this Master Lease, which amendment shall be promptly executed by Tenant.

(vi) **Other Undertakings.** Tenant shall take such actions and execute and deliver such documents, including, without limitation, the New Lease and new or amended Memorandum(s) of Lease and, if requested by Landlord, an amendment to this Master Lease, as are reasonably necessary and appropriate to effectuate fully the provisions and intent of this **Section 1.12(b)**, and as otherwise are appropriate or as Landlord or any Title Insurer may reasonably request to evidence such removal and new leasing of the Removal Properties, including memoranda of lease with respect to such New Leases and amendments of all existing memoranda of lease with respect to this Master Lease.

(c) Without limitation of the foregoing, all New Leases shall remain cross-defaulted with this Master Lease unless otherwise required by Landlord; **provided, however,** that if the landlord under any New Lease shall not be Landlord or an Affiliate of Landlord, any such New Lease shall not be or remain cross-defaulted with this Master Lease. In all cases, whether or not cross-defaulted with this Master Lease, so long as any Landlord Mortgage shall apply to any Removal Property or New Lease, such Removal Property and/or New Lease shall continue to be subject either to the existing SNDA with respect to the Master Lease, or subject to a new SNDA to be delivered by Landlord Mortgagee, Landlord and Tenant on substantially the same terms and conditions as the existing SNDA (having regard to the terms and conditions of the New Lease).

(d) To the extent requested by Landlord, Tenant shall cause Lease Guarantors to execute, acknowledge and deliver a separate New Lease Guaranty with respect to each New Lease and a Guaranty Amendment with respect to this Master Lease the remainder of the Demised Premises.

(e) For the avoidance of doubt, all costs and expenses relating to the New Leases (including reasonable attorneys’ fees and other reasonable, documented out-of-pocket costs incurred by Tenant or Lease Guarantor for outside counsel, if any) shall be borne by Landlord, and not Tenant.
1.13 **Self-Help.** Notwithstanding that Landlord may be the direct party to any or all Operating Agreements and ground leases, before the Multi-Tenant Occupancy Date, Tenant shall continue to be the responsible party for Landlord’s obligations under all Operating Agreements and any ground lease (where applicable) and Tenant shall comply with all non-monetary terms thereof which are applicable to the Demised Premises and shall pay Tenant’s Proportionate Share of expenses (as set forth in **Schedule 2** to the Side Letter) with respect to such Operating Agreements. Landlord shall use all commercially reasonable efforts to comply or cause the compliance with all terms of the Operating Agreements to the extent applicable to the Common Areas and any portions of the Property leased to third parties (“**Applicable Terms**”). In the event Landlord defaults in the performance of any of the Applicable Terms or fails to enforce the obligations of any other obligee under any Operating Agreement with respect to the Applicable Terms and such default or failure would reasonably be expected to result in a material adverse effect on Tenant or any individual Demised Premises, Tenant may, but shall not be obligated to, after thirty (30) days’ Notice to Landlord of Tenant’s intention to take such specified action (except in the event of an emergency, defined as a condition presenting an imminent threat of harm to persons and property, in which case no notice shall be required), cure any default by Landlord under the Operating Agreements with respect to the Applicable Terms and/or enforce, in its own name, the obligations of any other obligor under the Operating Agreements with respect to Applicable Terms (to the extent Landlord would be permitted to do so, subject to the terms and conditions under the Operating Agreements with respect to Applicable Terms). Notwithstanding anything herein to the contrary (except in the event of an emergency), Tenant’s foregoing right to exercise self-help with respect to the obligations of any Person under the Operating Agreements with respect to the Applicable Terms shall be tolled during such time that Landlord is using commercially reasonable efforts to enforce such obligations. Landlord shall, within ten (10) Business Days after receipt of Tenant’s demand and supporting documentation in reasonable detail, reimburse Tenant for the reasonable costs incurred by Tenant in performing any of Landlord’s obligations under the Operating Agreements or enforcing the obligations of any Person under any Operating Agreements with respect to the Applicable Terms (including reasonable attorneys’ fees and expenses), as to which Tenant has provided such thirty (30)-day Notice. The foregoing rights of Tenant are referred to as “**Self-Help**”.

**ARTICLE II**

**DEFINITIONS**

2.1 **Definitions.** For all purposes of this Master Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this **Article II** have the meanings assigned to them in this Article and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; (iii) all references in this Master Lease to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this Master Lease; (iv) the word “including” shall have the same meaning as the phrase “including, without limitation,” and other similar phrases; (v) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Master Lease as a whole and not to any particular Article, Section or other subdivision; and (vi) for the calculation of any financial ratios or tests referenced.
in this Master Lease, this Master Lease, regardless of its treatment under GAAP, shall be deemed to be an operating lease and the Rent payable hereunder shall be treated as an operating expense and shall not constitute Indebtedness or interest expense.

“10-Day Period”: As defined in Section 29.1(c).

“100% Recapture Property” or 100% Recapture Properties”: As defined in Section 1.9.

“100% Recapture Property Termination Fee”: As defined in Section 1.9(a)(iv).

“100% Recapture Property termination Fee Escrow”: As defined in Section 1.9.

“100% Recapture Property Termination Notice”: As defined in Section 0.

“12-Month Destruction”: As defined in Section 12.2(a).

“12-Month Destruction Fee”: As defined in Section 12.6.

“AAA”: As defined in Section 29.2(a).

“Actual 100% Property Recapture Termination Date”: As defined in Section 1.9.

“Actual Additional Recapture Space Termination Date”: As defined in Section 1.8(a).

“Actual Recapture Date”: As defined in Section 1.7(d).

“ADA”: The Federal Americans with Disabilities Act (as amended) and similar Legal Requirements with respect to persons with disabilities.

“Additional Charges”: 100% of the amount, or Tenant’s Proportionate Share, as applicable as determined in this Master Lease, of all Property Charges, subject to termination of such payments for future Property Charges with respect to all Terminated Space, as provided herein; and all other amounts, sums, charges, liabilities and obligations which Tenant assumes or agrees to pay or may become liable for under this Master Lease at any time and from time to time, other than Base Rent; provided, however, in no event shall Additional Charges include, nor shall Tenant be responsible to pay, any costs, expenses, fees or charges under or with respect to (a) any mortgage, deed of trust, lien, charge, pledge, hypothecation, security interest, or other matter whatsoever affecting title to any of the Demised Premises or any portion thereof or any interest therein (other than Known Environmental Problems or Retail Operations Claims), whether or not of record which was not in existence on the Commencement Date, or thereafter, which was not a result of Tenant’s Acts or incurred for Tenant’s benefit, (b) any Landlord Mortgage Documents, or (c) any liens, charges or encumbrances suffered or created by Landlord or Landlord’s Related Users (but expressly including Further Encumbrances); and, in the event of any failure on the part of Tenant to pay any of those items (except where such failure is directly due to the acts or omissions of Landlord or any of Landlord’s tenants), every fine, penalty, interest and cost which may be added for nonpayment or late payment of such items,
including, without limitation, all amounts for which Tenant is or may become liable to indemnify Landlord and Indemnified Parties under this Master Lease (including reasonable attorneys’ fees and court costs). All Additional Charges (however denominated) shall be collectible and payable as additional rent under this Master Lease.

“**Additional Recapture Space**”: Each Appendage SAC and each Free-Standing SAC, and each so-called “outlot”, “outparcel” or portion of any parking or Common Area (other than a Free-Standing SAC), whether or not now or hereafter considered as a separate legal or tax parcel, and which is not subject to any Leases (and in respect of any parking or Common Areas, so long as any such Additional Recapture Space is without any material adverse impact on the retail operations of the applicable Store (as the same is reconfigured and constituted from time to time), including access, egress, parking and loading docks).

“**Additional Recapture Space Termination Notice**”: As defined in Section 1.8(a).

“**Additional Recapture Space Termination Right**”: As defined in Section 1.8.

“**Adverse Impact**”: As defined in Section 8.1(b).

“**Affiliate**”: When used with respect to any corporation, limited liability company, or partnership, the term “Affiliate” shall mean any person which, directly or indirectly, controls or is controlled by or is under common control with such corporation, limited liability company or partnership. For the purposes of this definition, “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person through the ownership of voting securities, partnership interests or other equity interests.

“**All Risk**”: As defined in Section 11.2(a).

“**Alterations**”: As defined in Section 8.1.

“**Appendage SAC**”: A SAC which is physically attached as an “appendage” to a Store but is not located wholly within the interior of the Store and which may be physically separated from the Store without any physical relocation of any other retail operations within the Store.

“**Applicable Terms**”: As defined in Section 0.

“**Appraiser**”: As defined in Section 26.1.

“**Approved Vendors**”: As defined in Section 1.7(j)(i).

“**Arbitration Rules**”: As defined in Section 29.2(a).

“**Article XII Terminated Space**”: As defined in Section 1.11(a).

“**Award**”: All compensation, sums or anything of value awarded, paid or received on a total or partial Taking.
“Base Rent”: 

(a) During the Initial Term and each of the first (1st) and second (2nd) Renewal Terms, the Base Rent shall be as follows: (i) during the first (1st) Lease Year, the Base Rent shall be an annual amount equal to $133,939,956, adjusted downward from time to time in accordance with the “SHC Base Rent Adjustment” as specified in and otherwise as provided in Schedule 2 attached to the Side Letter; and (ii) during each Lease Year commencing with the second (2nd) Lease Year, the Base Rent shall be increased by an annual amount equal to two percent (2%), cumulative and compounded, over the Base Rent for the immediately preceding Lease Year (as so increased).

(b) Commencing with the third (3rd) and any subsequent Renewal Term (if any), the Base Rent shall be an annual amount equal to the greater of (a) the Base Rent for the immediately preceding Lease Year and (b) the Fair Market Rent for the entire Demised Premises, determined with respect to each such Renewal Term promptly after the delivery of the applicable Renewal Notice.

“Business Day”: Each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which national banks in the City of New York, New York, are authorized, or obligated, by law or executive order, to close.

“Calculation Period”: As defined in Section 1.6(c).

“CAM Expenses”: As defined in Section 10.2(c)(ii).

“Cash”: Cash and cash equivalents and all instruments evidencing the same or any right thereto and all proceeds thereof.

“Change of Control”: Except as permitted or required hereunder, (i) the direct or indirect sale of all or substantially all of the assets of Tenant or Tenant’s Parent, whether held directly or through Subsidiaries, in one transaction or in a series of related transactions (excluding sales to Tenant’s Parent or its Subsidiaries) and excluding any transaction permitted pursuant to Section 9.3, or (ii) (a) Tenant ceasing to be a wholly owned Subsidiary (directly or indirectly) of Tenant’s Parent or (b) Tenant’s Parent ceasing to control one hundred percent (100%) of the voting power in the Equity Interests of Tenant. For the avoidance of doubt, subject to compliance with Section 9.3, the transfer of publicly traded Equity Interests of Tenant’s Parent shall not constitute a Change of Control.

“Claim”: As defined in Section 14.12(a).

“Code”: The Internal Revenue Code of 1986 and, to the extent applicable, the Treasury Regulations promulgated thereunder, each as amended from time to time.

“Commencement Date”: As defined in Section 1.4.

“Common Areas”: The sidewalks, walkways, alleyways, connecting tunnels, passageways and entranceways to third-party properties, sidewalks, utility pipes, conduits and lines, service drives, parking aisles, driveways, doorways (other than located in the wall of any
Leased Improvements), and parking lots and parking areas and other external areas which shall exist from time to time on or adjacent to the Properties or Demised Premises, including such areas which may be available as part of a Shopping Center by the owner thereof or designated as “common areas” or areas for “common use,” by Landlord, Tenant and/or other occupants and/or owners of the Demised Premises or any Recapture Space, Additional Recapture Space and/or any Shopping Centers, and their respective Related Users, provided, however, that at such time as the Recapture Space or any Additional Recapture Space shall cease to be a portion of the Demised Premises, the Common Areas shall also include such of the loading docks, elevators, escalators, store rooms, restrooms and other facilities which are, as of the date hereof, located within or exclusively serving the applicable Store (“Exclusive Store Areas”) as are mutually agreed by the Parties and identified on the Final Recapture Plans for the separation of the Tenant Retained Space and the Recapture Space, subject to all Legal Requirements and Encumbrances to the particular Demised Premises; provided, further, that “Common Areas” shall specifically exclude those areas which may be occupied from time to time by buildings or structures or parking areas which shall be designed or designated for the exclusive use of Landlord or any other owners, tenants, licensees or occupants of the Properties or Demised Premises or any Shopping Center, as the case may be, and their respective agents, employees, customers, licensees and invitees. Notwithstanding the foregoing, until the occurrence of the Multi-Tenant Occupancy Date, all areas and facilities which would otherwise constitute “Common Areas” located wholly on the Property shall be deemed to be a part of the Demised Premises, and shall be subject to Tenant’s exclusive use and possession and shall be Tenant’s sole responsibility (except as otherwise provided herein), subject to all Legal Requirements, Encumbrances and all other provisions of this Master Lease.

“Conciliator”: As defined in Section 29.1(b).

“Condemnation”: As defined in Section 12.8(a).

“Construction Professionals”: As defined in Schedule 1.7(i)(ii)B.2.

“Current Title Policy”: As defined in Section 1.6(g).

“Demised Premises”: As defined in Section 1.1.

“Destruction Termination Fee”: As defined in Section 12.7.

“Dispute”: As defined in Section 29.1(a).

“Dispute Notice”: As defined in Section 29.1(c).

“Division Principles”: As defined in Section 1.7(b).

“dollars” and “$” shall mean the lawful money of the United States.

“EBITDA,” “EBITDAR”: With respect to any Store, the net income (which for the purposes of this calculation shall include all rents collected) or loss calculated with respect to the operations of such Store on a Property-by-Property or “four wall” basis, determined in accordance with GAAP using the methodologies and practices of Tenant’s Parent currently in
effect, adjusted by excluding (1) income tax expense, (2) consolidated interest expense (net of interest income), (3) depreciation and amortization expense, (4) any income, gains or losses attributable to the early extinguishment or conversion of indebtedness or cancellation of indebtedness, (5) gains or losses on discontinued operations and asset sales, disposals or abandonments, (6) impairment charges or asset write-offs, including, without limitation, those related to goodwill or intangible assets, Long-Lived Assets, and investments in debt and equity securities, in each case, in accordance with GAAP, (7) any noncash items of expense (other than to the extent such noncash items of expense require or result in an accrual or reserve for future cash expenses), (8) extraordinary gains or losses, (9) unusual or nonrecurring gains or items of income or loss and (10) in the case of EBITDAR, Base Rent payable under this Master Lease; provided that each of net income and the foregoing adjustments shall be determined using the methodologies and practices of Tenant’s Parent in effect as of the Commencement Date as shown on Schedule 2.1(a) hereto.

“Encumbrance” or “Encumbrances”: As defined Section 1.1(d).

“Environmental Costs”: As defined in Section 20.4.

“Environmental Equipment”: All above-ground or underground storage tanks for petroleum, petroleum products, solvents, chemicals or other liquids; above-ground or in-ground hydraulic or mechanical lifts; solvent recovery systems; oil-water separator systems; alignment racks; gasoline pumps, dispensers, pipes and pipelines, and dispensing islands and canopies, and ancillary equipment; and all other machinery, equipment, facilities, fixtures and installations now or hereafter used, operated, installed, altered or maintained in connection with or associated with the use, storage, generation, treatment, recycling, transportation, removal or disposal of Hazardous Substances, now or hereafter located at, on or about the Demised Premises.

“Environmental Laws”: Any and all federal, state, municipal and local laws, statutes, ordinances, rules, regulations, guidances, policies, orders, decisions, determinations, decrees or judgments, whether statutory or common law, as amended from time to time, now or hereafter in effect, or promulgated, pertaining to pollution, the environment, natural resources, public health and safety and industrial hygiene, including the management, use, generation, manufacture, labeling, registration, production, storage, release, discharge, spilling, leaking, emitting, injecting, escaping, abandoning, dumping, disposal, handling, treatment, removal, decontamination, cleanup, transportation or regulation of or exposure to any Hazardous Substance, including the Industrial Site Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act.

“Environmental Ordinary Course of Business”: As defined in Section 20.1.

“Environmental Permits”: As defined in Schedule 20.6(c)(i).

“Equity Interests”: With respect to any person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether
voting or nonvoting), of equity of such person, including, if such person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

“Event of Default”: As defined in Section 13.1.

“Event of Default Notice”: As defined in Section 13.2(b).

“Excepted Liens”: As defined in Section 1.6(g).

“Excess Expenses”: As defined in Schedule 10.2(e)(17).

“Exclusive Store Areas”: As defined in definition of “Common Areas.”

“Fair Market Rent”: With respect to the Properties or any portion thereof (including any space offered to Tenant in any 100% Recapture Property), the prevailing market rent (including all fixed, percentage and Additional Charges) which is generally obtained by owners or landlords of real property on an arm’s-length basis for leases of similar space (size, location and amenities) in the geographical market where the subject space is located, taking into account all of the material terms and conditions of the prospective lease, including tenant improvements and allowance, delayed or free rent, security deposits and the like, and in the case of the Demised Premises, subject to the applicable terms and conditions of this Master Lease including with respect to the termination or recapture of Nonprofitable Property, Recapture Property and 100% Recapture Property, such Fair Market Rent to be determined by mutual agreement by the parties or in accordance with Article XXVI.

“Final Recapture Plans”: As defined in Section 1.7(c).

“Financial Statements”: (i) For a Fiscal Year, consolidated statements of Tenant’s Parent and its consolidated subsidiaries of income, stockholders’ equity and cash flows for such period and the related consolidated balance sheet as at the end of such period, together with the notes thereto, all in reasonable detail and setting forth in comparative form the corresponding figures for the preceding Fiscal Year and prepared in accordance with GAAP and audited by a “big four” or other nationally recognized accounting firm, and (ii) for a fiscal quarter, consolidated statements of Tenant’s Parent’s income, stockholders’ equity and cash flows for such period and for the period from the beginning of the Fiscal Year to the end of such period and the related consolidated balance sheet as at the end of such period, together with the notes thereto, all in reasonable detail and setting forth in comparative form the corresponding figures for the corresponding period in the preceding Fiscal Year and prepared in accordance with GAAP.

“Fiscal Year”: The fiscal year of Tenant’s Parent for public reporting purposes.

“50% Go Dark”: As defined in Section 7.3(b).

“50% Go Dark Date”: As defined in Section 7.3(b).
“50% Go Dark Notice”: As defined in Section 7.3(b).

“50% Go Dark Operating Standard”: As defined in Section 7.3(b).

“50% Go Dark Period”: As defined in Section 7.3(b).

“50% Go Dark Property” and “50% Go Dark Properties”: As defined in Section 7.3(b).

“Fixtures”: As defined in Section 1.1(c).

“Force Majeure”: A delay due to acts of God, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or similar causes beyond the reasonable control of Tenant; provided, that (1) any period of Force Majeure shall apply only to performance of the obligations necessarily affected by such circumstances and shall continue only so long as Tenant is continuously and diligently using all reasonable efforts to minimize the effect and duration thereof; and (2) Force Majeure shall not include the unavailability or insufficiency of funds.

“Foreclosure Purchaser”: As defined in Section 14.1.

“Free-Standing SAC”: A SAC which comprises a free-standing building separate and apart from a Store, expressly excluding any Appendage SAC.

“Free-Standing SAC Lease”: As defined in Section 9.8(b)(ii).

“Further Encumbrances”: As defined in Section 1.1(d).

“GAAP”: United States generally accepted accounting principles, as in effect from time to time.

“General Tax Indemnity”: As defined in Section 4.3.

“Governmental Approvals” means any notices or reports to be submitted to, or other filings to be made with, or any consents, registrations, approvals, permits or authorizations to be obtained from, any Governmental Authority.

“Governmental Authority” means any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official or other legislative, judicial, regulatory, administrative or governmental authority.

“Gross Leasable Square Footage”: With respect to any Demised Premises, the gross square footage available for lease at such Demised Premises or any other building or improvement now or hereafter located on the applicable Property, (a) with respect to Tenant’s Space, as measured and determined in accordance with the same methods and manner applied in the determination of the “Initial Leased Square Feet” of the Demised Premises as set forth on Schedule 2 to the Side Letter, and (b) with respect to all other space, the greater of (i) such gross square footage as measured and determined in accordance with the same methods and manner as
in clause (a) or (ii) any other measure of gross square footage as set forth in any lease or other occupancy agreement by Landlord with respect to the Property. Disputes with respect to the determination of Gross Leasable Square Footage shall be resolved in accordance with Article XXIX.

“Guaranty Amendment”: As defined in definition of “Lease Guaranty.”

“Handling”: As defined in Section 20.4.

“Hazardous Substances”: Each and every element, compound, chemical mixture, emission, contaminant, pollutant, material, waste or other substance (including radioactive substances, whether solid, liquid or gaseous) which is defined, determined or identified as hazardous, or toxic or under any Environmental Law or for which liability or standards of care or a requirement for investigation or remediation are imposed under, or that are otherwise subject to, Environmental Law, including, without limitation, asbestos, asbestos containing materials, urethane, polychlorinated biphenyls, any petroleum product, petroleum derived products and/or its constituents or derivatives, and any caustic, flammable or explosive materials. Without limiting the generality of the foregoing, the term shall mean and include:

(a) “hazardous substances” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products regularly found at properties with a standard of operation and maintenance comparable to the applicable Property;
(b) “hazardous waste” and “regulated substances” as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;
(c) “hazardous materials” as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder;
(d) “chemical substance or mixture” as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder; and
(e) “hazardous materials” as defined under all applicable environmental protection statutes of each state and municipality in which the Demised Premises are located.

“Holdover Period”: As defined in Section 1.11(d).

“Holdover Space”: As defined in Section 1.11(d)(i).

“Impositions”: All taxes, including capital stock, franchise, margin and other state taxes of Landlord, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes, including tax increases and re-assessments; assessments including assessments for
supplemental assessments and public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Demised Premises or the Property and/or the Rent and Additional Charges (other than Impositions) and all interest and penalties thereon attributable to any failure in payment by Tenant (other than failures arising from the acts or omissions of Landlord) which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon (i) Landlord or Landlord’s interest in the Demised Premises or the Property, (ii) the Demised Premises or any part thereof or any rent therefrom or any estate, right, title or interest therein, (iii) any occupancy, operation, use or possession of, or sales from or activity conducted on or in connection with the Demised Premises or the property or the leasing or use of the Demised Premises or the property or any part thereof, or (iv) any Tenant’s Property; provided, however, that nothing contained in this Master Lease shall be construed to require Tenant to pay (a) any tax based on net income (whether denominated as a franchise or capital stock or other tax) imposed on Landlord or any other Person, (b) any transfer, or net revenue tax of Landlord or any other Person except Tenant and its successors, (c) any tax imposed with respect to the sale, exchange or other disposition by Landlord of any Demised Premises or the proceeds thereof (excluding any recapture of any Recapture Property or Additional Recapture Space or any development, redevelopment or leasing thereof), or (d) any principal or interest on any Indebtedness on or secured by the Demised Premises owed to a Landlord Mortgagee for which Landlord or its Subsidiaries is the obligor; provided, further, that Impositions shall include any tax, assessment, tax levy or charge set forth in the foregoing clause (a) or (b) that is levied, assessed or imposed in lieu of, or as a substitute for, any Imposition. Notwithstanding the foregoing, from and after the date of the termination of this Master Lease in respect of any Recapture Space, Tenant shall pay Tenant’s Proportionate Share of all Impositions (except in the case of any separate assessment of the Recapture Space and Tenant Retained Space for tax purposes, in which case Tenant shall pay only one hundred percent (100%) of the Impositions which are separately assessed (if any) with respect to the Tenant Retained Space), and Tenant’s obligations for all future Impositions (i.e., Impositions first accruing or otherwise first payable subsequent to the Actual Recapture Date) shall cease with respect to all other Terminated Space. Notwithstanding any provision herein to the contrary, the Parties acknowledge and agree that for the sole purpose of any Imposition which may be assessed based upon the rentals payable under this Master Lease, the applicable “SHC Base Rent Adjustment” set forth on Schedule 2 of the Side Letter shall apply with respect to each individual Demised Premises.

“Indebtedness”: With respect to any Landlord Mortgage, all indebtedness for borrowed money and related obligations (including all principal, interest, late charges, prepayment or other penalties, or any other charges solely in connection with the payment, prepayment or nonpayment thereof). For the avoidance of doubt, Indebtedness shall expressly exclude (i) all costs, expenses or obligations directly related to the use, occupancy, repair, allocation or maintenance of the Demised Premises or otherwise arising out of the Demised Premises and (ii) all Impositions, Utility Charges and all other costs, fees or charges (other than Indebtedness) under all Encumbrances, all of which shall remain the obligation of Tenant.
“**Indemnified Parties**”: Landlord and Landlord Mortgagee, and each of their respective successors and assigns, their members, managers, partners, shareholders, officers, directors, agents, attorneys and representatives.

“**Initial Term**”: As defined in Section 1.4.

“**Inspections**”: As defined in Section 20.5(a).

“**Installment Expense**” or “**Installment Expenses**”: As defined in Section 4.5(a).

“**Installment Expense Statement**”: As defined in Section 4.5(b)(iii).

“**Insurance Requirements**”: The terms and conditions of all insurance policies required to be maintained by Tenant by this Master Lease, any Landlord Mortgage, and any other Encumbrances, and all requirements of the issuer of any such policy and of any insurance board, association, organization or company necessary for the maintenance of any such policy, including all of Tenant’s permitted self-insurance.

“**Kmart Store(s)**”: As defined in the Recitals.

“**Kmart Tenant**”: As defined in the Preamble.

“**Known Environmental Problems**”: As defined in Section 14.12(b)(ii).

“**Land**”: As defined in Section 1.1(a).

“**Landlord**”: As defined in the Preamble.

“**Landlord Authorized Work**”: As defined in Section 21.18.

“**Landlord Encumbrances**”: As defined in Section 1.6(g).

“**Landlord Mortgage**”: As defined in Section 11.1.

“**Landlord Mortgage Documents**”: With respect to each Landlord Mortgage and Landlord Mortgagee, the applicable Landlord Mortgage, loan agreement, debt agreement, credit facility agreement, indenture, lease, note, collateral assignment instruments, guarantees, environmental and indemnity agreements and other documents or instruments evidencing, securing or otherwise relating to the loan made, credit extended, or lease or other financing vehicle entered into pursuant thereto, as amended and supplemented from time to time in accordance with Article XIV.

“**Landlord Mortgagee**”: As defined in Section 11.1.

“**Landlord 100% Recapture Property Termination Right**”: As defined in Section 1.9.

“**Landlord’s Insurance Costs**”: As defined in Section 11.2(b).

“**Landlord Tax Returns**”: As defined in Section 4.1(b).
“Landlord’s Work”: As defined in Schedule 1.7(i)(ii).

“Lands’ End Agreements”: That certain (a) Master Lease Agreement dated April 4, 2014 and, (b) Master Sublease Agreement dated April 4, 2014 (as now or hereafter amended) by each and between Sears, Roebuck and Co. and Lands’ End, Inc. (“Lands’ End”) and (c) that certain Retail Operations Agreement dated April 4, 2014 (as now or hereafter amended) by and between Sears, Roebuck and Co. and Lands’ End, Inc. Those Demised Premises which contain space demised to Lands’ End (“Lands’ End Space”) pursuant to the Lands’ End Agreements are listed on Exhibit D attached hereto. Tenant shall continue to retain all right, title and interest in the Lands’ End Agreements, and the same shall not be assigned to Landlord, except to the extent provided in Section 10.5(b).

“Lease” or “Leases”: Any and all leases of a portion of any Property by Tenant or any Affiliate of Tenant to any unaffiliated third party existing immediately prior to the consummation of the Purchase Agreement, as the same may be amended from time to time, and all replacements thereof, and all new leases or subleases entered into by Landlord after the date hereof (including with respect to any Recapture Space or Additional Recapture Space), but excluding all Subleases. The Lands’ End Agreements and the Sears Hometown License Agreement shall not constitute or be deemed to be Leases. The Leases which are in existence as of the date hereof have been assigned by separate instrument by Tenant or an Affiliate of Tenant to Landlord in connection with Landlord’s acquisition of the Demised Premises.

“Lease Guarantor”: Tenant’s Parent and each entity that guarantees the payment or collection of all or any portion of the amounts payable by Tenant, or the performance by Tenant of all or any of its obligations, under this Master Lease from time to time, including without limitation those entities set forth on Schedule 2.1(b). Tenant shall cause each Subsidiary of Tenant’s Parent that, now or in the future becomes liable in respect of Tenant Parent’s principal working capital credit facility (presently the Second Amended and Restated Credit Agreement dated as of April 8, 2011, as amended), to be a Lease Guarantor and execute a Lease Guaranty; provided that Landlord shall, other than in connection with the sale or other disposition (including without limitation by equity distribution or rights offering) of all or substantially all of the assets in one transaction or a series of related transactions of Tenant’s Parent (in respect of which this proviso shall not apply), upon Tenant’s request and at Tenant’s expense pursuant to reasonable and customary forms prepared by Tenant, release any Lease Guarantor that ceases to be a Subsidiary of Tenant’s Parent from its Lease Guaranty. For avoidance of doubt, no Lease Guarantor that remains a Subsidiary of Tenant’s Parent will be released from the Guaranty or entitled to release from the Guaranty whether or not it ceases to be liable in respect of Tenant Parent’s principal working capital credit facility.

“Lease Guaranty”: Any guaranty by a Lease Guarantor of the obligations of Tenant under this Master Lease, as the same may be amended, supplemented or replaced from time to time with Lender’s prior written consent or otherwise in accordance with the terms of this Master Lease. Any Lease Guaranty shall terminate and be of no force or effect with respect to any Property or portion thereof as to which this Master Lease is terminated pursuant to the express terms of Section 1.6, 1.7, 1.8, or 1.9 or by reason of casualty or Condemnation as provided herein (except in each case for all obligations of Tenant which have accrued as of the Master Lease termination date or which survive the termination of the Master Lease) and shall continue
in full force and effect with respect to the Master Lease with respect to the remainder of the Demised Premises, provided, however, that Landlord may require Lease Guarantor to, and Lease Guarantor shall, execute, and acknowledge an amendment to any existing Lease Guaranty ("Guaranty Amendment") ratifying and reconfirming the Lease Guaranty with respect to such remainder of the Demised Premises. In the event of any New Lease, or any new lease to any Successor Landlord, any Lease Guaranty shall continue to apply to same and Tenant shall cause each then-existing Lease Guarantor of this Master Lease to execute, acknowledge and deliver an amendment to any existing Lease Guaranty or a new Lease Guaranty (each, a “New Lease Guaranty”) on all of the same terms and conditions of the existing Lease Guaranty, modified appropriately to reflect such New Lease or new lease to Successor Landlord, as the case may be.

“Leased Improvements”: As defined in Section 1.1(b).

“Leasehold Estate”: As defined in Section 15.1.

“Leasehold Property”: As defined in the Recitals.

“Lease Provisions”: As defined in Section 21.15.

“Lease Year”: The first (1st) Lease Year shall be the period commencing on the Commencement Date and ending on the last day of the calendar month in which the first (1st) anniversary of the Commencement Date occurs, and each subsequent Lease Year shall be each period of twelve (12) full calendar months after the last day of the prior Lease Year.

“Legal Requirements”: All federal, state, county, municipal and other governmental statutes, laws, rules, policies, guidance, codes, orders, regulations, ordinances, permits, licenses, covenants, conditions, restrictions, judgments, decrees and injunctions (including common law and Environmental Laws) affecting either the Demised Premises or Tenant’s Property or the construction, use or alteration thereof, whether now or hereafter enacted and in force, including any which may (i) require repairs, modifications or alterations in or to the Demised Premises and/or Tenant’s Property, (ii) in any way adversely affect the use and enjoyment thereof, or (iii) regulate the transport, handling, use, storage or disposal or require the cleanup or other treatment of any Hazardous Substance. For the avoidance of doubt, so long as Tenant is not in violation of any Legal Requirements (including, without limitation, by reason of applicable provisions with respect to “grandfathering,” notice, grace or cure periods, protest, dispute and contests, negotiations of terms and conditions of remedial action, and the like), Tenant shall be deemed to be in compliance with any Legal Requirements (including Environmental Law), and Tenant’s liability for any performance by Landlord of Tenant’s obligations to so comply (as permitted in this Master Lease) shall be similarly conditioned or limited thereby.

“Local Remedies”: As defined in Section 21.5.

“Long-Lived Assets”: All property capitalized in accordance with GAAP with an expected life of not less than fifteen (15) years as initially reflected on the books and records of the owner thereof at or about the time of acquisition thereof (and, for the avoidance of doubt, with respect to property acquired by Landlord pursuant to the Purchase Agreement, the books and records of Tenant’s Parent at the time of acquisition thereof by Tenant’s Parent or its applicable Subsidiary).
“Liability” or “Liabilities” means with respect to any Person, any and all claims, debts, demands, actions, causes of action, suits, damages, costs, obligations, accruals, accounts payable, reckonings, bonds, indemnities and similar obligations, agreements, promises, guarantees, make whole agreements and similar obligations, and other liabilities and requirements of such Person, including all contractual obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, liquidated or unliquidated, reserved or unreserved, known or unknown, or determined or determinable, whenever arising and including those arising under any applicable Law, rule, regulation, Action, threatened or contemplated Action, order or consent decree of any Governmental Authority or any award of any arbitrator or mediator of any kind, and those arising under any Contract, including those arising under this Agreement, in each case, whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person. For the avoidance of doubt, Liabilities shall include reasonable attorneys’ fees, the costs and expenses of all demands, assessments, judgments, settlements and compromises, and any and all other costs and expenses whatsoever reasonably incurred in connection with anything contemplated by the preceding sentence.

“Master Lease”: As defined in the Preamble.

“Maximum Foreseeable Loss”: As defined in Section 11.2(a).

“Multi-Tenant Occupancy Date”: At any time during the Term, the earliest (including as of the Commencement Date) date on which any of the following shall occur with respect to a Demised Premises or Property: (a) the Property shall be subject to any Lease, or (b) the Actual Recapture Date and/or the Actual Additional Recapture Space Termination Date (as applicable).

“New Lease” or “New Leases”: As defined in Section 1.12(a).

“New Lease Guaranty”: As defined in definition of “Lease Guaranty.”

“Nonprofitable”: With respect to any Store as of any date of determination, that the EBITDAR for such Store for the twelve (12)-month period ending as of the last day of the most recently completed fiscal quarter of Tenant Parent is less than the applicable ‘SHC Base Rent Adjustment” as specified in Schedule 2 (attached to the Side Letter), as increased from and after the first (1st) Lease Year as provided herein.

“Nonprofitable Property”: As defined in Section 1.6(b).

“Nonprofitable Property Limitation”: As defined in Section 1.6(e).

“Nonprofitable Property Termination Date”: As defined in Section 1.6(b).

“Non-Release Violation(s):” As defined in Section 20.3.

“Notice”: A written notice given in accordance with Article XIX.

“OFAC”: As defined in Section 24.1.

“Offer Period”: As defined in Section 1.9(a)(v).
“Offer Space”: As defined in Section 1.9(a)(v).

“Officer’s Certificate”: A certificate of Tenant or Landlord, as the case may be, signed by a senior officer or managing or general partner of such party authorized to so sign by resolution of its board of directors or by its sole member or by the terms of its by-laws or operating agreement or partnership agreement, as applicable; provided, however, that any Officer’s Certificate with respect to a Nonprofitable Property shall be signed by the chief financial officer of Tenant.

“Operating Agreements”: All reciprocal easement, operating and/or construction agreements (“REAs”), easements and rights of way, covenants, conditions, restrictions, declarations and similar agreements or encumbrances affecting the access, ingress, egress, use, maintenance, construction, parking, signage, occupancy or operation of any Demised Premises, Property, or Common Area, in existence from time to time, whether or not of record.

“Operating Expenses”: As set forth on Schedule 10.2(e).

“Overdue Rate”: On any date, an annual rate equal to five (5) percentage points above the Prime Rate, but in no event greater than the maximum rate then permitted under applicable law.

“Party” or “Parties”: Landlord and/or Tenant, their successors and assigns as party to this Master Lease, including Kmart Tenant and Sears Tenant (with Kmart Tenant and Sears Tenant each being referred to as a “Tenant Party”).

“Payment Date”: As defined in Section 3.1.

“Performing Parties”: As defined in Schedule 20.6(x)(B).

“Permitted Encumbrances”: (i) Liens imposed by law, such as mechanics and materialmen Liens in each case for sums not yet overdue for a period or more than thirty (30) days or which are being diligently contested in good faith by appropriate proceedings or such other Liens arising out of judgments or awards against Tenant (for purposes of this definition of “Permitted Encumbrances,” “Tenant” shall mean Tenant and any Person claiming by, through or under Tenant, as applicable) with respect to which Tenant shall then be proceeding with an appeal or other proceedings for review if enforcement of such Liens is bonded or stayed, (ii) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than thirty (30) days or payable or subject to penalties for nonpayment or which are being contested in good faith by appropriate proceedings diligently conducted, if enforcement of such Liens is bonded or stayed, (iii) all matters disclosed on the title commitment or title policy delivered to Landlord in connection with Landlord’s acquisition of the Properties, together with minor survey exceptions (or any state of facts an accurate survey might show), minor encumbrances, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes (including, for the avoidance of doubt, Operating Agreements), or zoning or other restrictions as to the use of the Properties or Liens incidental to the conduct of the business of Tenant or to the ownership of its properties which were not incurred in connection with any indebtedness for borrowed money and which do not in the aggregate materially adversely affect the value of any Property or materially affect
impair its use in the operation of the business of Tenant, (iv) Liens arising from Uniform Commercial Code financing statement filings regarding leases of Tenant’s Property entered into by Tenant in the ordinary course of business, (v) Liens securing judgments against Tenant (or any Person claiming by, through or under Tenant) for the payment of money (excluding judgments for payment of borrowed money) so long as such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period with which such proceedings may be initiated has not expired, (vi) Leases, or Subleases which are existing on the date hereof or entered into after the date hereof in accordance with the terms of this Master Lease and (vii) Liens pursuant to or in connection with the Operating Agreements which have not been created or incurred by Tenant. In addition, Permitted Encumbrances shall include any (A) Landlord Mortgage and Landlord Mortgage Documents (including any Liens securing any notes issued in connection therewith, but not for purposes of determining Tenant’s obligations, and (B) all other liens, changes and Encumbrances of whatsoever nature which are not incurred or caused by Tenant, Tenant’s Parent, any other Guarantor or Subsidiary of Tenant’s Parent or Tenant Related User (including all liens, changes and Encumbrances in connection with any work expressly requested to be performed or incurred by Landlord or on behalf of Landlord). Except where the terms of this Master Lease expressly require Tenant to comply with or perform the covenants and obligations of Landlord’s Mortgage Documents, Tenant shall not be deemed to have agreed to comply with or perform said covenants or obligations of Landlord’s Mortgage Documents, notwithstanding that Tenant shall remain obligated to make all other payments and to observe or perform all other obligations under the Permitted Encumbrances.

“Person” or “person”: Any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

“Preliminary Recapture Plans”: As defined in Section 1.7(c).

“Premises Obligations”: As defined in Section 1.3(c).

“Prime Rate”: On any date, a rate equal to the annual rate on such date publicly announced by JPMorgan Chase Bank, N.A. (provided, that if JPMorgan Chase Bank, N.A. ceases to publish such rate, the Prime Rate shall be determined according to the Prime Rate of another nationally known money center bank reasonably selected by Landlord) to be its prime rate for ninety (90)-day unsecured loans to its corporate borrowers of the highest credit standing, but in no event greater than the maximum rate then permitted under applicable law.

“Prohibited Persons”: As defined in Section 24.1.

“Prohibited Uses”: As set forth on Exhibit B.

“Promotional Rights”: As defined in Section 10.2(a)(ii).

“Property” or “Properties”: As defined in the Recitals.

“Property Charges”: Collectively, Impositions, Utility Charges, CAM Expenses, Property Document CAM Expenses, all rents, additional rent and other charges, Landlord’s Insurance Costs and Operating Expenses, and all other costs, fees and charges under all Encumbrances.
“Property Document CAM Expenses”: As defined in Section 10.2(c)(iii).

“Proposed 100% Recapture Property Date”: As defined in Section 1.9.

“Proposed Additional Recapture Space Date”: As defined in Section 1.8(a).

“Proposed Recapture Date”: As defined in Section 1.7(d).

“Purchase Agreement”: As defined in the Recitals.

“Puerto Rico Premises”: As defined in Section 21.25.

“REAs”: As defined in the definition of “Operating Agreements.”

“Rebranding and/or Alternative Retail Use”: As defined in Section 7.2(a).

“Recapture Notice”: As defined in Section 1.7(d).

“Recapture Separation Work”: As defined Section 1.7(j).

“Recapture Space”: As defined in Section 1.7(a).

“Related User” or “Related Users”: With respect to any Person, such Person’s tenants, subtenants, licensees, agents, employees, customers, invitees, contractors, vendors, agents and representatives, permitted by such Person to use the premises in question.

“Remediation Materials”: As defined in Schedule 20.6(c)(vii)(B).

“Removal Date”: As defined in Section 1.12(b).

“Removal Notice”: As defined in Section 1.12(b).

“Removal Property” or “Removal Properties”: As defined in Section 1.12(a).

“Renewal Exercise Date”: As defined in Section 1.5(a).

“Renewal Notice”: As defined in Section 1.5(a).

“Renewal Revocation Notice”: As defined in Section 1.5(d).

“Renewal Terms”: As defined in Section 1.5(a).

“Rent”: Collectively, the Base Rent and all Additional Charges.

“Required Alterations”: Alterations which are required to comply with Legal Requirements.
“Restoration Standards”: As defined in Section 12.1(a).

“Retail Operations Claims”: As defined in Section 14.12(b)(i).

“SAC” or “SACs”: As defined in the Recitals.

“SAC Definitive Agreement”: As defined in Section 9.8(a).

“SAC Definitive Agreement Notice”: As defined in Section 9.8(a).

“SAC Negotiations”: As defined in Section 9.8(a).

“Sale”: As defined in Section 21.25.

“Sale Agreement” As defined in Section 21.25.

“Sale Counter-Party”: As defined in Section 21.25.

“Sears Store”: As defined in the Recitals.

“Sears Tenant”: As defined in the Preamble.

“SEC”: The United States Securities and Exchange Commission.

“Security for Excepted Liens”: As defined in Section 1.6(g).

“Self-Help”: As defined in Section 0.

“Sears Hometown” means Sears Authorized Hometown Stores, LLC.

“Sears Hometown License Agreement” means, solely to the extent related to the Property known as KM 9647 located at 4820 S. 4th Street, Leavenworth, KS (“KM 9647 Property”), that certain License Agreement dated as of November 20, 2008 by and between Sears Holdings Management Corporation, as agent for Sears, Roebuck and Co. and Kmart Corporation, as licensor, and Sears Authorized Hometown, as in effect on the date hereof.

“Sears Hometown Space” means the space at the KM 9647 Property occupied by Sears Hometown pursuant to the Sears Hometown License Agreement.

“Senior Representative”: As defined in Section 29.1(b).

“Shopping Center”: Any shopping center, shopping mall or other property of a third-party property owner located adjacent to the Demised Premises.

“Side Letter” means that certain letter agreement entered into between Landlord and Tenant and dated as of the Commencement Date.

“SNDA”: As defined in Section 14.1.
“State”: With respect to each Property, the state or commonwealth in which such Store is located.

“Statement”: As defined in Section 4.5(b)(iii).

“Stay Period”: As defined in Section 13.1(f).

“Store”: As defined in the Recitals.

“Sublease” or “Subleases”: As defined in Section 9.2.

“Subsidiary”: As to any Person, (i) any corporation more than fifty percent (50%) of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time of determination owned by such Person and/or one or more Subsidiaries of such Person, and (ii) any partnership, limited liability company, association, joint venture or other entity in which such person and/or one or more Subsidiaries of such person has more than a fifty percent (50%) equity interest at the time of determination. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Master Lease shall refer to a Subsidiary or Subsidiaries of Tenant.

“Successor Landlord”: As defined in Section 14.2.

“Taxes”: As defined in Section 4.3.

“Tax Statement”: As defined in Section 4.5(b)(i).

“Tenant”: As defined in the Preamble and in definition of “Permitted Encumbrances.”

“Tenant 100% Property Recapture Termination Date”: As defined in Section 1.9(a).

“Tenant 100% Property Recapture Termination Notice”: As defined in Section 1.9(a).

“Tenant Additional Recapture Space Termination Date”: As defined in Section 1.8(a).

“Tenant Additional Recapture Space Termination Notice”: As defined in Section 1.8(a).

“Tenant Confidential Information”: As defined in Section 21.24.

“Tenant Free-Standing SAC Notice”: As defined in Section 9.8(a).

“Tenant Offer”: As defined in Section 1.9(a)(v).

“Tenant Party”: As defined in definition of “Party” or “Parties.”

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“Tenant Party Breach”: As defined in Section 1.3(a).

“Tenant PR Rights”: As defined in Section 21.25.

“Tenant Recapture Termination Date”: As defined in Section 1.7(d).

“Tenant Recapture Termination Notice”: As defined in Section 1.7(d).

“Tenant Retained Space”: As defined in Section 1.7(a).

“Tenant ROFO Notice”: As defined in Section 1.9(a)(v).

“Tenant PR Rights”: As defined in Section 21.25.

“Tenant PR ROFO Rights”: As defined in Section 21.25.

“Tenant’s Acts”: Collectively, with respect to any matter, the (A) negligent act or omission or willful or intentional misconduct of Tenant, Tenant’s Parent, Tenant Related User any Subsidiary of Tenant’s Parent, each of their agents, representatives, employees, contractors or vendors, or (B) any breach of any of Tenant’s obligations under this Master Lease.

“Tenant’s Award”: As defined in Section 12.9(d).

“Tenant’s Parent”: Sears Holdings Corporation.

“Tenant’s Property”: With respect to each Property, all trade fixtures and other assets (other than the Demised Premises and property owned by a third party) owned by Tenant and primarily related to or used in connection with the operation of the business conducted on or about the Demised Premises, together with all replacements, modifications, additions, alterations and substitutes therefor, subject to terms, conditions and limitations of this Master Lease.

“Tenant’s Proportionate Share”: (a) Prior to the Multi-Tenant Occupancy Date, one hundred percent (100%) of all Property Charges and all other Additional Charges; and (b) from and after the Multi-Tenant Occupancy Date, (i) one hundred percent (100%) of all Property Charges and Additional Charges which are separately assessed or imposed with respect to the portion of the Property occupied by Tenant (as adjusted to take into account recaptures and terminations) or which are attributed solely to the use, operation, occupancy or consumption of or by Tenant in or on the Demised Premises, and (ii) otherwise, with respect to any individual Demised Premises, as calculated at the time of determination from time to time, a fraction, (A) the numerator of which shall be the Gross Leasable Square Footage in the Store (including the Lands’ End Space, Sears Hometown Space, any SAC and any other free-standing buildings, if any) which are then leased by Tenant, “Tenant’s Space”), and (B) the denominator of which shall be the aggregate of all Gross Leasable Square Footage of (1) Tenant’s Space, plus (2) all other buildings and improvements now or hereafter located on the Property, including all Recapture Space and Additional Recapture Space from and after the date of recapture, and including any new buildings or additions with respect to any Recapture Space, Additional Recapture Space or any other portions of the Property (from and after the issuance of a certificate of occupancy or equivalent thereof with respect to such new buildings or additions); provided,
however, with respect to any expense paid by a third party occupying a building or other space at the Property directly to the taxing authority, utility or service provider or other vendor which are not included in any Property Charges, the foregoing denominator shall be reduced by the Gross Leasable Square Footage of the building or space leased by such third party for the purpose of calculating Tenant’s Proportionate Share for such expense item and Tenant shall have not liability in respect of such expense. Disputes with respect to Tenant’s Proportionate Share shall be resolved in accordance with Article XXIX. Notwithstanding the foregoing, Tenant’s Space shall include all space which may be subject to any Lease entered into by Landlord after the Commencement Date but only as to which (and only so long as) the applicable Actual Recapture Date, Actual Additional Recapture Space Termination Date or the Actual 100% Recapture Termination Date, as the case may be, has not occurred.

“Tenant Retained Space”: As defined in Section 1.7(a).

“Tenant’s Space”: As defined in the definition of “Tenant’s Proportionate Share.”

“Tenant Termination Election Date”: As defined in Section 1.6(b).

“Tenant Termination Election Notice”: As defined in Section 1.6(b).

“Tenant’s Work”: As defined in Schedule 1.7(j)(ii).

“Term”: As defined in Section 1.4.

“Terminated Space”: As defined in Section 1.11(a).

“Termination Fee”: As defined in Section 1.6(c).

“Third-Party Charges”: As defined in Section 3.1(a).

“Third-Party Late Charges”: As defined in Section 3.1(a).

“Title Insurer”: As defined in Section 1.6(g).

“Total Condemnation”: As defined in Section 12.8(c).

“Total Destruction”: As defined in Section 12.2(a).

“Transaction Expenses”: As defined in Section 1.6(h).

“Transfer”: Any sale, assignment, transfer, mortgage, pledge, hypothecation, granting of any security interest, lease, sublicense, license, or occupancy arrangement, whether directly or indirectly, voluntarily or involuntarily, or by operation of law, including without limitation any Change of Control (including any agreement, or granting any option or right, to do or effectuate any of the foregoing, whether conditional, provisional or absolute).

“Trustee”: As defined in Section 14.4.
“Unavoidable Delay”: Delays due to strikes, lockouts, inability to procure materials, power failure, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the reasonable control of the party responsible for performing an obligation hereunder; provided that lack of funds shall not be deemed a cause beyond the reasonable control of a Party.

“Union Bidding”: As defined in Schedule 1.7(j)(ii)B.3.

“Unrelated Successor Tenant”: As defined in Section 9.3.

“Unsuitable for Its Intended Use”: A state of any Store such that by reason of damage or destruction, or a partial taking by Condemnation, such Store cannot, following restoration thereof (to the extent commercially practical), be operated on a commercially practicable basis for its use for the operation of Sears store, taking into account, among other relevant factors, the amount of square footage (excluding the Recapture Space) and the estimated revenue affected by such damage or destruction.

“Updated Title Commitment”: As defined in Section 1.6(g).

“Upgrades”: As defined in Section 1.7(j)(iii).

“Utility Charges”: All fees, costs, expenses and charges for electricity, power, gas, oil, water, sanitary and storm sewer, septic system refuse collection, security, and other utilities and services used or consumed in connection with the applicable Demised Premises during the Term.

“Wire Transfer”: As defined in Section 3.3.

ARTICLE III
RENT

3.1 Rent. (a) Subject to Section 3.1(b), during the Term, Tenant will pay to Landlord the Base Rent and Additional Charges in lawful money of the United States of America and legal tender for the payment of public and private debts, in the manner provided in Section 3.3. The Base Rent during any Lease Year is payable in advance in consecutive monthly installments equal to one twelfth (1/12th) of the annual Base Rent on the first (1st) Business Day of each calendar month during that Lease Year (each, a “Payment Date”).

(b) Notwithstanding the foregoing, if the Commencement Date shall occur on a date which is other than the first Business Day of a calendar month, then the first Payment Date shall occur on the Commencement Date, and on such date Tenant shall pay the sum of (i) the amount of prorated Base Rent from and after the Commencement Date through the end of the applicable calendar month, plus (ii) the amount of Base Rent payable for the next succeeding calendar month.

3.2 Late Payment of Rent. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs and administrative complications not contemplated hereunder, the exact amount and scope of which is presently anticipated to be extremely difficult to ascertain. Accordingly, if any installment of Rent, other than Additional
Charges payable to a Person other than Landlord ("Third-Party Charges"), shall not be paid within five (5) days after its due date, Tenant will pay Landlord on demand a late charge equal to the lesser of (a) five percent (5%) of the amount of such installment or (b) the maximum amount permitted by law. The parties agree that this late charge represents a fair and reasonable estimate of the costs and expenses (including economic losses) that Landlord will incur by reason of late payment by Tenant. The parties further agree that such late charge is Rent and not interest and such assessment does not constitute a lender or borrower/creditor relationship between Landlord and Tenant. Thereafter, if any installment or payment of Rent (other than Third-Party Charges) shall not be paid within ten (10) days after its due date, the amount unpaid, including any late charges previously accrued, shall bear interest at the Overdue Rate from the due date of such installment or payment to the date of payment thereof, and Tenant shall pay such interest to Landlord on demand. The payment of such late charge or such interest shall not constitute waiver of, nor excuse or cure, any default under this Master Lease, nor prevent Landlord from exercising any other rights and remedies available to Landlord. Notwithstanding the foregoing, Tenant shall be responsible for payment of all interest, late charges and other costs and fees imposed by third parties ("Third-Party Late Charges") with respect to late payments of Third-Party Charges; provided that, if Landlord shall elect in its discretion to pay (without any obligation to do so) any Third-Party Charges which are not paid by Tenant when due (together with any Third-Party Late Charges), Tenant shall pay Landlord a late charge and interest, at the rates provided above, on all amounts so paid by Landlord and which Tenant fails to pay to Landlord within five (5) days (as to late charge) or ten (10) days (as to interest), respectively, after the date of Landlord’s payment. Any interest or late charge which is paid by Tenant and which is subsequently determined to have been charged to or paid by Tenant in error, shall be refunded by Landlord to Tenant without interest.

3.3 Method of Payment of Rent and Other Sums and Charges. Base Rent and Additional Charges to be paid to Landlord and all sums to be paid by Landlord to Tenant shall be paid by electronic funds transfer debit transactions through wire transfer or ACH payment of immediately available funds ("Wire Transfer") and shall be initiated by Tenant for settlement on or before the applicable Payment Date (or when otherwise due and payable). The Parties shall provide each other with appropriate Wire Transfer information in a Notice from each Party to the other. If Landlord directs Tenant to pay any Rent to any party other than Landlord, Tenant shall send to Landlord, simultaneously with such payment, a copy of the transmittal letter or invoice and a check whereby such payment is made or such other evidence of payment as Landlord may reasonably require. All other payments by Tenant of all other sums and charges hereunder (by way of example, and not limitation, payment of the Termination Fee), and all payments by Landlord to Tenant which are provided herein, shall be made by Wire Transfer. If Tenant makes payment to any third party as directed by Landlord or pursuant to any Landlord Mortgage Documents, upon receipt of such payment (subject to collection) the same shall be deemed to have been paid to Landlord without further recourse to Tenant.

3.4 Net Lease. Landlord and Tenant acknowledge and agree that (i) this Master Lease is, and is intended to be, what is commonly referred to as a “net, net, net” or “triple net” lease, and (ii) the Rent shall be paid absolutely net to Landlord, so that this Master Lease shall yield to Landlord the full amount or benefit of the installments of Base Rent and Tenant’s Proportionate Share of Additional Charges throughout the Term with respect to the entire Demised Premises, all as more fully set forth in Article V and subject to any other provisions of this Master Lease that
expressly provide for adjustment or abatement of Rent or other charges (if any). Except as otherwise expressly set forth in this Master Lease, Tenant assumes the responsibility for the condition, use, operation and maintenance of the Demised Premises, and Landlord shall have no responsibility or liability therefor. If Landlord commences any proceedings for nonpayment of Rent, Tenant will not interpose any counterclaim or cross complaint or similar pleading of any nature or description in such proceedings (nor move or agree to consolidate in such proceedings any claim by Tenant in any other proceedings). The covenants to pay Base Rent and Additional Charges amounts hereunder are independent covenants, and Tenant shall have no right to hold back, offset, deduct, credit against or fail to pay in full any such amounts for claimed or actual default or breach by Landlord of whatsoever nature or for any other reason whatsoever. For the avoidance of doubt, Tenant shall not have, and hereby expressly and absolutely waives, relinquishes, and covenants not to assert, accept or take advantage of, any right to deposit or pay with or into any court or other third-party escrow, depository account or tenant account with respect to any disputed Rent, or any Rent pending resolution of any other dispute or controversy with Landlord.

**ARTICLE IV**
**IMPOSITIONS**

4.1 **Impositions.** (a) Subject to Section 4.2 relating to permitted contests, and subject to Section 4.5, during the Term (whether prior or subsequent to any Multi-Tenant Occupancy Date), Tenant shall pay, or cause to be paid, either one hundred percent (100%) or Tenant’s Proportionate Share, as the case may be, of all Impositions before any fine, penalty, interest or cost may be added for nonpayment. Unless otherwise requested by Landlord (including to comply with Landlord Mortgage Documents), Tenant shall make such payments directly to the taxing authorities where feasible, or otherwise make such payments to Landlord as part of the Installment Expenses, and shall promptly furnish to Landlord copies of official receipts or other satisfactory proof evidencing such direct payments. Tenant’s obligation to pay Impositions shall be absolutely fixed upon the date such Impositions become a lien upon the Demised Premises or any part thereof, subject to Section 4.2. Tenant shall also be responsible for all Impositions which, on the date of the Master Lease, is a lien upon the Demised Premises or any part thereof. If any Imposition may, at the option of the taxpayer, lawfully be paid in installments, whether or not interest shall accrue on the unpaid balance of such Imposition, Tenant may pay the same, and any accrued interest on the unpaid balance of such Imposition, in installments as the same respectively become due and before any fine, penalty, premium, further interest or cost may be added thereto. Notwithstanding the foregoing, if Tenant is making payments of Installment Expenses which include estimated Impositions, Landlord shall provide funds to Tenant for the direct payment of Impositions by Tenant not later than thirty (30) days before the due date, as a condition precedent to Tenant’s obligation to make such direct payments of Impositions.

(b) Landlord shall prepare and file or cause to be prepared and filed all tax returns and reports as may be required by Legal Requirements with respect to Landlord’s net income, gross receipts, franchise taxes and taxes on its capital stock and any other returns required to be filed by or in the name of Landlord (the “Landlord Tax Returns”), and Tenant or Tenant’s Parent and/or Lease Guarantor shall prepare and file all other tax returns and reports as may be required by Legal Requirements with respect to or relating to the Demised Premises and Tenant’s Property.

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(c) Any refund due from any taxing authority in respect of any Imposition paid by or on behalf of Tenant shall be paid over to or retained by Tenant, net of all of Landlord’s costs, fees and expenses reasonably incurred in connection with obtaining such refund (including all reasonable attorneys’ fees).

(d) Landlord and Tenant shall, upon request of the other, provide such data as is maintained by the party to whom the request is made with respect to the Demised Premises as may be necessary to prepare any required returns and reports. If any property covered by this Master Lease is classified as personal property for tax purposes, Tenant shall file all personal property tax returns in such jurisdictions where it must legally so file. Landlord, to the extent it possesses the same, and Tenant, to the extent it possesses the same, shall provide the other party, upon request, with cost and depreciation records necessary for filing returns for any property so classified as personal property. Where Landlord is legally required to file personal property tax returns, Tenant shall be provided with copies of assessment notices indicating a value in excess of the reported value in sufficient time for Tenant to file a protest.

(e) Billings for reimbursement by Tenant to Landlord of personal property or real property taxes and any taxes due under the Landlord Tax Returns, if and to the extent Tenant is responsible for such taxes under the terms of this Section 4.1, shall be accompanied by copies of a bill therefor and payments thereof that identify the personal property or real property or other tax obligations of Landlord with respect to which such payments are made.

(f) Impositions imposed or assessed in respect of the tax-fiscal period during which the Term terminates shall be adjusted and prorated between Landlord and Tenant, whether or not such Imposition is imposed or assessed before or after such termination, and Tenant’s obligation to pay its prorated share thereof in respect of a tax-fiscal period during the Term shall survive such termination. Landlord will not voluntarily enter into agreements that will result in additional Impositions without Tenant’s consent, which shall not be unreasonably withheld (it being understood that it shall not be reasonable to withhold consent to customary additional Impositions that other property owners of properties similar to the Demised Premises customarily consent to in the ordinary course of business); provided, however, that Tenant is given reasonable opportunity to participate in the process leading to such agreement.

4.2 Permitted Contests. Tenant, upon not less than thirty (30) days’ prior written Notice to Landlord, on its own or in Landlord’s name, at Tenant’s sole cost and expense, may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any licensure or certification decision (including pursuant to any Imposition, Legal Requirement, Insurance Requirement, lien, attachment, levy, encumbrance, charge or claim), and upon Tenant’s request Landlord shall reasonably cooperate with Tenant with respect to such contest at no cost or expense to Landlord; provided, however, that (i) in the case of an unpaid Imposition, lien, attachment, levy, encumbrance, charge or claim pursuant to any Legal Requirements, the commencement and continuation of such proceedings shall suspend the collection or enforcement thereof from or against Landlord and the Demised Premises; (ii) neither the Demised Premises, the Rent therefrom nor any part or interest in either thereof would be in any danger of being sold, forfeited, attached or lost pending the outcome of such proceedings; (iii) in the case of a Legal Requirement, neither Landlord nor Tenant would be in any danger of civil or criminal liability for
failure to comply therewith pending the outcome of such proceedings; (iv) in the case of a Legal Requirement, Imposition, lien, encumbrance or charge that exceeds five hundred thousand dollars ($500,000), Tenant shall give such reasonable security (in Cash, or by satisfactory letter of credit) as may be reasonably required by Landlord or any Title Insurer to insure ultimate payment of the same (including all interest, penalties and charges) and to prevent any sale or forfeiture of the Demised Premises or the Rent by reason of such nonpayment or noncompliance; (v) in the case of an Insurance Requirement, the coverage required by Section 10.3 shall be maintained; (vi) Tenant shall keep Landlord reasonably informed as to the status of and with copies of all material documents in the proceedings; and (vii) if such contest shall be finally resolved against Landlord or Tenant, Tenant shall promptly pay the amount required to be paid, together with all interest and penalties accrued thereon, or comply with the applicable Legal Requirement or Insurance Requirement. Landlord, at Tenant’s expense, shall execute and deliver to Tenant such authorizations and other documents as may reasonably be required in any such contest, and, if reasonably requested by Tenant or if Landlord so desires, Landlord shall have the right to join as a party therein and/or fully participate therein in conjunction with Tenant. The provisions of this Section 4.2 shall not be construed to permit Tenant to contest the payment of Rent payable by Tenant to Landlord hereunder. Without limiting any other provision of this Master Lease, Tenant shall indemnify, defend, protect and save Landlord and all Indemnified Parties and the Demised Premises harmless from and against any and all liability, costs, fees, damages, expenses, penalties, fines and charges of any kind (including reasonable attorneys’ fees, including those incurred in the enforcement of this indemnity) that may be imposed upon Landlord, the Property and/or the Demised Premises in connection with any such contest and any loss resulting therefrom. Notwithstanding anything in this Section 4.2, any contest with respect to any Demised Premises a portion of which has been recaptured by Landlord, shall be subject to Landlord’s prior reasonable approval, provided that, upon receipt of an invoice therefor in reasonable detail, Landlord shall promptly pay and reimburse Tenant for all reasonable fees, costs and expenses incurred by Tenant (including reasonable attorneys’ fees) in pursuing any such contest, in excess of Tenant’s Proportionate Share thereof.

4.3 General Tax Indemnity. Tenant will indemnify the Indemnified Parties against any fees or taxes ("Taxes") imposed by the United States or any taxing jurisdiction or authority of or in the United States (or foreign taxing authority, to the extent such foreign jurisdiction imposes such taxes as a result of the location of Tenant or activities of Tenant in such jurisdiction) in connection with the Properties or the transactions contemplated herein (unless with respect to Lease Property which has been recaptured or terminated); provided that the amount of any indemnification payment in respect of Taxes shall be (i) decreased by any cash Tax benefit actually realized by the Indemnified Parties as a result of such Taxes; and (ii) increased by an amount equal to any cash Taxes attributable to the receipt of such indemnification payment by the Indemnified Parties. This general tax indemnity ("General Tax Indemnity") will exclude: (i) Taxes based on net income or capital gains, or franchise or doing business taxes of an Indemnified Party imposed by a jurisdiction in which such Indemnified Party is otherwise resident for tax purposes or is subject to taxation as a result of the Properties being located in such jurisdiction (but only to the extent of the portion of rent or gains attributable to such Properties); (ii) Taxes on capital or net worth (including minimum and alternative minimum Taxes measured by any items of Tax preference); (iii) Taxes to the extent they would not have been imposed if the Indemnified Party or any of its Affiliates had not engaged in activities or had a presence in the jurisdiction imposing such Taxes that activities or presence are unrelated to the transaction.
contemplated hereby; (iv) Taxes resulting from a voluntary or involuntary transfer by an Indemnified Party of an interest in all or any part of the Properties, an Indemnified Party or any other interest created under the operative documents, other than during an Event of Default and other than pursuant to Tenant’s exercise of any rights or obligations (including any elections with respect to any Terminated Space) under the operative documents; (v) Taxes imposed because the Indemnified Party is not a U.S. person; (vi) Taxes resulting from the willful misconduct or gross negligence by the Indemnified Party or any of its Affiliates; and (vii) Taxes, with respect to any period after the termination of the Master Lease, with respect to a particular Property. The foregoing exclusions will not apply to sales, use, transfer, recording and similar taxes unrelated to Tenant’s Property or any Alterations which Tenant elects to remove or surrender, or the termination of the Master Lease with respect to any Terminated Space which is not the result of Tenant’s election. The General Tax Indemnity will be subject to Tenant’s right to contest Taxes in the manner provided in Section 4.2. Tenant will be entitled to all future refunds of, and tax savings of Landlord (but not any of its direct or indirect beneficial owners) resulting from or attributable to, any event giving rise to payment of a General Tax Indemnity or the making of such payment.

4.4 Utility Charges. Tenant shall pay or cause to be paid when due all Utility Charges. Tenant shall also pay or reimburse Landlord for all costs and expenses of any kind whatsoever that at any time during the Term hereof, with respect to any Demised Premises, may be imposed against Landlord by reason of any of the Encumbrances (except as expressly provided to the contrary herein, including any and all costs and expenses associated with any utility, drainage and parking easements). Tenant will not enter into any agreements or consent to any transaction or instruments that will encumber the Demised Premises (except for permitted Subleases on the terms and conditions herein) or the Property or any that will affect the Demised Premises or the Property after the expiration of the Term. In the event of any termination of this Master Lease with respect to any Terminated Space (other than as a result of an Event of Default), Tenant’s obligation for new Utility Charges shall cease as to all Utility Charges applicable to each all such Terminated Space which first accrue from and after the date of termination; provided, that from and after termination, Tenant shall pay for all Utility Charges with respect to the Tenanted Premises pursuant to a separate meter to be installed by Landlord at its expense (and, until installation of a separate meter is complete, Tenant shall pay all Utility Charges with respect to the Retained Space in accordance with Landlord’s and Tenant’s reasonable allocation of the Utility Charges as determined then in good faith based on the most current Utility bills available with respect to Tenant’s usage in the applicable Demised Premises) and all accessory lines and equipment which may be required (if any) to be installed by Landlord at its expense.

4.5 Installment Expenses. (a) Subject to the further provisions of this Section 4.5, from and after the Commencement Date, on each Payment Date for each individual Demised Premises, Tenant shall deposit with Landlord an amount equal to one-twelfth (1/12th) of the sum of the reasonable estimate of Landlord of annual Impositions, Operating Expenses, CAM Expenses, Property Document CAM Expenses, Landlord’s Insurance Costs and all other recurrent Property Charges (each an “Installment Expense”, and collectively, “Installment Expenses”) with respect to such individual Demised Premises, and in light of Tenant’s Proportionate Share, as determined from time to time based on (i) reasonably available information existing as at the Commencement Date, with respect to the first Lease Year, and (ii) thereafter, the prior Lease Year’s estimates (as adjusted for facts or circumstances known to Landlord and/or Tenant). Landlord will apply the amounts so deposited to the payment of Installment Expenses as the same shall become due and payable.
(b) The monthly installments on account of Installment Expenses shall be payable by Tenant as follows:

(i) Tenant’s Proportionate Share of all Impositions on an annual basis shall be paid to Landlord in equal monthly installments on each Payment Date in an amount based on one hundred five percent (105%) of the prior calendar year tax bill for all of the Demised Premises, or Landlord may elect, at its sole option, to bill such amounts in arrears; provided, that in the event Landlord is required under any mortgage covering the Property to escrow real estate taxes, Landlord may, but shall not be obligated to, use the amount so paid as a basis for its estimate of the monthly installments due from Tenant hereunder. Tenant shall pay initially, and until further notice by Landlord, the estimated amounts of Impositions set forth in Schedule 4.5 to the Side Letter. On an annual basis, no later than April 1 of each calendar year, Landlord shall furnish Tenant with a written statement of the actual amount of Tenant’s Proportionate Share of Impositions (“Tax Statement”) and a copy of any and all tax bills and statements received from the taxing authority which serve as a basis for the determination of Impositions and Tenant’s Proportionate Share of Impositions. In the event no tax bill is available, Landlord will reasonably compute the amount of such tax and provide a copy of the tax bill when the same becomes available. If the total amount paid by Tenant under this Section 4.5(b)(i) for any calendar year during the Lease Term, or any Renewal Term, shall be less than the actual amount due from Tenant for such year, as shown on the applicable Tax Statement, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, such deficiency to be paid within forty-five (45) days after Landlord’s delivery of such statement; and if the total amount paid by Tenant hereunder for any such calendar year shall exceed such actual amount due from Tenant for such calendar year, such excess shall be credited against the next installment of Impositions and assessments due from Tenant to Landlord hereunder. If the Term shall have expired and no further Impositions shall be due, Landlord shall refund difference to Tenant when Landlord sends the final Tax Statement.

(ii) Landlord shall reasonably estimate by Notice to Tenant given not less than sixty (60) days in advance of each calendar year the amounts Tenant shall owe for Installment Expenses other than Impositions for any full or partial calendar year of the Term. Tenant shall pay such estimated amounts in equal monthly installments on or before each Payment Date. Tenant shall pay initially, and until further notice by Landlord, the estimated amounts of Installment Expenses other than Impositions set forth in Schedule 4.5 to the Side Letter. Within a reasonable time following such Notice of estimated Installment Expenses, the Parties shall promptly confirm in writing a revision of Schedule 4.5 applicable to the next succeeding calendar year reflecting Landlord’s reasonable estimate.
Within ninety (90) days after the end of each calendar year, Landlord shall provide a statement to Tenant showing: (x) the amount of actual Installment Expenses by category of Installment Expense (i.e., Operating Expenses, CAM Expenses, etc.), for such year, with a listing of amounts for major items or categories of such Installment Expenses ("Installment Expense Statement") (in the event no expense information is available for a particular Installment Expense, Landlord will reasonably compute the amount of such Installment Expense and provide a general ledger broken down by each individual Demised Premises and each category with which specific Installment Expenses apply and provide a copy of the Installment Expense Statement when such information becomes available), (y) any amount paid by Tenant towards Installment Expenses during such calendar year on an estimated basis, and (z) any revised estimate of Tenant’s obligations for Installment Expenses for the current calendar year (the "Statement").

If the Statement shows that Tenant’s estimated payments were less than Tenant’s actual obligations for Installment Expenses for such year, Tenant shall pay the difference. If the Statement shows an increase in Tenant’s estimated payments for the current calendar year, Tenant shall pay the difference between the new and former estimates for the period from January 1 of the current calendar year through the month in which the foregoing Statement is sent, within thirty (30) days of Tenant’s receipt of the Statement.

If the Statement shows that Tenant’s estimated payments exceeded Tenant’s actual obligations for Installment Expenses, Tenant shall receive a credit for the difference against payments of Installment Expenses next due. If the Term shall have expired and no further Rent shall be due, Landlord shall refund such difference when Landlord sends the Statement.

At its option, Tenant may cause at any reasonable time, upon seven (7) days’ prior written notification to Landlord and during normal business hours in Landlord’s corporate office (but not more than once in any Lease Year), a complete review and audit to be made of Landlord’s invoices, bills and documentation justifying the Installment Expenses and Tenant’s share of these costs. Tenant agrees that no contingency fee auditor shall be employed by Tenant for the purpose of conducting any such audit. Any overpayment by Tenant revealed by such audit shall promptly be refunded by Landlord. In addition, if such an audit discloses that Tenant has been charged three percent (3%) or more in excess of the amount actually owed by Tenant, Landlord shall be responsible for and reimburse Tenant for the reasonable cost of the audit within thirty (30) days of Tenant’s demand for the same with all supporting documentation.

Landlord shall adjust the amount of Tenant’s estimated payments of Installment Expenses from time to time to reflect a reduction in Tenant’s Proportionate Share promptly after any Actual Recapture Date, Actual Additional Space Termination Date, and/or other events which result in such reduction, retroactive to the date of such reduction in Tenant’s Proportionate Share, and any overpayments of Installment Expenses based on such reduction shall be credited to the next installment(s) of Installment Expenses.

Notwithstanding the foregoing, prior to the Multi-Tenant Occupancy Date, Installment Expenses shall not include, and Tenant shall not make any monthly deposits for, any amounts for CAM Expenses, Utility Charges or Operating Expenses (it being understood that Tenant shall pay all such expenses directly to the party to whom they are due as and when due and the same shall constitute Property Charges).

On the Commencement Date, Tenant shall deposit with Landlord an amount equal to all reserves required on the Commencement Date under the Landlord Mortgage Documents in respect of Installment Expenses that would be for the account of Tenant hereunder, which deposit shall constitute an advance against Installment Payments otherwise due hereunder.
ARTICLE V
NO ABATEMENT

5.1 No Termination, Abatement, Etc. Except as otherwise specifically provided in this Master Lease, Tenant shall remain bound by this Master Lease in accordance with its terms, and shall, under no circumstances, neither take any action without the written consent of Landlord to modify, surrender or terminate the same, nor seek or be entitled to any suspension, abatement, deduction, deferment or reduction of Rent, or to any credit or set-off against, or any deposit in trust or escrow, or to enjoin the payment of, or otherwise obtain equitable relief with respect to, the Rent or any other liabilities or obligations of Tenant hereunder, or any portion thereof. Without limiting the foregoing, except as may be otherwise specifically provided to the contrary in this Master Lease, the respective obligations of Landlord and Tenant shall not be affected by reason of (i) any damage to or destruction of the Demised Premises or the Property or any portion thereof from whatever cause or any Condemnation of the Demised Premises or any portion thereof; (ii) other than as a direct result of Landlord’s willful misconduct or gross negligence, the lawful or unlawful prohibition of, or restriction upon, Tenant’s use of the Demised Premises or any portion thereof, or the interference with such use by any Person or by reason of eviction by paramount title; (iii) any claim that Tenant has or might have against Landlord by reason of any default or breach of any warranty or representation by Landlord hereunder (if any) or under any other agreement between Landlord and Tenant or to which Landlord and Tenant are parties, or by statute or law, or otherwise, or any breach of Landlord’s covenants or obligations under this Master Lease; (iv) any bankruptcy, insolvency, reorganization, consolidation, readjustment, liquidation, dissolution, winding up or other proceedings affecting Landlord or Tenant or any assignee or transferee of Landlord or Tenant; or (v) for any other cause, whether similar or dissimilar to any of the foregoing, other than a discharge of Tenant from any such obligations as a matter of law (and Tenant hereby waives and relinquishes any such right of discharge to the greatest extent now or hereafter permitted by law). Tenant hereby waive and relinquishes any such right of discharge to the greatest extent now or hereafter permitted by law). Tenant hereby specifically and unconditionally further waives all rights arising from any occurrence whatsoever which may now or hereafter be conferred upon it by law or in equity (a) to modify, surrender or terminate this Master Lease in whole or in part or quit or surrender the Demised Premises or any portion thereof (except with respect to any Terminated Space), or (b) which may entitle Tenant to any abatement,
reduction, suspension, deferment, stay or enjoining of the payment of the Rent or other sums payable by Tenant hereunder except in each case as may be otherwise specifically provided to the contrary in this Master Lease. Notwithstanding the foregoing, nothing in this Article V shall preclude Tenant from bringing a separate action against Landlord for any matter described in the foregoing clause (ii), with respect to Landlord’s willful misconduct or gross negligence only, (iii), (iv) or (v) but specifically excluding any matter referred to in clause (i), and Tenant is not waiving other rights and remedies not expressly waived herein, subject to all other terms and conditions of this Master Lease (including without limitation Section 21.3). The obligations of Landlord and Tenant hereunder shall be separate and independent covenants and agreements, and the Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Master Lease or by termination of this Master Lease as to all or any portion of the Demised Premises other than by reason of an Event of Default.

5.2 Assumption of Risk of Loss. Without limiting any other provision of this Master Lease, the entire risk of loss or of decrease in the value, utility or fitness for use, or enjoyment and beneficial use of the Demised Premises as a consequence of (a) the damage or destruction thereof in whole or in part by fire, the elements, casualties thefts, riots or civil unrest, wars, terrorism, or other traditional events of force majeure, (b) changes in applicable law, or changes in financial or economic circumstances or conditions either generally or specifically applicable to Tenant, or other changes, (c) foreclosure, attachments, levies or executions, or (d) condemnation or eminent domain proceedings, in each and every case foreseen or unforeseen, is unconditionally assumed by Tenant, and in no event shall entitle Tenant to any abatement of Base Rent or Additional Charges or any right to modify, amend, suspend or terminate this Master Lease. Notwithstanding the foregoing but subject in all cases to Section 5.1, Tenant shall not be responsible for any gross negligence or willful acts of Landlord, or for any acts or omissions of Landlord or any Landlord’s tenants under the Leases or in the Recapture Space first arising from and after the date of this Master Lease or the Actual Recapture Date, as the case may be.

ARTICLE VI
OWNERSHIP OF DEMISED PREMISES

6.1 Ownership of the Demised Premises. (a) Landlord and Tenant acknowledge and agree that they have executed and delivered this Master Lease with the understanding that (i) the Demised Premises is the property of Landlord as and to the extent conveyed pursuant to the Purchase Agreement; (ii) Tenant has only the right to the possession and use of the Demised Premises upon the terms and conditions of this Master Lease; (iii) this Master Lease is a “true lease,” is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, or any other agreement or arrangement other than a “true lease,” and the economic realities of this Master Lease are those of a “true lease”; (iv) the business relationship created by this Master Lease and any related documents is, and at all times shall remain, that of landlord and tenant, and shall not create or constitute the relationship of borrower and lender; (v) this Master Lease has been entered into by each party in reliance upon the mutual covenants, conditions and agreements contained herein; and (vi) none of the covenants, conditions or agreements contained herein is intended, nor shall the same be deemed or construed, to create a partnership between Landlord and Tenant, to make
them joint venturers, to make Tenant an agent, legal representative, partner, subsidiary or employee of Landlord, or to make Landlord in any way responsible for the debts, obligations or losses of Tenant (except for Landlord’s express obligations with respect to any Recapture Separation Work, Recapture Related Repairs or CAM Expenses which Tenant or an Affiliate of Tenant performs at Landlord’s request as provided in this Master Lease).

(b) Each of the parties hereto covenants and agrees not to (i) file any income tax return or other associated documents; (ii) file any other document with or submit any document to any Governmental Authority; (iii) enter into any written contractual arrangement with any Person; or (iv) release any financial statements, in each case, that takes a position that (1) in general, asserts or could reasonably be construed to assert that this Master Lease is other than a “true lease” as well as an “operating lease” under GAAP, with Landlord as owner of the Demised Premises and Tenant as the tenant of the Demised Premises, and (2) in particular, without limiting the generality of the foregoing, is inconsistent with the following positions: (x) the treatment of Landlord as the owner of such Demised Premises eligible to claim depreciation deductions under Section 167 or 168 of the Code with respect to such Demised Premises, (y) the reporting by Tenant of its Rent payments as rent expense under Section 162 of the Code with respect to such Demised Premises, (z) the reporting by Landlord of the Rent payments (including, to the extent permissible under applicable law, any Third-Party Charges that represent expenses of Landlord) as rental income under Section 61 of the Code.

(c) Tenant waives any claim or defense under or with respect to this Master Lease with respect to or against any of the Demised Premises or any Indemnified Parties based upon the characterization of this Master Lease as anything other than a true lease and as a master lease of all of the Demised Premises. Tenant stipulates, covenants and agrees (1) not to challenge or support or consent to the challenge of the validity, enforceability or characterization of this Master Lease of the Demised Premises as a true lease and/or as a single, unitary, indivisible, nonseverable instrument pertaining to the lease of all, but not less than all, of the Demised Premises, and (2) not to assert, take, omit to take, support or consent to any action inconsistent with the agreements and understandings set forth in Section 1.2 or this Section 6.1.

6.2 Tenant’s Property. Tenant shall, during the entire Term, own (or lease, subject to this Master Lease) and maintain (or cause its Subsidiaries to own (or lease, subject to this Master Lease) and maintain) on the Leased Premises adequate and sufficient Tenant’s Property, and shall maintain (or cause its Subsidiaries to maintain) all of such Tenant’s Property in good order, condition and repair, in all cases as Tenant deems reasonably necessary and appropriate in the good faith exercise of its reasonable commercial judgment to operate the Stores for use as a Sears Store or a Kmart Store (or as some other named or branded store as may be permitted under this Master Lease) in the ordinary course of business in compliance with all applicable licensure and certification requirements, all applicable Legal Requirements and Insurance Requirements, and the terms and conditions of this Master Lease. If any of Tenant’s Property requires replacement to comply with the foregoing, Tenant shall replace (or cause a Subsidiary to replace) it with similar property of the same or better quality at Tenant’s (or such Subsidiary’s) sole cost and expense. Subject to the foregoing, including replacement, Tenant and its Subsidiaries may sell, transfer, convey or otherwise dispose of Tenant’s Property in their discretion in the ordinary course of its business and Landlord shall have no rights to such Tenant’s Property, so long as the same does not make or result in any Encumbrances on the Demised Premises. Tenant shall, upon
Landlord’s request from time to time, but not more frequently than one (1) time per Lease Year, provide Landlord with a substantially complete description of the material Tenant’s Property located at each of the Demised Premises other than inventory, merchandise, and fixtures or equipment exclusively used for the purpose of retail sales and other than Tenant’s Property at any one (1) Demised Premises having (a) a value of less than Twenty-five thousand dollars ($25,000) as to any one item of Tenant’s Property or (b) an aggregate value of less than two hundred thousand dollars ($200,000) with respect to all items of Tenant’s Property in one (1) Demised Premises. Tenant shall remove all of Tenant’s Property from the Demised Premises at the end of the Term (including all telecommunication cabling and any rooftop antennas or communications installations), except to the extent that Tenant has transferred ownership of such Tenant’s Property to a Successor Tenant or Landlord. Tenant shall restore any and all damage from such removal. Without limiting the foregoing or any other rights or remedies of Landlord, any Tenant’s Property left on the Demised Premises at the end of the Term whose ownership was not transferred to a Successor Tenant or Landlord shall be deemed abandoned by Tenant and shall become the property of Landlord. For the avoidance of doubt, Tenant’s Property will not constitute Alterations or Leased Improvements.

ARTICLE VII
CONDITION AND USE OF DEMISED PREMISES

7.1 Condition of the Demised Premises. Tenant acknowledges receipt and delivery of complete and exclusive possession of the Demised Premises, and complete delivery of the Common Areas subject to the provisions hereof with respect to Tenant’s use and possession prior to and after the Multi-Tenant Occupancy Date, and subject to the Permitted Encumbrances and the Leases. Tenant acknowledges and confirms that for a substantial period prior to and up to and including the execution of this Master Lease, Tenant’s Parent and/or its Subsidiaries have been in continuous ownership and possession of the Demised Premises, Tenant is fully familiar therewith, and has examined and otherwise has knowledge of the condition of the Demised Premises prior to the execution and delivery of this Master Lease and has found the same to be in good order and repair and, to the best of Tenant’s knowledge, subject to the normal use and operation of SACs in the ordinary course of business, free from Hazardous Substances not in compliance with Legal Requirements and satisfactory for its purposes hereunder. Regardless, however, of any knowledge, examination or inspection made by Tenant and whether or not any patent or latent defect or condition was revealed or discovered thereby, Tenant is leasing the Demised Premises “as is,” “where is” and “with all faults” in its present condition. Tenant hereby irrevocably, unconditionally and absolutely waives and relinquishes any claim or action against Landlord whatsoever in respect of the condition of the Demised Premises, including any patent or latent defects or adverse conditions not discovered or discoverable or otherwise known or unknown by Tenant as of the Commencement Date.

LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN FACT OR IN LAW, IN RESPECT OF THE DEMISED PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, KNOWN AND UNKNOWN, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY
TENANT, INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND
COMPLIANCE WITH ALL ENVIRONMENTAL LAWS. THE FOREGOING SHALL NOT LIMIT ANY EXPRESS
COVENANTS OR OBLIGATIONS OF LANDLORD CONTAINED ELSEWHERE IN THIS MASTER LEASE.

Tenant’s Initials: Landlord’s Initials:

Without limiting the foregoing, Tenant realizes and acknowledges that factual matters now unknown to it may have given or
may hereafter give rise to losses, damages, liabilities, costs and expenses that are presently unknown, unanticipated and unsuspected,
and Tenant further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and
that Tenant nevertheless hereby intends to release, discharge and acquit Landlord and all Indemnified Parties from any and all such
unknown losses, damages, liabilities, costs and expenses. In furtherance of this intention, Tenant hereby expressly waives any and all
rights and benefits conferred upon it by the provisions of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER
MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.” Tenant acknowledges that all of
the foregoing acknowledgments, releases and waivers, including the waiver of the provisions of California Civil Code Section 1542,
were expressly bargained for with the advice of counsel.

Tenant’s Initials: Landlord’s Initials:

7.2 Use of the Demised Premises: Permitted, Prohibited and Restricted Uses. (a) Subject to the provisions of Sections 7.3
and 9.3, Tenant shall use, or cause to be used, the Demised Premises primarily for the operation of (i) a Kmart Store with respect to
the Kmart Stores and (ii) a Sears Store with respect to the Sears Stores and for all other lawful uses incidental thereto (including
without limitation all Subleases) in accordance with all Legal Requirements and for no other use or purpose whatsoever, subject to
Tenant’s operating covenant herein, and further subject to all use restrictions and/or exclusives which affect the Demised Premises
contained in any Encumbrances; provided, however, that Landlord shall have the right in its discretion to include any or all of the
same restrictions and/or exclusives as are in existence as of the date hereof but not any new restrictions and/or exclusives that would
limit Tenant’s use of the Demised Premises as permitted under this Master Lease without Tenant’s consent), in any amended or new
Lease for the benefit of the tenants thereunder, and Tenant agrees to abide by all such same restrictions and/or exclusives; provided,
further, however, that subject to all Legal Requirements, Insurance Requirements and all Encumbrances, all such restrictions and/or
exclusions, and all other provisions of this Master Lease, Tenant (or any successor permitted pursuant to Section 9.3) shall (on not
less than sixty (60) days’ Notice to Landlord of its intention to do so) have the right at any time and from time to time, to change
(i) the name or branding of any Store, provided, that such change of name or branding is the same as the name or branding for all or
substantially all of the Sears or Kmart stores, as applicable, nationally in operation at the time (and in the case of any permitted
Transfer, such
change in branding or name to take effect not later than sixty (60) days after giving effect to any such permitted Transfer), or such changed name or branding includes the “Sears”, “Kmart” or “Shop Your Way” brand or name or abbreviations or derivatives thereof (including by way of example only and not by way of limitation, “K” or “Big K”) and (ii) the primary use of any Store to any other retail use (x) that is within the principal retail uses of such Store as of the Commencement Date or that is a natural outgrowth or reasonable extension, modification development or expansion of any such use or reasonably related, incidental, complementary or ancillary thereto (including, without limitation, any modified department store format or evolution thereof that takes account of changing markets, technology or condition), or (y) that is not within the uses described in clause (x)(ii), but which is undertaken as part of a change to the use of all or substantially all of the Sears or Kmart stores, as applicable, regionally within the region (within the United States) of any affected Demised Premises in operation at the time (collectively, in (i) and (ii), “Rebranding and/or Alternative Retail Use”). It is agreed that the foregoing use and restriction on use is a material inducement to Landlord entering into this Master Lease and that Landlord would not enter into this Master Lease without this inducement. To the extent there are costs or expenses for or in connection with complying with Legal Requirements resulting from or associated with the occupancy or operation of the Demised Premises, including, without limitation, fire detection and suppression systems, or environmental equipment or any environmental compliance and remediation, all such costs and expenses shall be borne solely by Tenant. Tenant, at its sole expense, shall keep the Demised Premises clean and tidy at all times, free of debris, trash, rubbish, leaves, ice and snow, and in accordance with all Legal Requirements and Insurance Requirements, and shall immediately cause any Hazardous Substances emanating from, in, under or onto the Demised Premises to be promptly reported, cleaned and removed by licensed contractors and deposited in licensed facilities in accordance with all applicable Environmental Laws. Tenant shall use the Demised Premises and all parking and common areas only as provided by and in accordance with all Encumbrances, subject to Landlord’s reservation of rights herein.

(b) From and after the Multi-Tenant Occupancy Date, Tenant’s use and occupancy shall be further subject to the following:

(i) Landlord’s reasonable rules and regulations therefor as promulgated from time to time;

(ii) In no event shall Tenant make any charge for parking to its customers or invitees;

(iii) Except in Tenant’s year-round and/or seasonal ordinary course of business (including in parking areas and/or sidewalks), Tenant shall not suffer or permit outside displays or advertising, storage or sales of materials or, merchandise, or storage equipment or commercial vehicles (other than vehicles of the Home Services Affiliate of Tenant and/or other Tenant vehicles and other than in the Environmental Ordinary Course of Business), or overnight outside parking of vehicles in connection with Tenant’s activities at the Demised Premises (other than parking of vehicles of the Home Services Affiliate of Tenant and/or other Tenant vehicles, and with the exception of parking in areas designated by Tenant for “early-bird” or other customers dropping off or picking up vehicles left for service
at any SAC, or with respect to any vehicles in connection with any vehicle rental business, including customer cars, in each case prior to or after normal business hours;

(iv) Deliveries to the Demised Premises by vendors, contractors and suppliers (including loading and unloading) shall be at such times and otherwise subject to such reasonable rules and regulations established by Landlord from time to time; provided, however, that Tenant may continue to permit deliveries in accordance with its customary practices as in effect on the date hereof with respect to the Kmart Stores and the Sears Stores, subject to the provisions of Section 1.7(i); and

(v) Uses as permitted in Section 10.2(a)(ii).

(c) Notwithstanding anything to the contrary, Tenant shall not use or permit the Demised Premises (or part thereof), to be used, directly or indirectly, for any use that would violate any Legal Requirements or for any of the Prohibited Uses set forth in Exhibit B attached hereto. Landlord covenants and agrees that it shall not use or permit the use by others of any Property that would violate any of the Prohibited Uses designated in Exhibit B as applicable to Landlord.

(d) Tenant shall not commit, or suffer to be committed, any waste on the Demised Premises or cause or permit any nuisance thereon.

(e) Tenant shall neither suffer nor permit the Demised Premises or any portion thereof to be used, or otherwise act or fail to act, in such a manner as (i) might reasonably tend to impair Landlord’s title thereto or to any portion thereof, (ii) may make possible a claim of adverse use or possession, or an implied dedication of the Demised Premises or any portion thereof, or (iii) may subject the Demised Premises or this Master Lease to any Encumbrances, other than Permitted Encumbrances.

7.3 Operating Covenant. (a) Subject to Tenant’s termination rights with respect to each Nonprofitable Property, or any other termination of this Master Lease with respect to any individual Demised Premises or all of the Demised Premises prior to the expiration of the Term, in accordance with the terms of this Master Lease, and subject to the provisions of Section 7.3(b) except in instances of casualty or condemnation during the period reasonably required for restoration, or for consecutive periods not to exceed one hundred twenty (120) days in connection with Alterations and other repairs subject to extension for Force Majeure, or for such other periods as Tenant reasonably determines in good faith are reasonably required in connection with the separation and division of any Recapture Property and/or Additional Recapture Space (in each case subject to Landlord’s reasonable approval), Tenant covenants and agrees to and shall continuously operate the retail business of each Sears Store as a Sears store and of each Kmart Store as a Kmart store (including, in part, by means of the Subleases) subject to and in accordance with the use provisions of Section 7.2, stocked and staffed as is generally consistent with Tenant’s applicable regional practices in the ordinary course of business (subject to any additional applicable terms and conditions of this Master Lease, including Section 7.3(b)), subject to any Rebranding and/or Alternative Retail Use (subject in all cases to all applicable Legal
Requirements), during such hours of operation as are generally consistent with those of similar national retailers further, subject to any additional hours as Tenant may determine in its discretion; provided, however, that in no event shall Tenant be required to (but may in its discretion) operate during any hours which are longer or more restrictive than those (i) as currently operated by Tenant at each individual Demised Premises as of the Commencement Date or as determined by Tenant at any individual Demised Premises from time to time with respect to holiday schedules, or (ii) of any other anchor tenant or the majority of the other tenants or occupants of the Property and the balance of the Shopping Center from time to time. Tenant shall keep the Demised Premises (including all customer and service areas) in no worse condition than their current condition on the Commencement Date (subject to the repairs to be made in accordance with Schedule 10.1).

(b) Notwithstanding the provisions of Section 7.3(a), if Tenant determines in its discretion to partially cease business operations at up to 50% of the Gross Leasable Square Footage ("50% Go Dark") at any individual Demised Premises (each a "50% Go Dark Property" and collectively, "50% Go Dark Properties"), Tenant shall have the right to do so for a period determined by Tenant in its discretion not to exceed twelve (12) calendar months ("50% Go Dark Period") from and after the date ("50% Go Dark Date") set forth in a Notice of such intention, which notice shall describe in reasonable detail Tenant’s plan for the 50% Go Dark Period, including the manner in which Tenant will satisfy the 50% Go Dark Operating Standard, given to Landlord not less than ninety (90) days prior to Tenant going dark ("50% Go Dark Notice"); provided, however, that during any one (1) Lease Year in the aggregate there shall not be more than twenty (20) 50% Go Dark Properties in which Tenant has partially ceased business operations, it being understood and agreed that Tenant shall remain liable for each and every obligation (including, without limitation the obligation to pay Base Rent and Property Charges which respect to all of such Demised Premises) under this Master Lease with respect to each such Demised Premises ("50% Go Dark Property"), other than pursuant to this Section 7.3 from and after the 50% Go Dark Notice, subject to all of Tenant’s termination rights with respect to a Nonprofitable Property. Tenant shall give Landlord not less than thirty (30) days’ Notice of its intention to resume full business operations on or before the expiration of the applicable 50% Go Dark Period. For the avoidance of doubt, Tenant’s election to 50% Go Dark with respect to an individual Demised Premises (i) shall not be deemed to be a default or an Event of Default under this Master Lease, and (ii) Tenant’s election to 50% Go Dark with respect to such Demised Premises shall not disqualify such Demised Premises from being treated as a Nonprofitable Property in accordance with the terms of Section 1.6, at any time during the 50% Go Dark Period or thereafter. By way of example and not by way of limitation, if Tenant is precluded from exercising its right to terminate this Master Lease with respect to a Nonprofitable Property by reason of the Nonprofitable Property Limitation and thereafter elects to 50% Go Dark with respect to such Nonprofitable Property, at such time as the Nonprofitable Property Limitation ceases to apply thereto, Tenant may exercise such right of termination at any time (x) during the 50% Go Dark Period and (y) after the expiration of the 50% Go Dark Period and any resumption of business operations, without further certification of any financial data with respect to such Nonprofitable Property. Tenant shall operate each 50% Go Dark Property such that it will retain during the entire 50% Go Dark Period the look, feel and consistency of a fully operating Sears Store or Kmart Store to minimize the impact of the 50% Go Dark on customers and the operations of the Store (the “50% Go Dark Operating Standard”).
7.4 Signs. The size, color, design, location and specifications with respect to all exterior signs, and all interior signs which may be viewed from the exterior of any Property, whether ground mounted, pylon, window, door or building, mounted or otherwise, to be located on the Demised Premises or any other portion of any shopping center of which the Demised Premises may be a part shall be submitted for and subject to the prior written approval of Landlord not to be unreasonably withheld or delayed (and any other required persons under any REAs or other Encumbrances), and shall comply with all Encumbrances and all Legal Requirements. In each instance where approval of any signage is requested, Tenant shall submit its proposed sign plan to Landlord’s Director of Real Estate (or any other Person designated by Landlord from time to time) for approval at least forty-five (45) days, or fifteen (15) days prior to the required date for submission pursuant to any REAs or other Encumbrances, as applicable, whichever is earlier, prior to the date Tenant plans to erect any such signs. Notwithstanding the foregoing, Tenant may continue to maintain all signage and banners in existence as of the date hereof and otherwise in the ordinary course of business (including existing exterior and new interior signage for Subleases in the ordinary course of business, including for auto rental, dental and optician licensed businesses) complies with all Legal Requirements from time to time and Encumbrances, and to replace the same with substantially similar signage without Landlord’s consent. Further notwithstanding the foregoing, all signage on or with respect to any Recapture Space shall be determined by Landlord in its sole discretion, so long as the signage (a) does not materially adversely affect (by way of altering, diminishing, obscuring or impairing) the visibility of (except de minimis impairments of visibility) the signage of the Store as of the date hereof, and is otherwise generally consistent in style and appearance with either (i) the signage in the Store and/or the premises subject to the Leases at the time of installation of said other signage, or (ii) the signage customarily used by any Landlord’s tenant in the majority of the other locations of such tenant, (b) is the same or substantially the same as the signage on any Third-Party Lease Improvements as of the date hereof, or (c) is required to comply with Legal Requirements.

7.5 Multi-Tenant Occupancy Date. Notwithstanding the provisions of Sections 7.3 and 7.4 or any other provisions contained in this Master Lease to the contrary, subject to all Legal Requirements and Encumbrances and restrictions/exclusives (if any), (a) until the occurrence of the Multi-Tenant Occupancy Date, (i) Tenant shall be free to operate each individual Demised Premises during such hours and in such commercially reasonable manner as it shall determine, in its sole discretion, consistent with its operating covenant, and (ii) Tenant shall be free to maintain and/or alter or change any signage in its discretion, and (b) at all times during the Term Tenant shall be free to operate each individual Demised Premises in such manner and with such signage as is consistent with the historical operation of Kmart and Sears Stores and/or its ordinary course of business (subject to any Rebranding and/or Alternative Retail Use).

ARTICLE VIII
ALTERATIONS

8.1 Alteration and Additions. (a) Tenant, at its own sole cost and expense, shall make all alterations, renovations, modifications, additions or improvements to the improvements located at any Property (“Alterations”), all as may be required by Legal Requirements or Insurance Requirements, or any Encumbrances, subject to customary contest provisions, or as required to comply with its repair, maintenance or other obligations in this Master Lease, and Landlord’s consent shall not be required to make any such Alterations; provided, that Tenant shall
give Landlord prior Notice (except in an emergency) of all such Alterations costing in excess of one hundred thousand dollars ($100,000) in any one (1) instance with respect to an individual Demised Premises, together with copies of all material plans, specifications and permits therefor, and provided, further, that Tenant shall comply with Schedule 1.7(j)(ii).

(b) Tenant shall also have the right to make nonstructural Alterations (including Alterations to nonmaterial components of nonmajor building systems) as needed to keep up with changes in or the requirements of its operations (so long as the same do not adversely affect the value or structural integrity of the Demised Premises, or interfere with or adversely impact any premises demised under any Leases or any Recapture Space, or materially increase the cost of any Recapture Separation Work unless Tenant bears the entire cost of any such increase or conflict with or require consent under any Legal Requirements or Encumbrances (each, an “Adverse Impact”), without Landlord’s consent, upon prior Notice to Landlord, including copies of all plans and specifications therefor; provided, however, that if the Alterations have an aggregate cost in excess of two hundred fifty thousand dollars ($250,000) with respect to any individual Demised Premises in any Lease Year, then Landlord may require Tenant to remove the same at the expiration or termination of the Lease, as provided below. All Alterations costing in excess of one hundred thousand dollars ($100,000) in any one (1) instance with respect to an individual Demised Premises, whether or not requiring Landlord’s consent, shall be made and shall comply with the construction and insurance requirements in Schedule 1.7(j)(ii) attached hereto, and other customary procedures. If Landlord’s consent is required pursuant to this Section 8.1, such consent shall not be unreasonably withheld, conditioned or delayed by Landlord so long as there is no Adverse Impact.

Prior to making any nonstructural Alterations with a cost in excess of two hundred fifty thousand dollars ($250,000) in any one (1) instance with respect to an in individual Demised Premises, Tenant shall give Landlord Notice in reasonable detail of Tenant’s proposed Alterations, and in such event Landlord shall give Notice to Tenant within ten (10) Business Days after receipt of Tenant’s such Notice whether removal and restoration of such Alterations would be required at the end of the Term. If Landlord requires or is deemed to require such removal and restoration by Tenant, Tenant shall be required to remove and restore any such Alterations as provided in Section 8.2. Landlord’s failure to provide such Notice within ten (10) Business Days after receipt of Tenant’s Notice shall be deemed to be a Notice by Landlord to Tenant that such removal and restoration is required.

(c) So long as no Adverse Impact shall result from such Alterations, Tenant may make structural Alterations or Alterations to material components of building systems (i) prior to the Multi-Tenant Occupancy Date with Landlord’s consent, not to be unreasonably withheld, and (ii) after the Multi-Tenant Occupancy Date, with Landlord’s consent which may be withheld in Landlord’s sole discretion.

8.2 Title to Alterations. Tenant will retain title to all Alterations so long as such Alterations are not financed by Landlord or are not required by Legal Requirements or Insurance Requirements. Title to all Alterations that are financed by Landlord or are required by Legal Requirements or Insurance Requirements will vest in Landlord automatically upon the completion thereof. At the expiration or sooner termination of this Master Lease, with respect to the particular Demised Premises, Tenant shall (a) remove all Alterations which Tenant is required to
remove in Section 8.1, and (b) have the right, at its election, to either remove all other Alterations to which it retains title as provided above and repair all damage to the Demised Premises caused by such removal, or to surrender the Alterations to Landlord, free and clear of all claims, right, title and interest of Tenant. Any Alterations not so removed by Tenant shall conclusively be deemed to be Landlord’s sole property and title thereto shall automatically vest in Landlord after such nonremoval and Landlord may retain or dispose of the same in its discretion without any accountability to Tenant; provided, however, that notwithstanding any surrender of the Demised Premises or the Alterations, Tenant shall remain liable to Landlord for all unrepaired damage as a result of any removal of Alterations and all of Landlord’s reasonable costs of such removal with respect to any such nonremoval.

ARTICLE IX
TRANSFER

9.1 Transfer; Subletting and Assignment. Except as otherwise expressly provided herein (including, without limitation, Article XV), Tenant shall not, without Landlord’s prior written consent (which consent may be withheld in Landlord’s sole and absolute discretion) Transfer this Master Lease or the Demised Premises, or any rights of Tenant or any interest of Tenant therein, including any subletting of part or all or any part of the Demised Premises, or engage the services of any Person (other than an Affiliate of Tenant) for the management or operation of any Demised Premises (as to which management services Landlord’s consent shall not be unreasonably withheld, conditioned or delayed. Any assignment or Transfer of any rights or interests in violation of this Article IX is ipso facto null and void and of no force or effect. Tenant acknowledges and agrees that the foregoing restrictions on Tenant’s rights of Transfer are consistent with and integral to the protection and implementation of Landlord’s rights to the Recapture Space and Additional Recapture Space and that the Rent and the other terms and conditions of this Master Lease have been expressly negotiated based upon and taking into account the foregoing restrictions on Tenant’s rights of Transfer, and that Landlord is relying upon the expertise of Tenant in the operation of each Store and that Landlord entered into this Master Lease with the expectation that Tenant would remain in and operate each Store during the entire Term (except for such express rights of termination by Tenant, or recapture or buy-out by Landlord, or limited rights of Tenant, as set forth herein) and for those reasons, among others, except as set forth herein, Landlord retains sole and absolute discretion in approving or disapproving any assignment or sublease or other Transfer not expressly permitted hereunder. Tenant acknowledges and agrees that the foregoing restrictions on Transfer are reasonable and have been specifically negotiated and bargained for between the parties and are an essential part of the economics of this Master Lease, and are a material inducement to Landlord to enter into this Master Lease.

9.2 Permitted Subletting. Tenant shall not have any right to lease, sublease, license or otherwise permit the use or occupancy of any space on or within any Property, except for: (a) the Lands’ End Agreements; (b) the Sears Hometown License Agreement; and (c) leases, licenses, concessions or in-store department agreements with third-party retailers, concessionaires, tenants or licensees that (i) operate wholly within or as part of Tenant’s Store with respect to any Demised Premises (except for storage or parking of vehicles in connection with vehicle rentals), do not operate separate or apart from the operations of the applicable Kmart Stores and/or Sears Stores, do not violate or conflict with any Encumbrance or any use restrictions
and/or exclusives which affect the Demised Premises as of the time of the Commencement Date and which are generally consistent with historical practices at the Stores or otherwise consistent with the permitted uses of Section 7.2 (the leases, licenses, concessions and other agreements in clauses (a), (b) and (c), individually, a “Sublease,” and collectively, the “Subleases”); provided that in the case of the Subleases described in part (c) of this sentence, (i) (x) Tenant shall use commercially reasonable efforts to give Notice to Landlord of each new Sublease executed after the Commencement Date within thirty (30) days of the execution thereof and prior to the commencement of occupancy by the sublessee; provided, however, Tenant shall not be in breach or default of the foregoing obligation to provide Notices of Subleases if it provides a list of Subleases entered into since the last Notice to Landlord within fifteen (15) days of Landlord’s written request therefor given not more frequently than once in any calendar quarter during the Term, and (y) Tenant shall give Notice to Landlord of each new Sublease to the extent not previously provided, as part of the quarterly reports provided in Section 21.24(a) to the extent of the actual knowledge of such Subleases by the person preparing and signing such quarterly report, and (ii) such Sublease shall be expressly subject to the rights of any other Leases existing as of the Commencement Date which were entered into prior to the execution of such Sublease and to other Encumbrances affecting the Property as of the date such Sublease is entered into. For the purposes of this Section 9.2 only, “Encumbrance” shall include any Landlord Mortgage solely with respect to the lien thereof.

9.3 Permitted Assignments. Notwithstanding the foregoing, Tenant may, without Landlord’s prior written consent: (a) assign this Master Lease to Tenant’s Parent or any Subsidiary thereof; or (b) assign or transfer all of its rights and obligations under the Master Lease (either directly or indirectly, by operation of law or through a merger or other corporate transaction) to any other solvent corporation, partnership, limited liability company or other legal entity that (1) acquires all or substantially all of the assets of Tenant’s Parent, (2) is the surviving entity of a merger with Tenant’s Parent, or (3) results from a consolidation, reorganization or recapitalization of Tenant’s Parent with a solvent corporation, partnership or other legal entity, in each case of subclauses (1), (2) and (3), provided the surviving entity has a net worth of not less than the net worth of Tenant’s Parent as of immediately prior such merger or other corporate transaction, after giving effect to any financing provided or contemplated in such merger or corporate transaction; provided, that in each case the successor tenant or successor Tenant Party (if not the named Tenant herein, the “Unrelated Successor Tenant”) assumes all of such Tenant’s obligations under the Master Lease (except that any such Unrelated Successor Tenant shall not be required to operate a “Sears” or “Kmart” Store, but shall otherwise comply with all of the provisions of Sections 7.2 and 7.3). In the case of any such assignment, (x) each Lease Guarantor (or the successor to each Lease Guarantor) shall reaffirm the Lease Guaranty (if it is not the successor to Tenant under the Master Lease) in a written instrument for the express benefit of Landlord in form and content reasonably satisfactory to Landlord and Landlord shall receive a fully executed copy thereof; (y) the use of the Demised Premises, except as expressly set forth above, shall continue to comply with the requirements of this Master Lease, including without limitation all rights of Landlord and all obligations of Tenant with respect to the Recapture Space, Additional Recapture Space and the 100% Recapture Property and (z) with respect to subdivision (b) above, if the identity and creditworthiness of the successor tenant and successor Lease Guarantor shall be subject to the reasonable approval of Landlord and Landlord Mortgagee.
9.4 **Required Assignment and Subletting Provisions.** Any permitted assignment and/or Sublease entered into after the Commencement Date must provide in the assignment or Sublease document that:

(a) in the case of a Sublease, it shall be subject and subordinate to all of the terms and conditions of this Master Lease, including any Landlord Mortgage Documents;

(b) the use of the applicable Store (or portion thereof) shall not conflict with any Legal Requirement or any other provision of this Master Lease;

(c) except as otherwise provided herein, no subtenant or assignee shall be permitted to further sublet all or any part of the applicable Demised Premises or assign this Master Lease or its Sublease or otherwise Transfer any interest in any of the foregoing;

(d) Tenant shall insert in each permitted Sublease entered into after the Commencement Date provisions to the effect (and shall advise all parties thereto in writing with respect to all permitted Subleases entered into prior to the Commencement Date) that (A) in the event the Master Lease shall expire or otherwise terminate for any reason with respect to the Property of which the Sublease is a part before the expiration of such Sublease, the Sublease shall automatically terminate without further notice or action of any kind and the subtenant under the Sublease shall immediately surrender possession of the premises under the Sublease to Landlord or as directed by Landlord, and (B) if the subtenant receives a written notice from Landlord or Landlord’s assignees, if any, stating that an Event of Default has occurred, so long as the Master Lease is not terminated with respect to the Property of which the Sublease premises is a part, the subtenant shall thereafter attorn to the applicable party and be obligated to and shall pay all rentals and all other sums and charges accruing under said Sublease directly to the party giving such notice, or as such party may direct, without any action of or any liability to Tenant.

9.5 **Costs.** Tenant shall reimburse Landlord for Landlord’s reasonable costs and expenses (including reasonable attorneys’ fees) incurred in conjunction with the processing and documentation of any assignment or subletting, Sublease or assignment that is actually consummated.

9.6 **No Release of Tenant’s Obligations.** No assignment or subletting shall relieve Tenant or subsequent transferee of its obligation to pay the Rent and to perform all of the other obligations to be performed by Tenant hereunder, except as expressly provided herein. The liability of Tenant and any immediate and remote successor in interest of Tenant (by assignment or otherwise), and the due performance of the obligations of this Master Lease on Tenant’s part to be performed or observed, shall not in any way be discharged, excused, released or impaired by any (i) stipulation which extends the time within which an obligation under this Master Lease is to be performed, (ii) waiver of the performance of an obligation required under this Master Lease that is not entered into for the benefit of Tenant or such successor, or (iii) failure to enforce any of the obligations set forth in this Master Lease; provided, that Tenant shall not be responsible for any additional obligations or liability arising as the result of any modification, amendment or renewal of this Master Lease by Landlord and any assignee of Tenant that is not an Affiliate of Tenant. For the avoidance of doubt, all rights and options of Landlord and obligations of Tenant.
with respect to any Nonprofitable Property, Recapture Space or Additional Recapture Space, and all obligations of Tenant pursuant to the exercise of any options with respect to any Renewal Terms, shall continue to apply to Tenant with full force and effect and Tenant shall be fully liable with respect thereto.

9.7 **No Restriction on Landlord.** Notwithstanding any provision herein to the contrary, Landlord shall be free in its sole discretion, and there shall be no restriction, limitation or requirement whatsoever on or with respect to, Landlord’s rights, to use, operate, occupy, re-lease, sublease or license, alter, add to, modify or maintain, to refrain from doing, suspend or cease any of the foregoing, or to leave vacant, any Recapture Space in whole or in part.

9.8 **Free-Standing SAC Leases.** (a) Notwithstanding any provisions to the contrary in this Master Lease, at any time prior to or within thirty (30) days of receipt of an Additional Recapture Termination Notice, Tenant may give notice to Landlord (“**Tenant Free-Standing SAC Notice**”) (limited to one (1) Tenant Free-Standing Notice in any twelve (12)-month period) that Tenant has entered or is considering entering into good faith negotiations (“**SAC Negotiations**”) with a prospective acquiror with respect to a bona fide third-party offer to acquire from Tenant the automotive care center business operated by Tenant at not less than 20% of the Free-Standing SACs which are part of the Demised Premises at the time of and as to the Demised Premises identified in such Tenant Free-Standing SAC Notice. In such event, Landlord shall not have the right to recapture any Free-Standing SACs which are identified in such Tenant Free-Standing SAC Notice for a period of one hundred twenty (120) days thereafter or until the termination of Tenant’s negotiations therefor, whichever is earlier. Upon Notice from Tenant (“**SAC Definitive Agreement Notice**”) that Tenant has executed a definitive agreement (“**SAC Definitive Agreement**”) for the acquisition of the automotive care business at not less than 20% of such Free-Standing SACs (including all Free-Standing SACs identified in any Landlord’s Additional Recapture Termination Notice) within such one hundred twenty (120)-day period, Tenant shall have the right to request that Landlord enter into negotiations for the Free-Standing SAC Lease as provided below; **provided that** Landlord shall have approval rights, in its sole and absolute discretion, over any Free-Standing SAC Lease. If (i) Landlord does not receive a SAC Definitive Agreement Notice within such one hundred twenty (120)-day period, or (ii) Landlord is otherwise informed that Tenant has terminated all SAC Negotiations without a SAC Definitive Agreement within such one hundred twenty (120)-day period, or (iii) Landlord and the proposed SAC acquiror have not mutually agreed upon and delivered a fully executed master lease with respect to all affected Free-Standing SACs as provided below or before the Closing of the SAC Definitive Agreement, or (iv) Landlord has not approved the Free Standing SAC Lease, then in any such event Landlord may at its election by Notice to Tenant at any time thereafter reinstate the Additional Recapture Space Termination Notice and/or give any additional or subsequent Additional Response Space Termination Notices and specify a date for recapture of the Additional Recapture Space within sixty (60) days after such Notice.

(b) The SAC Definitive Agreement shall provide:

(i) The Closing thereof shall occur not later than ninety (90) days after the execution of the SAC Definitive Agreement.

(ii) At the Closing, the SAC acquiror (which shall be a creditworthy entity experienced in the operation of automobile centers similar to the SACs, satisfactory to Landlord), as tenant, shall enter into a unitary, cross-defaulted master lease with Landlord, as landlord, with respect to all affected Free-Standing SACs, on such terms and conditions which are mutually satisfactory to Landlord and such tenant in each of their sole discretion (“**Free-Standing SAC Lease**”). Upon the execution and delivery of any Free-Standing SAC Lease (if any), this Master Lease shall terminate with respect to the affected Free-Standing SACs with the same force and effect as provided in Section 1.9(b)(iii). Nothing contained herein shall obligate Landlord to enter into any Free-Standing SAC Lease and Tenant hereby releases and agrees to hold harmless Landlord, Landlord’s Mortgagee and any other Indemnified Persons with respect to any and all Liabilities arising out of any SAC Definitive Agreement or any refusal or failure to enter into any proposed Free-Standing SAC Lease.
ARTICLE X
MAINTENANCE AND COMMON AREAS

10.1 Maintenance and Repair; Trade Fixtures. (a) During the Term, Tenant, at its sole cost and expense and without the prior consent of Landlord, shall maintain the Demised Premises and Tenant’s Property, and except as provided in, and otherwise subject to, any REAs, all private roadways, sidewalks and curbs appurtenant to the Demised Premises or which are under Tenant’s exclusive control, or under any REAs for which Tenant is responsible for compliance under this Master Lease, in good order and repair (ordinary wear and tear excepted) with the standard of care and quality taking into account the age of the Demised Premises whether or not the need for such repairs occurs as a result of Tenant’s use, any prior use, the elements, or the age of the Demised Premises or Tenant’s Property, or otherwise (but excluding (i) Landlord’s gross negligence or willful misconduct, or any affirmative acts in connection with work performed by Landlord with respect to any Recapture Space or Tenant Retained Space, and (ii) all acts and omissions of any of Landlord’s Related Users in any Recapture Space or Additional Recapture Space or under any Leases which first arise after the date of this Master Lease), and, with reasonable promptness, make all necessary and appropriate repairs thereto of every kind and nature, including without limitation those necessary to ensure continuing compliance with all Legal Requirements, and Insurance Requirements, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, or arising by reason of a condition existing at or prior to the Commencement Date; provided, however, that subject to all Legal Requirements and Insurance Requirements all such repairs shall only be required to be made to the standards and the conditions existing as of the Commencement Date with respect to each Demised Premises, ordinary wear and tear excepted, with the standard of care and quality taking into account the age of the Demised Premises, and shall otherwise be made in general conformity with Schedule 1.7(j)(ii) attached hereto; provided, further, however, that Tenant’s obligations under this Section 10.1 shall include the maintenance, repair and replacement (a) at all times, of any and all building systems, machinery and equipment which exclusively serve the Demised Premises, (b) up to and including the Multi-Tenant Occupancy Date, of the bearing walls, floors, foundations, roofs and all structural elements of the Demised Premises (and after the Multi-Tenant Occupancy Date, the obligations in this clause (b) shall be Landlord’s responsibility) and (c) perform the repairs to be made in accordance with Schedule 10.1. Tenant
will not take or omit to take any action the taking or omission of which would reasonably be expected to (x) materially impair the value or the usefulness of the Demised Premises or any part thereof, (y) create (or permit to continue) any dangerous condition or (z) create (or permit to continue) any condition which might reasonably be expected to involve any imminent loss, damage or injury to any person or property; provided, that subject to Article XX, Tenant shall be entitled to operate SACs in accordance with Tenant’s usual and customary business practices in effect on the date of this Master Lease, and in compliance with all Encumbrances, Legal Requirements and Insurance Requirements. In connection with the foregoing, Tenant’s obligations shall include without limitation with respect to the Demised Premises, including, prior to the Multi-Tenant Occupancy Date, with respect to all Common Areas (and Landlord’s obligations with respect to all Common Areas, including all parking lots and parking areas, and landscaping not under the exclusive control of Tenant, after the Multi-Tenant Occupancy Date shall include):

(i) Maintaining (including periodic washing and painting, as necessary, but in no event shall any Party be required to paint more than once in any rolling 5-year period) and repairing the storefront, facade and exterior walls of the Demised Premises; provided, that any re-painting of a different color or any changes to the exterior shall require Landlord’s prior written consent, which will not be unreasonably withheld, conditioned or delayed;

(ii) Repairing and replacing, as necessary (in the same style and appearance), the doors (including, without limitation, any overhead doors) and windows of the Demised Premises, and the mechanisms therefor;

(iii) Causing the regular removal of garbage and refuse from the Demised Premises;

(iv) Causing the regular spraying for and control of insect, rodent, animal and pest infestation, and maintaining in good working order and condition all doors (both swinging and roll-up doors), including, without limitation, all weather seals, so as to limit any gaps to \( \frac{1}{4} \) inch or less along the bottom and sides of all doors;

(v) Servicing, maintaining, repairing and replacing all Fixtures;

(vi) Regular sweeping, cleaning and removal of trash, debris, grease, oils, other materials and stains from the Demised Premises and from the immediately adjacent sidewalks, service drives and loading or delivery areas, if any of the Demised Premises, as necessary to keep the same clean and in good order and condition (after the Multi-Tenant Occupancy Date Tenant shall be responsible for such sidewalks, service drives and loading or delivery areas under the exclusive control of Tenant and Landlord shall remain responsible for the immediately adjacent and all other sidewalks, service drives and loading or delivery areas and landscaping not under the exclusive control of the Tenant);
(vii) Regular sweeping, cleaning and washing of the interior of the Demised Premises, including, without limitation, floors, windows and fixtures, and periodic washing and painting of interior walls;

(viii) Repairing broken, damaged or leaking walls, bathrooms, roofs, or fixtures and equipment in the interior of the Demised Premises, including, without limitation, plate glass windows, windows, floors and lighting fixtures, to the extent not covered by Landlord’s “All-Risk” insurance;

(ix) Irrigating and performing all gardening and landscaping of all lawns, trees, shrubs and plantings immediately adjacent to the Demised Premises and under the exclusive control of Tenant;

(x) Paving, repairing and striping of all parking areas as reasonably required; and

(xi) In furtherance of the foregoing obligations to service, repair and maintain any Fixtures during the Term, Tenant shall maintain a contract on at least an annual basis (which contract shall be approved by Landlord, such approval not to be unreasonably withheld) for regular servicing and maintenance (in accordance with their respective manufacturing guidelines) of the heating, ventilating, air conditioning and vertical transportation systems that are part of the Fixtures in accordance with their manufacturing guidelines, unless Landlord shall otherwise direct (without additional cost or expense to Tenant). Upon request (not more frequently than annually), Tenant shall submit to Landlord a copy of such fully paid contract and any extensions, renewals or replacements thereof. At a minimum, each maintenance contract for any Fixtures shall include a provision that such contractor shall be required to coordinate any activities performed on the roof of the Demised Premises with Landlord’s or any tenant of Landlord’s activities, as the case may be, with/by a roofing contractor, so as to not void any roof or related warranties.

(b) Except as otherwise expressly required elsewhere in this Master Lease (including with respect to Landlord’s obligations from and after the Multi-Tenant Occupancy Date), Landlord shall not under any circumstances be required to (i) build or rebuild any improvements on the Demised Premises; (ii) make any repairs, replacements, alterations, restorations or renewals of any nature to the Demised Premises, whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto; or (iii) maintain the Demised Premises in any way. Except as otherwise expressly required elsewhere in this Master Lease, Tenant hereby unconditionally waives, to the fullest extent now or hereafter permitted by law, the right to make any repairs or perform any maintenance at the expense of Landlord pursuant to any law in effect at the time of the execution of this Master Lease, or hereafter enacted. The foregoing shall not limit in any manner Landlord’s obligations to pay for, or to advance or reimburse Tenant for, all costs and expenses of all Recapture Separation Work as provided in this Master Lease.

(c) Tenant shall, upon the expiration or earlier termination of the Term, vacate and surrender the Demised Premises in the condition in which such Demised Premises was
originally received from Landlord, except as repaired, rebuilt, restored, altered or added to as permitted or required by the provisions of this Master Lease and except for ordinary wear and tear, and further subject to the provisions with respect to removal and restoration of Tenant’s Property and Alterations and remediation of all environmental conditions.

(d) Notwithstanding the foregoing standards for Tenant’s repair and maintenance obligations, Tenant agrees to perform those items of deferred repair and maintenance set forth on Schedule 10.1; provided, however, to the extent that Tenant shall fund any Landlord Mortgage reserve for Schedule 10.1 work, Tenant’s obligation to perform such deferred repair and maintenance relating to such reserves shall be conditioned upon Landlord’s release of such funds (or an equivalent amount) to Tenant on a timely basis in connection with the performance of such work.

10.2 Common Areas. (a) During the Term, until the occurrence of the Multi-Tenant Occupancy Date, Tenant shall have the exclusive use and possession of all Common Areas (subject to all applicable provisions of this Master Lease, Legal Requirements and Encumbrances) and shall be solely responsible therefor, including all maintenance and repairs relating thereto, and shall pay all CAM Expenses and all Property Document CAM Expenses, and the maintenance and repair obligations pursuant to Section 10.1.

(i) From and after the Multi-Tenant Occupancy Date, Landlord shall operate and maintain (or cause to be operated and maintained) the Common Areas located wholly within the Property in such a manner as Landlord, in its reasonable discretion, shall determine as being compliant with the Legal Requirements and Encumbrances, but subject to the terms and conditions of this Master Lease relating to any conditions, rights or restrictions of Landlord’s and Landlord’s Related Users in the Common Areas located wholly within the Property, further subject to Tenant’s obligations in Section 10.1(c). Tenant shall have a nonexclusive right and license to use the Common Areas in common with Landlord, and their respective Related Users (including all of the same Persons with respect to the Recapture Space and Additional Recapture Space), for the sole purposes of access, ingress, egress, loading and unloading, and parking, subject to the provisions of this Master Lease, all Encumbrances, and all applicable Legal Requirements and Insurance Requirements. Tenant’s use of the Common Areas shall be subject to all rules and regulations set forth in the applicable Encumbrances (including, without limitation, any rights of any parties (including Landlord) to reconfigure or alter such Common Areas, at any time and from time to time), and the reasonable, nondiscriminatory rules and regulations promulgated by Landlord in its discretion from time to time, including the designation of specific areas within Landlord’s premises or in reasonable proximity thereto in which automobiles owned by Tenant’s Related Users shall be parked and to accommodate the reasonable requests and requirements of Landlord and Landlord’s Related Users, provided, that the same shall not increase Tenant’s obligations or decrease Tenant’s rights or remedies under this Master Lease, in any material respect. Furthermore, Tenant covenants not to do or permit to be done any act in, on or about the Common Areas or the Demised Premises which would interfere with the use or enjoyment of the premises demised under the Leases or any Recapture Space (or
any adjacent shopping center, shopping mall or third-party owner’s property, as the case may be), or the Common Areas by Landlord, its other tenants, authorized users and assigns, or the other owners, tenants, or occupants of any adjacent shopping center, shopping mall, as the case may be, or the respective agents, employees, customers, licensees and invitees of any of the foregoing parties.

(ii) Subject to the provisions of any applicable Encumbrances, Legal Requirements and Insurance Requirements and the terms and conditions set forth in this Section 10.2(a)(ii), subsequent to the Multi-Tenant Occupancy Date with respect to a Demised Premises, Tenant, Landlord and Landlord’s Related Users shall have the right to (A) to utilize portions of the Common Areas for outdoor events, activities, shows, displays, temporary special promotional events, including sales from temporary facilities, and including carnivals, automobile and boat shows and sales, sales of rugs, cars, spas, plants and antiques, tent sales, and National Safety Weekend events and other charity events (including charity walks); or (B) to utilize the lighting standards and other areas in the parking lot for advertising purposes ((A) and (B) collectively, the “Promotional Rights”), subject to Landlord’s reasonable rules and regulations applicable to all tenants of the Property with respect to the manner of the exercise of such Promotional Rights; provided, that (x) Tenant’s Promotional Rights shall include, and Tenant shall exercise Promotional Rights in a manner described in Section 10.2(a)(ii)(A) that is consistent with, the historical practices of Tenant at that Store or that may be conducted on a regional basis with respect to an affected Store (including, without limitation, outdoor garden and/or patio shops), and such other uses in connection with the natural evolution of Tenant’s generally permitted use of the Demised Premises (subject to Landlord’s reasonable approval of such other uses), and (y) Tenant shall not exercise any Promotional Rights in a manner (as opposed to the nature of the use) that would reasonably be expected to have a material adverse impact on Landlord or any third party tenant to whom Landlord has leased or licensed all or any portion of the Property other than the Demised Premises (“Third Party Tenant”). Landlord shall have the right to grant Promotional Rights to any Third Party Tenant, provided, that, no such Promotional Rights shall be exercisable in a manner that would reasonably be expected to have a material adverse impact on Tenant, Landlord or any other Third Party Tenant. Tenant, Landlord and Third-Party Tenants shall work cooperatively and in good faith to coordinate the exercise of the Promotional Rights in accordance with the foregoing provisions.

(b) **Party Walls.** Tenant acknowledges and agrees that any walls now or hereafter separating the Demised Premises from any premises demised under any Leases or any Recapture Space, if any, are party walls to be shared by Tenant with Landlord and the other tenants and occupants of the building in which the Demised Premises is located. Tenant hereby grants to Landlord, and such other tenants and occupants, if any, and such persons hereby retain, the nonexclusive right to use such walls for all purposes for which they may be intended, or to such use by Landlord as may be desirable and/or convenient, including, without limitation, utilities, maintenance and fixturing. Tenant hereby acknowledges and agrees that Landlord shall, at its expense (but without charge by Tenant), have the right, at any time and at all times throughout the Term, to install, maintain, alter, repair and replace any cabling, conduit, utilities,
venting, pipes, wiring and other items through and into the Demised Premises to serve or service any premises demised under the Leases or any Recapture Space or Additional Recapture Space. Tenant shall receive not less than ten (10) days’ prior notice (except in case of an emergency) of any such use or work, and no such use or work shall materially interfere with Tenant’s normal business operations in the Tenant Retained Space. To the extent reasonably required in connection with any Leases as of the date hereof or in connection with any separation of the Recapture Space, Tenant shall have all of the same foregoing rights in connection with the Demised Premises and the Tenant Retained Space. Without limiting the foregoing, except in an emergency, Landlord shall use all reasonable efforts to avoid any material work in the Demised Premises during the period November 1-March 1 in any calendar year.

(c) **Common Area Maintenance.**

(i) Prior to the Multi-Tenant Occupancy Date, the Common Areas shall be maintained and operated by Tenant in accordance with all of the provisions of this Lease, and in accordance with all Operating Agreements and other Encumbrances as such Operating Agreements and other Encumbrances apply to the Demised Premises, and Tenant shall pay all CAM Expenses (as hereinafter defined).

(ii) From and after the Multi-Tenant Occupancy Date, Landlord shall perform and pay for all maintenance, repairs and replacements to all Common Areas ("**CAM Expenses**"), including all parking lot fencing, striping, paving, lighting, fencing and drainage; snow, ice, rubbish and trash removal; irrigation, gardening and landscaping services, with respect to all landscaped areas; and ordinary and customary building services, maintenance, cleaning and janitorial services, except such services and expenses which are separately performed and charged for under Encumbrances, and all other items relating to Common Areas in Section 10.2 (c)(i).

(iii) Tenant shall pay as Additional Charges (as part of Tenant’s payments of Installment Expenses), Tenant’s Proportionate Share of (x) all CAM Expenses and other Operating Expenses and (y) all CAM costs and expenses under all Operating Agreements (including those which are included in) and other Encumbrances ("**Property Document CAM Expenses**"). Landlord shall include itemized statements of all Property Document CAM Expenses in the Statements.

(iv) Notwithstanding any provision to the contrary in this Master Lease, except as may be expressly provided in any Lease in existence on the Commencement Date, or (II) now or hereafter authorized in Tenant’s sole discretion in connection with any Sublease, neither Landlord nor any Landlord’s Related User shall use or permit the use of, nor shall any other tenant or occupant of the Property use, any dumpster, compactor, bin or other waste receptacle which is used, serviced or maintained by Tenant for the exclusive use with respect to the Demised Premises.
(d) **Tenant’s Building Alarm System.** If and to the extent such system exists as of the Commencement Date or is installed by Tenant at its discretion during the Term, Tenant shall, at its sole expense, install, operate and be responsible for maintaining, repairing and replacing an alarm system for each applicable Demised Premises (connected to its own electrical system). Tenant shall be responsible for and shall not in any way connect, tie into or otherwise append the building alarm system for any Demised Premises to the alarm system for any physically separate premises demised under any Lease or any Recapture Space or Additional Recapture Space.

(c) **Operating Expenses.** With respect to all Operating Expenses with respect to the Property which are not otherwise provided for herein in accordance with Section 4.5, Tenant shall pay (i) prior to the Multi-Tenant Occupancy Date, one hundred percent (100%) of the cost thereof and (b) after the Multi-Tenant Occupancy Date, Tenant’s Proportionate Share thereof.

10.3 **Landlord’s Responsibility for Leasehold Improvements Subsequent to Multi-Tenant Occupancy Date.** Subject to the provisions of Section 10.2(e), from and after the Multi-Tenant Occupancy Date, and during the balance of the Term, Landlord shall maintain, repair and replace all of the building systems, machinery and equipment, to the extent that the same do not exclusively serve the Demised Premises, and the bearing walls, floors, foundations, roofs and all structural elements of the Leased Improvements in accordance with the Legal Requirements and Insurance Requirements. All costs and expenses incurred by Landlord pursuant to this Section 10.3 shall be included as part of Operating Expenses, and Tenant shall pay Tenant’s Proportionate Share thereof.

10.4 **Landlord’s Warranties and Guaranties.** In connection with Tenant’s repair and maintenance obligations under this Master Lease, Landlord agrees that Tenant shall have the benefit of, and Landlord shall use all commercially reasonable efforts to enforce (without any obligation of Landlord to incur legal expenses or institute litigation, unless Tenant pays for all costs and expenses thereof, and holds harmless Landlord therefrom) all applicable warranties and guaranties assigned to or otherwise held by Landlord during the Term; provided, however, that Tenant’s repair and maintenance obligations shall not be delayed, suspended or otherwise affected by the existence or nonexistence, or any failure, refusal, delay in the performance, adequacy or payment or nonpayment, of any such warranty or guaranty (if any).

10.5 **Tenant’s Responsibility under Lands’ End Agreements and Sears Hometown License Agreement.**

(a) Notwithstanding any provision to the contrary in this Master Lease, Tenant agrees that Sears, Roebuck and Co. (and Tenant, but not Landlord, in the event Sears, Roebuck and Co. shall fail to perform or discharge any such obligations) shall be solely responsible to perform and discharge all obligations of the landlord under the Lands’ End Agreements with respect to the Lands’ End Space and the Sears Hometown License Agreement with respect to the Sears Hometown Space, including without limitation all such obligations (if any) for or with respect to repair, maintenance (including common area maintenance) and alterations, and Tenant shall, and shall cause Sears, Roebuck and Co. to, release and indemnify, defend and hold harmless Landlord from all costs, expenses and Liabilities therefrom (except as
arising from Landlord’s gross negligence, willful misconduct or breach of the terms of this Lease); provided that Landlord shall be liable for any relocation of the Lands’ End Space and Sears Hometown Space within any Demised Premises pursuant to any Recapture Separation Work.

(b) Tenant shall cause Sears, Roebuck and Co. to presently, absolutely and unconditionally assign to Landlord, from and after the Commencement Date, all of Sears, Roebuck and Co.’s right, title and interest in all current and future rents and the absolute, unconditional and continuing right to receive and collect all rent, and all taxes and other charges (if any) payable by Lands’ End under the Lands’ End Agreements (excluding any and all payments under the Retail Operations Agreement dated April 4, 2014, as now or hereafter amended, provided such amendments do not reduce the rent, taxes and other charges payable by Lands’ End under the Lands’ End Agreements other than the Retail Operations Agreement) with respect to Lands’ End Space at the Demised Premises (collectively, the “LE Rents”) and payable by Sears Hometown under the Sears Hometown License Agreement with respect to Sears Hometown Space at the Demised Premises (collectively, the “Hometown Rents”), it being intended by Tenant that this assignment constitutes a present, outright, immediate, continuing and absolute assignment of any and all LE Rents and Hometown Rents and not an assignment for security nor an assignment of the Lands’ End Agreements or the Sears Hometown License Agreement. Such assignment to Landlord shall not be construed to bind Landlord to the performance of any of the covenants, conditions or provisions contained in the Lands’ End Agreements or the Sears Hometown License Agreement or otherwise impose any obligation upon Landlord thereunder. Notwithstanding the foregoing assignment of the LE Rents and Hometown Rents to Landlord, Tenant shall cause Sears, Roebuck and Co. to continue to perform and discharge all obligations of Sears, Roebuck and Co. as the landlord under the Lands’ End Agreements with respect to the applicable Lands’ End Space and the Sears Hometown License Agreement with respect to the Sears Hometown Space. In furtherance of the foregoing assignment, Tenant shall use commercially reasonable efforts to cause (and to cause Sears, Roebuck and Co. to cause) Lands’ End and Sears Hometown, respectively, to pay directly to Landlord all LE Rents and Hometown Rents, and, in any event, if Tenant or Sears, Roebuck and Co. shall ever receive any LE Rent or Hometown Rent, Tenant shall (and shall cause Sears, Roebuck and Co. to) execute and deliver to Landlord such additional instruments, in form and substance reasonably satisfactory to Landlord, as may hereafter be reasonably requested by Landlord to further evidence and confirm such assignment. Tenant agrees to (and to cause Sears, Roebuck and Co. to) execute and deliver to Landlord such additional instruments, in form and substance reasonably satisfactory to Landlord, as may hereafter be reasonably requested by Landlord to further evidence and confirm such assignment. In the event that Lands’ End or Sears Hometown shall exercise any set-off rights against Tenant, Tenant’s Parent or any Subsidiary of Tenant’s Parent, or otherwise withholds LE Rent or Hometown Rent as a result of a default by Tenant, Tenant’s Parent or any Subsidiary of Tenant’s Parent under any Lands’ End Agreement or Sears Hometown License Agreement, or in the event Lands’ End or Sears Hometown is stayed or otherwise prohibited from making LE Rent/Hometown Rent payments directly to Landlord in the event of any insolvency proceeding of Tenant or Guarantor, Tenant shall be liable for and pay to Landlord, as Additional Charges, all such LE Rent and Hometown Rent at the times provided under the Lands’ End Agreements.

(c) Tenant agrees that it shall cause Sears, Roebuck and Co. to not amend, modify or terminate the Lands’ End Agreements or Sears Hometown License Agreement insofar as they relate to the Properties, without the prior written consent of Landlord, such consent to not be unreasonably withheld.
(d) For the avoidance of doubt, Sears, Roebuck and Co. retains rights to relocate Lands’ End Space as provided in the Lands’ End Agreements and all rights to terminate the Lands’ End Agreements in the event Tenant ceases business operations in the applicable Demised Premises as permitted in this Master Lease (except Tenant shall not have the right to cause a termination the Lands’ End Agreement in connection with a 50% Go Dark), or the Master Lease is otherwise terminated with respect to any individual Demised Premises; provided, Tenant agrees that, other than pursuant to a Final Recapture Plan, it may not (and it shall cause Sears, Roebuck and Co. not to) relocate Lands’ End Space within any Demised Premises except with the prior written consent of Landlord in its sole discretion, unless Lands’ End shall have consented to such relocation in writing and a copy of such consent shall have been promptly delivered to Landlord and Landlord Mortgagee.

(e) Upon the termination of the occupancy of any Lands’ End Space or Sears Hometown Space by Lands’ End or Sears Hometown at any Demised Premises in accordance with the applicable Lands’ End Agreement, the Sears Hometown License Agreement, or otherwise, such Lands’ End Space or Sears Hometown Space (as applicable) shall be deemed to have been automatically recaptured by Tenant and shall from and after the date of such termination be deemed a part of the Demised Premises demised to Tenant, subject in all respect to the terms and conditions of this Master Lease, including, without limitation, with respect to the payment by Tenant of Base Rent and Additional Charges to Landlord with respect to such former Lands’ End Space. In such event, the amount of Base Rent shall be increased as provided on Schedule 2 to the Side Letter.

ARTICLE XI
INSURANCE

11.1 General Insurance Requirements. During the Term, subject to Section 11.2(a), Tenant shall at all times keep the Demised Premises, and all property located therein or thereon, including the Leased Improvements, Fixtures and Tenant’s Property, insured with the kinds and amounts of insurance described below, and otherwise as permitted in the Insurance Requirements. Each element of insurance described in this Section 11.1 shall be maintained with respect to the Demised Premises and Tenant’s Property and the operations of each Store thereon. Such insurance shall be written by companies permitted to conduct business in the applicable State. All third-party liability type policies must name Landlord as an “additional insured.” All property policies shall name Landlord as “loss payee” for its interests in each Property. All business interruption policies shall name Landlord as “loss payee” with respect to Rent only. Property losses shall be payable to Landlord and/or Tenant as provided in Article XIV. In addition, the policies, as appropriate, shall name as an “additional insured” and/or “loss payee,” each holder of any mortgage, deed of trust or other security agreement (“Landlord Mortgagees”) securing any Indebtedness or any other Encumbrance placed on the Demised Premises in accordance with the provisions of Article XIV (“Landlord Mortgage”) by way of a standard form of mortgagee’s loss payable endorsement. Except as otherwise set forth herein, any property insurance loss adjustment settlement shall require the written consent of Landlord, Tenant and each Landlord Mortgagee (to the extent required under the applicable Landlord Mortgage Documents), unless
the amount of the loss net of the applicable deductible is less than the lesser of twenty-five percent (25%) of the value of the Leasehold Improvements or five hundred thousand dollars ($500,000), in which event no consent shall be required by Landlord. Evidence of insurance shall be deposited with Landlord and, if requested, with any Landlord Mortgagee. The insurance policies required to be carried by Tenant hereunder shall insure against at least the following risks with respect to each Property:

(a) Insurance against fire, vandalism, malicious mischief and such other perils as are from time to time included in a standard extended coverage insurance policy, insuring Tenant’s merchandise, inventory, trade fixtures, furnishings, equipment, plate and window glass and all other such items of personal property and Tenant’s Property (including all exterior and interior improvements, including those existing in the Store as of the Commencement Date), and all modifications, replacements and substitutions thereof, in an amount not less than one hundred percent (100%) of the full amount of the actual replacement cost thereof;

(b) Loss or damage by explosion of steam boilers, pressure vessels or similar apparatus, now or hereafter installed in each Store, in such limits, with respect to any one accident, as may be reasonably requested by Landlord from time to time;

(c) Flood (when any of the improvements comprising the Demised Premises is located in whole or in part within a FEMA designated high-hazard flood zone) in an amount not less than the full replacement cost of such improvements or such other hazards and in such amounts as may be customary for comparable properties in the area;

(d) Loss of rental value in an amount not less than twelve (12) months’ Rent payable hereunder or business interruption in an amount not less than twelve (12) months of income and normal operating expenses including ninety (90) days’ ordinary payroll and Rent payable hereunder, with an extended period of indemnity coverage of at least ninety (90) days necessitated by the occurrence of any of the hazards described in Section 11.1(a), 11.1(b) or 11.1(c);

(e) Claims for personal injury or property damage under a policy of comprehensive general public liability insurance with amounts not less than one hundred million dollars ($100,000,000) each occurrence and one hundred million dollars ($100,000,000) in the annual aggregate and with a retention or deductible not in excess of five hundred thousand dollars ($500,000); provided, that such requirements may be satisfied through the purchase of a primary general liability policy and excess liability policies;

(f) Workers’ compensation insurance evidenced by Tenant on a per-state basis (with respect to the state in which each Demised Premises are located) and by a certificate of insurance on a “statutory basis” with minimum limits of “employers liability” coverage of five hundred thousand dollars ($500,000) per occurrence;

(g) Motor vehicle liability insurance with coverage for all owned, nonowned and hired vehicles with a combined single limit of not less than Three Million and No/100 Dollars ($3,000,000) per occurrence for bodily injury and property damage. If no vehicles are owned or leased, the commercial general liability insurance shall be extended to provide insurance for nonowned and hired vehicles;
During such time as Tenant is constructing any improvements, Tenant, at its sole cost and expense, shall carry, or cause to be carried (i) workers’ compensation insurance and employers’ liability insurance covering all persons employed in connection with the improvements in statutory limits, (ii) a completed operations endorsement to the commercial general liability insurance policy referred to above, (iii) builder’s risk insurance, completed value form (or its equivalent), covering all physical loss, in an amount and subject to policy conditions reasonably satisfactory to Landlord, and (iv) such other insurance, in such amounts, as Landlord deems reasonably necessary to protect Landlord’s interest in the Demised Premises from any act or omission of Tenant’s contractors or subcontractors;

Without duplicating any of the above insurance coverages, as and to the extent Tenant engages in (i) the sale or serving of alcoholic beverages, liquor liability insurance, and (ii) the sale of gasoline or other petroleum products and/or the operation of SACs, Tenant shall procure pollution legal liability insurance covering each location with a retroactive date corresponding to the first occupation by Tenant with a minimum limit of ten million dollars ($10,000,000) for each incident which coverage shall be primary and noncontributory and should also include coverage for any underground storage tanks located on the Land.

By this Section 11.1, Tenant intends that the risk of loss or damage to the Demised Premises and all property thereon, including the Leased Improvements, Fixtures and Tenant’s Property described above, be borne by responsible property insurance carriers and Tenant hereby agrees to look solely to, and to seek recovery only from, its respective property insurance carriers, in the event of a loss of a type described above to the extent that such coverage is agreed to be provided hereunder. For this purpose, any applicable deductible or self-insured amount shall be treated as though it were recoverable under such policies; and

Tenant, may self-insure any or all of the above-stated risks by maintaining (or causing Tenant’s Parent or a Subsidiary thereof to maintain) a program of insurance. In the event Tenant elects to self-insure (or cause an Affiliate to insure) for any such risk, it shall use reasonable efforts to endeavor to notify Landlord of such election. Failure to so notify Landlord, however, shall not be considered a default under the terms of this Lease and shall not subject Tenant to any additional liability hereunder. Upon request by Landlord, Tenant shall promptly disclose to Landlord whether or not Tenant self-insures (or cause an Affiliate to insure) any of its insurance risks under this Master Lease.

Landlord’s "All-Risk" Insurance. (a) Landlord shall provide, with respect to the Demised Premises and the entire building in which it is located, insurance against loss or damage by fire, vandalism and malicious mischief, extended coverage perils commonly known as “All Risk,” and all physical loss perils normally included in such All Risk insurance, including, but not limited to, sprinkler leakage and windstorm damages in an amount not less than the insurable value on a Maximum Foreseeable Loss (as defined in this Section 11.2) basis and including a building ordinance coverage endorsement. The term “Maximum Foreseeable Loss” shall mean the largest monetary loss within one area that may be expected to result from a single fire with protection impaired, the control of the fire mainly dependent on physical barriers or
separations and a delayed manual firefighting by public and/or private fire brigades. If Landlord reasonably believes that the Maximum Foreseeable Loss has increased at any time during the Term, it shall have the right to do so on commercially reasonable terms.

(b) Tenant shall reimburse Landlord on demand upon submission of an invoice therefor for the cost of Landlord’s “All-Risk” policy of insurance and all other insurance policies which Landlord may maintain from time to time, with respect to the Demised Premises and the Property (“Landlord’s Insurance Costs”), in the amount of, (a) prior to the Multi-Tenant Occupancy Date, one hundred percent (100%) of the amount thereof, and (b) from and after the Multi-Tenant Occupancy Date, Tenant’s Proportionate Share thereof (in each case payable as part of the Operating Expenses).

11.3 Additional Insurance. In addition to the insurance described above, Tenant shall maintain such additional insurance upon notice from Landlord as may be reasonably required from time to time by Landlord (as and to the extent then customarily carried or required by prudent owners of properties similar to the Properties) and any Landlord Mortgagee, so long as the same is available at commercially reasonable rates, and shall further at all times maintain adequate workers’ compensation coverage and any other coverage required by Legal Requirements for all Persons employed by Tenant on the Demised Premises in accordance with Legal Requirements. If Tenant is not required to do so, Landlord may abstain and pay on the same and add the cost thereof to the Property Charges.

11.4 Waiver of Subrogation. All insurance policies carried by either Party covering the Demised Premises or Tenant’s Property, including, without limitation, contents, fire and liability insurance, shall expressly waive any right of subrogation on the part of the insurer against the other Party. Each Party, respectively, shall pay any additional costs or charges for obtaining such waiver.

11.5 Policy Requirements. All of the Tenant policies of insurance referred to in this Article XI shall be written in form reasonably satisfactory to Landlord and any Landlord Mortgagee and issued by insurance companies with a minimum policyholder rating of not less than “A” and a financial rating of “VIII” in the most recent version of Best’s Key Rating Guide, or a minimum rating of “BBB” from Standard & Poor’s or the equivalent.

11.6 Increase in Limits. If, from time to time after the Commencement Date, Landlord determines in the exercise of its reasonable business judgment in good faith that the limits of the personal injury or property damage-public liability insurance then carried pursuant to Section 11.1(e) are insufficient, Landlord may give Tenant Notice of acceptable limits for the insurance to be carried; provided, that in no event will Tenant be required to carry insurance in an amount which exceeds the sum of (i) the amounts set forth in Section 11.1(e) hereof and (ii) two percent (2%) thereof in any one (1) Lease Year; and subject to the foregoing limitation, within ninety (90) days after the receipt of such Notice, the liability insurance shall thereafter be carried with limits as prescribed by Landlord until further increase pursuant to the provisions of this Section 11.6.

11.7 Blanket Policy. Notwithstanding anything to the contrary contained in this Article XI, Tenant’s obligations to carry the liability insurance provided for herein may be
brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, that the requirements of this Article XI (including satisfaction of the Landlord Mortgagee’s requirements and the approval of the Landlord Mortgagee) are otherwise satisfied; and provided, further, that Tenant maintains specific allocations reasonably acceptable to Landlord.

11.8 No Separate Insurance. Tenant shall not, on Tenant’s own initiative or pursuant to the request or requirement of any third party, (i) take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article XI to be furnished by, or which may reasonably be required to be furnished by, Tenant or (ii) increase the amounts of any then-existing insurance by securing an additional insurance policy or policies, unless all parties having an insurable interest in the subject matter of the insurance coverage, including in all cases Landlord and all Landlord Mortgagees, are included therein as additional insureds and the loss is payable under such insurance policy or policies in the same manner as losses are payable under this Master Lease. Notwithstanding the foregoing, nothing herein shall prohibit Tenant from insuring against risks not required to be insured hereby, and as to such insurance, Landlord and any Landlord Mortgagee need not be included therein as additional insureds, nor must the loss thereunder be payable in the same manner as losses are payable hereunder except to the extent required to avoid a default under the Landlord Mortgage.

ARTICLE XII
CASUALTY AND CONDEMNATION

12.1 Casualty; Property Insurance Proceeds. (a) All proceeds (except business interruption insurance proceeds not allocated to rent expenses) payable by reason of any property loss, damage, or destruction of or to the Demised Premises by fire or other casualty, or any portion thereof, under any property policy of insurance required to be carried by Landlord hereunder, shall be paid to Landlord Mortgagee if required under any Landlord Mortgage, if any (or if none, to Landlord), to be held in trust for purpose of restoration and made available to Tenant upon request and in accordance with Landlord Mortgagee’s customary procedures (unless Landlord Mortgage Documents permit or require use of such proceeds to pay indebtedness and such proceeds are so used), or if there is no Landlord Mortgagee, by Landlord, pursuant to the procedures set forth in this Section 12.1(a), for the reasonable costs of preservation, stabilization, emergency restoration business interruption (other than any amount allocated to rent expenses), reconstruction and repair, as the case may be, of any damage to or destruction of the Demised Premises, or any portion thereof. All proceeds paid to Tenant from Landlord’s insurance shall be used only for the repair of any damage to the Demised Premises. Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Demised Premises to substantially the same condition as existed immediately before the damage or destruction and with materials and workmanship of like kind and quality and to Landlord’s reasonable satisfaction, and in accordance with the general terms and conditions of Schedule 1.7 (j)(ii) attached hereto, as applicable (collectively, “Restoration Standards”), shall be provided to Landlord, unless otherwise required by any Landlord Mortgagee. All salvage resulting from any risk covered by insurance for damage or loss to the Demised Premises shall belong to Landlord. Landlord shall have the right to prosecute and settle insurance claims, in good faith in a commercially reasonable manner intended to maximize the recovery, with respect to all Landlord’s insurance, provided, that Landlord shall fully consult with and involve Tenant in...
the entire process of adjusting and settling any insurance claims under this Article XII, and any final settlement with the insurance company shall be subject to Tenant’s written consent if such adjustment or settlement would result in insurance proceeds which are insufficient to completely cover all of Tenant’s restoration obligations hereunder, such consent not to be unreasonably withheld, conditioned or delayed, and any consent by Landlord Mortgagee (if required) under any Landlord Mortgage. Tenant shall have the sole right to adjust and settle all insurance claims with respect to all Tenant’s insurance and to retain all proceeds thereof (including loss of rental value) for its own account.

(b) Subject to the provisions of any Landlord Mortgage, and subject to the terms of this Article XII, Landlord Mortgagee or Landlord shall make available to Tenant the insurance proceeds (net of all administrative and collection costs, including reasonable attorneys’ fees) paid to Landlord for such repair and rebuilding as it progresses. Payments shall be made against certification of the architect approved by Landlord (which approval shall not be unreasonably withheld, delayed or conditioned) responsible for the supervision of the repairs and rebuilding that the work had been performed substantially in conformance with the approved plans and specifications therefor and the value of the work in place is equal to not less than one hundred ten percent (110%) of the aggregate amount advanced by Landlord for the payment of such work. Prior to commencing the repairing and rebuilding, Tenant shall deliver to Landlord for Landlord’s approval a schedule setting forth the estimated monthly draws for such work. Subject to the provisions of any applicable Landlord Mortgage, Landlord shall contribute to such payments, out of the insurance proceeds being held in trust by Landlord, an amount equal to the proportion that the total net amount so held by Landlord bears to the total estimated cost of repairing and rebuilding, multiplied by the payment by Tenant on account of such work. Landlord may, however, withhold ten percent (10%) from each payment until the work has been completed and unconditional lien releases and/or other proof has been furnished to Landlord that no lien or liability has attached, or will attach, to the applicable Demised Premises or the Property or to Landlord in connection with repairing and rebuilding.

12.2 Tenant’s Obligations Following Casualty. (a) If any Demised Premises is damaged, whether or not from a risk covered by insurance, (i) Tenant shall promptly restore such Demised Premises to the Restoration Standards and (ii) such damage shall not terminate this Master Lease; provided, however, that in the case of (A) a total destruction of the Leased Improvements and Fixtures with respect to a particular Property or a destruction of same such that such Property is rendered Unsuitable For Its Intended Use ("Total Destruction"), or (B) a partial destruction which occurs during the last twelve (12) months of the Initial Term or any exercised Renewal Term ("12-Month Destruction"), then in either such event Tenant shall have the right to elect not to restore the Demised Premises, upon Notice to Landlord, and subject to and on the terms and conditions, as hereinafter provided.

(b) If Tenant restores the affected Demised Premises and the cost of the repair or restoration exceeds or appears is likely to exceed the amount of proceeds received from the insurance required to be carried hereunder, or if there are no insurance proceeds promptly after becoming aware of such facts (or at any time) upon demand by Landlord, Tenant shall promptly provide Landlord with evidence reasonably acceptable to Landlord that Tenant has available to it any excess amounts needed to restore such Demised Premises (without any adverse effect on Tenant’s ability to pay all Rent or to perform all of its other obligations with this Master Lease).
All such excess amounts necessary to restore such Demised Premises shall be paid by Tenant and the amount thereof promptly deposited with Landlord Mortgagee or Landlord, as the case may be, for disbursement as the work progresses. Notwithstanding the foregoing, if the amount of insurance proceeds available for restoration is not sufficient solely because of an uninsurable casualty, Tenant shall not be required to restore the casualty damage (but its obligation to pay Rent shall not be suspended or abated).

(c) If there is a 12-Month Destruction and Tenant elects not to restore by Notice to Landlord within sixty (60) days of the 12-Month Destruction, Tenant shall not be required to restore but shall be obligated to make payment to Landlord of the 12-Month Destruction Fee as provided in Section 12.6.

(d) If Tenant is not required to or permitted to, and elects not to repair and restore the Demised Premises, all insurance proceeds shall be paid to and retained by Landlord free and clear of any claim by or through Tenant, subject to the provisions of any Landlord Mortgage.

12.3 No Abatement of Rent. In the event of any casualty or destruction, including a Total Destruction, this Master Lease shall remain in full force and effect, and Tenant’s obligation to pay the Rent and all other charges required by this Master Lease shall remain unabated during the period required for adjusting insurance, satisfying Legal Requirements, repair and restoration, subject to Tenant’s foregoing right to elect not to restore and the termination of the Master Lease with respect to the affected Demised Premises in the event of Total Destruction, and Landlord’s right of termination if Landlord Mortgagee applies proceeds of insurance as provided below; provided, that in either of which events of termination, as of the date Tenant vacates the affected Demised Premises (and surrenders the same) in accordance with this Master Lease, there shall be a Base Rent adjustment with respect to the remainder of the Demised Premises in accordance with Schedule 2 to the Side Letter (as if the remainder of the Demised Premises was akin to the Tenant Space referenced in item 2 of such Schedule 2 to the Side Letter; provided, further, that the foregoing is subject to the provisions of Section 12.6.

12.4 Waiver. Tenant waives any statutory rights of termination which may arise by reason of any damage or destruction of the Demised Premises but such waiver shall not affect any contractual rights granted to Tenant under this Article XII.

12.5 Insurance Proceeds Paid to Landlord Mortgagee.

(a) Notwithstanding anything herein to the contrary, if any Landlord Mortgagee is entitled to any insurance proceeds, or any portion thereof, under the terms of any Landlord Mortgage, such proceeds shall be applied, held and/or disbursed in accordance with the terms of the Landlord Mortgage.

(b) Prior to the Multi-Tenant Occupancy Date, if the Landlord Mortgagee elects, or is required under the related financing document, to apply the insurance proceeds to the Indebtedness secured by the Landlord Mortgage, then Tenant shall not be obligated to repair or restore the Demised Premises and if Tenant does not elect to restore the Demised Premises with its own funds by Notice to Landlord within sixty (60) days of such application of proceeds by
Landlord Mortgagee, then except in the case of a Total Destruction, Landlord shall elect upon Notice to Tenant within ninety (90) days of application of such proceeds to the Landlord Mortgagee Indebtedness either to (a) fund the amount of insurance proceeds applied by Landlord Mortgage within six (6) months of such application, in which case Tenant shall be obligated to restore the Demised Premises upon receipt of such proceeds (regardless of the sufficiency thereof for the required restoration), which may be disbursed by Landlord in accordance with the same or similar procedures as applied by Landlord Mortgagee, or (b) terminate this Master Lease as to the Demised Premises effective as of a date ninety (90) days after the date of such Notice.

(c) From and after the Multi-Tenant Occupancy Date, if the Landlord Mortgagee elects, or is required under the related financing document, to apply the insurance proceeds to the Indebtedness secured by the Landlord Mortgage, then Landlord shall not be obligated to repair or restore the Demised Premises and Landlord shall elect upon Notice to Tenant within ninety (90) days of application of such proceeds to the Landlord Mortgagee Indebtedness either to (a) repair or restore the Demised Premises using Landlord’s own funds in accordance with the Restoration Standards, or (b) terminate this Master Lease as to the Demised Premises effective as of a date ninety (90) days after the date of such Notice (unless Tenant elects to provide its own funds to Landlord sufficient to complete such repair and restoration by Notice to Landlord within sixty (60) days after Landlord’s Notice of termination).

12.6Tenant’s Right to Terminate Upon Damage Near End of Term. In the event of a 12-Month Destruction in which Tenant does not elect to rebuild as provided herein, upon payment by Tenant to Landlord of the 12-Month Destruction Fee (as hereinafter defined), the Master Lease will terminate, and Tenant will vacate, the Demised Premises on the date that Tenant pays to Landlord the 12-Month Destruction Fee (as hereinafter defined), which shall not be later than ninety (90) days after receipt of Notice from Tenant of its election not to rebuild. The “12-Month Destruction Fee” is an amount equal to the greater of (a) the insurance proceeds attributable to such damage or destruction and (b) the cost to repair such damage or destruction as reasonably estimated by Landlord. Except for such Base Rent adjustment, such termination shall not otherwise affect any other terms or conditions of this Master Lease with respect to the remainder of the Demised Premises, all of which shall remain in full force and effect, subject to all obligations of Tenant which survive termination of the Master Lease.

12.7Tenant’s Right to Terminate Upon Total Destruction. In the event of a Total Destruction in which Tenant does not elect to rebuild as provided herein, upon payment by Tenant to Landlord of the Destruction Termination Fee (as hereafter defined) and the earlier of receipt by Landlord of all applicable insurance proceeds (and Landlord agrees to use all commercially reasonable efforts to adjust and obtain the same) or ninety (90) days after the date of the Total Destruction, the Master Lease will terminate as to, and Tenant will vacate, the Demised Premises. The “Destruction Termination Fee” is an amount equal to Base Rent attributable to such Demised Premises (as calculated in accordance with the “SHC Base Rent Adjustment” and as otherwise provided in Schedule 2 attached to the Side Letter) plus any payments under the Lands’ End Agreements or the Sears Hometown License Agreement relating to the Nonprofitable Property, in each case that would be payable for a period (the Calculation Period) of the lesser of (x) one (1) calendar year or (y) the balance of the Term (excluding renewals) from the date of termination with respect to such Demised Premises, plus (ii) all Property Charges attributable to such Demised Premises, including any Lands’ End Space and Sears Hometown Space, that would
be payable during the Calculation Period, which shall be initially paid at the rate based on the amount payable during the one (1)-year period immediately preceding the date of the Tenant Termination Election Notice, subject to final adjustment. When the actual amount of such Property Charges has been finally determined, Landlord and Tenant shall promptly adjust such amount and refund or pay any 12-Month Destruction Fee or Destruction Termination Fee (as applicable). Except for such Base Rent adjustment, such termination shall not otherwise affect any other terms or conditions of this Master Lease with respect to the remainder of the Demised Premises, all of which shall remain in full force and effect, subject to all obligations of Tenant which survive termination of the Master Lease.

12.8 Condemnation. (a) Tenant and Landlord shall promptly give the other written notice upon knowledge of the actual or threatened commencement of any condemnation or eminent domain proceeding or other governmental taking affecting any Demised Premises (a “Condemnation”), and, to the extent not otherwise received, shall deliver to the other copies of any and all papers served in connection with such Condemnation.

(b) Subject to the further provisions hereof, following the occurrence of a Condemnation, Tenant, regardless of whether sufficient Condemnation awards are available for restoration, shall, in a reasonably prompt manner, proceed to Restore the Demised Premises to the extent practicable to be of substantially the same character and quality as prior to the Condemnation, in compliance with all applicable material Legal Requirements. Tenant shall not be obligated to restore or replace Tenant’s Property or any alterations or additions to the Demised Premises made by Tenant unless, with respect to such alterations or additions, the same were Required Alterations.

(c) This Master Lease shall terminate with respect to the affected Demised Premises upon the Condemnation of all or substantially all of such Demised Premises, or which renders the unaffected portion of the Demised Premises Unsuitable for its Intended Use (“Total Condemnation”); provided, that in the event of a temporary taking (which shall not exceed six (6) consecutive months), the Master Lease shall continue in full force and effect and Tenant shall receive the entire award therefor, subject to any Landlord Mortgage. A Condemnation of substantially all of a Demised Premises shall be deemed to have occurred if (i) fifty percent (50%) or more of the square footage of such Demised Premises shall have been subject to a Condemnation, or (ii) there shall have been a loss of access or egress, parking capacity or any other appurtenance necessary for the operation of such Demised Premises substantially in the manner in which it had previously been operated and there is no reasonably equivalent replacement therefor. In the event of a termination of this Lease pursuant to this Section 12.8(c), as of the date Tenant vacates the affected Demised Premises (and surrenders the same) in accordance with this Master Lease, Tenant shall have no further obligation to pay any Base Rent or Additional Charges in respect of the affected Demised Premises for the period after such termination and surrender, and there shall be a Base Rent adjustment with respect to the remainder of the Demised Premises in accordance with the “SHC Base Rent Adjustment” and as otherwise provided in Schedule 2 to the Side Letter (as if the remainder of the Demised Premises was akin to the Tenant’s Space referred to in item 3 of such Schedule 2 to the Side Letter).

12.9 Condemnation Proceeds Paid to Landlord Mortgagee. Notwithstanding anything herein to the contrary, if any Landlord Mortgagee is entitled to any condemnation...
proceeds, or any portion thereof, under the terms of any Landlord Mortgage, such proceeds shall be applied, held and/or disbursed in accordance with the terms of the Landlord Mortgage. If the Landlord Mortgagee elects, or is required under the related financing document to apply the condemnation proceeds to the Indebtedness secured by the Landlord Mortgagee, then Tenant shall not be obligated to repair or restore the Demised Premises and if Tenant does not elect to restore the Demised Premises with its own funds by Notice to Landlord within sixty (60) days of such application of proceeds by Landlord Mortgagee, then, except in the case of a Total Condemnation, Landlord shall elect upon Notice to Tenant within ninety (90) days of application of such proceeds by Landlord Mortgagee Indebtedness either to (a) fund the amount of Condemnation proceeds applied by Landlord Mortgagee within six (6) months of such application, in which case Tenant shall be obligated to restore the Demised Premises upon receipt of such proceeds (regardless of the sufficiency thereof for the required restoration), which may be disbursed by Landlord in accordance with the same or similar procedures as applied by Landlord Mortgagee, or (b) terminate this Master Lease as to the Demised Premises effective as of a date ninety (90) days after the date of such Notice.

(a) If the Demised Premises is the subject of a Condemnation and this Master Lease does not terminate with respect thereto pursuant to Section 12.9(c), then Tenant shall not be required to restore, repair, replace or rebuild such Demised Premises if: the Restoration cannot reasonably be completed prior to the beginning of the ninth (9th) year immediately preceding the expiration of the Initial Term (or prior to the beginning of the fourth (4th) year of any Renewal Term) for any Property, and twenty percent (20%) or more (but less than fifty percent (50%) of the square footage of such Demised Premises shall have been subject to a Condemnation.

(b) With respect to a Condemnation of the Demised Premises that is described in Section 12.9(a), Tenant shall notify Landlord of its election not to restore within the next one hundred eighty (180) days after it is notified of the Condemnation or, if later, after the net Condemnation Proceeds available for restoration are determined, in which case, this Master Lease shall terminate with respect to the affected Demised Premises on a date specified in said Notice not later than the thirtieth (30th) day after such Notice, conditional on Landlord’s receipt of payment and/or assignment of the proceeds in the next succeeding sentence. In the event of any termination of this Master Lease, Tenant shall pay over and/or assign to Landlord all proceeds payable to Tenant (if any) in connection with such Condemnation, less any portion thereof previously used by Tenant to secure and make safe the affected Demised Premises and the Tenant’s Award (as hereinafter defined).

(c) The Base Rent and Additional Charges in respect of any Demised Premises affected by a Condemnation shall not abate by reason thereof (other than, in the case of any Additional Charges, if the same shall abate by the terms of any applicable law or otherwise as a result of such Condemnation), except as a result of and as of the date of a termination of this Master Lease with respect to an affected Demised Premises; provided, however, that from and after the date of such termination the Rent with respect to the remainder of the Demised Premises shall be adjusted in accordance with the “SHC Base Rent Adjustment” as specified in and as otherwise provided in Schedule 2 to the Side Letter.

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(d) Unless Tenant is required or elects to perform any restoration utilizing the Award, Landlord shall be entitled to the entire Award in any Condemnation, subject to Tenant’s Award, and Tenant shall not have any interest in or right to claim any, interest or award for or measured by the value of this Master Lease or Tenant’s leasehold estate hereunder, including any unexpired Term (including any Renewal Terms) hereof. Landlord shall have the exclusive power to collect, receive and retain any Award proceeds and to make any compromise or settlement in connection with such Condemnation, subject to Tenant’s Award, further subject to Landlord’s making available any Award for Tenant’s restoration obligations hereunder. Nothing herein shall be deemed to assign to Landlord, or preclude Tenant from seeking and retaining its interest in, a separate award to Tenant for Tenant’s Property, severable Alterations (subject to the provisions of any Legal Requirements, Insurance Requirements or Encumbrances), moving expenses, business dislocation damages or similar claims *(provided, that where this Master Lease is to terminate as a result of such Condemnation, such claim does not reduce the award that would otherwise be paid over or assigned to Landlord) (“**Tenant’s Award**”).

(e) Any surplus which may remain out of proceeds or awards received pursuant to a Condemnation after payment of such costs of Restoration undertaken by Tenant, and any Tenant’s Award (if any) shall be paid over to and belong to Landlord.

(f) Landlord shall accept or reject Tenant’s offer within sixty (60) days of Tenant’s election not to restore the Demised Premises as provided in this Article XII. All Rent shall be prorated as of and shall be paid or credited as of the closing.

12.10 **Landlord’s Restoration Obligations.** Notwithstanding the foregoing and subject to the terms of any Landlord Mortgage Documents, provided Tenant has not elected to terminate the Master Lease with respect to an individual Demised Premises, as provided for in this Article XII, from and after the Multi-Tenant Occupancy Date, upon reasonable notice to Tenant, Landlord shall perform all of Tenant’s restoration obligations (with the exception of restoration of Tenant’s Alterations (other than Alterations made pursuant to Legal Requirements or Insurance Requirements) and Tenant’s Property) to the extent of the “All Risk” Insurance which Landlord is obligated to carry hereunder, provided that Landlord receives such insurance proceeds in the case of a casualty, or to the extent of the Award actually received by Landlord upon condemnation with respect to damage or destruction which affects both the Demised Premises and any Recapture Space or Additional Recapture Space.

12.11 **Nonprofitable Properties.** Notwithstanding any provision contained in this Master Lease to the contrary, Tenant shall not have any obligation to restore any casualty damage or condemnation to any Nonprofitable Property, and shall be entitled to terminate this Master Lease with respect to such Nonprofitable Property on the earlier of (a) any date otherwise provided in Section 12.6 or 12.7, as the case may be, and (b) any applicable Nonprofitable Property Termination Date, upon payment of the applicable Nonprofitable Property Termination Fee.
ARTICLE XIII
DEFAULT

13.1 Events of Default. Any one (1) or more of the following shall constitute an “Event of Default”:

(a) (i) Tenant shall fail to pay any installment of Base Rent or any installment of the Installment Expenses when due and such failure is not cured by Tenant within ten (10) days after Tenant’s failure to pay such installment of Base Rent or Installment Expenses when due;

(ii) Tenant shall fail to pay any other amount payable hereunder when due and such failure is not cured by Tenant within thirty (30) days after Notice from Landlord of Tenant’s failure to pay such amount when due.

(b) a default shall occur under any Lease Guaranty where the default is not cured within any applicable cure period set forth therein or, if no cure periods are provided, within thirty (30) days after Notice from Landlord;

(c) Tenant or Lease Guarantor shall:

(i) admit in writing its inability to pay its debts generally as they become due;

(ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act;

(iii) make an assignment for the benefit of its creditors;

(iv) consent to the appointment of a receiver of itself or of the whole or any substantial part of its property; or

(v) file a petition or answer seeking reorganization or arrangement under the United States bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

(d) Tenant or Lease Guarantor shall be adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of Tenant or any Lease Guarantor, a receiver of Tenant or any Lease Guarantor or of the whole or substantially all of the Tenant’s or Tenant’s Parent’s property, or approving a petition filed against Tenant or any Lease Guarantor seeking reorganization or arrangement of Tenant or any Lease Guarantor under the United States bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, and such judgment, order or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of the entry thereof;

(e) Tenant or Tenant’s Parent shall be liquidated or dissolved;
the estate or interest of Tenant in the Demised Premises or any part thereof shall be levied upon or attached in any proceeding relating to more than (i) two hundred fifty thousand dollars ($250,000) with respect to any one Demised Premises or (ii) Two Million Dollars ($2,000,000) with respect to more than one Demised Premises, and the same shall not be vacated, discharged or stayed pending appeal (or bonded or otherwise similarly secured payment) within the earlier of ninety (90) days after commencement thereof or thirty (30) days after receipt by Tenant of notice thereof from Landlord or any earlier period provided by law for obtaining any stay pending appeal or to prevent foreclosure or sale (“Stay Period”); provided, however, that such notice shall be in lieu of and not in addition to any notice required under applicable law;

Tenant ceases the continuous operations of any Store in violation of the Operating Covenant, and Tenant fails to resume operations within thirty-five (35) days after Notice from Landlord; provided, however, if Landlord believes that Tenant has violated the Operating Covenant, it shall offer to meet and confer with Tenant in good faith for a period of fifteen (15) days prior to sending any Notice of such violation or any breach or default to Tenant; provided, further, however, Landlord shall not be required to meet and confer and Tenant shall not have any cure right with respect to any failure to conduct any business operations in 100% of any Demised Premises in violation of the Operating Covenant.

any of the material representations or warranties made by Tenant hereunder or by Lease Guarantor in a Guaranty prove to be untrue when made in any material respect, and (i) if such misrepresentation is capable of being cured, it shall not have been cured within thirty (30) days after Notice from Landlord, unless Tenant shall be diligently pursuing such cure and such cure is completed within an additional sixty (60) days thereafter, or (ii) if such misrepresentation is not capable of being cured but the damages or detriment to Landlord (including all reasonable attorneys’ fees) can reasonably be ascertained and ascribed a monetary value, Tenant fails to pay the amount thereof (as reasonably estimated by Landlord) to Landlord prior to the expiration of such additional sixty (60)-day period;

except as expressly permitted hereunder, there shall occur any Transfer of the Master Lease or any interest therein or any Demised Premises which is not entirely revoked and rescinded within the earlier of (a) fifteen (15) days after such Transfer or (b) Tenant’s becoming aware thereof; provided, however, that if such Transfer involves an impermissible Sublease of space due solely to Tenant’s good faith error in computing the rental value thereof which results in such Sublease exceeding the ten percent (10%) rental value limitation as provided in Section 9.2, which exceeds the aggregate limitation of ten percent (10%) of rental value, Tenant shall have an additional period not to exceed ninety (90) days in which to reduce the amount of space in such Sublease to a permissible level or to terminate such Sublease;

Tenant or Lease Guarantor, by its acts or omissions, causes or suffers the occurrence of a default under any provision (to the extent Tenant has knowledge of such provision and Tenant’s or Lease Guarantor’s obligations with respect thereto), of any Landlord Mortgage or Landlord Mortgage Documents by which Tenant is bound in accordance with Article XIV or Tenant has agreed under the terms of this Master Lease to be bound, which default is not cured within the applicable time period, if the effect of such default is to cause, or to permit the holder or holders of that Landlord Mortgage or Indebtedness secured by that
Landlord Mortgage (or a trustee or agent on behalf of such holder or holders) to cause, that Landlord Mortgage (or the Indebtedness secured thereby) to become or be declared due and payable (or redeemable) prior to its stated maturity;

(k) if Tenant shall fail to observe or perform any other nonmonetary term, covenant or condition of this Master Lease (so long as such failure is not caused directly by the gross negligence or willful misconduct of Landlord, or the acts or omissions of Landlord’s tenants in the Recapture Space or any Additional Recapture Space or under any Leases first arising from and after the date of this Master Lease) and such failure is not cured by Tenant within thirty (30) days after notice thereof from Landlord, unless such failure cannot with diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to be an Event of Default if Tenant proceeds promptly and diligently to cure the failure and continues to act with diligence to complete the curing thereof within a commercially reasonable period of time not to exceed an aggregate of one hundred twenty (120) days (which shall be further extended for up to an additional sixty (60) days for good cause shown) after such notice from Landlord, subject to further extension by reason of Unavoidable Delays, so long as Tenant continues to act with diligence and dispatch; provided, however, that such notice shall be in lieu of and not in addition to any notice required under applicable law; provided, further, however, that in no event shall the original thirty (30)-day period be further extended beyond any period (i) as shall be necessary to prevent imminent loss or damage (including the foreclosure of any lien) to any affected Demised Premises or (ii) which would constitute an event of default under any Landlord Mortgage which would entitle the holder to exercise any remedies thereunder;

(l) if Tenant or Lease Guarantor shall fail to pay, bond, escrow or otherwise similarly secure payment of one or more final judgments aggregating in excess of five million dollars ($5,000,000) with respect to Tenant or Lease Guarantor within the applicable Stay Period, unless the same does not attach to or otherwise adversely affect the Demised Premises or this Master Lease; and

(m) if Tenant shall fail to maintain any insurance required by the Lease and the same is not cured within the earlier of (a) ten (10) days after Notice from Landlord or (b) the date which is fifteen (15) days prior to the earliest date for cancellation of any insurance for nonpayment or nonrenewal; provided, however, that if such failure is the result of Tenant not obtaining the required insurance immediately following the downgrading of such insurance below the levels required herein, such failure shall not constitute an Event of Default unless such failure shall continue for the earlier of ten (10) days after (a) Tenant’s learning thereof or (b) Notice from Landlord.

13.2 Certain Remedies. (a) If an Event of Default shall have occurred and be continuing, Landlord may (i) after the expiration ten (10) days after any Event of Default Notice (as hereinafter defined), terminate this Master Lease by giving Tenant no less than ten (10) days’ Notice of such termination and the Term shall terminate and all rights of Tenant under this Master Lease shall cease, (ii) seek damages as provided in Section 13.3 and/or (iii) exercise any other right or remedy at law or in equity available to Landlord as a result of any Event of Default. Tenant shall pay as Additional Charges all costs and expenses incurred by or on behalf of Landlord, including reasonable attorneys’ fees and expenses, and court costs, as a result of any
Event of Default hereunder. If an Event of Default shall have occurred and be continuing, whether or not this Master Lease has been
terminated pursuant to the first sentence of this Section 13.2, Tenant shall, to the extent permitted by law, if required by Landlord to
do so, immediately surrender to Landlord possession of all or any portion of the Demised Premises as to which Landlord has so
demanded and quit the same and Landlord may, to the extent permitted by law, enter upon and repossess such Demised Premises by
reasonable force, summary proceedings, ejectment or otherwise, and, to the extent permitted by law, may remove Tenant and all other
Persons and any of Tenant’s Property from such Demised Premises (including all Alterations), but in no event shall Tenant be
obligated to remove any Alterations that are owned or are deemed to be owned by Landlord under this Master Lease.

(b) Landlord shall not be entitled to terminate this Master Lease by reason of an Event of Default (but Landlord may
exercise all other rights and remedies), unless and until Landlord has, following the occurrence of such Event of Default, delivered a
Notice (“Event of Default Notice”) to Tenant stating the Event of Default, and containing the following caption (in bold 16 point
type):

“THIS IS AN EVENT OF DEFAULT NOTICE. FAILURE TO TAKE IMMEDIATE ACTION AND TO CURE THE
EVENT(S) OF DEFAULT AS SPECIFIED BELOW WITHIN TEN (10) DAYS OF RECEIPT OF THIS NOTICE MAY
LEAD TO LANDLORD’S TERMINATION OF THE MASTER LEASE AND/OR THE EXERCISE OF OTHER
REMEDIES THEREUNDER.”

13.3 Damages. None of (i) the termination of this Master Lease, (ii) the repossession of the Demised Premises or any portion thereof, (iv) the reletting of all or any portion of the Demised Premises, or
(v) the inability of Landlord to collect or receive any rentals due upon any such reletting, shall relieve Tenant of its liabilities and
obligations hereunder, all of which shall survive any such termination, repossession or reletting. Landlord and Tenant agree that
Landlord shall have no obligation to mitigate Landlord’s damages under this Master Lease except if, and to the extent, required under
applicable law. If any such termination of this Master Lease occurs (whether or not Landlord terminates Tenant’s right to possession
of the Demised Premises), Tenant shall forthwith pay to Landlord all Rent due and payable under this Master Lease, to and including
the date of such termination. Thereafter Tenant shall forthwith pay to Landlord, at Landlord’s option, as and for liquidated and agreed
upon current damages for the occurrence of an Event of Default, either:

(a) the sum of:

(i) the worth at the time of award of the unpaid Base Rent which had been earned at the time of
termination to the extent not previously paid by Tenant under this Section 13.3; plus

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(ii) the worth at the time of award of the amount of unpaid Base Rent which would have been earned after termination until the time of award; plus

(iii) the worth at the time of award of the amount of the unpaid Base Rent for the balance of the Term after the time of award; plus

(iv) any other amount necessary to compensate Landlord for the detriment proximately caused by Tenant’s failure to perform its obligations under this Master Lease or which in the ordinary course of business might result therefrom, including all unpaid Additional Charges at the time of Termination and all Additional Charges which might have accrued for the balance of the Term, and all reasonable costs and expenses of reletting the Demised Premises, including, but not limited to, all brokerage, advertising, repairs and other similar expenses reasonably necessary to secure new tenants for the Demised Premises.

As used in the foregoing clauses (i), (ii) and (iii), the “worth at the time of award” shall be computed by allowing interest at the Overdue Rate from the date when due to the date paid. As used in Section 13.3(a)(iii), the “worth at the time of award” shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of New York at the time of award plus one percent (1%); or

(b) regardless of whether Landlord chooses to terminate Tenant’s right to possession of the Demised Premises (whether or not Landlord terminates the Master Lease), each installment of said Rent and other sums payable by Tenant to Landlord under this Master Lease as the same becomes due and payable, together with interest at the Overdue Rate from the date when due until paid, and Landlord may enforce, by action or otherwise, any other term or covenant of this Master Lease (and Landlord may at any time thereafter terminate Tenant’s right to possession of the Demised Premises and seek damages under subparagraph (a) hereof, to the extent not already paid for by Tenant under this subparagraph (b).

13.4 Receiver. Upon the occurrence and continuance of an Event of Default, and upon commencement of proceedings to enforce the rights of Landlord hereunder, but subject to any limitations of applicable law, Landlord shall be entitled, as a matter of right, to the appointment of a receiver or receivers acceptable to Landlord of the Demised Premises and of the revenues, earnings, income, products and profits thereof, pending the outcome of such proceedings, with such powers as the court making such appointment shall confer.

13.5 Waiver. If Landlord initiates judicial proceedings or if this Master Lease is terminated by Landlord pursuant to this Article XIII, Tenant waives, to the extent permitted by applicable law, (i) any right of redemption, re-entry or repossession; and (ii) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt.

13.6 Application of Funds. Any payments received by Landlord under any of the provisions of this Master Lease during the existence or continuance of any Event of Default which are made to Landlord rather than Tenant due to the existence of an Event of Default shall be applied to Tenant’s obligations in the order which Landlord may reasonably determine or as may be prescribed by the laws of the State in which the Property is located.
13.7 Landlord’s Right to Cure Tenant’s Default. If an Event of Default shall have occurred and be continuing, in addition to
and not in limitation of any and all other rights and remedies, Landlord, without waiving or releasing any obligation or Event of
Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and
at the expense of Tenant, and may, to the extent permitted by law, enter upon the applicable Demised Premises or any portion thereof
for such purpose and take all such action thereon as, in Landlord’s opinion, may be necessary or appropriate therefor including,
without limitation, to the fullest extent permitted by law, repossessing the Demised Premises and ejecting any Person or property
thereon; provided, however, that no such entry or action by Landlord shall constitute an actual or constructive eviction or
repossession, without Landlord’s express intention to do so as expressed in writing. No such entry shall be deemed an eviction of
Tenant. All reasonable sums so paid by Landlord and all costs and expenses (including attorneys’ fees and expenses, in each a case,
to the extent permitted by law) so incurred, together with interest thereon (to the maximum extent permitted by law) at the Overdue
Rate from the date on which such sums or expenses are paid or incurred by Landlord, shall be paid by Tenant to Landlord on demand.
The obligations of Tenant and rights of Landlord contained in this Article XIII shall survive the expiration or earlier termination of
this Master Lease.

13.8 Default by Entities Comprising Tenant. For the avoidance of doubt, each and every Event of Default of “Tenant” under
this Article XIII shall mean and include the same act, omission, failure, refusal, breach or default by either or both of Kmart Tenant or
Sears Tenant.

ARTICLE XIV
LANDLORD’S FINANCING

14.1 Landlord’s Financing. Without the consent of Tenant, Landlord may from time to time, directly or indirectly, create or
otherwise cause to exist any Landlord Mortgage upon the Demised Premises or any portion thereof or interest therein. This Master
Lease is and at all times shall automatically and without further action be subject and subordinate to the lien of any Landlord
Mortgage which may now or hereafter affect the Demised Premises or any portion thereof or interest therein and to all renewals,
modifications, consolidations, replacements, restatements and extensions thereof or any parts or portions thereof, subject to receipt of
the SNDA (hereinafter defined). The holder of each Landlord Mortgage shall execute and deliver to Tenant a nondisturbance and
attornment agreement substantially in the form attached hereto as Exhibit C (“SNDA”) or in the customary form then used by
Landlord Mortgagee which is substantially similar thereto in all material respects, which shall also be executed by Tenant as well as
Landlord, which will bind Landlord and Tenant, and such holder of such Landlord Mortgage and its successors and assigns as well as
any person who acquires any portion of the Demised Premises in a foreclosure or similar proceeding or in a transfer in lieu of any
such foreclosure or a successor owner of the Demised Premises (each, a “Foreclosure Purchaser”). The SNDA shall provide that in
the event of any foreclosure under the Landlord Mortgage, the holder of such Landlord Mortgage, and any Foreclosure Purchaser,
shall not disturb either Tenant’s leasehold interest or possession of the Demised Premises in accordance with the terms hereof, nor
any of Tenant’s rights, privileges and options, and shall give effect to this Master

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Lease as if such Landlord Mortgagee or Foreclosure Purchaser were the landlord under this Master Lease (so long as there is not then outstanding and continuing an Event of Default under this Master Lease, it being understood that if an Event of Default has occurred and is continuing at such time such parties shall be subject to the terms and provisions of this Master Lease concerning the exercise of rights and remedies upon such Event of Default). If, in connection with obtaining any Landlord Mortgage for the Demised Premises or any portion thereof or interest therein, a Landlord Mortgagee or prospective Landlord Mortgagee shall request (A) reasonable cooperation from Tenant, and/or (B) reasonable amendments or modifications to this Master Lease as a condition thereto, Tenant hereby agrees to reasonably cooperate in connection therewith, and to execute and deliver such amendments or modifications so long as any such amendments or modifications do not in any material respect (i) increase Tenant’s monetary obligations under this Master Lease; (ii) increase Tenant’s nonmonetary obligations under this Master Lease; or (iii) diminish Tenant’s rights or remedies under this Master Lease, including without limitation limiting or shortening any time periods for the payment or performance of any Tenant obligations or any notice and cure periods for any default of Tenant or limiting in any manner the right of Tenant to operate the Stores in the ordinary course of its business (collectively, “Tenant Detriments”).

14.2 Attornment. As provided in the SNDA attached hereto (and any other SNDA shall so provide), if Landlord’s interest in the Demised Premises or any portion thereof or interest therein is sold, conveyed or terminated upon the exercise of any remedy provided for in any Landlord Mortgage Documents (or in lieu of such exercise), or otherwise by operation of law: (a) at the request and option of the new owner or superior lessor, or other Foreclosure Purchaser, as the case may be (“Successor Landlord”), which request and option shall be exercised within thirty (30) days following such transfer of Landlord’s interest, Tenant shall attorn to and recognize the Successor Landlord as Tenant’s “landlord” under this Master Lease or enter into a new lease substantially in the form of this Master Lease with the Successor Landlord, and Successor Landlord and Tenant shall take such actions to confirm the foregoing within ten (10) days after request of the Successor Landlord, all on the terms and conditions set forth in the SNDA; and (b) the Successor Landlord shall not be liable for the acts of the prior Landlord, except as set forth in the SNDA; provided, however, until and unless Successor Landlord has made such request, Tenant shall continue to have all rights of possession of the Demised Premises as provided under this Master Lease.

14.3 Compliance with Landlord Mortgage Documents. (a) Tenant acknowledges that any Landlord Mortgage Documents executed by Landlord or any Affiliate of Landlord may impose certain obligations on the Landlord and its Affiliates to comply with or cause the operator and/or lessee of the Demised Premises to comply with all representations, covenants and warranties contained therein relating to such Demised Premises and the operator and/or lessee of such Demised Premises, including, covenants relating to (i) the maintenance and repair of such Demised Premises; (ii) maintenance and submission of financial records and accounts of the operation of such Demised Premises and related financial and other information regarding the operator and/or lessee of such Demised Premises and such Demised Premises itself; (iii) the procurement of insurance policies with respect to such Demised Premises; and (iv) without limiting the foregoing, compliance with all applicable Legal Requirements relating to such Demised Premises and the operation of the business thereof. For so long as any Landlord Mortgages encumber the Demised Premises or any portion thereof or interest therein, Tenant
covenants and agrees, at its sole cost and expense and for the express benefit of Landlord, to operate the applicable Store(s) and Demised Premises in strict compliance with the terms and conditions of the Landlord Mortgage Documents and to timely perform all of the obligations of Landlord relating to the operation of the Stores and the Demised Premises, or to the extent that any of such duties and obligations may not properly be performed by Tenant, Tenant shall cooperate with and assist Landlord in the performance thereof; provided, however, that notwithstanding the foregoing, this Section 14.3(a) shall not be deemed to, and shall not, impose on Tenant, any Tenant Detriments. If any new Landlord Mortgage Documents to be executed by Landlord or any Affiliate of Landlord would impose on Tenant any obligations permissible under this Section 14.3(a), Landlord shall provide copies of the same to Tenant for informational purposes (but not for Tenant’s approval) prior to the execution and delivery thereof by Landlord or any Affiliate of Landlord, as identified in Schedule 14.4. For the avoidance of doubt nothing in this Section 14.3(a) shall require Tenant, Tenant’s Parent or any of their Affiliates to satisfy any financial performance, operating performance or similar test that may be contemplated by any Landlord Mortgage Documents as a condition or covenant relative to the Landlord and its Affiliates.

(b) Without limiting or expanding Tenant’s obligations pursuant to any other provisions of this Master Lease, during the Term of this Master Lease, Tenant acknowledges and agrees that, except as expressly provided elsewhere in this Master Lease, or as Landlord may otherwise elect in writing, it shall undertake at its own cost and expense the performance of any and all repairs, replacements, improvements, maintenance items and all other requirements relating to the condition of the Demised Premises and Common Areas (to the extent that Tenant is then obligated by or for use or occupancy under the terms of this Master Lease) that are required by any Landlord Mortgage Documents or by any Landlord Mortgagee; provided, however, that this Section 14.3(b) shall not in any material respect (i) increase Tenant’s monetary obligations under this Master Lease; (ii) increase Tenant’s nonmonetary obligations under this Master Lease; or (iii) diminish Tenant’s rights or remedies under this Master Lease, including without limitation, limiting or shortening any time periods for the payment or performance of any Tenant obligations or shortening any notice and cure periods for any default of Tenant.

14.4 Landlord Mortgagee Generally. Landlord Mortgagee shall be an express and intended third party beneficiary of the provisions contained in this Article XIV and of any other provision in this Lease expressly requiring the approval or consent of Landlord Mortgagee and shall have the right to enforce such provisions against Tenant. Tenant shall have the right to rely conclusively upon any written communication from any Landlord Mortgagee’s “Trustee”, “Servicer” or “Special Servicer” as the duly authorized statement or communication by Landlord Mortgagee. Tenant acknowledges that it has received on or prior to the date hereof all of the Landlord Mortgage Documents listed on Schedule 14.4 attached hereto. Unless otherwise expressly provided in the Landlord Mortgage Documents, any consent or approval of Landlord Mortgagee required under this Lease may be granted or withheld in Landlord Mortgagee’s sole discretion.

14.5 Limitation of Successor Landlord Liability. Notwithstanding anything herein to the contrary, in the event a Successor Landlord shall acquire title to the Demised Premises (which, for purposes of this Section 14.5, shall include Landlord at any time after Landlord
Mortgagee (or its nominee or designee) shall have acquired direct or indirect control of the voting interests in any Landlord), Successor Landlord shall have no obligation, nor incur any liability, beyond Successor Landlord’s then-interest, if any, in the Demised Premises, and Tenant shall look exclusively to such interest, if any, of Successor Landlord in the Demised Premises for the payment and discharge of any obligations imposed upon Successor Landlord under this Lease. Tenant agrees that, with respect to any monetary judgment which may be obtained or secured by Tenant against Successor Landlord, Tenant shall look solely to the estate or interest owned by Successor Landlord in the Demised Premises (including, without limitation, the rent, issues and profits therefrom), and Tenant will not collect or attempt to collect any such judgment against any Successor Landlord personally or any shareholder, member, partner, director or officer thereof, out of any other assets of Successor Landlord or any shareholder, member, partner, director or officer thereof.

14.6 **Lease Modifications.** Tenant agrees that no amendment, modification, waiver, termination, tender, surrender or cancellation of this Lease shall be effective as against any Landlord Mortgagee or Successor Landlord unless the same shall have been consented to by Landlord Mortgagee or Successor Landlord in writing, unless otherwise provided in the Landlord Mortgage Documents.

14.7 **Notice of Default to Landlord Mortgagee.** In the event of any act or omission by Landlord which would give Tenant the right (if any), either immediately or after notice or the lapse of a period of time, or both, to terminate this Lease, or to claim a partial or total eviction, Tenant will not exercise any such right until it has given written notice of such act or omission to Landlord Mortgagee, and (B) until a reasonable period of time (in any event not less than ninety (90) days) for remedying such act or omission shall have elapsed following both the giving of such notice and following the time when Landlord Mortgagee shall have become entitled under the Landlord Mortgage Documents to remedy the same; provided that Landlord Mortgagee, with reasonable diligence (i) shall have pursued such remedies as are available to it under Landlord Mortgage Documents so as to be able to remedy the act or omission, and (ii) thereafter shall have commenced and continued to remedy such act or omission or cause the same to be remedied.

14.8 **Delivery of Notices to Landlord Mortgagee.** Subsequent to the receipt by Tenant of Notice from Landlord as to the identity and address of Landlord Mortgagee, no Notice from Tenant to Landlord or Notice from Landlord to Tenant shall be effective unless and until a duplicate original of such Notice is given to Landlord Mortgagee in accordance with Article XIX. The curing of any of Landlord’s defaults by Landlord Mortgagee shall be treated as performance by Landlord.

14.9 **Right of Landlord Mortgagee to Enforce Lease.** Tenant agrees that, to the extent permitted by Landlord under the Landlord Mortgage Documents, Landlord Mortgagee may exercise the self-help remedies of Landlord hereunder.

14.10 **Exercise of Landlord’s Discretion.** In any instance hereunder in which Landlord must be reasonable in making a request or granting or withholding an approval or consent, Tenant acknowledges and agrees that Landlord may take into account the reasonable objections of Landlord Mortgagee, to the extent Landlord is required to do so under the Landlord Mortgage Documents.
14.11 **Cure of Landlord Defaults.** Subject to the provisions of the SNDA, no Landlord default under this Lease shall be deemed to exist so long as any Landlord Mortgagee in good faith, (i) shall have commenced promptly to cure the default in question and prosecutes the same to completion with reasonable diligence and continuity, or (ii) if possession of the Demised Premises is required to cure the default in question, such Landlord Mortgagee (x) shall have entered into possession of the Demised Premises with the permission of Tenant for such purpose or (y) shall have notified Tenant of its intention to institute enforcement proceedings in respect of Landlord Mortgage Documents to obtain possession of Landlord’s interest directly or through a receiver and thereafter prosecutes such proceedings with reasonable diligence and continuity. In any event all rights or obligations of Tenant or Landlord with respect to any actual or potential Terminated Space shall remain in full force and effect.

14.12 **Indemnification.** (a) Notwithstanding the existence of any insurance required to be provided hereunder (but not in duplication thereof), and without regard to the policy limits of any such insurance, and in addition to and not in limitation of any other indemnity provided in this Master Lease, and further notwithstanding any provision of the Purchase Agreement to the contrary, subject to the provisions of Section 14.12(b), Tenant will protect, indemnify, save harmless and defend Landlord and Landlord Mortgagee and all Indemnified Parties from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, fees and expenses (including reasonable attorneys’ fees and court costs, including the same incurred in the enforcement of such indemnity), to the maximum extent permitted by law, imposed upon or incurred by or asserted against such Indemnified Party by reason of: (i) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Demised Premises, or any adjoining property under the exclusive control of Tenant, including any claims made by any Tenant Related User, expressly excluding any accident, injury, death or damage (as the case may be) occurring after the Actual Recapture Date with respect to any Recapture Space, or during or after Landlord’s completion of the Recapture Separation Work, or after the Additional Recapture Space Termination Date or after the recapture work with respect thereto except to the extent caused by negligence of Tenant or any Tenant Related User after the completion of Landlord’s Recapture Separation Work or other recapture and separation work, (ii) any use, misuse, nonuse, condition, maintenance, repair or Alteration by Tenant or anyone claiming by, through or under Tenant, including agents, contractors, invitees or visitors of the applicable Demised Premises or in connection with any Tenant’s Property, (iii) any failure on the part of Tenant or anyone claiming by, through or under Tenant to perform or comply with any of the terms of this Master Lease, (iv) any failure by Tenant to perform its obligations under the Lands’ End Agreements, the Sears Hometown License Agreement or any Sublease and any claims made thereunder, with respect to Tenant’s such failure to perform, (v) any contest by Tenant of any Legal Requirement or Insurance Requirement, regardless of whether the same is conducted in accordance with the terms hereof, (vi) any Retail Operations Claims, (vii) any Known Environmental Problems, (viii) without limitation of clause (i) above, any accident, injury, death or damage (as the case may be) occurring prior to the Commencement Date on or about any portion of the Property or (ix) without limitation of clause (i) above, any accident, injury, death or damage to any person occurring on or subsequent to the Commencement Date arising from any acts or omissions of Tenant or any Tenant’s Related Users. Any amounts which become payable by Tenant under this
Section 14.12 shall bear interest (to the extent permitted by law) at the Overdue Rate from ten (10) business days following the date of demand to the date of payment. Tenant, at its expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against any Indemnified Party ("Claim"). Nothing herein shall be construed as indemnifying an Indemnified Party against its own grossly negligent acts, or willful misconduct. If at any time an Indemnified Party shall have received written notice of or shall otherwise be aware of any Claim which is subject to indemnity under this Section 14.12, such Indemnified Party shall give reasonably prompt written notice of such Claim to Tenant; provided, that (i) such Indemnified Party shall have no liability for an inadvertent failure to give notice to Tenant of any Claim and (ii) the inadvertent failure of such Indemnified Party to give such a notice to Tenant shall not limit the rights of such Indemnified Party or the obligations of Tenant with respect to such Claim, provided that Tenant shall have no obligation to indemnify or defend any Claim until it receives actual notice thereof (from any source). Tenant shall have the right to control the defense or settlement of any Claim, provided, that (A) if the compromise or settlement of any such Claim shall not result in the complete release of such Indemnified Party from the claim so compromised or settled, the compromise or settlement shall require the prior written approval of such Indemnified Party and (B) no such compromise or settlement shall include any admission of wrongdoing on the part of such Indemnified Party, provided, further, that an Indemnified Party shall have the right to approve counsel engaged to defend such Claim by Tenant and, at its election and sole cost and expense, shall have the right, but not the obligation, to participate fully in the defense of any Claim with counsel of its choice. Without limiting the foregoing and notwithstanding any provision to the contrary in this Master Lease, no Indemnified Party shall voluntarily agree to accept or incur liability for any Claim, or waive, toll or extend any applicable limitations period with respect to any Claim. Tenant’s liability under this Section 14.12 shall survive the expiration or earlier termination of this Lease.

(b) The following shall be expressly included in the foregoing indemnity by Tenant:

(i) "Retail Operations Claims," which means any and all claims from or by all customers, licensees, invitees, employees and others for personal injury, property damage, product or service warranty, service, merchandise, products liability, and employment, consumer credit and vendor claims, and all claims and liabilities under applicable Legal Requirements, arising out of or relating to the retail business operations or other activities conducted on or about the Demised Premises by Tenant, Tenant’s Parent or any Affiliate of their Affiliates prior to the Commencement Date or at any time during the term of this Master Lease with respect to the Demised Premises, including without limitation claims from or by all customers, licensees, invitees, employees, Governmental Authorities or any other Person for, among other things, non-compliance with applicable law, personal injury, property damage, product or service warranty, service, merchandise, products liability, tax, employment (including any pension-related claims), consumer credit and vendor claims. For the avoidance of doubt, Retail Operations Claims shall include liabilities arising under tort claims by third parties as a result of violations of applicable Law, in each case, arising from the physical condition or use of the Demised Premises, but shall not include other (a) claims by Landlord, its Affiliates and their successors and assigns, relating directly
and solely to the physical condition of the Demised Premises, other than Known Environmental Problems as provided in the Purchase Agreement and in this Master Lease and such other matters as provided hereunder, and (b) claims arising after the recapture by Landlord or its Affiliates of all or any portion of the Demised Premises or termination of this Master Lease with respect to all or any of the Demised Premises, except to the extent provided in this Master Lease.

(ii) “Known Environmental Problems,” which means (i) any violation of Environmental Laws or (ii) the use, spilling, leaking, emitting, injecting, escaping, abandoning, dumping, presence, storage, release, threatened release, discharge, migration of or exposure to Hazardous Substances on, in, under, from or around any Land or Improvements in violation of Environmental Laws or in excess of an applicable standard that would require investigation, remediation or other corrective action pursuant to Environmental Law, in each case regardless of when such Hazardous Substances were first introduced in, on or about such Land, Improvements or Intangibles (each as defined in the Purchase Agreement) which (x) exists as of the Commencement Date, and/or (y) is caused by Tenant or any of Tenant’s Related Users, and in any case of (x) or (y) becomes known or disclosed (or is of public record) at any time during the Term or after the expiration or termination of this Master Lease. Notwithstanding any provision to the contrary in this Master Lease, Tenant’s liability for any violation of Environmental Laws shall be limited to Known Environmental Problems (including as set forth on Schedule 20.3).

(c) To the extent not prohibited by Law, Tenant hereby expressly releases Landlord, and Landlord Mortgagee and all Indemnified Parties from, and waives all claims for, damage or injury to person, theft, loss of use of or damage to property and loss of business sustained by Tenant and resulting from the Demised Premises, including any Leased Improvements, Fixtures and Tenant’s Property or any part thereof or any equipment therein or appurtenances thereto becoming in disrepair, or resulting from any damage, accident or event in or about the Demised Premises, from the foregoing release all acts or omissions of gross negligence or willful misconduct on the part of Landlord, Landlord Mortgagee or any Indemnified Parties. Without limiting the generality of the foregoing, this Section 14.12(c) shall apply particularly, but not exclusively, to: flooding, damage caused by Building equipment and apparatuses, water, snow, frost, steam, excessive heat or cold, broken glass, sewage, gas, odors, excessive noise or vibration, death, loss, conversion, theft, robbery, or the bursting or leaking of pipes, plumbing fixtures or sprinkler devices.

ARTICLE XV
TENANT FINANCING

15.1 No Leasehold Mortgages. Under no circumstance may Tenant mortgage or otherwise encumber Tenant’s interest and estate in and to the Demised Premises as a whole (the “Leasehold Estate”) or in part under one or more mortgages, deeds of trust or other instruments, except upon the prior written consent of Landlord Mortgagee, which may be withheld, conditioned or delayed in Landlord Mortgagee’s sole discretion.
15.2 Rights of Lenders to Obtain Collateral. (a) Landlord agrees to use commercially reasonable efforts to accommodate reasonable requests by Tenant and Tenant’s Affiliates relating to the financing arrangements of Tenant and its Affiliates, with respect to the rights of secured creditors to access the Demised Premises to take possession and dispose of assets of Tenant or its Affiliates pledged to such secured creditors.

(b) So long as the Lands’ End Agreements are in effect, Landlord agrees (with respect to the applicable Lands’ End Space), at no cost or expense to Landlord and without abrogating or limiting any other rights of Landlord under the Master Lease, to accommodate commercially reasonable requests of Lands’ End and its Affiliates relating to the financing arrangements of Lands’ End and its Affiliates with respect to the rights of secured creditors to access the applicable Lands’ End Space to take possession and dispense of assets of Lands’ End and its Affiliates pledged to such secured creditors.

ARTICLE XVI
NO MERGER

16.1 No Merger. There shall be no merger of this Master Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, (i) this Master Lease or the leasehold estate created hereby or any interest in this Master Lease or such leasehold estate and (ii) the fee estate in the Demised Premises.

ARTICLE XVII
CONVEYANCE BY LANDLORD

17.1 Conveyance by Landlord. Without limiting any provisions herein with respect to any Successor Landlord, if Landlord or any successor owner of the Demised Premises shall convey the Demised Premises as an entirety, other than as security for a debt, and the grantee or transferee expressly assumes all obligations of Landlord arising after the date of the conveyance, Landlord or such successor owner, as the case may be, shall thereupon be released absolutely and unconditionally from all future liabilities and obligations of Landlord under this Master Lease arising or accruing from and after the date of such conveyance or other transfer and all such future liabilities and obligations shall thereupon be binding upon the new owner.

ARTICLE XVIII
QUIET ENJOYMENT

18.1 Quiet Enjoyment. So long as Tenant shall pay the Rent as the same becomes due and shall comply with all of the other terms of this Master Lease and fully perform its obligations hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Demised Premises for the Term, free of any claim or other action by Landlord or anyone claiming by, through or under Landlord, including without limitation any Landlord Mortgagee, but subject to all Encumbrances, and all liens and encumbrances after the date hereof provided for in this Master Lease or consented to by Tenant in writing where such consent is required, further subject to the terms and conditions of the SNDA. No failure by Landlord to comply with the foregoing covenant shall give Tenant any right to cancel or terminate this Master Lease or abate, reduce or make a deduction from or offset or receive a credit against the Rent or any other sum payable under this
Master Lease, or to fail to perform any other obligation of Tenant hereunder. Notwithstanding the foregoing, Tenant shall have the right, by separate and independent action, to pursue any claim it may have against Landlord as a result of a breach by Landlord of the covenant of quiet enjoyment contained in this Section 18.1, subject to Section 21.3.

ARTICLE XIX
NOTICES

19.1 Notices. Any notice, request or other communication required or desired to be given by any party hereunder shall be in writing and shall be sent by registered or certified mail, postage prepaid and return receipt requested, by hand delivery or express or overnight courier service, or by facsimile transmission, to the following address and/or facsimile number:

To Tenant:
With a copy to: (which shall not constitute notice)

To Landlord:
With a copy to (which shall not constitute notice):

or to such other address as either party may hereafter designate. Notice given in accordance with this Section 19.1 shall be deemed to have been given (a) if by hand or by express or overnight courier service, on the date of personal delivery, if such delivery is made on a Business Day, or if not, on the first (1st) Business Day after delivery; if delivery is refused, Notice shall be deemed to have been given on the date delivery was first attempted; and (b) if by mail, on the third (3rd) Business Day after mailing; and (c) if by facsimile transmission, upon confirmation that such Notice was received at the number specified by the party or in a Notice to the sender.

ARTICLE XX
ENVIRONMENTAL INDEMNITY

20.1 Hazardous Substances. Tenant shall not allow any Hazardous Substance to be located in, on, under or about the Demised Premises or incorporated in any Property; provided, however, that Hazardous Substances may be brought, kept, used or disposed of in, on or about the Demised Premises in quantities and for purposes similar to those brought, kept, or properly used or disposed of, from, in, on or under similar facilities used for purposes similar to the uses conducted at the Stores in the ordinary course of business as of the date of this Master Lease and which are brought, kept, used and disposed of in compliance with Legal Requirements, including with respect to the operation of SACs. Tenant shall not allow the Demised Premises to be used as a waste disposal site, or for the management, use, generation, manufacturing, labeling, registration, production, handling, storage, release, discharge, emitting, injecting, abandoning, dumping, disposal, treatment, transportation or distribution or disposal of any Hazardous Substance, other than in the ordinary course of the business conducted at the Demised Premises in compliance with applicable Legal Requirements ("Environmental Ordinary Course of Business").
20.2 Notices. Tenant shall provide to Landlord, within five (5) Business Days after Tenant’s receipt thereof, a copy of any notice or notification (a) from a government agency with respect to (i) any violation of a Legal Requirement (other than a Non-Release Violation (as hereinafter defined)) relating to Hazardous Substances located in, on, or under the Demised Premises or any adjacent property, (ii) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed or threatened with respect to the Demised Premises; (b) with respect to any reports made to any federal, state or local environmental agency arising out of or in connection with any Hazardous Substance in, on, under or removed from the Demised Premises, including any complaints, notices, warnings or assertions of violations in connection therewith, other than with respect to any Non-Release Violations and (c) with respect to any claim made by any Person against Tenant or the Demised Premises relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Substance.

20.3 Remediation. (a) Tenant shall diligently and in good faith perform all remediation work described on Schedule 20.3 hereto and shall use all commercially reasonable efforts to perform the same by the deadlines set forth on Schedule 20.3, subject to extension of such deadlines due to unforeseen circumstances (including field conditions) and all customary events and occurrence of Force Majeure, further subject to the provisions of Section 20.3. Additionally, if Tenant (a) is or becomes aware of any Known Environmental Problem that involves the presence, a release or poses a potential release of a Hazardous Substance or material harm to human health or safety or for which there is a requirement under applicable Environmental Law to conduct an investigation or remediation, (b) receives notice from a government agency of a violation of any Legal Requirement relating to any Hazardous Substance (excepting administrative, ministerial, recordkeeping, product labelling or information violations, and similar violations which do not involve any presence, release or potential release of Hazardous Substances, and violations which are promptly corrected upon discovery, individually a “Non-Release Violation” and collectively, “Non-Release Violations”) in, on, under or about the Demised Premises, or any proximate property which is caused or alleged to be caused by Tenant, or any of Tenant’s Related Users, or (c) if Tenant, Landlord or the Demised Premises becomes subject to any order of any federal, state or local agency to repair, investigate, close, detoxify, decontaminate or otherwise remediate the Demised Premises, or if Landlord becomes aware of the circumstances described in clauses (a) through (c), Tenant shall promptly notify Landlord of such event (or Landlord shall promptly notify Tenant of such event (as applicable)), and, at its sole cost and expense, Tenant shall cure such violation or effect such repair, investigation, closure, detoxification, decontamination or other remediation as is required by applicable Environmental Law. If Tenant fails to implement and diligently pursue any such cure, investigation, repair, closure, detoxification, decontamination or other remediation to the satisfaction of the applicable regulatory authority as evidenced by the issuance of a “no further action/remediation” letter or similar instrument, Landlord shall have the right, but not the obligation, to carry out such action upon reasonable prior notice to Tenant and to recover from Tenant all of Landlord’s costs and expenses incurred in connection therewith in accordance with applicable Environmental Law.
(b) Notwithstanding any other provisions to the contrary contained in Sections 1.6, 1.7, 1.8, or 1.9, or elsewhere in this Master Lease:

(i) as of the Commencement Date, Landlord acknowledges receipt of environmental reports which disclose the existence of various Known Environmental Problems with respect to various Properties described on Schedule 20.3. Landlord understands and agrees that conditions may be such that remediation of such Known Environmental Problems, may not be completed within the time frames otherwise designated in this Master Lease, including by reason of the nature and extent of such Known Environmental Problems; and

(ii) Landlord agrees that Tenant will be required to commence remediation activities with respect to any Known Environmental Problems promptly after (x) Landlord’s and Tenant’s agreement on the appropriate remediation plan therefor in accordance with applicable Legal Requirements with respect to matters disclosed in such environmental reports as set forth on Schedule 20.3, and to complete remediation of Known Environmental Problems within a reasonable period of time and using reasonable diligence in accordance with the standard industry practices and in conformity with applicable Legal Requirements, including after the expiration or termination of this Master Lease with respect to any individual Demised Premises.

(c) To the extent that Tenant shall fund any Landlord Mortgage reserve for environmental remediation in accordance with Schedule 20.3, Tenant’s obligation to perform the environmental remediation relating to such reserves shall be conditioned upon Landlord’s release of such funds (or an equivalent amount) to Tenant in connection with the performance of such work.

20.4 Indemnity. Tenant shall indemnify, defend, protect, save, hold harmless, and reimburse Landlord and all Indemnified Parties for, from and against any and all costs, losses (including, losses of use or economic benefit or diminution in value), liabilities, damages, assessments, lawsuits, deficiencies, demands, claims and expenses (collectively, “Environmental Costs”), whether or not arising out of third-party claims and regardless of whether liability without fault is imposed, or sought to be imposed, on Landlord, or on the Demised Premises, incurred in connection with, arising out of, resulting from or incident to, directly or indirectly, any and all Known Environmental Problems before, during or after the Term, including (i) the production, management, use, generation, manufacture, labeling, registration, storage, treatment, transporting, disposal, discharge, spilling, leaking, emitting, injecting, escaping, abandoning, dumping, release or other handling or disposition of any Hazardous Substances from, in, on or about the Demised Premises (collectively, “Handling”), including the effects of such Handling of or exposure to any Hazardous Substances on any Person or property within or outside the boundaries of the Demised Premises, (ii) the presence of any Hazardous Substances in, on, under or about the Demised Premises, and (iii) the violation of any Environmental Law. “Environmental Costs” include interest, costs of response, removal, remedial action, containment, cleanup, investigation, design, engineering and construction, damages (including actual and consequential damages) for personal injuries and for injury to, destruction of or loss of property or natural resources, relocation or replacement costs, penalties, fines, charges or expenses, attorneys’ fees, expert fees, consultation fees, and court costs, and all amounts paid in investigating, defending or settling any of the foregoing.
20.5 Environmental Inspections. (a) In the event that Landlord has a reasonable basis to believe that Tenant is in breach of its obligations under this Article XX, or that there may exist any violation of Environmental Law or presence of Hazardous Substances in excess of an applicable standard that would require investigation, remediation or other corrective action pursuant to Environmental Law in, on, from, under or about any Demised Premises, or if Landlord desires to do so in connection with the prospective sale, leasing, financing, development or development of any portion of the Property (including the Demised Premises), Landlord shall have the right, from time to time, during normal business hours and upon not less than fifteen (15) days’ Notice to Tenant, except in the case of an emergency, in which event no notice shall be required, to conduct (or cause to be conducted) an inspection of the Demised Premises to determine the existence of such violation of Environmental Law or such presence of Hazardous Substances. During said 15-day period, at Tenant’s request Landlord’s environmental representatives shall meet and confer in good faith with Tenant’s environmental representatives, in an attempt to agree on a potential plan of action for any such inspection, including testing, sampling and monitoring, in a commercially reasonable and cost-effective manner. At the expiration of such 15-day period (except in the case of an emergency), Landlord shall have the right to enter and inspect the Demised Premises, conduct any testing, monitoring, sampling and analyses (collectively, “Inspections”) it deems reasonably necessary and shall have the right to inspect materials brought into the Demised Premises, subject to any agreed plan of action with Tenant (if any). Landlord may, in its reasonable discretion, retain such experts to conduct the Inspections and to prepare a written report in connection therewith. All reasonable costs and expenses incurred by Landlord under this Section 20.5 with respect to any Known Environmental Problems shall be paid on demand as Additional Charges by Tenant to Landlord, any failure to pay the same shall bear interest and be subject to terms of conduct by Tenant as provided with respect to Environmental Costs in Section 20.4. Failure to conduct an environmental inspection or to detect unfavorable conditions if such inspection is conducted shall in no fashion be intended as a release of any liability for Known Environmental Problems. Tenant shall remain liable for any environmental condition related to or having occurred during its tenancy and any Known Environmental Problem regardless of when such conditions are discovered and regardless of whether or not Landlord conducts an environmental inspection at the termination of this Master Lease. The obligations set forth in this Article XX shall survive the expiration or earlier termination of this Master Lease with respect to any or all Demised Premises for any reason whatsoever.

(b) All Inspections shall be conducted during normal business hours (except in an emergency) and a representative of Tenant shall have the right to be present (except in an emergency if no notice is practicable). Landlord and its representatives shall take reasonable care (i) to minimize disturbance of the operations of the Demised Premises, in the course of any Inspections, except in the case of an emergency, and (ii) not to cause any damage or injury to the Demised Premises or Tenant’s Property, and Landlord shall be responsible for all negligent acts and omissions for all representatives it brings upon the Demised Premises; provided, that Landlord shall not be responsible for any claims, costs, expenses, loss or damages for any existing environmental conditions or matters except to the extent that the same may be exacerbated by Landlord or its representatives by such negligence. Landlord shall maintain (or cause its contractors and experts to maintain) customary insurance coverage with customary limits with respect to all Inspections.
20.6 **Additional Provisions.** With respect to the Demised Premises and all SACs, Tenant shall comply with all of the additional terms, conditions and provisions set forth on **Schedule 20.6,** subject to the express provisions of this Article XX.

20.7 **Survival.** Tenant’s liability under this **Article XX** shall survive the expiration or earlier termination of this Master Lease.

**ARTICLE XXI**

**MISCELLANEOUS**

21.1 **Survival.** Notwithstanding anything to the contrary contained in this Master Lease, all terms, conditions, covenants and provisions with respect to Tenant’s obligations hereunder (including, without limitation, all claims against, and liabilities and indemnities of, Tenant) arising or accruing prior to or on the expiration or earlier termination of this Master Lease shall survive such expiration or termination of this Master Lease. For avoidance of doubt, no termination of this Master Lease with respect to part or all of any one or more Demised Premises at any one or more Properties in accordance with the terms of this Master Lease, except as otherwise expressly set forth herein, shall have no impact on the effectiveness of this Master Lease with respect to any Demised Premises or Properties which have not been so terminated.

21.2 **Partial Invalidity.** If any provision, term, covenant or condition of this Master Lease or the application thereof to any Person or circumstance shall, to any extent, be determined by a court of competent jurisdiction or any arbitrator to be invalid or unenforceable, the remainder of this Master Lease, or the application of such provision, term, covenant or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision, term, covenant or condition of this Master Lease shall be valid and be enforced to the fullest extent permitted by law.

21.3 **Non-Recourse.** Tenant specifically agrees to look solely to the equity interest of Landlord in the Demised Premises as it exists from time to time for the satisfaction of any claim or liability of Landlord under this Master Lease, and Tenant shall not institute any action or proceeding against, nor seek to recover any judgment from, Landlord personally or against any Property, but Landlord’s sole liability hereunder shall be limited solely to its equity interest in the Demised Premises from time to time, and no recourse under or in respect of this Master Lease shall be had against any other assets of Landlord or against any Person having an interest in Landlord or any such Person’s assets whatsoever. Without limiting the foregoing, it is specifically agreed that no constituent partner, member or shareholder or owner of any beneficial or equitable interest in Landlord or any manager, managing member, director, officer or employee of Landlord shall ever be personally liable nor shall any personal assets of any such Person ever be liable for any such claim, liability or judgment or for the payment of any monetary obligation to Tenant. Furthermore, except as otherwise expressly provided herein, in no event shall Landlord ever be liable to Tenant nor shall Tenant ever be liable to Landlord for any indirect, speculative or consequential damages suffered by Tenant or Landlord, as the case may be, from whatever cause.
21.4 **Successors and Assigns.** This Master Lease shall be binding upon Landlord and its successors and assigns, and upon Tenant and its permitted successors and assigns pursuant to Article IX.

21.5 **Governing Law.** THIS MASTER LEASE WAS NEGOTIATED IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL JURISDICTIONAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. ACCORDINGLY, IN ALL RESPECTS THIS MASTER LEASE (AND ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OR CONFLICTS OF LAW) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT ALL PROVISIONS HEREOF RELATING TO THE CREATION OF THE LEASEHOLD ESTATE AND ALL REMEDIES SET FORTH IN ARTICLE XIV RELATING TO RECOVERY OF POSSESSION OF THE DEMISED PREMISES (SUCH AS AN ACTION FOR UNLAWFUL DETAINER, IN REM ACTION OR OTHER SIMILAR ACTION) (COLLECTIVELY, "LOCAL REMEDIES") SHALL BE CONSTRUED AND ENFORCED ACCORDING TO, AND GOVERNED BY, THE LAWS OF THE STATE IN WHICH THE DEMISED PREMISES IS LOCATED.

21.6 **Consent to Jurisdiction; Waiver of Trial by Jury.** EACH PARTY HERETO IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK IN THE STATE OF NEW YORK FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS MASTER LEASE (INCLUDING ANY BREACH HEREOF) OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY, AND AGREES TO COMMENCE ANY SUCH ACTION, SUIT OR PROCEEDING ONLY IN SUCH COURTS, EXCEPT WITH RESPECT TO ANY LOCAL REMEDIES. EACH PARTY FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY UNITED STATES REGISTERED MAIL TO SUCH PARTY’S RESPECTIVE ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUCH ACTION, SUIT OR PROCEEDING. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY IN SUCH COURTS, AND HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN AN INCONVENIENT FORUM. EACH OF LANDLORD AND TENANT ACKNOWLEDGES THAT IT HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY UNDER THE CONSTITUTION OF THE UNITED STATES AND THE STATE. EACH OF LANDLORD AND TENANT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS MASTER LEASE (OR ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) OR (ii) IN ANY MANNER CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF LANDLORD AND
TENANT WITH RESPECT TO THIS MASTER LEASE (OR ANY AGREEMENT FORMED PURSUANT TO THE TERMS
HEREOF) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN
CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER
NOW EXISTING OR HEREINAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE;
EACH OF LANDLORD AND TENANT HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND,
ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY, AND THAT EITHER
PARTY MAY FILE A COPY OF THIS SECTION 21.6 WITH ANY COURT AS CONCLUSIVE EVIDENCE OF THE CONSENT
OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

21.7 Entire Agreement. This Master Lease and the Exhibits and Schedules hereto, the Side Letter and the SNDA constitute the
entire and final agreement of the parties with respect to the subject matter hereof, and may not be changed or modified except by an
agreement in writing signed by the parties, and no such change or modification to any specific provision of this Master Lease shall be
effective without the explicit reference to the applicable Section by number and paragraph (if any). Landlord and Tenant hereby agree
that all prior or contemporaneous oral or written understandings, agreements or negotiations relative to the leasing of the Demised
Premises or the execution of this Master Lease are merged and integrated into, and revoked and superseded, by this Master Lease.
Notwithstanding the foregoing, this Master Lease shall govern and supersede the Purchase Agreement in all respects with regard to
the matters referred to in the Purchase Agreement in Article V and Section 4.3 thereof.

21.8 Headings. All titles and headings to sections, subsections, paragraphs or other divisions of this Master Lease are only for
the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other contents of such
sections, subsections, paragraphs or other divisions, such other content being controlling as to the agreement among the parties
hereto.

21.9 Counterparts. This Master Lease may be executed in any number of counterparts, each of which shall be a valid and
binding original, but all of which together shall constitute one and the same instrument.

21.10 Interpretation. Both Landlord and Tenant have been represented by counsel and this Master Lease and every provision
hereof has been freely and fairly negotiated. Consequently, all provisions of this Master Lease shall be interpreted according to their
fair meaning and shall not be strictly construed against any party.

21.11 Time of Essence. TIME IS OF THE ESSENCE OF THIS MASTER LEASE AND EACH PROVISION HEREOF IN
WHICH TIME OF PERFORMANCE IS ESTABLISHED.

21.12 Further Assurances. The Parties agree to execute, acknowledge and deliver to each other Party and/or such other
Persons as a Party may request, all documents reasonably requested by any Party to give effect to the provisions and intent of this
Master Lease.

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21.13 **Landlord’s Right to Inspect and Show the Demised Premises.** In addition to all other rights of Landlord hereunder, upon reasonable advance notice to Tenant which may be given verbally to the Store manager with not less than forty-eight (48) hours’ notice (except in the case of an emergency), Landlord and its authorized representatives shall have the right to inspect the Demised Premises and to show the Demised Premises to potential purchasers, tenants and lenders at all reasonable times during usual business hours. Landlord and its representatives shall take reasonable care to minimize disturbance of the operations of the Demised Premises, except in the case of an emergency, and not to cause any damage or injury to the Demised Premises or Tenant’s Property, and Landlord shall be responsible for all acts and omissions for all representatives it brings on the Demised Premises. Tenant and its representatives shall have the right to be present during any and all such inspections.

21.14 **Acceptance of Surrender.** No surrender to Landlord of this Master Lease or of the Demised Premises or any part thereof, or of any interest therein, shall be valid or effective until and unless agreed to and accepted in writing by Landlord, and no act by Landlord or any representative or agent of Landlord, other than written acceptance by Landlord, shall constitute an acceptance of any such surrender.

21.15 **Non-Waiver.** The failure of Landlord or Tenant to insist, in any one or more instances, upon a strict performance of any of the covenants, conditions, terms or provisions of this Master Lease, or to exercise any election, option, right or remedy herein contained (collectively, “Lease Provisions”), shall not be construed as a waiver or a relinquishment of such Lease Provisions or a waiver for the future of any of the same or any other Lease Provisions, but the same shall continue and remain in full force and effect. The receipt by Landlord of Rent or payment of Rent by Tenant, with knowledge of the breach of any Lease Provisions for which Tenant is obligated or liable, shall not be deemed a waiver of such breach. No waiver by Landlord or Tenant of any Lease Provisions shall be deemed to have been made unless expressed in writing and signed by Landlord or Tenant, as the case may be.

21.16 **Accord and Satisfaction.** Without limiting the foregoing provisions of Section 21.15, no payment by Tenant or receipt by Landlord of a lesser amount than the full amount of Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated or required payments of Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or confirmation of any Wire Transfer or other payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check, Wire Transfer or other payment without prejudice to Landlord’s right to recover the balance of such Rent (with late charges and interest as provided herein) or pursue any other remedy provided in this Master Lease or at law or in equity.

21.17 **Recording.** Tenant shall not record this Master Lease without the written consent of Landlord, but Tenant may record any SNDA.

21.18 **Liens.** Subject to the express provisions hereof with respect to Tenant’s (or an Affiliate of Tenant’s, as the case may be) performance of Recapture Restoration Work and/or Recapture Related Repairs which has been required and authorized by Landlord in accordance with Section 1.6 or Section 10.1 (“Landlord Authorized Work”), Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or
other encumbrance upon the estate of Landlord or of any interest of Landlord in the Demised Premises or the Property, or upon or in
the building or buildings or improvements thereon or hereafter erected or placed thereon, it being agreed that should Tenant cause any
improvements, alterations or repairs to be made to the Demised Premises, or material furnished or labor performed therein, or
thereon, except for Landlord Authorized Work, neither Landlord nor the Demised Premises nor any improvements shall under any
circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished to the
Demised Premises or any part thereof. Subject to Landlord’s payment obligations for any Landlord Authorized Work, all such
improvements, alterations, repairs, materials and labor shall be done at Tenant’s expense and Tenant shall be solely and wholly
responsible to contractors, laborers and material men furnishing labor and material to said premises and building or buildings and
improvements or any part thereof and all such laborers, material men and contractors are hereby charged with notice that they must
look solely and wholly to Tenant and Tenant’s interest in the Demised Premises to secure the payment of any bills for work done and
materials furnished.

In addition to all other rights and remedies of Landlord, in the event that a mechanic’s lien shall be filed against the Demised
Premises or Tenant’s interest therein or against the Property or any applicable Shopping Center or any part thereof as the result of any
repairs, fixturing, alterations or other work undertaken by Tenant (subject to Landlord’s payment obligations with respect to Landlord
Authorized Work), Tenant shall, within twenty-one (21) days (or such shorter period as may be required pursuant to the terms of any
REA) after receiving notice of such lien, discharge such lien either by payment of the indebtedness due or by filing a bond (as
provided by statute) or by providing a surety bond for one hundred twenty five percent (120%) of the amount of such lien as security
therefor, or a title indemnity from a nationally recognized title insurer. In the event that Tenant shall fail to bond or discharge such
lien, or provide such security or title indemnity for such lien, provided, that Landlord has complied with its payment obligations with
respect to Landlord Authorized Work, Landlord may, but shall not be obligated to, in addition to all other rights and remedies in this
Master Lease, have the right to procure such discharge by filing such bond and Tenant shall pay the cost of such bond to Landlord
(together with interest at the Overdue Rate) as Additional Charges upon the first day that Rent shall be due thereafter.

21.19 Cumulative Remedies. Each and every one of the rights, remedies and benefits provided by this Lease to Landlord and
Tenant shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

21.20 Rules and Regulations. From and after the Multi-Tenant Occupancy Date, Landlord reserves the right to promulgate
reasonable, nondiscriminatory rules and regulations from time to time pertaining to the Demised Premises and the Property; provided,
that the same do not unreasonably or materially interfere with Tenant’s business or access to the Demised Premises or materially
increase Tenant’s obligations or materially decrease Tenant’s rights or remedies hereunder. Tenant agrees to comply with and observe
all such nondiscriminatory rules and regulations promulgated in accordance with this Section 21.20 and as to which it has received
adequate prior Notice providing Tenant with sufficient time to comply with such rules. Failure by Tenant to keep and observe such
rules and regulations shall constitute a breach of this Master Lease as if the same were contained herein as covenants of Tenant.
21.21 Confidentiality and Media Releases. The Parties hereby agree not to disclose any of the terms of this Master Lease to any person or entity not a party to this Master Lease, nor shall either Party, without the prior written consent of the other, issue any press or other media releases or make any public statements relating to the terms or provisions of this Master Lease; provided, however, that either Party may make necessary disclosures to (i) potential lenders, investors, purchasers, subtenants, assignees, attorneys, advisors, consultants, accountants and economic development authorities and/or as may be required by applicable laws or court order, so long as such Parties agree to keep all of the terms of this Master Lease strictly confidential to the extent practicable, and except as may be required pursuant to applicable law, or (ii) any lender, investor or prospective investor, rating agency, counsel, advisor, consultant or accountant in connection with a securitization and/or sale of a loan.

21.22 Authority. The Parties hereto represent and warrant to each other that the person(s) executing this Master Lease on behalf of Landlord or Tenant, as the case may be, have been duly authorized by all requisite corporate or other action of Landlord or Tenant, as the case may be, so that upon such execution this Master Lease will be binding upon and enforceable against each Party in accordance with its terms, subject to general equitable principles and the laws of insolvency and bankruptcy. Landlord and Tenant agree to furnish to the other Party from time to time upon request such written proof of such authorization as either Party may reasonably request.

21.23 Overdue Rate. In addition to all other rights and remedies of Landlord in this Master Lease, in the event that Landlord shall incur any cost or expense on behalf of Tenant (including curing or payment or discharge of any liability or obligation of Tenant or any breach or default by Tenant hereunder), whether or not there is an Event of Default, which is not paid to Landlord by Tenant within five (5) Business Days of Landlord’s demand therefor accompanied by an invoice in reasonable detail, the same shall bear interest at the Overdue Rate from the date of demand until paid in full and shall constitute Additional Charges.

21.24 Delivery of Information. (a) Within seventy-five (75) days after the end of each Fiscal Year and within forty (40) days after the end of each fiscal quarter of Tenant’s Parent during the Term, Tenant shall deliver to Landlord Financial Statements for the Fiscal Year or quarter, as the case may be, then ended.

(b) Tenant shall also deliver the following additional financial information to Landlord (in the forms provided in Schedule 21.24):

(i) no later than the time of delivery of Financial Statements pursuant to clause (a) above, statements of EBITDA and EBITDAR with respect to each Store, and all Stores Collectively for the four-quarter period then ended;

(ii) on a monthly basis, within thirty (30) days after the end of each month during the Term, (x) with respect to each Sears Store or Kmart Store, monthly sales and profit and loss reports with respect to each Demised Premises and (y) with respect to each Sears Store or Kmart Store as to which the Multi-Tenant Occupancy Date has not yet occurred, a certification as follows: that Tenant is current in its payment of all CAM Expenses, Utility Charges and Operating

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Expenses (if any) payable by Tenant pursuant to this Master Lease in accordance with all applicable grace periods and no such payments are overdue in excess of such grace periods except for matters being disputed by Tenant in good faith as described on a schedule to such certificate;

(iii) prompt notice (containing reasonable detail) of any material changes in the financial or physical condition of any Property, including any termination of a material lease and any termination or cancellation of terrorism or other insurance required by the Landlord Mortgage;

(iv) as promptly as reasonably practicable, all such other financial statements and information as Landlord may reasonably request, including to enable Landlord to comply with all voluntary and mandatory financial reporting requirements of Landlord under all Legal Requirements and under the Landlord Mortgage, including with respect to any requirements of any member of Landlord (or any Affiliate of any member of Landlord), their successors, and assigns, with respect to status as a REIT; and

(v) on a quarterly basis, within forty (40) days after the end of each calendar quarter during the Term, with respect to each Sears Store or Kmart Store reported in Section 21.24(b)(ii)(y), a statement describing all CAM Expenses, Utility Charges and Operating Expenses (if any) paid by Tenant pursuant to this Master Lease.

Subject to the next succeeding sentence, all such Financial Statements and additional financial information, and information derivative therefrom (collectively, “Tenant Confidential Information”, shall be held strictly confidential by Landlord and shall not be shared or disclosed by Landlord (except to its members, employees, representatives, agents, accountants and attorneys and Landlord shall cause its members, employees, representatives, agents, accountants and attorneys to not disclose the same) until and unless Tenant has made such information public and except pursuant to Legal Requirements or legal process. Notwithstanding the foregoing, Landlord may disclose Tenant Confidential Information to (i) the agents and actual or prospective lenders in respect of the Landlord Mortgage in accordance with the Landlord Mortgage Documents, (ii) any lender, investor or prospective investor, rating agency, counsel, advisor, consultant or accountant in connection with a securitization and/or sale of a loan, and (iii) actual or prospective equity investors in or purchasers of equity interests in Landlord, Guarantor or this Master Lease or any interests therein who have executed with Tenant a customary confidentiality agreement in a form that has been reasonably approved by Tenant for this purpose.

21.25 Puerto Rico Premises. Landlord covenants and agrees with Tenant, its successors and assigns, that Landlord, its successors and assigns, shall not (and shall not have any power or authority to) sell, convey, lease, assign, or otherwise transfer (“Sale”), or enter into any agreement, contract, agreement for deed, lease, agreement for lease, or any option, right of first refusal, right of first offer, or right of first negotiation for with respect to any Sale (“Sale Agreement”), except with respect to (i) a Landlord Mortgage, and (ii) unless Tenant has a right not to be disturbed based on the application of the terms of Section 4 of the SNDA, any
foreclosure, deed-in-lieu of foreclosure or other exercise of rights or remedies under such Landlord Mortgage and any subsequent sale by Landlord Mortgagee or a purchaser at foreclosure, with respect to (or any real property interest in) any Demised Premises or portion thereof located in Puerto Rico ("Puerto Rico Premises"), unless all of the following have been strictly complied with, failure of any of which shall render any Sale to any third-party null and void ab initio:

(a) Any such Sale and each such Sale Agreement shall be made expressly subject to this Master Lease and all of Tenant’s rights, remedies and privileges hereunder with respect to the applicable Puerto Rico Premises, including the Tenant PR ROFO Rights set forth below ("Tenant PR Rights");

(b) Each buyer, purchaser, lessee or other transferee and each other counter-party (other than Landlord or its successor or assign, collectively, “Sale Counter-Party”) to each Sale or Sale Agreement shall absolutely waive and release, to the fullest extent permitted by law, all rights to disavow any Tenant PR Rights by reason of the failure of Landlord or Tenant to record any lease or notice of lease with respect to the Puerto Rico Premises or this Master Lease;

(c) Each Sale Counter-Party shall agree in writing for the benefit of Tenant, its successors and assigns (each of whom shall be deemed third-party beneficiaries) that each such subsequent Sale or Sale Agreement entered into by any such Sale Counter-Party shall be expressly subject to all of the Tenant PR Rights, and all of Tenant’s PR ROFO Rights; and

(d) Not less than thirty (30) days prior to any proposed Sale or the proposed execution of any Sale Agreement, Landlord shall have provided Tenant with Notice of its intent to enter into a Sale or Sale Agreement and Tenant’s right to offer to purchase the Puerto Rico Premises which is the subject of such Sale or Sale Agreement, followed by a thirty (30)-day period of good faith negotiation between Landlord and Tenant with regard to Tenant’s purchase of such Puerto Rico Premises. If Tenant does not exercise such right to offer to purchase or the parties do not reach agreement during such 30-day negotiation period, Landlord shall provide Tenant with ten (10) days’ prior Notice of any subsequent Sale and any Sale Agreement with respect to such Puerto Rico Premises, which Notice shall include evidence of Landlord’s compliance with all of the foregoing clauses (a)-(c), and all of Tenant’s PR ROFO Rights in this clause (d). This right of offer by Tenant shall apply with respect to each separate Puerto Rico Premises; provided however, Tenant’s right of offer shall automatically be waived with respect to each Sale which otherwise fully complies with the foregoing clauses (a)-(c). In furtherance of said Tenant’s right of offer, the Parties are recording a deed with respect thereto in the Registry of the Property of Puerto Rico. Landlord covenants and agrees to grant an additional ten (10)-year right of offer with the same terms and conditions provided herein every nine (9) years during the Term of this Master Lease with respect to any of the Puerto Rico Premises (including all renewal terms), commencing on the first day of the ninth (9th) anniversary of the Commencement Date and continuing on the first day of each ninth (9th) Lease Year thereafter, and the Parties covenant and agree to execute, acknowledge and deliver (in proper form for recording) without charge to either Party corresponding deeds to record the aforementioned Tenant’s right of offer over the Puerto Rico Premises in the Registry of the Property of Puerto Rico. Tenant’s rights in this clause (d) are referred to as the “Tenant PR ROFO Rights”).

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ARTICLE XXII
MEMORANDUM OF LEASE

22.1 Memorandum of Lease. Landlord and Tenant covenant and agree to execute, acknowledge and deliver a short-form memorandum of this Master Lease, in form suitable for recording under the laws of each state in which the applicable Demised Premises is located, at such time as Tenant has made an initial assignment of this Master Lease to an Affiliate, or at any other time upon the request of Tenant. From time to time, upon request of either Party, the Parties shall execute, acknowledge and deliver amendments to such memoranda of lease (a) to reflect the termination of this Master Lease with respect to any Properties as provided herein, and upon the final expiration or earlier termination of this Master Lease to the Demised Premises, and (b) as otherwise may be appropriate. Tenant shall pay all costs and expenses of recording such Memorandum of Lease and any further memoranda of lease (except in connection with any New Lease) or in connection with any Recapture Space or Additional Recapture Space.

ARTICLE XXIII
BROKERS

23.1 Brokers. Tenant warrants that it has not had any contact or dealings with any real estate broker, agent or finder or other Person which would give rise to the payment of any fee, brokerage commission or other payment in connection with this Master Lease, and Tenant shall indemnify, protect, hold harmless and defend Landlord and all Indemnified Parties from and against any claims, liability, damages, fees, costs or expenses, including reasonable attorneys’ fees and court costs (including the same incurred in the enforcement of each indemnity) with respect to any fee, brokerage commission or other payment arising out of any act or omission of Tenant. Landlord warrants that it has not had any contact or dealings with any real estate broker, agent, finder or other Person which would give rise to the payment of any fee, brokerage commission or other payment in connection with this Master Lease, and Landlord shall indemnify, protect, hold harmless and defend Tenant from and against any claims, liability, damages, fees, costs or expenses, including reasonable attorneys’ fees and court costs (including the same incurred in the enforcement of such indemnity) with respect to any fee, brokerage commission or other payment arising out of any act or omission of Landlord.

ARTICLE XXIV
ANTI-TERRORISM

24.1 Anti-Terrorism Representations. Tenant hereby represents and warrants that neither Tenant, nor, to the knowledge of Tenant, any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (a) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (b) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (c) named on the following list that is published by OFAC: “List of Specially Designated Nationals and Blocked Persons” (collectively, “Prohibited Persons”). Tenant hereby represents and warrants to Landlord that no funds tendered to Landlord by Tenant under the terms

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of this Master Lease are or will be directly or, to Tenant’s knowledge, indirectly derived from activities that may contravene U.S. federal, state or international laws and regulations, including anti-money laundering laws. If the foregoing representations are untrue at any time during the Term and Landlord suffers actual damages as a result thereof, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant.

Tenant will not during the Term of this Master Lease knowingly engage in any transactions or dealings, or knowingly be otherwise associated, with any Prohibited Persons in connection with the use or occupancy of the Demised Premises. A breach of the representations contained in this Section 24.1 by Tenant as a result of which Landlord suffers actual damages shall constitute a material breach of this Master Lease and shall entitle Landlord to any and all remedies available hereunder, or at law or in equity.

ARTICLE XXV
REIT PROTECTION

25.1 REIT Protection. (a) The Parties hereto intend that Rent and all other amounts paid by Tenant hereunder will qualify as “rents from real property” within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto and this Master Lease shall be interpreted consistently with this intent.

(b) Notwithstanding anything to the contrary contained in this Master Lease, Tenant shall not without Landlord’s advance written consent (which consent shall not be unreasonably withheld) (i) sublet, assign or enter into a management arrangement for the Demised Premises on any basis such that the rental or other amounts to be paid by the subtenant, assignee or manager thereunder would be based, in whole or in part, on either (x) the income or profits derived by the business activities of the subtenant, assignee or manager or (y) any other formula or allocation such that any portion of any amount received by Landlord (or received or deemed to be received for U.S. federal income tax purposes by any member of Landlord (or any Affiliate of any member of Landlord)) would fail to qualify as “rents from real property” within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto; (ii) furnish or render any services to the subtenant, assignee or manager or manage or operate the Demised Premises so subleased, assigned or managed; (iii) sublet or assign to, or enter into a management arrangement for the Demised Premises with, any Person (other than a “taxable REIT subsidiary” (within the meaning of Section 856(l) of the Code)) in which Tenant, Landlord or any member of Landlord (or any Affiliate of any member of Landlord) owns an interest, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d)(5) of the Code); or (iv) sublet, assign or enter into a management arrangement for the Demised Premises in any other manner which could cause any portion of the amounts received by Landlord (or received or deemed to be received for U.S. federal income tax purposes by any member of Landlord (or any Affiliate of any member of Landlord)) pursuant to this Master Lease or any sublease to fail to qualify as “rents from real property” within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto, or which could cause any other income of Landlord or any member of Landlord (or any Affiliate of any member of Landlord) to fail to qualify as income described in Section 856(c)(2) of the Code. The requirements of this Section 25.1(b) shall likewise apply to any further subleasing by any subtenant.
(c) Notwithstanding anything to the contrary contained in this Master Lease, the Parties acknowledge and agree that Landlord, in its sole discretion, may assign this Master Lease or any interest herein to another Person (including, without limitation, a “taxable REIT subsidiary” (within the meaning of Section 856(l) of the Code)) to maintain the status of any member of Landlord (or any Affiliate of any member of Landlord) as a “real estate investment trust” (within the meaning of Section 856(a) of the Code); provided, however, that Landlord shall be required to (i) comply with any applicable legal requirements related to such transfer and (ii) give Tenant notice of any such assignment; and provided, further, that any such assignment shall be subject to all of the rights of Tenant hereunder.

(d) Notwithstanding anything to the contrary contained in this Master Lease, upon request of Landlord, Tenant shall cooperate with Landlord in good faith and at no cost or expense to Tenant, and provide such documentation and/or information as may be in Tenant’s possession or under Tenant’s control and otherwise readily available to Tenant as shall be reasonably requested by Landlord in connection with verification of “real estate investment trust” (within the meaning of Section 856(a) of the Code) compliance requirements. Tenant shall take such reasonable action as may be requested by Landlord from time to time to ensure compliance with the Internal Revenue Service requirement that Rent allocable for purposes of Section 856 of the Code to personal property, if any, at the beginning and end of a calendar year does not exceed fifteen percent (15%) of the total Rent due hereunder as long as such compliance does not (i) increase Tenant’s monetary obligations under this Master Lease, (ii) materially and adversely increase Tenant’s nonmonetary obligations under this Master Lease or (iii) materially diminish Tenant’s rights under this Master Lease.

ARTICLE XXVI
FAIR MARKET RENT—APPRAISAL

26.1 Fair Market Rent. In the event that it becomes necessary to determine the Fair Market Rent of any Demised Premises for any purpose of this Master Lease, and the parties cannot agree amongst themselves on such value within twenty (20) days after the first request made by one of the parties to do so, then either party may notify the other of a person selected to act as appraiser (such person, and each other person selected as provided herein, an “Appraiser”) on its behalf. Within fifteen (15) days after receipt of any such Notice, the other party shall by notice to the first party appoint a second person as Appraiser on its behalf. The Appraisers thus appointed, each of whom must be a member of The Appraisal Institute/American Institute of Real Estate Appraisers (or any successor organization thereto) with at least ten (10) years of experience appraising properties similar to the Demised Premises, shall, within forty-five (45) days after the date of the notice appointing the first appraiser, proceed to appraise the applicable Demised Premises to determine the Fair Market Rent thereof as of the relevant date; provided, that if one Appraiser shall have been so appointed, or if two Appraisers shall have been so appointed but only one such Appraiser shall have made such determination within fifty (50) days after the making of the initial appointment, then the determination of such Appraiser shall be final and binding upon the parties. If two Appraisers shall have been appointed and shall have made their determinations within the respective requisite periods set forth above and if the difference between the amounts so determined shall not exceed ten percent (10%) of the lesser of such amounts, then the Fair Market Rent shall be an amount equal to fifty percent (50%) of the sum of the amounts so determined. If the difference between the amounts so determined shall exceed ten
percent (10%) of the lesser of such amounts, then such two (2) Appraisers shall have twenty (20) days to appoint a third (3rd) Appraiser, but if such Appraisers fail to do so, then either party may request the American Arbitration Association or any successor organization thereto to appoint an Appraiser within twenty (20) days of such request, and both parties shall be bound by any appointment so made within such twenty (20)-day period. If no such Appraiser shall have been appointed within such twenty (20) days or within ninety (90) days of the original request for a determination of Fair Market Rent, whichever is earlier, either Landlord or Tenant may apply to any court having jurisdiction to have such appointment made by such court. Any Appraiser appointed by the original Appraisers, by the American Arbitration Association or by such court shall be instructed to determine the Fair Market Rent within thirty (30) days after appointment of such Appraiser. The determination of the appraiser which differs most in terms of dollar amount from the determination of the other two Appraisers shall be excluded, and fifty percent (50%) of the sum of the remaining two determinations shall be final and binding upon Landlord and Tenant as the Fair Market Rent for such interest. This provision for determination by appraisal shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the parties except as otherwise provided by applicable law. Landlord and Tenant shall each pay the fees and expenses of the Appraiser appointed by it and their own legal fees, and each shall pay one-half of the fees and expenses of the third Appraiser and one-half (1/2) of all other cost and expenses incurred in connection with each appraisal.

ARTICLE XXVII
OFFICERS’ CERTIFICATES—STATUS OF LEASE

27.1 Certificate of Tenant. At any time during the Term, Tenant shall, within twenty (20) days after written request by Landlord, execute, acknowledge and deliver to Landlord, or any other Person specified by Landlord, an Officer’s Certificate (which may be relied upon by such Person) (a) certifying (i) that, to the knowledge of Tenant, this Master Lease is unmodified and in full force and effect (or if there are modifications, that this Master Lease, as modified, is in full force and effect and stating such modifications and providing a copy thereof if requested) and (ii) the date to which Base Rent, Additional Charges and any other item payable by Tenant hereunder has been paid, and (b) stating (i) whether Tenant has given Landlord any outstanding notice of any event that, with the giving of notice or the passage of time, or both, would constitute a default by Landlord in the performance of any covenant, agreement, obligation or condition contained in this Master Lease and (ii) whether, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in reasonable detail each such default.

27.2 Certificate of Landlord. At any time during the Term, Landlord shall, within twenty (20) days after request by Tenant, execute, acknowledge and deliver to Tenant, or any other Person specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications and providing a copy thereof if requested) and (ii) the date to which Base Rent, Additional Charges and any other item payable by Tenant hereunder has been paid, and (b) stating (i) whether an Event of Default has occurred or whether Landlord has given Tenant any outstanding notice of any event that, with the giving of notice or the passage of time, or both,
would constitute an Event of Default and (ii) whether, to the best knowledge of Landlord, Tenant is in default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in reasonable detail each such default or Event of Default.

ARTICLE XXVIII
CONDITION OF DEMISED PREMISES ON EXPIRATION OR TERMINATION OF MASTER LEASE

28.1 Delivery of Demised Premises. Upon the expiration or termination of this Master Lease from whatsoever cause with respect to any or all of the Demised Premises or a portion thereof, including without limitation any termination under Section 1.6, 1.7 or 1.8, with respect to casualty or Condemnation, or as a result of any Event of Default, Tenant shall surrender and deliver the affected Demised Premises to Landlord, together with all Alterations which are Landlord’s property under this Master Lease, (a) vacant and free from all occupants and tenancies, including without limitation all Subleases, (b) broom-clean and in proper order and condition of repair as required by the other provisions of this Master Lease, reasonable wear and tear excepted, (c) in compliance with all Legal Requirements, Encumbrances and all other requirements of this Master Lease, (d) with all Tenant’s Property removed and all Alterations removed which Tenant is entitled to remove and has elected to remove in its sole discretion (and the Demised Premises completely restored with respect to all of the removed Alterations), (e) with all Known Environmental Problems remediated only as and to the extent expressly provided in Schedule 20.3, and otherwise subject to Section 20.3(b) including with respect to all SACs in respect of such Known Environmental Problems, with all hydraulic lifts and pits, waste-handling equipment, oil-water separators and all other machinery, facilities and equipment for SAC operations removed, whether located at the SACs or elsewhere on or about the Demised Premises as and to the extent required by Environmental Law, and (f) free and clear of all Encumbrances, other than (x) Permitted Encumbrances (except for (A) Excepted Liens and (B) Subleases, the Sears Hometown License Agreement, and the Lands’ End Agreements), and (y) Permitted Encumbrances (excluding Excepted Liens, except in the case of a Master Lease termination with respect to the Recapture Space in which the Master Lease continues with respect to the Tenant Retained Space, in which case Excepted Liens shall be permitted so long as Security for Excepted Liens is provided to Landlord) and Landlord Encumbrances (provided, however, that Tenant shall remain liable for the payment and discharge of all Excepted Liens).

Notwithstanding the foregoing, in the event of a Master Lease termination as a result of casualty or Condemnation, the foregoing provisions with respect to Alterations, and subparagraph (b), shall not apply to the extent affected by such casualty or Condemnation.

ARTICLE XXIX
ALTERNATIVE DISPUTE RESOLUTION—EXPEDITED ARBITRATION

29.1 At tempted Dispute Resolution. (a) All disputes, claims or controversies arising under this Master Lease between the Parties with respect to or arising under (i) Sections 1.7 and 1.8, (ii) with respect to the calculation and determination of Base Rent, the “SHC Base Rent Adjustment” and other items and adjustments as provided in Schedule 2 to the Side Letter (each, a “Dispute”) shall be addressed and resolved in accordance with the procedures set forth below, and no other claim shall be brought in any court or under
other dispute resolution process, and no other remedy shall be sought to be exercised by any Party with respect to the subject matter of any such Dispute (except that the decision of the Conciliator or Arbitrator may be enforced in any court of competent jurisdiction). Without limiting the foregoing, pending the resolution of such Dispute as provided herein, neither Party shall be deemed in breach or default nor shall there be an Event of Default under this Master Lease; provided, however, in the event of a Dispute with respect to subdivisions (ii) or (iii), Tenant shall continue to pay all Base Rent and Property Charges in accordance with the amounts last proposed or claimed by Landlord immediately prior to such Dispute, subject to prompt adjustment and refund or credit to Tenant of any amounts owing to Tenant upon such resolution. For the avoidance of doubt, from and after the Actual Recapture Date, a Dispute shall not include (and arbitration shall not apply to) any Event of Default or the exercise of any remedies by Landlord for an Event of Default, including the termination of this Master Lease, with respect to any Recapture Space or any Tenant Retained Space.

(b) Landlord and Tenant shall use all reasonable good faith efforts to settle and resolve all Disputes in an expeditious manner. Landlord and Tenant have each designated a senior executive officer (“Senior Representative”) to act as its representative to attempt to resolve all Disputes; each Party may designate a replacement Senior Representative for such Party from time to time by Notice to the other Party. As of the Commencement Date, Landlord’s initial Senior Representative shall be [ ], and Tenant’s initial Senior Representative shall be [ ]. On or before the Commencement Date, or at any time thereafter, by separate agreement, the Parties shall attempt in good faith to select a disinterested Person (“Conciliator”) to assist in the resolution of all such Disputes, which Conciliator may similarly be replaced only by mutual agreement of the Parties from time to time.

(c) If the Parties fail to resolve any Dispute through informal discussions, either Landlord or Tenant may give Notice to the other Party (and the Conciliator, if any) of the existence of a Dispute (“Dispute Notice”), which shall specify with reasonable detail the matter or matters in dispute and the relief sought (and, if monetary, the amount thereof), and shall propose a place, date and time for the Parties’ respective Senior Representatives to meet with each other (and the Conciliator, if any) to seek to resolve the Dispute (which date shall be no later than three (3) days from the date of delivery of the Dispute Notice). Landlord and Tenant, together with any such Conciliator (if any) shall use reasonable best efforts to negotiate a resolution to the Dispute during a period of ten (10) days ("10-Day Period") beginning upon the date that any Party delivers a Dispute Notice. These reasonable best efforts shall include taking the following sequential steps, all of which shall be completed within such 10-Day Period:

(i) The Senior Representative of the Party receiving the Dispute Notice shall use his or her reasonable best efforts to meet with the noticing Party’s Senior Representative and any Conciliator at the place, on the date and at the time proposed in the Dispute Notice.

(ii) The Senior Representatives and any Conciliator, acting in good faith, shall use their respective reasonable best efforts to negotiate a mutually acceptable resolution of the asserted Dispute.

(iii) If, acting in good faith, the Senior Representatives (with the assistance of any Conciliator) are unable to achieve a mutually acceptable resolution of the asserted Dispute within said 10-Day Period, the Parties agree that the Conciliator (if any) shall make the final decision at the expiration of such 10-Day Period, which decision shall be in writing and shall be final and binding on the Parties. If the Dispute is not resolved as provided in this Section 29.1, then the Parties shall submit the Dispute to binding arbitration as provided herein.
29.2 **Binding Arbitration.** If, upon the expiration of the 10-Day Period following the date of delivery of the Dispute Notice, the Senior Representatives are unable to negotiate a resolution of the Dispute, and there is no Conciliator (or the Conciliator fails to issue a decision), then the Parties shall submit the Dispute to binding arbitration in accordance with the following arbitration procedures:

(a) The arbitration will be conducted pursuant to the Expedited Procedures of the Commercial Arbitration Rules (“Arbitration Rules”) of the American Arbitration Association (“AAA”) in New York, New York, and the arbitrator shall render his or her award not later than fourteen (14) days after the close of the hearing in the arbitration.

(b) The arbitrator will be selected from an AAA list using the AAA-recommended selection method.

(c) After the appointment of the arbitrator, the arbitrator shall hold a conference with the Parties as soon as practicable (but in any event within five (5) days of such appointment) to define and narrow the issues and claims to be arbitrated, to define and limit discovery and to identify the form of evidence to be presented. All discovery shall be completed within five (5) Business Days of said conference.

(d) Any arbitration shall be conducted by the arbitrator under the guidance of the Federal Rules of Civil Procedure and the Federal Rules of Evidence, as modified by the Expedited Procedures, but the arbitrator shall not be required to comply strictly with such rules in conducting any such arbitration.

(e) The arbitrator shall conduct such evidentiary or other hearings not to exceed two (2) days, as the arbitrator shall deem necessary or appropriate, and thereafter shall make a determination as soon as practicable and within said fourteen (14)-day period.

(f) A full and complete record of the arbitration shall be maintained, and the award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law of the arbitrator.

(g) Each Party will bear equally the costs and expenses of AAA and the arbitrator, and each Party will bear its own costs and expenses.

(h) In no event will the arbitrator determine that any Party should be awarded punitive, exemplary, consequential or speculative damages or any other damages not measured by the prevailing Party’s actual damages.
(i) All arbitration proceedings shall be confidential, except to the extent that disclosure is required by applicable law.

(j) The arbitrator may make and grant interim and interlocutory awards and relief, including injunctive relief, which shall not be subject to appeal.

(k) The final award by the arbitrator shall be final and binding on the Parties and shall not be subject to appeal, and judgment on the award may be entered in any court of competent jurisdiction.

(l) In the case of any conflict between a term or condition of this Master Lease and a term or condition of the Arbitration Rules, the terms and conditions of this Master Lease shall govern and control in all respects to the fullest extent permissible or feasible.

[SIGNATURES FOLLOW]
IN WITNESS WHEREOF, this Master Lease and Sublease has been executed and delivered by the Members effective as of the Effective Date.

[Signatures]
[Acknowledgments]
[Exhibits]
[Schedules]
## EXHIBIT A

### PROPERTIES

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Exhibit A Properties – 6
EXHIBIT B

PROHIBITED USES

[NOTE: All Prohibited Uses marked “*” shall apply to both Landlord and Tenant; all others apply to Tenant only.]

* • A flea market;
* • A pawn shop;
• A banquet hall, auditorium or other place of public assembly;
• A library or reading room (except incidental to the sale at retail of books);
• A discotheque or dance hall, any establishment offering live entertainment of any kind (excluding live music in restaurants), and a theatre, cinema or playhouse, provided that readings, demonstrations, television, video and other displays, and/or interactive presentations, shall be permitted as incidental to any other lawful use;
* • A mortuary, funeral home or crematorium;
• Living quarters, sleeping apartment or lodging rooms;
* • Any use which is a public or private nuisance;
* • Any use which produces: (A) noise or sound that is objectionable due to intermittence, high frequency, shrillness or loudness (except as otherwise permitted), (B) noxious odors, (C) noxious, toxic, caustic or corrosive fumes, fuel or gas, (D) dust, dirt or fly ash in excessive quantities, or (E) fire, explosion or other damaging or dangerous hazard, excluding in all cases the normal operations of SACs;
* • Any assembling, manufacturing, industrial, distilling, refining, smelting, agriculture or mining operation;
* • Junk yard or dump;
* • A massage parlor, or the sale, rental or display of “adult” or pornographic materials, including, without limitation, magazines, books, movies, videos, and photographs, or any pornographic display of any nature, excepting massages offered by a spa;
• A casino, gaming hall, off-track betting facility, or other gambling operation or facility, excepting the sale of lottery tickets and gambling where allowed under applicable Legal Requirements;
* • A “head shop” or other business selling drug paraphernalia, and
• A retail use that is primarily (a) an off-price or discount store (other than a store operated under the “Sears”, “Kmart” or “Shop Your Way” brand or name or any abbreviation or derivative of such brand or name (such as, by way of example only and not by way of limitation, “K” or “Big K”), or any other brand or name including therein the name “Sears”, “Kmart” or “Shop Your Way” or any abbreviation or derivative for such brand or name as aforesaid ), or *(b) a second-hand store.
EXHIBIT C
FORM OF SNDA

Prepared by and after recording return to:


SUBORDINATION, NON-DISTURBANCE, and Attornment AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this “Agreement”) is made as of the [    ] day of[            ], 2015 by and between (i) [                    ], a [                    ], having an address at [                    ] (together with its successors and assigns, “Lender”), (ii) Kmart Operations, LLC, a [limited liability company], having an address at [                    ] (“Kmart Tenant”), Sears Operations, LLC, a [limited liability company], having an address at [                    ] (“Sears Tenant”, and together with Kmart Tenant, individually or collectively as the context shall indicate, “Tenant”), and (iii) Seritage SRC Finance LLC, a Delaware limited liability company (“Sears Landlord”) and Seritage KMT Finance LLC, a Delaware limited liability company (“Kmart Landlord”, and together with Sears Landlord, individually or collectively as the context shall indicate, “Landlord”).

RECITALS

Landlord is the fee owner of those certain properties identified on Exhibit A attached hereto, (collectively, the “Landlord Parcels” and each a “Landlord Parcel”).

By that certain Master Lease dated [            ] (collectively, the “Lease”), by and between Landlord and Tenant, Tenant has leased from Landlord all or a portion of each Landlord Parcel and the improvements thereon (the “Premises”), together with certain easements and rights over the Landlord Parcel as described in the Lease.
Lender is the holder of a mortgage or beneficiary under a deed of trust on each Landlord Parcel, given to the Lender by Landlord dated as of the date hereof (individually or collectively as the context shall indicate, the “Mortgage”, and the “Mortgages”). Lender and Landlord are also parties to that certain Loan Agreement, dated as of the date hereof (the “Loan Agreement” and, collectively with the Mortgage and the other Loan Documents as defined in the Loan Agreement, the “Loan Documents”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

The loan terms require Landlord to cause Tenant to subordinate the Lease and its interest in the Premises to the lien of the Mortgage and that Tenant attorn to Lender.

In return for Tenant’s agreement to subordinate and attorn on the terms and conditions set forth herein, Tenant requires recognition of and consent to the Lease terms by Lender, subject to the terms of this Agreement, and to be assured of continued occupancy of the Demised Premises under the terms of the Lease, in the event either Lender or a Successor to Lender (as defined herein) succeeds to the rights of Landlord under the Lease pursuant to the terms of the Mortgage.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Recitals paragraphs set forth above are hereby incorporated into this Agreement. All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Lease.

2. Lender hereby consents to the Lease.

3. Subject to the terms of this Agreement, the Lease is and shall be subject and subordinate to the lien of the Mortgage and to all renewals, replacements and extensions of the Mortgage (pursuant to Section 14.1 of the Lease) to the full extent of the principal sum secured thereby, interest thereon and any applicable fees and expenses and to the terms, conditions and covenants set forth in the Mortgage and the other Loan Documents.

4. In the event that Lender shall commence an action to foreclose the Mortgage or to obtain a receiver of the Demised Premises, or shall foreclose the Mortgage by advertisement, entry and sale according to any procedure available under the laws of the state where the Landlord Parcel is located, Tenant shall not be joined as a party defendant in any such action or proceeding, unless such joinder is required by law, and in any event Tenant shall not be disturbed in its possession of the Demised Premises under the Lease, including its rights under Section 21.25 of the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the premises then currently demised under the Lease (subject to, and as the Demised Premises may be modified from time to time pursuant to, the terms and conditions of the Lease), (c) the Lease shall be in full force and effect and (d) no Event of Default has occurred and is continuing.

Exhibit C Form of SNDA – 2
5. In the event that Lender or any bona-fide purchaser (at a foreclosure sale or other proceedings brought to enforce the Mortgage), subsequent owner (receiving title by deed or assignment in lieu of foreclosure), successor or assign (including, without limitation, a successor or assign from Lender in its capacity as the holder of the indebtedness secured by the Mortgage, such purchaser, subsequent owner, successor or assign referred to as “Successor”) shall acquire the Demised Premises upon foreclosure, or by deed in lieu of foreclosure, or by any other means:

(a) Lender or its Successor shall recognize and accept the rights of Tenant and shall thereafter assume the obligations of Landlord under the Lease, subject to Section 4 above and subsection 5(d) below;

(b) Tenant shall be deemed to have made a full and complete attornment to Lender or its Successor as the landlord under the Lease so as to establish direct privity between the Lender or its Successor and Tenant;

(c) All rights and obligations of Tenant under the Lease shall continue in full force and effect and be enforceable by and against Tenant, respectively, with the same force and effect as if the Lease had originally been made and entered into directly by and between Lender or its Successor (as the case may be) as the landlord thereunder, and Tenant and, in the event the Lease shall automatically terminate pursuant to applicable law, Lender or its Successor (as the case may be) and Tenant shall, upon the request of Tenant, immediately enter into a new lease on the exact same terms and conditions of the Lease; and

(d) Notwithstanding anything to the contrary contained herein, in the Loan Documents or in the Lease, the following is specifically understood and agreed:

(1) Neither Lender nor its Successor shall be obligated to complete any construction work required to be done by Landlord pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant, except that with respect to Recapture Separation Work and Additional Recapture Space separation work as provided in Section 1.7 and 1.8 of the Lease that remains unfinished as of the date upon which the Lender or its Successor shall become the owner of the applicable Landlord Parcel (“Successor Landlord”), Successor Landlord shall elect to either (A) complete such work (regardless of the adequacy of any reserves available therefor) or (B) notify Tenant that Successor Landlord elects not to complete such work. If Successor Lender elects not to complete such work, the Lease shall automatically be reinstated as to such Recapture Space or Additional Recapture Space (in its then current condition) such that the Demised Premises and related Lease terms for such Property shall be the same as though the Recapture Notice or Additional Recapture Space Termination Notice had never been given, it being understood and agreed that (x) from and after Successor Landlord’s election not to complete such work Tenant’s payment obligations under the Lease shall apply to the Demised Premises including the applicable Recapture Space or Additional Recapture Space but (y) Tenant shall not be deemed to be in default or breach of the Operating Covenant.

Exhibit C Form of SNDA – 3
for such reasonable period of time as shall be reasonably necessary for Tenant (at its sole cost and expense) to return the Demised Premises to substantially the condition as existed immediately before the applicable Recapture Notice or Additional Recapture Space Termination Notice was given.

(2) Subject to subsection 5(a) hereof, neither Lender nor its Successor shall be liable (a) for Landlord’s failure to perform any of its obligations under the Lease which have accrued prior to the date on which the Lender or its Successor shall become the owner of the applicable Landlord Parcel, or (b) for any act or omission of Landlord, whether prior to or after such foreclosure or sale, provided, that the foregoing shall not limit the obligations of Lender or its Successor (and they shall remain obligated) for (A) any alteration (but specifically excluding any work under clauses (1) or (4) of this Section 5(d) except as expressly provided therein), maintenance, or repair covenants of Landlord or any obligations to cure violations of any Legal Requirements by Landlord of a continuing nature (“Continuing Acts”), and (B) any obligations of Landlord under the Lease which accrue from and after the date such Lender or its Successor shall succeed to Landlord’s interest.

(3) Neither Lender nor its Successor shall be required to make any repairs to any Landlord Parcel or to the Demised Premises required as a result of fire or other casualty or by reason of condemnation, except Lender or its Successor shall remain obligated to make all such repairs if Landlord is required to do so under the Lease to the extent that Lender or its Successor shall have received casualty insurance proceeds or condemnation awards with respect to such events.

(4) Neither Lender nor its Successor shall be required to make any capital improvements to any Landlord Parcel or to the Demised Premises under the Lease which Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the premises demised under the Lease, except they shall remain obligated for (I) all of the same as expressly set forth in Section 5(d)(1) with respect to Recapture Separation Work and Additional Recapture Space separation work, if Lender shall have elected to complete such work as set forth in Section 5(d)(1) above and (II) all Continuing Acts.

(5) Neither Lender nor its Successor shall be subject to any offsets, defenses, abatements or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which the Lender or its Successor shall become the owner of the applicable Landlord Parcel, except Tenant shall retain against them all Tenant defenses, claims and counterclaims (if any) with respect to any Continuing Acts.

(6) Neither Lender nor its Successor shall be liable for the return of rental security deposits, if any, paid by Tenant to Landlord in accordance with the Lease unless such sums are actually received by Lender or its Successor.

Exhibit C Form of SNDA – 4
(7) Neither Lender nor its Successor shall be bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any prior Landlord unless (i) such sums are actually received by the Lender or its Successor, or (ii) such prepayment shall have been expressly provided in the Lease; provided that this clause (7) shall not limit Tenant’s right to any credit or refund under the Lease under the installment expense true-up provisions set forth in Section 4.5 of the Lease, except to the extent Landlord has misappropriated any payments therefor.

(8) Neither Lender nor its Successor shall be bound to make any payment to Tenant which was required under the Lease, or otherwise, to be made prior to the time the Lender or its Successor succeeded to Landlord’s interest, except that Landlord or its Successor shall remain liable for all payments with respect to all Continuing Acts. In the event any 100% Recapture Property Termination Notice has been given, if any amounts placed into escrow pursuant to Section 1.9 of the Lease with respect to such 100% Recapture Property Termination Notice are not released to Tenant on the termination date contemplated by the Lease, Tenant shall have the right within five (5) Business Days of such scheduled termination date to reinstate the Lease. If Tenant makes such election to reinstate the Lease, Tenant shall not be deemed to be in default or breach of the Operating Covenant for such reasonable period of time as shall be reasonably necessary in order to resume business operations in the event Tenant retains the 100% Recapture Property.

(9) Neither Lender nor its Successor shall be bound by any agreement amending, modifying or terminating the Lease (except for any termination, and any amendment, made pursuant to and as expressly provided in the Lease) made without the Lender’s prior written consent prior to the time the Lender or its Successor succeeded to Landlord’s interest.

(10) Neither Lender nor its Successor shall be bound by any assignment of the Lease or sublease of the Landlord Parcel, or any portion thereof, made prior to the time the Successor succeeded to Landlord’s interest, other than if pursuant to the provisions of the Lease.

6. Nothing herein contained shall impose any obligations upon either Lender or its Successor to perform any of the obligations of Landlord under the Lease, unless and until Lender or its Successor shall succeed to the interests of Landlord in accordance with Section 5 above. Provided that the conditions set forth in Section 4 above are satisfied, in the event that Lender, at its election in its sole discretion, shall seek a receiver for any Landlord Parcel, Lender shall (a) use commercially reasonable efforts to request that the order appointing the receiver require the receiver for such Landlord Parcel to operate such Landlord Parcel subject to the terms of the Lease, (b) to the extent required by applicable law, deliver any such required notice or order with respect to such appointment and order, and (c) unless deemed necessary in Lender’s prudent judgment, not object to Tenant appearing at its sole cost and expense in any proceeding for such appointment and order for the sole purpose of supporting a request made under Exhibit C Form of SNDA – 5.
Either party, at any time and from time to time (by providing notice to the other party in the manner set forth above), may designate a different address or person, or both, to whom such notice may be sent. Notice of change in address or person shall be effective 10 days after written notice of such change has been sent to Tenant in accordance with the terms of this Paragraph.

subsection 6(a), or making a similar request, so long as such appearance shall not hinder or delay the appointment of the receiver and Tenant has advised Lender of its intent to appear.

7. Any notice required or desired to be given under this Agreement shall be in writing and (a) given by certified or registered mail, return receipt requested, postage prepaid or (b) sent by reputable overnight air courier service (i.e., Federal Express, Airborne, etc.) with guaranteed overnight delivery; in each instance addressed to the party as provided below. Notices shall be deemed given when actually received by the recipient, receipt thereof is refused by the recipient or the impossibility of delivery due to the failure to provide a new address as required herein. All notices hereunder shall be addressed as follows:

If to Lender: | | 
If to Tenant: | | 
With a copy to: | | 
If to Landlord: | | 
With a copy to: | | 

Either party, at any time and from time to time (by providing notice to the other party in the manner set forth above), may designate a different address or person, or both, to whom such notice may be sent. Notice of change in address or person shall be effective 10 days after written notice of such change has been sent to Tenant in accordance with the terms of this Paragraph.

8. Tenant will give Lender a copy of any notice of default sent by Tenant to Landlord (“Default Notice”); provided that, Tenant’s failure, for any reason or no reason, to give Lender a Default Notice will not comprise either a default or breach of Tenant’s obligations under the Lease and will not, except as set forth herein, preclude or affect in any way Tenant’s right to exercise any remedy provided to Tenant for Landlord’s default in the Lease. If Lender receives a Default Notice from Tenant, Lender shall have the same period of time provided Landlord under the Lease within which to cure such default. The Lender’s cure period shall begin to run upon receipt of the Default Notice. Notwithstanding anything to the contrary contained in this Section 8, Tenant agrees not to terminate the Lease by reason of default by Landlord under the Lease, or to an abatement of rent under the Lease, without delivering to Lender or its Successor written notice of such default and the opportunity to cure within 60 days of the delivery of such notice to Lender or its Successor, or if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default, provided that Lender has kept Tenant up-to-date with the current contact information for Lender or its Successor as to where to send such notice.

Exhibit C Form of SNDA – 6
9. This Agreement shall be binding upon and inure to the benefit of Lender, its Successor, Landlord and Tenant and their respective legal representatives, successors, administrators and assigns. The term “Lender” as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of a Landlord Parcel by reason of a foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise.

10. Landlord shall give written notice to Tenant of the reconveyance or other release of the Mortgage within thirty (30) days of the date the reconveyance or other release is recorded.

11. This Agreement and the lien of the Mortgage shall not apply to any personality, real property, fixtures or equipment owned or leased by Tenant which is now or hereafter placed on or installed in the Premises, and Tenant shall have the full right to remove said personality, real property, fixtures and equipment at the expiration of the Lease term.

12. Lender may sell, transfer and deliver the Note and assign the Mortgage, this Agreement and the other documents executed in connection therewith to one or more investors in the secondary mortgage market (“Investors”), provided, any assignment of this Agreement in connection with such sale or transfer shall be subject to all terms and provisions of this Agreement. In connection with such sale, Lender may retain or assign responsibility for servicing the loan, including the Note, the Mortgage, this Agreement and the other documents executed in connection therewith, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer, on behalf of the Investors. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

13. Tenant will, at the cost of Tenant, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts and assurances, as reasonably necessary, as Lender shall, from time to time, reasonably require, for the better assuring and confirming unto Lender the property and rights hereby intended now or hereafter so to be pursuant to this Agreement, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording this Agreement, or for complying with all applicable laws.

14. Tenant acknowledges that Lender is obligated only to Landlord to make the Loan upon the terms and subject to the conditions set forth in the Loan Documents. In no event shall Lender or any Successor, nor any heir, legal representative, successor, or assignee of Lender or any such purchaser or grantee (collectively the Lender, such purchaser, grantee, heir, legal representative, successor or assignee, the “Subsequent Landlord”) have any personal liability for the obligations of Landlord under the Lease and should the Subsequent Landlord succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Subsequent Landlord in the applicable Landlord Parcel(s) for the satisfaction of Tenant’s remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by any Subsequent Landlord as landlord under the Lease, and no other property or assets of any Subsequent Landlord shall be subject to levy, execution or other
Enforcement procedure for the satisfaction of Tenant’s remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law in the event of any failure by Subsequent Landlord to perform any such material obligation.

15. This Agreement constitutes the entire agreement of the parties hereto concerning its subject matter and may not be modified except in writing signed by the parties hereto.

16. The provisions of this Agreement are valid and enforceable only upon execution by Landlord and Lender of an unmodified counterpart hereof and delivering a fully signed original to Tenant by [ ].

{Remainder of Page Intentionally Left Blank; Signature Pages Immediately Follow}

Exhibit C Form of SNDA – 8
IN WITNESS WHEREOF, this Subordination, Non-Disturbance and Attornment Agreement has been signed and sealed on the day and year first above set forth.

Lender:

By: _____________________________
Name: ___________________________
Title: ____________________________

Tenant:

[KMART OPERATIONS, LLC]

By: _____________________________
Name: ___________________________
Title: ____________________________

[SEARS OPERATIONS, LLC]

By: _____________________________
Name: ___________________________
Title: ____________________________

Landlord:

[SERITAGE KMT FINANCE LLC]

By: _____________________________
Name: ___________________________
Title: ____________________________

[SERITAGE SRC FINANCE LLC]

By: _____________________________
Name: ___________________________
Title: ____________________________

Exhibit C Form of SNDA – 9
LENDER NOTARY:

STATE OF )

) SS:

COUNTY OF )

THE undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that personally known to me to be the of , a , and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged under oath that in such capacity he/she signed and delivered the said instrument pursuant to authority duly given to him/her by said .

GIVEN under my hand and seal this day of , 20 .

__________________________________________

Notary Public

My Commission Expires:

__________________________________________

Exhibit C Form of SNDA – 10
TENANT NOTARY:

STATE OF

) SS:

COUNTY OF

THE undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that personally known to me to be the of , a , and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged under oath that in such capacity he/she signed and delivered the said instrument pursuant to authority duly given to him/her by said .

GIVEN under my hand and seal this day of , 20 .

My Commission Expires:

STATE OF )

) SS:

COUNTY OF )

THE undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that personally known to me to be the of , a , and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged under oath that in such capacity he/she signed and delivered the said instrument pursuant to authority duly given to him/her by said .

Exhibit C Form of SNDA – 11
GIVEN under my hand and seal this day of , 20 .

Notary Public

My Commission Expires:

Exhibit C Form of SNDA – 12
LANDLORD NOTARY:

STATE OF

) SS:

COUNTY OF

THE undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that personally known to me to be the of , a , and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged under oath that in such capacity he/she signed and delivered the said instrument pursuant to authority duly given to him/her by said .

GIVEN under my hand and seal this day of , 20 .

__________________________________________
Notary Public

My Commission Expires:

__________________________________________

STATE OF

) SS:

COUNTY OF

THE undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that personally known to me to be the of , a , and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged under oath that in such capacity he/she signed and delivered the said instrument pursuant to authority duly given to him/her by said .

Exhibit C Form of SNDA – 13
GIVEN under my hand and seal this day of , 20 .

My Commission Expires:

________________________________________________________________________

Exhibit C Form of SNDA – 14

Notary Public
EXHIBIT “A”

LIST AND LEGAL DESCRIPTIONS-FEE PROPERTIES

PROPERTIES
**EXHIBIT D**

**LANDS’ END PREMISES**

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Exhibit D Lands’ End Premises – 1
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<td>Sears Toledo</td>
<td>OH</td>
</tr>
<tr>
<td>1119</td>
<td>Sears Happy Valley</td>
<td>OR</td>
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<tr>
<td>1083</td>
<td>Sears Warwick</td>
<td>RI</td>
</tr>
<tr>
<td>1146</td>
<td>Sears Cordova</td>
<td>TN</td>
</tr>
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<td>1186</td>
<td>Sears Memphis</td>
<td>TN</td>
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<td>1067</td>
<td>Sears Houston</td>
<td>TX</td>
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<tr>
<td>1888</td>
<td>Sears West Jordan</td>
<td>UT</td>
</tr>
<tr>
<td>1284</td>
<td>Sears Alexandria</td>
<td>VA</td>
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<td>1814</td>
<td>Sears Fairfax</td>
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<tr>
<td>1265</td>
<td>Sears Virginia Beach</td>
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<td>2514</td>
<td>Sears Warrenton</td>
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<td>1069</td>
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<td>2239</td>
<td>Sears Vancouver</td>
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<tr>
<td>2382</td>
<td>Sears Madison</td>
<td>WI</td>
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</table>
[DATE]

[ADDRESS OF TENANT]

RECAPTURE NOTICE

Pursuant to Section 1.7 of the Master Lease

For Sears / Kmart Store [STORE NUMBER]

[NOTE: ANY TENANT RESPONSE REQUIRED WITHIN 30 DAYS]

Seritage Finance LLC (“Landlord”) hereby notifies Kmart Operations, LLC and Sears Operations, LLC (“Tenant”) of its intention to recapture space pursuant to Section 1.7 of the Master Lease by and among Seritage Finance LLC, Kmart Operations, LLC and Sears Operations, LLC, dated as of [DATE], 2015 (the “Master Lease”). All terms used herein but not otherwise defined have the meaning ascribed to them in the Master Lease.

This Recapture Notice pertains to Store Number [STORE NUMBER] at [STORE ADDRESS].

The Proposed Recapture Date is: [PROPOSED RECAPTURE DATE]. Tenant has sixty (60) days after receipt of this Recapture Notice to give notice of a Tenant Recapture Termination Date, if desired, which shall not be less than ninety (90) days after receipt of this Recapture Notice.

Following the Actual Recapture Date, the following terms will apply with respect to the modified Demised Premises.

- Annual Base Rent:
- Tenant’s Proportionate Share of all Property Charges:
- Monthly Installment Expenses payable by Tenant:

A site plan showing the applicable Tenant Retained Space and the Recapture Space with respect to the modified Demised Premises, along with a description of the Tenant Retained Space, is attached as Exhibit A.

Schedule 1.7(d) Form of Recapture Notice – 1
A modified **Schedule 2** to the Master Lease reflecting the applicable adjustments for the modified Demised Premises is attached as Exhibit B. A copy of a title report with respect to this Property pursuant to **Section 1.7(e)** of the Master Lease is attached as Exhibit C.

**SHOULD TENANT DISAGREE WITH ANY OF THE FOREGOING ITEMS, PURSUANT TO THE MASTER LEASE TENANT SHALL SEND LANDLORD A NOTICE WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS RECAPTURE NOTICE SETTING FORTH THE NATURE OF TENANT’S DISAGREEMENT IN REASONABLE DETAIL.**

SERITAGE FINANCE LLC,

a Delaware limited liability company

By: 
______________________________

Name: 
______________________________

Title: 
______________________________

Schedule 1.7(d) Form of Recapture Notice – 2
Exhibit A

Site Plan and Description of Tenant Retained Space
Exhibit B

Modified Schedule 2 to the Master Lease
Exhibit C

Title Report
GENERAL REQUIREMENTS AND CONDITIONS

All provisions of this Schedule 1.7(j)(ii) are intended to supplement the provisions in the Master Lease above governing any general construction work performed by Landlord, or by Tenant, including without limitation Recapture Separation Work, Additional Recapture Space recapture and separation work, or any casualty or Condemnation restoration, or Tenant Alterations. In the event of any conflict between the express provisions of the Master Lease and this Schedule 1.7(j)(ii), the former shall control. All of the foregoing performed by either Party shall be referred to as “Landlord’s Work” or “Tenant’s Work,” respectively.

Tenant’s Work will be performed by Tenant in accordance with final plans and specifications approved by Landlord (as and to the extent such plans and specifications and/or approval is provided for in the Master Lease). Tenant’s contractor(s) shall secure and pay for all necessary permits, inspections, certificates, legal approvals, Certificate of Occupancy and/or fees required by public authorities and/or utility companies with respect to Tenant’s Work.

A. General Requirements

1. All Landlord’s Work or Tenant’s Work installed by Tenant or Landlord shall be coordinated with, completed in harmony with and so as not to unreasonably interfere with, Landlord’s or Tenant’s construction schedule, business operations, nor any other tenant’s or subtenant’s activities, including with respect to Landlord’s tenants in the Recapture Space or under any of the Leases.

2. All contractors employed by either Landlord or Tenant shall allow other contractors, even of the same trade, to work on the Demised Premises without interference and in accordance with the spirit and intent of Paragraph 1 above.

3. Tenant and Tenant’s contractors shall provide all insurance required by Landlord as set forth in this Lease, or as is otherwise maintained in the ordinary course by prudent and reputable contractors and/or property owners, or as otherwise reasonably required by Landlord, prior to the start of any construction work within the Demised Premises. Landlord and Landlord Mortgagee shall each be named as an additional insured in all such insurance.

4. Tenant shall, at all times, keep or cause to be kept the Demised Premises and the surrounding area free from accumulations of waste materials and/or rubbish caused by it or its contractors’ employees or workers and shall not place or permit to be placed any waste materials and/or rubbish on the Common Areas or other areas of Landlord’s Premises. Tenant and/or its contractors shall provide dumpsters and maintenance of said dumpsters during the construction period in a secure, neat and orderly condition and shall remove and empty the same on a regular basis to avoid unsightly, obstructive or hazardous accumulations or conditions.

5. Tenant shall provide Landlord prior written notice (except in case of an emergency) of the proposed commencement date of (a) any Tenant Alterations to be done within or to the Demised Premises as provided in the Master Lease, and of (b) other Tenant’s Work with a cost in excess of $100,000 in any one (1) instance with respect to an individual
Demised Premises, and Landlord shall provide Tenant at least thirty (30) days’ prior written notice of the estimated completion of any Recapture Restoration Work or any Additional Recapture Space recapture and separation work.

6. Tenant shall coordinate the parking of contractor vehicles, the placement of dumpsters and the staging area for construction materials, furniture, fixtures and other equipment, with Landlord’s or any of its tenants’ construction representatives and construction coordinators so as not to disrupt Landlord’s or tenants’ operations or interfere with customer parking. All construction materials, furniture, fixtures and other equipment shall be kept within Tenant’s Demised Premises or within areas of the parking lot designated by Landlord following proposal from and consultation with the Tenant, both Parties acting reasonably and in good faith.

B. Construction Procedures

1. When submitting construction plans and specifications (preliminary, completed or final), Tenant or the Tenant’s appointed representative shall issue Tenant’s plans, specifications and supporting documents electronically via emails to Landlord’s construction coordinator.

2. Tenant can elect to contract with architects, engineers and other construction professionals of good repute, which are experienced, financially responsible and duly licensed in the jurisdiction in which the Demised Premises is located (“Construction Professionals”) of its choosing for the preparation of the construction plans and specifications. The architect (and other Construction Professionals, as appropriate) shall prepare detailed construction drawings for the work to be performed at the Demised Premises, incorporating the improvements to comply with all of Tenant’s obligations under this Master Lease or as determined by Landlord in consultation with Tenant with respect to work to be done on behalf of Landlord. Such drawings will be forwarded to Landlord for its review and comment to the extent Landlord’s approval of same is required under the Master Lease.

3. All contractors engaged by Tenant shall be bondable contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with any contractor hired by Landlord or Landlord’s tenants. Tenant shall permit union licensed contractors to bid on Tenant’s Work, but Tenant shall not be obligated to engage such contractors unless union labor is required in the area where the Demised Premises is located. Tenant shall retain sufficient documentation evidencing union contractor bidding and shall provide such documentation to Landlord upon fifteen (15) days’ prior written request. In the event Tenant does not permit union licensed contractors to bid on Tenant’s Work (“Union Bidding”) and Landlord is picketed or involved in a dispute with the unions due to Tenant’s failure to permit Union Bidding, then Tenant shall indemnify, defend and hold Landlord, its officers, directors, partners, employees and contractors harmless from and against any and all damages, claims, losses and expenses (including, without limitation, attorneys’ fees, expert witness fees and court costs) incurred by Landlord due to Tenant’s failure to permit Union Bidding. All work shall be coordinated with the general project work. Tenant shall use its commercially reasonable efforts to cause its contractors to maintain harmony and avoid any and all disputes with labor unions in which Tenant’s contractors or any person or entity performing work on behalf of Tenant may become involved. Tenant shall be responsible for any delay, disruption, obstruction or hindrance in the completion of Tenant’s Work and any damages and

Schedule 1.7(j)(ii) – 2
extra costs resulting from such disputes, except with respect to work for which Landlord is financially responsible under the Master Lease, but expressly excluding all of Tenant’s Acts. Tenant shall use its commercially reasonable efforts to cause its contractors to take all action including, but not limited to, filing charges with the N.L.R.B. and pursuing litigation to prevent or end any stoppage or slowdown of Tenant’s Work.

4. Construction shall comply in all respects with applicable Legal Requirements.

5. Upon Landlord’s request from time to time, Tenant shall assign to Landlord any or all contracts or agreements with contractors, vendors, suppliers and/or Construction Professionals as designated by Landlord in connection with all Tenant Work performed on behalf of Landlord.

Schedule 1.7(j)(ii) – 3
SCHEDULE 1.8(d)

FORM OF ADDITIONAL RECAPTURE SPACE TERMINATION NOTICE

[DATE]

[ADDRESS OF TENANT]

ADDITIONAL RECAPTURE SPACE TERMINATION NOTICE

Pursuant to Section 1.8 of the Master Lease

For Sears / Kmart Store [STORE NUMBER]

[NOTE: ANY TENANT RESPONSE REQUIRED WITHIN 30 DAYS]

Seritage Finance LLC (“Landlord”) hereby notifies Kmart Operations, LLC and Sears Operations, LLC (“Tenant”) of its intention to recapture space pursuant to Section 1.8 of the Master Lease by and among Seritage Finance LLC, Kmart Operations, LLC and Sears Operations, LLC, dated as of [DATE], 2015 (the “Master Lease”). All terms used herein but not otherwise defined have the meaning ascribed to them in the Master Lease.

This Additional Recapture Space Termination Notice pertains to Store Number [STORE NUMBER] at [STORE ADDRESS].

The Proposed Additional Recapture Space Date is: _________. Tenant has sixty (60) days after receipt of this Recapture Notice to give notice of a Tenant Additional Recapture Space Termination Date, if desired, which shall not be less than ninety (90) days after receipt of this Recapture Notice.

Following the Actual Additional Recapture Space Termination Date, the following terms will apply with respect to the modified Demised Premises.

• Annual Base Rent:
• Tenant’s Proportionate Share of all Property Charges:
• Monthly Installment Expenses payable by Tenant:

A site plan showing the applicable Tenant Retained Space and the Additional Recapture Space with respect to the modified Demised Premises, along with a description of the Tenant Retained Space, is attached as Exhibit A.

Schedule 1.8(d) – 1
A modified Schedule 2 to the Master Lease reflecting the applicable adjustments for the modified Demised Premises is attached as Exhibit B. A copy of a title report with respect to this Property pursuant to Section 1.8(b) of the Master Lease is attached as Exhibit C.

SHOULD TENANT DISAGREE WITH ANY OF THE FOREGOING ITEMS, PURSUANT TO THE MASTER LEASE TENANT SHALL SEND LANDLORD A NOTICE WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS RECAPTURE NOTICE SETTING FORTH THE NATURE OF TENANT’S DISAGREEMENT IN REASONABLE DETAIL.

SERITAGE FINANCE LLC,

a Delaware limited liability company

By: ________________________________
Name: ______________________________
Title: ______________________________

Schedule 1.8(d) – 2
Exhibit A

Site Plan and Description of Tenant Retained Space
Exhibit B

Modified Schedule 2 to the Master Lease
Exhibit C

Title Report
SCHEDULE 2.1(a)

EBITDAR METHODOLOGY

[To Come]
SCHEDULE 2.1(b)

LEASE GUARANTORS

1. A&E Factory Service, LLC
2. A&E Home Delivery, LLC
3. A&E Lawn & Garden, LLC
4. A&E Signature Service, LLC
5. California Builder Appliances, Inc.
6. Florida Builder Appliances, Inc.
7. KLC, Inc.
8. Kmart Corporation
9. Kmart Holding Corporation
10. Kmart of Michigan, Inc.
11. Kmart of Washington LLC
12. Kmart Stores of Illinois LLC
13. Kmart Stores of Texas LLC
14. Kmart.com LLC
15. Sears Brands Management Corporation
16. Sears Holdings Corporation
17. Sears Holdings Management Corporation
18. Sears Home Improvement Products, Inc.
19. Sears Protection Company
20. Sears Protection Company (Florida), L.L.C.
21. Sears Roebuck Acceptance Corp.
22. Sears Roebuck and Co.
23. Sears Roebuck de Puerto Rico, Inc.
24. SOE, Inc.
25. StarWest, LLC
26. MyGofer LLC
27. Private Brands, Ltd.
SCHEDULE 10.1

Deferred Maintenance

[TO COME]
"Operating Expenses" means: All costs and expenses of any kind, nature, and description incurred in connection with the maintenance, operation, care and repair of the Property which are desirable for the operation and maintenance of the Property, including the governance, management and administration of this Master Lease, the Leases, and all future leases of portions of the Property by Landlord, in accordance with the standard maintained in the City and State in which the Property is located for similar buildings and sites (subject to any other specific standards applicable to the Demised Premises as provided in this Master Lease), and which are not duplicative of other costs and expenses provided in the Master Lease or otherwise required to be paid or reimbursed by Tenant under this Master Lease. The following types of expenses are by way of illustration and not by way of limitation of the generality of the foregoing:

(1) the cost of providing all heating, ventilating, air conditioning, water and waste-water services and other utilities to the buildings in which the Demised Premises are located;

(2) the cost of refuse, rubbish and garbage collection and removal for the Property;

(3) cleaning, gardening and landscaping the Property (including, without limitation, the Common Areas);

(4) costs of tie-ins or other costs for providing sanitary or storm sewers or control to and for the Property and Demised Premises;

(5) inspection and permit fees, accounting fees, and attorney and other professional fees incurred by Landlord in connection with the operation of the Property or the Demised Premises;

(6) repairs and replacements of the paving and resurfacing of parking lots (as reasonably required), curbs, fencing, walkways, electrical power lines, light poles, bulbs, drainage systems and equipment used on the Property (including the Common Areas);

(7) line painting;

(8) attending the parking areas (if necessary);

(9) any governmental charges, surcharges, fees or taxes on the parking areas or parking spaces or on vehicles parking therein;

(10) security services, including electronic response and surveillance and/or private police protection if obtained;

(11) repair or replacement of on-site water lines, sanitary sewer lines and storm sewer lines serving the Property;
(12) rental of machinery, equipment and tools used in operating and maintaining the Property and all buildings and improvements thereon;

(13) reasonable amortization or depreciation of equipment purchased and used for operating or maintaining (i) the Property and/or (ii) all buildings and improvements thereon;

(14) costs of signs, sign maintenance and sound systems;

(15) all personal property and similar taxes on equipment, machinery, tools, supplies and other personal property and facilities used in the maintenance of the Property;

(16) compensation, paid to any person specifically providing direct services with respect to the Property (as opposed to a person in the general employ of Landlord), including the classification of building superintendent;

(17) all repairs to the Property and all buildings and improvements thereon (provided that with respect to the Demised Premises, any such repairs shall not materially exceed the standard of repairs for which Tenant is obligated under the Master Lease);

(18) all supplies and replacement items required for the Property;

(19) all costs for restoration, relocation or expansion of the Common Areas of the Property;

(20) all charges for maintenance contracts, inspection contracts, HVAC, escalator and elevator contracts and similar contracts for the Property, together with all reasonable costs, fees and expenses of attorneys, accountants, tax-reduction personnel, building inspectors, architects, construction engineers, environmental engineers and inspectors, and other professionals and experts in connection with the maintenance, repair and operation of the Property;

(21) [Intentionally Omitted];

(22) all insurance with respect to the Property, including Landlord’s Insurance Costs;

(23) all costs and expenses incurred by Landlord pursuant to all Operating Agreements;

(24) all costs and expenses incurred by Landlord to perform Landlord’s obligations under Section 10.3; and

(25) [Intentionally Omitted].

Notwithstanding the foregoing, Operating Expenses shall expressly exclude:

(1) costs of maintenance and repair reimbursed by insurance proceeds or paid for by other tenants of the Property separate from their share of any Operating Expenses;

Schedule 10.2(e) – 2
(2) repairs, maintenance, alterations, tenant improvements, tenant allowances, free rent or other tenant concessions, or other specific costs attributable solely to other tenants’ space in the Property or billed to such tenants;

(3) brokerage and leasing commissions, advertising expenses and other costs incurred in leasing or re-leasing space in the Property, including, without limitation, any Recapture Space or Additional Recapture Space;

(4) debt service, interest on borrowed money or debt amortization;

(5) depreciation on the Property or equipment or systems therein;

(6) attorneys’ fees and expenses incurred in connection with lease negotiations or lease disputes;

(7) the cost (including any amortization thereof) of any improvements or alterations which would be properly classified as capital expenditures according to generally accepted accounting principles, except for items referred to in Item (24) or any other items of Operating Expenses above;

(8) the cost of decorating, improving for tenant occupancy, painting or redecorating portions of any building to be demised to tenants;

(9) the cost of all Recapture Separation Work and all similar work with respect to any Additional Recapture Space, including, without limitation, any construction management or supervisory fees or expenses;

(10) costs, fees or expenses of or related to any separation, construction, redevelopment or reletting of any Recapture Space or Additional Recapture Space;

(11) salaries and other compensation of personnel in the general employ of Landlord or any of its subsidiaries or affiliates;

(12) advertising and promotional fees in excess of five thousand dollars ($5,000) per calendar year;

(13) the costs of artwork or sculpture;

(14) costs for repairs or other work occasioned by fire, windstorm or other casualty which are fully reimbursed by insurance;

(15) wages, salaries or other compensation paid for clerks or attendants in concessions or newsstands operated by Landlord or Landlord’s affiliates;

(16) costs or expenses charged to or payable by other third-party tenants of Landlord (including utility charges) other than as part of Operating Expenses;

Schedule 10.2(e) – 3
(17) any costs or expenses which are otherwise reimbursed to Landlord, other than as part of a Tenant’s Proportionate Share of Operating Expenses or CAM Expenses, provided, however, that notwithstanding any provision in this Master Lease to the contrary, in no event shall Landlord be entitled to bill, receive and retain from Tenant and all third-party tenants (subject to final adjustments and accounting) an aggregate of more than one hundred percent (100%) of all actual costs and expenses paid or incurred by Landlord on account of Operating Expenses or any other Installment Expenses and if Landlord shall receive more than one hundred percent (100%) (“Excess Expenses”), Landlord shall promptly refund to Tenant an amount equal to the lesser of (i) the amount of such Excess Expenses, or Tenant’s Proportionate Share thereof (from and after the Multi-Tenant Occupancy Date), and (ii) the actual amount paid by Tenant on account of all Operating Expenses or other Installment Expenses.

(18) overhead or administrative fees, costs or expenses of Landlord, or any subsidiaries or affiliates of Landlord (including any profit increments to any such subsidiaries or affiliates);

(19) charitable or political donations or contributions;

(20) interest, charges or penalties arising by reason of Landlord’s failure to timely pay any Impositions, CAM Expenses, (so long as timely paid by Tenant to Landlord), other Operating Expenses or other Property Charges, to the extent Landlord is required or has undertaken to do so under this Master Lease;

(21) any management fee or construction management or supervisory fee, with respect to the Demised Premises or the Property, other than any such fees (if any) which are payable to unrelated third-parties, pursuant to any REAs or Operating Agreements, but in no event with respect to any Recapture Separation Work or any work in connection with any Additional Recapture Space;

(22) any fees or other compensation for services (other than reimbursement for out-of-pocket expenses) with respect to the Property paid to Tenant or any Affiliate of Tenant pursuant to any separate agreement for services between Landlord or any Affiliate of landlord, and Tenant or any Affiliate of Tenant;

(22) any costs or expenses arising out of or related to any breach or default by Landlord pursuant to the Master Lease or any negligence, gross negligence or willful misconduct of Landlord; or

(24) any costs or expenses arising out of or related all matters for which Landlord is required to indemnify, defend or hold harmless Tenant pursuant to the Master Lease.

Schedule 10.2(e) – 4
SCHEDULE 14.4

LANDLORD MORTGAGE DOCUMENTS

1. Loan Agreement
2. Promissory Note
3. Mortgages/Deeds of Trust for all Properties
4. Pledge and Security Agreement (JV Equity for GGP JV, Simon JV and Macerich JV)
5. Consent (GGP JV Agreement)
6. [Side Letter to GGP JV Agreement]
7. Consent (Simon JV Agreement)
8. [Side Letter to Simon JV Agreement]
9. Consent (Macerich JV Agreement)
10. [Side Letter to Macerich JV Agreement]
11. Cash Management Agreement
12. Clearing Account DACA
13. Operating Account DACA (See Schedule 4)
14. Environmental Indemnity Agreement
15. Recourse Carve-Out Guaranty
16. Assignment and Subordination of Management Agreement
17. Assignment and Subordination of SHLD TSA
18. Assignment of Interest Rate Cap
19. Title Instruction Letter

[Post-Closing Agreement]
SCHEDULE 20.3

INITIAL ENVIRONMENTAL REMEDIATION

[To Come]
SCHEDULE 20.6

ADDITIONAL PROVISIONS WITH RESPECT TO ENVIRONMENTAL MATTERS WITH RESPECT TO THE DEMISED PREMISES AND SACS

Notwithstanding anything to the contrary elsewhere in this Master Lease, the following terms and provisions shall apply to and govern Tenant’s use and occupancy of the Demised Premises and the portion thereof containing or relating to SACs, and the conduct of the Tenant’s use and operation of the Demised Premises and the Stores, all of which terms and provisions Tenant shall observe, perform and comply with promptly and at its sole cost and expense:

(a) Storage. All scrap/discarded mufflers or other equipment, parts, tires, batteries/battery cores, brake linings, wiper blades and other potentially hazardous by-products or results of Tenant’s operations, all other debris and waste or used products (including, without limitation, motor oils and petroleum and nonpetroleum products), and all Hazardous Substances, must be stored in accordance with the Environmental Ordinary Course of Business.

(b) Parking. Tenant shall cause its employees to park all automobiles which are in the process of service and/or maintenance either inside the Demised Premises or solely within that portion of the Common Areas identified as parking areas for Sears Store customers in any Encumbrances or, at the request of Landlord, in such specific locations thereof as may be designated from time to time by Landlord.

(c) Environmental Best Management Practices. In using each and all of the Demised Premises or operating the automobile care service business at the Demised Premises, Tenant shall use best management practices in managing all Hazardous Substances, including, but not limited to, strictly complying with all of the following:

   (i) Compliance With Environmental Laws and Legal Requirements. Tenant shall comply, and shall cause the Demised Premises and all activities thereon to strictly comply, with all Environmental Laws and all other Legal Requirements now or hereafter in effect. Tenant shall procure and maintain in full force and effect at all times any and all licenses, permits, approvals, consents or authorizations required under any Environmental Laws or other Legal Requirements for the conduct of Tenant’s operations on the Demised Premises ("Environmental Permits"), and Tenant shall not take, suffer or permit any action which would violate any such Environmental Permits, nor fail to take any action the failure of which would violate or cause the suspension or revocation of any such Environmental Permits. Tenant shall timely make all applications to renew and extend all Environmental Permits. Landlord shall reasonably cooperate, at Tenant’s expense, with Tenant’s efforts to procure such Environmental Permits, but Landlord shall not incur any expense, liability or obligation with respect to any such Environmental Permits.

   (ii) Release and Generation of Hazardous Substances. Tenant shall not cause or permit the release, threatened release, abandonment, treatment, dumping, discharging or disposal of any Hazardous Substances on, from, under or

Schedule 20.6-1
about the Demised Premises, the Properties and/or the Shopping Center (if applicable). Tenant shall not use, manage,
handle, store, generate or transport or permit the use, management, handling, generation or transportation of Hazardous
Substances on, under or from the Demised Premises except to the extent necessary for Tenant’s business operations and
then only in strict compliance with applicable Environmental Laws and other Legal Requirements. In addition, Tenant
shall not manage (except as a generator), store or dispose of any hazardous waste, as such term is defined under applicable
Environmental Law, or Hazardous Substances on, from or under the Demised Premises or take any action or allow any
activity, in each case that would cause the Demised Premises to be considered a hazardous waste treatment, storage or
disposal facility within the meaning of any applicable Environmental Law.

(iii) Removal of Waste Oils and Solvents. Tenant shall cause all waste oils, solvents and other used petroleum and
nonpetroleum waste to be removed periodically (but not less frequently than once per month or period as may be
customary in the industry) and transported from the Demised Premises by a properly licensed, experienced and reputable
waste removal contractor, to be disposed of at duly licensed facilities, all in strict accordance with all applicable Legal
Requirements and Environmental Laws.

(iv) Oil-Water Separator. Tenant shall regularly (at least annually or such shorter period as required by
Environmental Laws) cause the oil-water separator to be dredged, cleaned and refilled and the filtration material replaced,
removed and transported by a properly licensed and reputable waste removal contractor, approved in advance by Landlord,
to be disposed of at duly licensed facilities in strict accordance with all applicable Legal Requirements and Environmental
Laws.

(v) Environmental Equipment; Remediation. Subject to the provisions of Section 20.3(b):

(A) Tenant shall not use or install or allow the use or installation of any Environmental Equipment on the
Demised Premises which is first used or installed after the Effective Date located in whole or in part beneath the
surface of the ground without Landlord’s prior written consent (provided, that Tenant may use the preexisting
Environmental Equipment located at the Demised Premises on the date of this Master Lease, subject to the further
provisions hereof). Tenant is solely responsible for any liability, damage, cost or claim resulting from, relating to or
arising out of any such use or installation. If Tenant installs or uses any Environmental Equipment which is involved
in or related to any Known Environmental Problem, Tenant shall, at or before the time that it vacates the Demised
Premises and at any rate on or before the effective date of such vacating, unless otherwise directed by Landlord:
(i) remove, dispose or repair the same if required in compliance with all Environmental Laws; (ii) restore the
Demised Premises to their original condition (excluding and after removal of any and all Environmental
Equipment); and (iii) comply with all obligations related thereto under all Environmental Laws;
(B) Subject to the foregoing, with respect to all Known Environmental Problems, Tenant agrees to operate, maintain, abandon, close, remove, repair and replace all Environmental Equipment as may be necessary in accordance with applicable Environmental Laws, including, without limitation, being responsible for the removal, replacement, treatment and disposal of soils, building materials, equipment and/or groundwater impacted with or by Hazardous Substances and disturbed, exposed or released during such operation, maintenance, abandonment, removal, repair and replacement activities;

(C) Upon removal of any Environmental Equipment, Tenant shall promptly: (x) investigate whether any release of Hazardous Substances occurred in connection with such Environmental Equipment; (y) promptly after the removal thereof notify Landlord in writing of all releases of Hazardous Substances and/or any contamination discovered as a result of such investigation, and provide Landlord with all results thereof and all tests and reports in connection therewith; and (z) using a consultant and methods reasonably approved in advance by Landlord and in full accordance with all applicable Environmental Laws, remove all such Hazardous Substances and repair all damage to the Demised Premises, the Properties and/or the Shopping Center (if applicable);

(D) Without limiting the foregoing provisions of subparagraph (C), in the event that Tenant removes, replaces, repairs or modifies a hydraulic lift, Tenant shall, in accordance with applicable Environmental Laws, promptly remove, replace and properly dispose of all soils and/or groundwater which: (x) are impacted with Hazardous Substances, including, but not limited to, oils, petroleum products and/or petroleum-derived products; and/or (y) are exposed or disturbed by the removal, replacement, repair or modification of a hydraulic lift. Notwithstanding the foregoing, Landlord reserves the right, at any time and from time to time, at Tenant’s expense and without releasing Tenant from any of its liability or obligations under this Master Lease, to initiate or assume control in a commercially reasonable manner in accordance with applicable Legal Requirements over the investigation, remediation or monitoring of any soil and/or groundwater found to be impacted by Hazardous Substances; and

(E) Tenant shall notify Landlord in writing at least seven (7) days in advance of any permanent abandonment or removal (without implying Landlord’s consent to any abandonment or removal, which consent must be requested in writing by Tenant and shall be given or withheld in Landlord’s sole discretion), and/or replacement of Environmental Equipment.

(vi) **Storage Tanks.** Tenant shall operate above-ground or below-ground storage tanks, including with respect to temporary storage of waste oils and solvents for periodic disposal as provided in Schedules 20.6(c)(iii) and (c)(iv), and in the Environmental Ordinary Course of Business.
(vii) **Compliance, Investigation and Reports.**

(A) Tenant shall strictly comply with all applicable Legal Requirements pertaining to the permitted use and the protection of human health and the environment, including making all filings and reports to applicable governmental agencies necessary to so comply, including hazardous waste manifests (providing copies of all such manifests, notices, demands, claims and correspondence received from or sent to any governmental agency to the manager of the Sears Store or Kmart Store, as the case may be, at the respective Sears Store or Kmart Store address, and to Landlord), and performing any investigation, remediation, clean up or work required to comply with Legal Requirements and Environmental Laws and paying (and indemnifying Landlord against) any fines, penalties, damages, costs, liabilities and expenses arising out of Tenant’s failure to comply with Legal Requirements and Environmental Laws.

(B) Without limiting the foregoing, upon receiving notice thereof, Tenant shall promptly: (x) notify Landlord in writing and provide copies of all documents regarding all actual or alleged violations of any Environmental Law that involve a release or threatened release of Hazardous Substance relating to Tenant’s activities or otherwise, including copies of any environmental testing, cleanup, monitoring, or closure reports or documents, regulatory correspondence or other written materials whatsoever (including all updates, supplements and revisions) relating to their discovery, investigation, remediation and/or monitoring of any soils and/or groundwater impacted with Hazardous Materials on or about the Demised Premises, in connection with Tenant’s operation, investigation, maintenance, abandonment, removal, repair and replacement of Environmental Equipment (collectively, “Remediation Materials”); and (y) at its sole expense and using a consultant and methods approved in advance by Landlord and in full compliance with all applicable Environmental Laws, investigate and correct all such violations, remove all such Hazardous Substances and repair all damage to the Demised Premises, the Properties and/or the Shopping Center (if applicable).

(viii) **Removal of Hazardous Substances.** Upon the expiration or earlier termination of this Master Lease, Tenant shall cause, at its sole cost and expense, all containerized or accumulated Hazardous Substances, including Hazardous Substances accumulated in any tanks or secondary containment systems, to be removed from the Demised Premises and transported off-site for use, storage or disposal in accordance with all Environmental Laws.

(ix) **Inspection by Landlord.** Tenant acknowledges and agrees that, at any time and from time to time during the Term, Landlord and its representatives may enter the Demised Premises to install, maintain or use any environmental monitoring or testing equipment or to perform any environmental monitoring, testing, auditing or inspection activity with respect to any activities on,
at or in the vicinity of the Demised Premises, and to review, inspect and copy all Remediation Materials. In addition, Landlord has the right, at any time and from time to time, to inspect or audit the Demised Premises with respect to environmental matters and to observe and audit Tenant’s compliance with Environmental Laws and the provisions of Article XX and other provisions of this Master Lease. During such inspection or audit, Tenant agrees to provide all relevant documents and information reasonably requested by Landlord and to provide to Landlord the opportunity to interview Tenant’s employees relating to environmental matters. This right of audit and inspection does not constitute a duty on Landlord’s part to so inspect and in no event relieves Tenant of any obligations under this Master Lease or under any Legal Requirements. All activities by Landlord under this Schedule 20.6(c)(ix) shall be subject to the provisions with respect to notice and terms of inspection, Landlord’s responsibility and insurance and all other matters as provided in Section 20.5 of this Master Lease. Landlord shall maintain (or cause its contractors and experts to maintain) customary insurance coverage with customary limits with respect to all Inspections naming Tenant as additional insured.

(x) Landlord’s Right to Perform.

(A) If Tenant fails to perform any of its obligations under this Schedule 20.6 in a timely manner, without limiting any other Landlord’s rights or remedies under this Master Lease, upon reasonable notice to Tenant, Landlord may (but shall have no obligation to) perform such obligation at Tenant’s sole risk and expense.

(B) Without limiting the foregoing, in the event Tenant has not fully complied with all obligations to deliver any or all of the Demised Premises free of Hazardous Substances or has failed to remove any Environmental Equipment or has failed to otherwise complete any required remediation activities or other obligations pursuant to Article XX with respect to the surrender of the Demised Premises on the expiration or earlier termination of this Master Lease, subject to the provisions of Schedule 20.3 and the provisions of Section 20.3(b), Landlord, its successors, assigns and designees (collectively, “Performing Parties”) may accept such delivery and surrender of the Demised Premises with respect to any or all of the Demised Premises in accordance with the requirements of Environmental Law at Tenant’s sole cost and expense, without releasing Tenant from its liabilities or obligations under this Master Lease and without waiving any rights or remedies against Tenant. In such event, in addition to all other Landlord’s rights and remedies, Tenant shall remain liable for all costs, expenses, fees, charges, fines, penalties and damages as a result of Tenant’s such failure to deliver and surrender the Demised Premises in the condition required, and shall pay or reimburse the same to Landlord or any other Performing Parties, plus five percent (5%) of the amount thereof for administrative expenses, within ten (10) days of written demand therefor.
(xi) **Tenant to Maintain Records.** Tenant shall retain and maintain copies of all removal, transportation and disposal manifests, notices, correspondence, spill or release reports, remediation requests and action plans, environmental reports, tests and inspections, notices of violations, and all other Remediation Materials referred to in this **Schedule 20.6** for a period of not less than three (3) years (or such longer period as may be required by applicable Environmental Law) from and after the period to which they relate.

(xii) **Environmental Indemnity.** In addition to all other Tenant indemnities hereunder, Tenant shall indemnify, defend (with counsel acceptable to Landlord), and hold harmless Landlord and all Indemnified Parties from and against any and all Losses (including reasonable attorneys’ fees and expenses, including all of the same incurred in the enforcement of this indemnity, and reasonable consultants’ fees) which are caused by, relate to or arise in connection with: (A) any breach of Article XX; (B) any violation by Tenant or Tenant Group of any Environmental Law with respect to the Demised Premises, the Properties and/or the Shopping Center (if applicable); (C) any act or omission of Tenant or Tenant Group as to any environmental matter or condition arising during the Term resulting in any violation of Environmental Law; and (D) that portion of an environmental condition on or about the Demised Premises, the Properties and/or the Shopping Center (if applicable) caused by, contributed to, or aggravated or exacerbated by Tenant. Tenant’s obligation under this **Schedule 20.6(c)(xii)** shall survive the expiration or earlier termination of this Master Lease.

(xiii) **Confidentiality.** All environmental testing and mitigation results and all documents or reports generated in connection with the Tenant’s operation, investigation, maintenance, abandonment, removal, repair or replacement of any Environmental Equipment or Hazardous Substances shall be kept strictly confidential unless disclosure is required by law (in which event, prior written notice of such disclosure, together with a copy of the testing, mitigation documents or reports that will be disclosed must be given to Landlord at least thirty (30) days prior to the disclosure).

(xiv) **Survival.** The provisions of this **Schedule 20.6** shall survive the expiration or sooner termination of this Master Lease with respect to any or all of the Demised Premises.
SUBSCRIPTION, DISTRIBUTION AND PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

SEARS HOLDINGS CORPORATION

AND

SERITAGE GROWTH PROPERTIES

DATED AS OF June 5, 2015
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This SUBSCRIPTION, DISTRIBUTION AND PURCHASE AND SALE AGREEMENT, made and entered into effective as of [, 2015 (this “Agreement”), is by and between Sears Holdings Corporation, a Delaware corporation (“SHC”), and Seritage Growth Properties, a Maryland real estate investment trust (“Seritage”). Capitalized terms shall have the respective meanings assigned to them in Article I.

R E C I T A L S

WHEREAS, the Board of Directors of SHC (the “SHC Board”) has determined that it is in the best interests of SHC and holders of SHC Common Stock to create a new publicly traded company to which it will cause its Subsidiaries to sell the Transferred Properties and lease such properties back pursuant to the terms of the Transaction;

WHEREAS, Seritage has been organized for this purpose and has not engaged in activities except in preparation for the Transaction and the distribution of Seritage Common Shares;

WHEREAS, it is appropriate and desirable to set forth the principal corporate transactions required to effect the Transaction and certain other agreements that will govern certain matters relating to the Transaction and the relationship of SHC, Seritage and their respective Subsidiaries following the Closing.
NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. For the purpose of this Agreement, the following terms shall have the following meanings:


“Action” means any demand, action, claim, dispute, suit, countersuit, arbitration, inquiry, subpoena, proceeding or investigation of any nature (whether criminal, civil, legislative, administrative, regulatory, prosecutor or otherwise) by or before any federal, state, local, foreign or international Governmental Authority or any arbitration or mediation tribunal.

“Affiliate” means (solely for purposes of this Agreement and for no other purpose) (a) with respect to Seritage, its Subsidiaries, and (b) with respect to SHC, its Subsidiaries; provided, however, that except where the context indicates otherwise (and solely for purposes of this Agreement and for no other purpose), from and after the Closing Date, no member of the SHC Group shall be deemed to be an Affiliate of any member of the Seritage Group and no member of the Seritage Group shall be deemed to be an Affiliate of any member of the SHC Group.

“Agent” means the subscription agent to be appointed by SHC to distribute to the holders of SHC Common Stock the Rights, and to the holders of the Rights the Seritage Common Shares, to be distributed and sold pursuant to, and on the terms and conditions of, the Transaction.

“Agreement” has the meaning set forth in the Preamble.

“Ancillary Agreements” means the Master Lease, the Transition Services Agreement, the SHC Closing Deliverables and the Seritage Closing Deliverables.

“Approvals or Notifications” means any consents, waivers, approvals, permits or authorizations to be obtained from, notices, registrations or reports to be submitted to, or other filings to be made with, any third Person, including any Governmental Authority.

“Assignment and Assumption of REAs” has the meaning set forth in Section 3.4(a)(ii)(C).

“Assignment and Assumption of Personal Property and Intangibles” has the meaning set forth in Section 3.4(a)(ii)(B).

“Assignment and Assumption of Ground Lease” has the meaning set forth in Section 3.4(a)(ii)(E).

“Business Day” means any day that is not a Saturday, a Sunday or any other day on which banks in New York, New York are required or authorized by applicable Law to be closed.

“Closing” has the meaning set forth in Section 3.2.

“Closing Date” has the meaning set forth in Section 3.2.

“Commitment Letter” means that certain Commitment Letter, dated as of May [●], 2015, by and among SHC, Seritage, H/2 Capital Partners LLC and JPMorgan Chase Bank, National Association.

“Common Privileges” has the meaning set forth in Section 7.8.

“Continuing Trustee” means (a) each member of the Seritage Board as of immediately following the Closing and (b) any person becoming a member of the Seritage Board subsequent to the Closing whose election or nomination for election was approved by the affirmative majority vote of the members of the Seritage Board who are Continuing Trustees at the time of such election or nomination (either by a specific vote or by approval of the proxy statement of the relevant party in which such person is named as a nominee for trustee, without written objection to such nomination).

“Control” (including the terms “Controlled by” and “under common Control with”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, general partnership or other interests, as trustee, personal representative or executor, by contract, agreement, obligation, indenture, instrument, lease, promise, credit arrangement, release, warranty, commitment, undertaking or otherwise.

“Deed” shall have the meaning assigned thereto in Section 3.4(a)(ii)(A).

“Disclosing Party” means a party that discloses Information to the Receiving Party.

“Disputes” has the meaning set forth in Section 4.1.

“Dispute Meeting” has the meaning set forth in Section 4.2(b).

“Dispute Notice” has the meaning set forth in Section 4.2(b).

“Dispute Resolution Committee” has the meaning set forth in Section 4.2(a).

“Distribution” has the meaning set forth in the Recitals.

“Distribution Date” has the meaning set forth in Section 2.2.

“Environmental Equipment” means all above-ground and underground storage tanks for petroleum, petroleum products, solvents, chemicals or other liquids; above-ground or in-ground hydraulic and mechanical lifts; solvent recovery systems; oil-water separator systems; alignment
locks; gasoline pumps, dispensers, pipes and pipelines, and dispensing islands and canopies, and ancillary equipment; and all other
machinery, equipment, facilities, fixtures and installations now or hereafter used, operated, installed, altered or maintained in
connection with or associated with the use, storage, generation, treatment, recycling, transportation, removal or disposal of Hazardous
Materials, now or hereafter located at, on or about the Transferred Properties.

“Environmental Law” means any and all Laws, guidances, policies or determinations, as amended from time to time, now or
hereafter in effect, or promulgated, pertaining to pollution, the environment, natural resources, public health and safety and industrial
hygiene, including the management, use, generation, manufacture, labeling, registration, production, storage, release, discharge,
spilling, leaking, emitting, injecting, escaping, abandoning, dumping, disposal, handling, treatment, removal, decontamination,
cleanup, transportation or regulation of or exposure to any Hazardous Substance, including the Industrial Site Recovery Act, the
Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation
and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe
Drinking Water Act and the Occupational Safety and Health Act.

“Environmental Problems” has the meaning set forth in Section 5.2(b).

“Exchange” means the New York Stock Exchange.

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended, together with the rules and regulations
promulgated thereunder.

“Expiration Date” means 5:00 p.m. New York City time on [●], 2015, or such later date to which SHC may determine to extend
the Rights Offering.

“Fee Properties” has the meaning set forth in the definition of Transferred Properties.

“Financing” means the financing transactions contemplated by the Commitment Letter.

“Financing Closing” means [●].

“Fixtures” means all equipment, machinery, fixtures, and other items of property, including all components thereof, that are now
or hereafter located in, on or used in connection with and permanently affixed to or otherwise incorporated into the Improvements,
together with all replacements, modifications, alterations and additions thereto, and other items of real and/or personal property,
including all components thereof, now and hereafter located in, on or used in connection with, and permanently affixed to or
incorporated into the Improvements, including all HVAC equipment, all furnaces, boilers, heaters, electrical equipment, heating,
plumbing, lighting, ventilating, refrigerating, incineration, air- and water-pollution-control, waste-disposal, air-cooling and air-
conditioning systems and apparatus, security systems, sprinkler systems and fire- and theft-protection equipment, elevators, escalators
and lifts, including all Environmental Equipment.

“Form S-11” has the meaning set forth in Section 3.3(a)(C).
“Good Faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing in accordance with applicable Law.

“Governmental Approvals” means any notices or reports to be submitted to, or other filings to be made with, or any consents, registrations, approvals, permits or authorizations to be obtained from, any Governmental Authority.

“Governmental Authority” means any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official or other legislative, judicial, regulatory, administrative or governmental authority.

“Ground Lease SNDA” has the meaning set forth in Section 3.4(b)(ii)(L).

“Ground Leases” has the meaning set forth in the definition of Transferred Properties.

“Group” means either the SHC Group or the Seritage Group, as the context requires.

“Hazardous Substances” means each and every element, compound, chemical mixture, emission, contaminant, pollutant, material, waste or other substance (including radioactive substances, whether solid, liquid or gaseous) which is defined, determined or identified as hazardous or toxic under any Environmental Law or for which liability or standards of care or a requirement for investigation or remediation are imposed under, or that are otherwise subject to, Environmental Law, including without limitation asbestos, asbestos containing materials, urethane, polychlorinated biphenyls, any petroleum product, petroleum derived products and/or its constituents or derivatives, and any caustic, flammable or explosive materials. Without limiting the generality of the foregoing, the term shall mean and include:

(a) “hazardous substances” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products regularly found at properties with a standard of operation and maintenance comparable to the applicable Property;

(b) “hazardous waste” and “regulated substances” as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(c) “hazardous materials” as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder;

(d) “chemical substance or mixture” as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder; and

(e) “hazardous materials” as defined under all applicable environmental protection statutes of each state and municipality in which the Demised Premises are located.

“Improvements” means any and all buildings, structures, Fixtures, support systems, surface parking lots, parking streets and garages and other improvements now or hereafter
affixed to or located on or under the Land or connected thereto, including, but not limited to, alleyways and connecting tunnels, passageways and entranceways to any adjacent malls, shopping centers or other third-party properties, sidewalks, utility pipes, conduits and lines (on-site and off-site to the extent SHC Group has any interest in the same), parking areas and roadways appurtenant to such buildings and structures located on any Fee Properties or Leasehold Properties, as the case may be, excluding fixtures owned by utilities or other service providers or other third parties.

“Indemnifying Party” has the meaning set forth in Section 5.4(a).

“Indemnitee” has the meaning set forth in Section 5.4(a).

“Indemnity Payment” has the meaning set forth in Section 5.4(a).

“Information” means information, whether or not patentable or copyrightable, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, diagrams, models, research and development files, formulations and specifications, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, tenant information, cost information, tenant prospect lists, correspondence and lists, communications by or to attorneys (including attorney-client privileged information), memoranda and other materials prepared by attorneys or under their direction (including attorney work product) and other technical, financial, employee or business information, documents or data.

“Insurance Proceeds” means those monies (a) received by an insured or reinsured from a Third-Party insurer or reinsurer, (b) paid by a Third-Party insurer or reinsurer on behalf of the insured or reinsured or (c) received (including by way of set-off) from any Third Party in the nature of insurance, contribution or indemnification in respect of any Liability, in any such case net of any applicable premium adjustments (including, retrospectively rated premium adjustments) and net of any self-insured retention, deductible or other form of self-insurance, net of any premium increases and net of any third-party costs or expenses incurred in the collection thereof.

“Intangibles” means any and all warranties and guaranties (express or implied) issued to the SHC Group relating specifically to the Fee Properties and/or the Leasehold Properties (but not those that relate to the operations taking place at the Fee Properties and/or Leasehold Properties) and all architectural and construction plans and drawings, architectural and other professional contracts, construction contracts, and all permits, certificates of occupancy, licenses, approvals and authorizations issued by any Governmental Authority in connection with the foregoing, together with all air and development rights (if any), in each case to the extent they are in effect as of the Closing Date and which are transferable and may be assigned to or by the SHC Group, but expressly excluding all Intellectual Property, trade secrets and other proprietary information owned or licensed by the SHC Group.
“Intellectual Property” means all right, title and interest in or relating to intellectual property or industrial property, whether arising under the Law of the United States or any other country or any political subdivision thereof or multinational Laws or any other Law, including, (a) patents, patent applications, and all divisionals, continuations and continuations-in-part thereof, together with all reissues, reexaminations, renewals and extensions thereof and all rights to obtain such divisionals, continuations and continuations-in-part, reissues, reexaminations, renewals and extensions, and all utility models and statutory invention registrations and any other such analogous rights, (b) trademarks, service marks, Internet domain names, trade dress, trade styles, logos, trade names, services names, brand names, corporate names, assumed business names and general intangibles and other source identifiers of a like nature, together with the goodwill associated with any of the foregoing, and all registrations and applications for registrations thereof, together with all renewals and extensions thereof and all rights to obtain such renewals and extensions, (c) copyrights, mask work rights, database and design rights, moral rights and rights in Internet websites, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof and all applications in connection therewith, together with all renewals, continuations, reversions and extensions thereof and all rights to obtain such renewals, continuations, reversions and extensions and (iv) confidential and proprietary Information, including, trade secrets and know-how. “Intellectual Property” also includes all goodwill associated with Intellectual Property and the right to sue and recover at Law or in equity for past, present and future infringement, misappropriation, dilution, violation or other impairment of such Intellectual Property and all license agreements (including, licenses from or to third parties in respect of Intellectual Property).

“Interests” has the meaning set forth in Exhibit I to this Agreement.

“JV Interests” means the Interests in the following Transferred Entities: GS Portfolio Holdings LLC, SPS Portfolio Holdings LLC and MS Portfolio LLC.

“Land” means (a) the fee interest in and to those certain parcels of land that comprise the Fee Properties, and (b) the leasehold interest in and to those certain parcels of land that comprise the premises demised under the Ground Lease, together with all of SHC Group’s right, title and interest (if any) in and to all rights, appurtenances, hereditaments and tenements pertaining thereto, including all right, title and interest (if any) of the SHC Group in and to adjacent streets, alleys, easements and rights-of-way, and all oil, gas, mineral, water and irrigation rights running with or otherwise pertaining thereto.

“Landlord” means Seritage SRC Finance LLC and Seritage KMT Finance LLC, collectively, as landlord under the Master Lease.

“Lands’ End Lease” means, with respect to each applicable main SHC Group store building located on the Transferred Properties, the leasing arrangement for space in such store between the SHC Group and Lands’ End, Inc. pursuant to a master lease of space within SHC Group stores located at various SHC Group properties, including the Transferred Properties. Notwithstanding anything herein to the contrary, SHC Group shall not assign the Lands’ End Leases with the conveyance of the Transferred Properties but will remain as the landlord (sublandlord) under the Lands’ End Leases; provided that (i) the Tenant under the Master Lease shall assign to the landlord under the Master Lease the economic benefits of such lease (but not
such lease itself) in respect of the Transferred Properties and (ii) the Tenant under the Master Lease will discharge the landlord’s obligations under the Lands’ End Leases, in each case, on the terms and conditions provided in the Master Lease.

“Landlord’s Mortgage” has the meaning set forth in Section 3.4(b)(ii)(M).

“Landlord Mortgage SNDA” has the meaning set forth in Section 3.4(b)(ii)(N).

“Law” means any national, supranational, federal, state, provincial, local or similar law (including common law), statute, code, order, ordinance, rule, regulation, treaty (including any income tax treaty), license, permit, authorization, approval, consent, decree, injunction, binding judicial or administrative interpretation or other requirement, in each case, enacted, promulgated, issued or entered by a Governmental Authority.

“Lease”, “Leases” means each and every existing third-party lease or sublease of a portion of the Transferred Properties as of the Closing Date, other than in-store concessions, departments and licenses by the SHC Group comprising in the aggregate less than 10% of rental value of all the rentable square footage at the main SHC Group store building located on the Transferred Properties (including all amendments and extensions thereof), and excluding the Lands’ End Leases, as set forth on Schedule A (which such Schedule A shall be updated at the Closing for any of the foregoing executed after the date of this Agreement and on or prior to the Closing Date).

“Leasehold Properties” has the meaning set forth in the definition of Transferred Properties.

“Liability” or “Liabilities” means with respect to any Person, any and all claims, debts, demands, actions, causes of action, suits, damages, costs, obligations, accruals, accounts payable, reckonings, bonds, indemnities and similar obligations, agreements, promises, guarantees, make whole agreements and similar obligations, and other liabilities and requirements of such Person, including all contractual obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, liquidated or unliquidated, reserved or unreserved, known or unknown, or determined or determinable, whenever arising and including those arising under any applicable Law, rule, regulation, Action, threatened or contemplated Action, order or consent decree of any Governmental Authority or any award of any arbitrator or mediator of any kind, and those arising under any Contract, including those arising under this Agreement, in each case, whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person. For the avoidance of doubt, Liabilities shall include reasonable attorneys’ fees, the costs and expenses of all demands, assessments, judgments, settlements and compromises, and any and all other costs and expenses whatsoever reasonably incurred in connection with anything contemplated by the preceding sentence.

“Loss” has the meaning set forth in Section 10.22.

“Loss Limit” has the meaning set forth in Section 10.22.

“Mark” means (a) the seritage.com domain name registration, (b) U.S. trademark registration #4577331 for the word mark “SERITAGE” and any unregistered trademark, service
mark, trade name, d/b/a, certification mark, slogan, logo symbol, trade dress or other indicia of origin related to the foregoing registered word mark, and all applications or registrations relating thereto, and (c) all goodwill connected with the use thereof and symbolized thereby.

“Master Lease” means the Master Lease Agreement, dated of [●], 2015, by and between [●], as landlord.

“Memoranda” and “Memorandum” have the meanings set forth in Section 3.4(a)(ii)(H).

“Operating Partnership” means Seritage Growth Properties, L.P., a Delaware limited partnership, of which Seritage is the general partner.

“Owner’s Title Affidavit” has the meaning set forth in Section 3.4(a)(ii)(I).

“Paying Party” has the meaning set forth in Section 10.19.

“Payee Party” has the meaning set forth in Section 10.19.

“Permitted Encumbrances” means (i) all matters of record and (ii) all other matters that do not have a material adverse effect on the continued use of the Transferred Properties in the manner they are being used as of the date hereof and, in the case of the Leasehold Properties (and any Improvements located thereon), the terms of the respective Ground Leases.

“Person” means an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, any other entity and any Governmental Authority.

“Personal Property” means all tangible personal property located upon the Land or within the Improvements, including without limitation, any and all plans, specifications, drawings, books, building records, and all other items of personal property owned by the SHC Group and used exclusively in connection with the Land or Improvements (i.e., not in connection with or relating to the operations taking place on the Land or within the Improvements) and which are not included in the Fixtures, but expressly excluding all inventory, merchandise and trade fixtures and other personal property used in the operation of the SHC Group, its tenants and other users of the property (whether owned by them, their vendors or other third parties), including, without limitation, racks, shelving, registers, computers, computer terminals and computer-related equipment, security equipment, cleaning and maintenance equipment, batteries, tires, automobile testing equipment, petroleum and petroleum products, and other tangible personal property.

“Personnel” means the officers, directors, employees, agents, suppliers, licensors, licensees, contractors, subcontractors and other representatives, from time to time, of a party and its Affiliates; provided, that the Personnel of the members of the Seritage Group shall not be deemed Personnel of the members of the SHC Group and the Personnel of the members of the SHC Group shall not be deemed Personnel of the members of the Seritage Group.
“Prime Rate” means the rate which JPMorgan Chase Bank, N.A. (or any successor thereto or other major money center commercial bank agreed to by the parties) announces from time to time as its prime lending rate, as in effect from time to time.

“Properties Sale” has the meaning set forth in Section 2.3(c).

“Properties Sale Closing” has the meaning set forth in Section 3.2.

“Purchase Price” means the aggregate Purchase Price payable by Seritage to SHC for all Transferred Properties in the amount of $[●] in cash, allocated as to each Transferred Property as set forth on Schedule B, subject to any provisions hereof providing for adjustments or prorations; provided that there shall be credited against the Purchase Price the principal amount of the Financing encumbering the Transferred Properties and the Transferred Entities immediately prior to the Properties Sale Closing.

“REA” or “REAs” means each and every reciprocal easement, operating and/or construction agreements and in all other easements, covenants and similar rights related to the Transferred Properties identified therein.

“Receiving Party” means a party that to which Information is disclosed by the Disclosing Party.

“Record Date” means 5:00 p.m., New York City time on the date to be determined by the SHC Board as the record date for determining holders of SHC Common Stock entitled to receive Rights in the Distribution.

“Record Holders” means the holders of record of shares of SHC Common Stock as of the Record Date.

“Restricted Payment” any dividend or other distribution (whether in cash, securities or other property) with respect to any equity interests in SHC, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such equity interests in SHC, or any option, warrant or other right to acquire any such equity interests in SHC.

“Retail Operations Claims” means any and all Liabilities arising out of or relating to the retail business operations or other activities conducted on or about the Transferred Properties by the SHC Group or the Tenant’s Related Users (as such term is defined in the Master Lease), prior to the Closing Date or at any time during the term of the Master Lease with respect to the premises demised thereunder, including without limitation claims from or by all customers, licensees, invitees, employees, Governmental Authorities or any other Person for, among other things, non-compliance with applicable Law, personal injury, property damage, product or service warranty, service, merchandise, products liability, tax, employment (including any pension-related claims), consumer credit and vendor claims. For the avoidance of doubt, Retail Operations Claims shall include Liabilities arising under tort claims by third-parties or as a result of non-compliance with applicable Law, in each case, arising from the physical condition or use of the Transferred Properties by SHC Group or Tenant’s Related Users (as such term is defined
in the Master Lease), but shall not include (a) claims by Seritage Group and its successors and assigns, relating directly and solely to 
the physical condition of the Transferred Properties, other than Environmental Problems as provided in this Agreement and in the 
Master Lease and such other matters as provided in the Master Lease, and (b) claims arising out of or relating to the recapture or 
redevelopment of the Transferred Properties by the Seritage Group following the Property Sale Closing or arising out of or relating to 
an act or omission occurring with respect to, or on or about, such recaptured or redeveloped space following such redevelopment or 
recapture, except to the extent provided in the Master Lease.

“Rights” has the meaning set forth in the Recitals.

“Rights Offering” has the meaning set forth in the Recitals.

“Rights Offering Closing” has the meaning set forth in Section 3.2.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the U.S. Securities Act of 1933, as amended, together with the rules and regulations promulgated 
thereunder.

“Seritage” has the meaning set forth in the Preamble.

“Seritage Board” means the Board of Trustees of Seritage.

“Seritage Closing Deliverables” has the meaning set forth in Section 3.4(b)(ii).

“Seritage Common Shares” means the Class A common shares of beneficial interest, par value $0.01 per share, of Seritage.

“Seritage Group” means Seritage and each Affiliate of Seritage immediately after the Closing Date.

“Seritage Indemnitee” has the meaning set forth in Section 5.3.

“Seritage Information” means with all Information exclusively relating to the owning, developing, selling, transferring, leasing, 
managing and financing any of the Transferred Properties and/or the Transferred Entities in the possession of any member of the SHC 
Group (whether or not located upon the Land or within the Improvements) (for the avoidance of doubt, excluding Information 
relating to the retail business operations or other activities conducted on or about the Transferred Properties by the SHC Group or the 
Tenant’s Related Users).

“Shared Privilege” has the meaning set forth in Section 7.8(d).

“SHC” has the meaning set forth in the Preamble.

“SHC Board” has the meaning set forth in the Recitals.

“SHC Closing Deliverables” has the meaning set forth in Section 3.4(a)(ii).
“SHC Common Stock” means the common stock, par value $0.01 per share, of SHC.

“SHC Group” means SHC and each Affiliate of SHC immediately after the Closing Date (in each case other than any member of the Seritage Group).

“SNDA” has the meaning set forth in Section 3.4(b)(ii)(L).

“SHC Indemnitee” has the meaning set forth in Section 5.2.

“Subscription” has the meaning set forth in the Recitals.

“Subsidiary” or “subsidiary” means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such Person, (ii) the total combined equity interests or (iii) the capital, profit or beneficial interests, in the case of a partnership, limited liability company or trust, or (b) otherwise has the power to vote, either directly or indirectly, sufficient securities or interests to elect a majority of the board of directors or similar governing body or to Control such Person.

“Tenant” means Kmart Operations, LLC and Sears Operations, LLC, as tenant under the Master Lease.

“Third-Party” means any Person that is neither a party to this Agreement nor an Affiliate of either party to this Agreement.

“Third-Party Claim” has the meaning set forth in Section 5.7(a).

“Third-Party Proceeds” has the meaning set forth in Section 5.4(a).

“Title Commitments” means all of the latest revised title commitments issued by the Title Company as of the date of this Agreement with respect to all of the Transferred Properties.

“Title Company” means a nationally recognized title insurance company selected by Seritage to issue one or more title insurance policies with respect to the Transferred Properties.

“Title Policy” has the meaning set forth in Section 3.4(a)(ii)(I).

“Transaction” has the meaning set forth in the Recitals.

“Transferred Entities” has the meaning set forth in Exhibit I to this Agreement.

“Transferred Properties” means collectively the (a) real properties owned in fee by the SHC Group (“Fee Properties”) and (b) the leasehold interest(s) owned by the SHC Group under the ground lease(s) (the “Leasehold Properties”) (including all amendments and extensions thereof, the “Ground Leases”), to the extent such Fee Properties and Leasehold Properties are identified on Exhibits I and II.
“Transition Services Agreement” means the Transition Services Agreement, dated as of [●], 2015, by and between Sears Holdings Management Corporation and Operating Partnership, as amended from time to time.

ARTICLE II
THE SUBSCRIPTION, THE DISTRIBUTION AND THE PURCHASE AND SALE

2.1 The Subscription. Seritage hereby issues and delivers to SHC, and SHC hereby subscribes for, [●] unitized Rights, each with the right when exercised to purchase one Seritage Common Share from Seritage, subject to certain conditions and on the terms and in the manner described in “The Rights Offering” section of the Form S-11, the receipt of which Rights by SHC is hereby acknowledged.

2.2 The Distribution. SHC shall instruct the Agent to distribute to each Record Holder, as soon as practicable after [11:59] p.m. New York City time, or such other time as SHC may determine, on such date as SHC may determine (the “Distribution Date”), one Right for each share of SHC Common Stock held by such Record Holder as of the Record Date. SHC hereby agrees that from the date of this Agreement until the earlier of the termination of this Agreement or the Distribution Date, SHC shall, and shall cause the SHC Group to, use reasonable best efforts to operate its stores located at the Transferred Properties in the ordinary course consistent with past practice in all material respects, except as required by applicable Law, as contemplated by this Agreement or as consented to in writing by Seritage; provided that in no event shall SHC or any other member of the SHC Group, without the prior written consent of Seritage, sell, convey, assign, transfer, license or otherwise dispose of, directly or indirectly, any Transferred Properties, other than as would be permitted without consent of Seritage under the Master Lease.

2.3 The Purchase and Sale.

(a) Upon the terms and subject to the conditions set forth in this Agreement, at the Properties Sale Closing, SHC shall, and shall cause the other members of the SHC Group to, transfer, convey, assign and deliver to each transferee identified on Exhibit I or such other member of the Seritage Group as Seritage shall designate, and each such transferee or member of the Seritage Group shall purchase and acquire from SHC or the other members of the SHC Group, as applicable, all of the SHC Group’s right, title and interest in and to each of the Interests in the Transferred Entities.

(b) Upon the terms and subject to the conditions set forth in this Agreement, at the Properties Sale Closing, SHC shall, and shall cause the other members of the SHC Group to, transfer, convey, assign and deliver to each transferee identified on Exhibit II or such other member of the Seritage Group as Seritage shall designate, and each such transferee or member of the Seritage Group shall purchase and acquire from SHC or the other members of the SHC Group, as applicable, all of the SHC Group’s right, title and interest in and to each of the Transferred Properties and JV Interests identified on Exhibit II (for the avoidance of doubt, excluding the Transferred Properties and JV Interests identified on Exhibit I, which shall be purchased and sold, indirectly, pursuant to Section 2.3(a)).

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(c) Upon the terms and subject to the conditions set forth in this Agreement, at the Properties Sale Closing, SHC shall, or shall cause the applicable member of the SHC Group to, transfer, convey, assign and deliver to Operating Partnership or its designee all of its right, title and interest in and to the Mark “SERITAGE,” together with all rights to sue, counterclaim, and to collect damages, payments and equitable relief for all legal and equitable claims of past, present, and future infringements or other violations thereof, any rights to protection of interest in such Mark and all income, royalties, damages and payments now or hereafter due or payable with respect thereto, for its own use and benefit and for the use and on behalf of its successors, assigns or other legal representatives.

(d) Subject to Section 7.1(e), upon the terms and subject to the conditions set forth in this Agreement, at the Properties Sale Closing, SHC shall, or shall cause the applicable member of the SHC Group to, transfer, convey, assign and deliver to Operating Partnership or its designee Seritage Information; provided that the members of the SHC Group shall be entitled to retain copies of all Seritage Information.

(e) Upon the terms and subject to the conditions set forth in this Agreement, at the Properties Sale Closing, SHC shall, or shall cause the applicable member of the SHC Group to, transfer, convey, assign and deliver to Operating Partnership or its designee all of its right, title and interest in and to the (i) Personal Property, (ii) Intangibles, (iii) REAs, (iv) Ground Leases and (v) Leases. The actions set forth in Section 2.3(a)-(e) are referred to as the “Properties Sale.”

(f) Upon the terms and subject to the conditions set forth in this Agreement, at the Properties Sale Closing, Seritage shall or shall cause its applicable Subsidiary to assume, and will to pay, perform and discharge as they become due, all of the Liabilities and obligations, if any, under any (i) Personal Property, (ii) Intangibles, (iii) REAs, (iv) Ground Leases and (v) Leases.

(g) Upon the terms and subject to the conditions set forth in this Agreement, at the Properties Sale Closing, in consideration for the Properties Sale, Seritage shall pay or cause to be paid to SHC or its designee(s), by wire transfer of immediately available funds to such account(s) as are designated in writing by SHC, the Purchase Price for all of the Interests conveyed pursuant to Section 2.3(a), all of the Transferred Properties conveyed pursuant to Section 2.3(b) and the Mark conveyed pursuant to Section 2.3(c).

2.4 Use of Proceeds. SHC covenants and agrees that it shall not use, or permit or cause to be used, the proceeds of the Properties Sale, or any portion thereof, directly or indirectly, for purposes of making a Restricted Payment.

ARTICLE III
THE CLOSING

3.1 Actions Prior to Closing. Prior to the Closing Date and subject to the terms and conditions set forth herein, the parties shall take, or cause to be taken, the following actions in connection with the Transaction:

(a) Securities Law Matters. Seritage shall file any amendments or supplements to the Form S-11 as may be necessary or advisable in order to cause the Form S-11 to become

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effective prior to the Distribution Date and remain effective as required by the SEC or federal, state or other applicable securities Laws. SHC and Seritage shall cooperate in preparing, filing with the SEC and causing to become effective registration statements or amendments thereof which are required to reflect the establishment of, or amendments to, any employee benefit and other plans necessary or advisable in connection with the transactions contemplated by this Agreement and the Ancillary Agreements. SHC and Seritage shall take all such action as may be necessary or advisable under the securities or blue sky Laws of the United States (and any comparable Laws under any non-U.S. jurisdiction) in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

(b) **Subscription Agent.** SHC shall enter into a subscription agent agreement with the Agent or otherwise provide instructions to the Agent regarding the Distribution and the Rights Offering.

(c) **Stock-Based Employee Benefit Plans.** Seritage and, if applicable, SHC shall take all actions as may be necessary to approve the stock-based employee benefit plans of Seritage in order to satisfy the requirements of Rule 16b-3 under the Exchange Act and the applicable rules and regulations of the Exchange.

(d) **Delivery of Rights and Seritage Common Shares.** On or prior to the Distribution Date, SHC shall deliver to the Agent such number of Rights as is necessary to permit the distribution of one Right for each share of SHC Common Stock held by such Record Holders in the Distribution. On or prior to the Closing Date, Seritage shall deliver to the Agent book-entry transfer authorizations for such number of the outstanding Seritage Common Shares as is necessary to effect the Rights Offering. Seritage agrees to provide all further book-entry transfer authorizations for Seritage Common Shares that SHC or the Agent shall require in order to effect the Distribution and the Rights Offering.

(e) **Approvals and Notifications.** To the extent that the Transaction requires any Approvals or Notifications, the parties shall endeavor to obtain or make such Approvals or Notifications as soon as reasonably practicable; provided, however, that, except to the extent expressly provided in this Agreement or any of the Ancillary Agreements or as otherwise agreed between SHC and Seritage, neither SHC nor Seritage shall be obligated to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Person in order to obtain or make such Approvals or Notifications.

(f) **Transfer of Transferred Properties; Financing.** Immediately prior to the Closing, SHC shall take the following actions in the following order: (i) SHC shall cause its respective Subsidiaries that are owners of the Transferred Properties, the JV Interests and the Transferred Entities as shown in the steps outlined on Schedule J to transfer (including by way of merger) such Transferred Properties, JV Interests and Transferred Entities to each of the relevant transferees in accordance with the steps outlined in Schedule J, together with all related Personal Property and Intangibles, REAs, Ground Leases and Leases; (ii) SHC shall cause its respective Subsidiaries to transfer the operations of the SHC Group stores located at the Transferred Properties to Tenant and transfer the interests in Tenant to the relevant transferees and shall cause Tenant and Landlord to enter into the Master Lease, all in accordance with the steps outlined in Schedule K; and (iii) SHC shall cause the applicable borrowing entities to consummate the Financing.

(g) **Other Ancillary Agreements.** Effective as of the date hereof, each of SHC and Seritage shall, and shall cause their respective Subsidiaries, as applicable, to, execute and deliver all Ancillary Agreements to which such Person is a party.

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3.2 The Closing. The closing of the Rights Offering (the “Rights Offering Closing”) and the closing of the Properties Sale (the “Properties Sale Closing,” and collectively the “Closing”) shall occur as soon as practicable after the Expiration Date and the satisfaction or waiver of the conditions set forth in Sections 3.3(a), 3.4(a) and 3.4(b), on such date and at such time as SHC may determine (the “Closing Date”). SHC and Seritage shall cooperate to cause the conditions to the Closing set forth in Sections 3.3(a), 3.4(a) and 3.4(b) to be satisfied at the Closing Date.

3.3 Conditions Precedent to the Rights Offering Closing.

(a) In no event shall SHC be required to consummate the Rights Offering Closing occur unless (i) the Properties Sale Closing shall have occurred contemporaneously with such Rights Offering Closing and (ii) each of the following conditions shall have been satisfied or waived by SHC in its sole and absolute discretion:

   (A) **SHC Board Approval.** The SHC Board shall have authorized and approved the Transaction and not withdrawn such authorization and approval, and the SHC Board shall have declared the Distribution.

   (B) **Execution of Ancillary Agreements.** Each of the Ancillary Agreements shall have been duly executed and delivered by the parties thereto and all of the actions required to be performed prior to the Closing shall have been completed, including those required pursuant to Section 3.4.

   (C) **Effectiveness of Form S-11.** A Registration Statement on Form S-11 registering the offering of Rights and the Seritage Common Shares (the “Form S-11”) shall be effective under the Securities Act, with no stop order in effect with respect thereto and no proceedings for such purpose pending before or threatened by the SEC.

   (D) **Minimum Subscription.** Holders of Rights shall have subscribed for, in the aggregate, no fewer than [●] Seritage Common Shares in the Rights Offering.

   (E) **Listing on the Exchange.** The Rights and the Seritage Common Shares shall have been accepted for listing on the Exchange, subject to official notice of issuance.

   (F) **Governmental Approvals.** All Governmental Approvals necessary to consummate the Transaction shall have been obtained and be in full force and effect.
(G) No Order or Injunction. No order, injunction or decree issued by any Governmental Authority of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Transaction or any of the related transactions shall be in effect, and no other event outside the control of SHC shall have occurred or failed to occur that prevents the consummation of the Transaction or any of the related transactions.

(H) Seritage Board. The individuals listed in the Form S-11 as members of the Seritage Board following the Closing shall have been duly elected and qualified to serve as members of the Seritage Board following the Closing.

(I) Seritage Officers. SHC shall have delivered or caused to be delivered to Seritage resignations, effective as of immediately after the Closing, of each individual who will serve as an officer of Seritage or member of the Seritage Board immediately after the Closing and who served as an officer or member of the SHC Board immediately prior to the Closing and will no longer serve in such capacity immediately after the Closing.

(J) Declaration of Trust. The Amended and Restated Declaration of Trust of Seritage and the Amended and Restated Bylaws of Seritage, each in such form as may be reasonably determined by SHC, shall be in effect.

(K) No Circumstances Making Transaction Inadvisable. No event or development shall have occurred or exist that, in the judgment of the SHC Board, in its sole and absolute discretion, makes the Transaction not in the best interest of SHC or holders of SHC Common Stock, or makes it inadvisable to effect the Transaction or the other transactions contemplated.

(b) The conditions set forth in Section 3.3(a) are for the sole benefit of SHC and shall not give rise to or create any duty on the part of SHC or the SHC Board to waive or not to waive any such condition or to effect the Transaction or in any way limit SHC’s rights of termination set forth in Article IX or alter the consequences of any such termination from those specified in such Article. Any determination made by the SHC Board prior to the Closing concerning the satisfaction or waiver of any or all of the conditions set forth in Section 3.3(a) shall be conclusive and binding on the parties.

3.4 Conditions Precedent to the Properties Sale Closing

(a) Conditions to Seritage’s Obligations. In no event shall Seritage be obligated to consummate the Properties Sale Closing unless (i) the Financing Closing shall have occurred immediately prior to the Rights Offering Closing and the Rights Offering Closing shall have occurred contemporaneously with such Properties Sale Closing and (ii) unless waived by Seritage, SHC shall have, or shall have caused to be, delivered to Seritage or its designee, or, in the case of the Interests in the Transferred Entities purchased and sold pursuant to Section 2.3(a), to the appropriate Transferred Entity or Transferred Entities (or, in either case, to the Title Company for recording, as applicable) at or prior to the Properties Sale Closing all of the
following items with respect to the respective Transferred Properties, executed and acknowledged by the appropriate member of the SHC Group as applicable or other signatory as designated below (collectively, the “SHC Closing Deliverables”):

(A) A duly executed and acknowledged deed without covenants against grantor’s acts, or any warranties or representations whatsoever with respect to each Fee Property, except that the grantor is in possession of and has not previously conveyed fee title to each Fee Property, except such covenants, representations and warranties, if any, as are required for issuance of a Title Policy on customary terms for each of the Transferred Properties, duly executed and acknowledged by the appropriate members of the SHC Group, in the form attached as Schedule C (the “Deed”) together with any additional duly executed and acknowledged deeds required by Seritage in its reasonable discretion or the Title Company to convey all of such member’s right, title and interest in and to the Improvements located on the Fee Property and/or the Leasehold Property, with the appropriate member of the Seritage Group as grantee, sufficient to convey to such grantee (including with respect to the Transferred Entities) good and marketable title to the Fee Properties and all Improvements located on the Fee Properties, and all Improvements located on the Leasehold Property to the extent owned by SHC Group, in each case free and clear of all liens, charges, encumbrances, title defects and other clouds on title other than those set forth in the Title Commitments and other Permitted Encumbrances;

(B) a duly executed and acknowledged Assignment and Assumption of Personal Property and Intangibles assigning the SHC Group’s interest in the Personal Property and Intangibles related to the Transferred Properties (“Assignment and Assumption of Personal Property and Intangibles”) in the form attached hereto as Schedule D;

(C) a true and complete, fully executed copy of each REA;

(D) a duly executed and acknowledged Assignment and Assumption of REAs assigning the SHC Group’s interest in all REAs (“Assignment and Assumption of REAs”) in the form attached hereto as Schedule E;

(E) a true and complete, fully executed copy of each Ground Lease;

(F) a duly executed and acknowledged Assignment and Assumption of Ground Lease with respect to each Ground Lease (“Assignment and Assumption of Ground Lease”), free and clear of all liens, charges, encumbrances, title defects and other clouds on title other than those set forth in the Title Commitments;

(G) a true and complete, fully executed copy of each Lease;
(H) a duly executed and acknowledged Assignment and Assumption of Lease with respect to each Lease (“Assignment and Assumption of Lease”);

(I) a duly executed and acknowledged Master Lease in the form attached as Schedule F, together with separate memoranda thereof (each, a “Memorandum” and collectively, “Memoranda”) in the form of Schedule G for recording with respect to each Fee Property and each Leasehold Property with such ministerial and non-substantive modifications as required for recordation of the respective Memorandum in the land records of the jurisdiction in which the respective Transferred Property is located;

(J) such owner’s affidavits, gap indemnities and other documentation as may be customarily and reasonably required by the Title Company (collectively, “Owner’s Title Affidavit”) in connection with its issuance (at the request of Seritage) of an Owner’s or Leasehold Title Policy or any Lender’s Title Policy required in connection with the Financing, as appropriate, with respect to any or all of the Transferred Properties (collectively, “Title Policy”);

(K) a certificate in the form attached hereto as Schedule H from and duly executed by SHC stating that it is not a “foreign person” as defined in the Federal Foreign Investment in Real Property Tax Act of 1980;

(L) such evidence as the Title Company may reasonably require as to the authority of the person or persons executing any document on behalf of any member of the SHC Group, including in respect of any Transferred Entity, as applicable;

(M) a duly executed closing statement prepared in accordance with the terms of this Agreement that is reasonably acceptable to Seritage;

(N) duly executed transfer tax returns, certificates and affidavits required in connection with the consummation of the Transaction contemplated hereby;

(O) any documents and any fees or costs payable by the SHC Group with respect to the Transaction pursuant to Section 10.2(a);

(P) copies of certificates executed by the Secretary or other appropriate officer or representative of the SHC Group, attaching thereto and duly certifying as of the Closing Date the applicable resolutions of the SHC Board authorizing the execution and delivery of this Agreement, the SHC Closing Deliverables and the consummation of the transactions contemplated hereunder;

(Q) copies of certificates executed by the Secretary or other appropriate officer or representative of the SHC Group, attaching good standing certificates for each applicable Person in the SHC Group from its jurisdiction of -19-
formation and (as and to the extent required by the Title Company) each jurisdiction in which such Person is qualified to do business and in which the Transferred Properties are located, in each case dated as of a date no later than twenty (20) days prior to the Closing Date;

(R) a true and complete copy of each mortgage on the Transferred Properties subject to the Master Lease in connection with the Financing (collectively, “Landlord’s Mortgage”);

(S) a Ground Lease SNDA executed and acknowledged by the Tenant under the Master Lease;

(T) a Landlord Mortgage SNDA executed and acknowledged by the Tenant under the Master Lease;

(U) certificates evidencing, or certified copies of book-entry notations of, the Interests in the Transferred Entities and instruments of transfer relating thereto, in each case to the extent appropriate, together with copies of the limited liability company or equivalent agreements of such Transferred Entities, each with a notation evidencing the transferee of such Interests as the holder of such Interests, and a good standing certificate for each such Transferred Entity;

(V) if and to the extent required in connection with the Financing, an estoppel indemnity executed by SHC for the benefit of the lender(s) under the Financing with respect to one or more Leases and/or one or more REAs in the form contemplated under the Financing; and

(W) such additional documents as are otherwise provided for herein or as shall be reasonably required by Seritage and reasonably acceptable to the SHC Group to consummate the Properties Sale and which are not inconsistent with any other provisions herein.

(b) Conditions to SHC’s Obligations. In no event shall SHC be obligated to consummate the Properties Sale Closing unless (i) the Financing Closing shall have occurred immediately prior to the Properties Sale Closing and the Rights Offering Closing shall have occurred contemporaneously with such Properties Sale Closing and (ii) unless waived by SHC, Seritage shall have, or shall have caused to be, delivered to SHC, in the case of Transferred Properties purchased and sold pursuant to Section 2.3(b), or SHC shall have received from the appropriate Transferred Entity or Transferred Entities, in the case of Transferred Properties purchased and sole pursuant to Section 2.3(a) (or, in either case, to or from the Title Company for recording, as applicable) at or prior to the Properties Sale Closing all of the following items, each executed by the appropriate member of the Seritage Group (the “Seritage Closing Deliverables”):

(A) a duly executed and acknowledged Assignment and Assumption of Personal Property and Intangibles;

(B) a duly executed and acknowledged Assignment and Assumption of REAs;
(C) a duly executed and acknowledged Assignment and Assumption of Ground Lease with respect to each Ground Lease;

(D) a duly executed and acknowledged Assignment and Assumption of Lease with respect to each Lease;

(E) a duly executed and acknowledged Master Lease, together with separate Memoranda thereof;

(F) such evidence as the Title Company may reasonably require as to the authority of the person or persons executing any document on behalf of any member of the Seritage Group or any Transferred Entity, as applicable;

(G) a duly executed closing statement prepared in accordance with the terms of this Agreement that is reasonably acceptable to SHC;

(H) duly executed transfer tax returns, certificates and affidavits required in connection with the consummation of the Transaction contemplated hereby;

(I) any documents and any fees or costs payable by any member of the Seritage Group in connection with the Transaction pursuant to Section 10.2(a) hereof;

(J) copies of certificates executed by the Secretary or other appropriate officer or representative of the Seller, attaching thereto and duly certifying as of the Closing Date the applicable resolutions of the Seritage Board authorizing the execution and delivery of this Agreement, the Seritage Closing Deliverables and the consummation of the Transaction contemplated hereunder;

(K) copies of certificates executed by the Secretary or other appropriate officer or representative of each applicable member of the Seritage Group or Transferred Entity, attaching good standing certificates from its jurisdiction of formation and each jurisdiction in which it is qualified to do business, in each case dated as of a date no later than twenty (20) days prior to the Closing Date;

(L) a subordination and non-disturbance agreement (“SNDA”) from the landlord under each Ground Lease, only if and to the extent Seritage or the Transferred Entity, as applicable, has been able to obtain the same with the exercise of commercially reasonable efforts (“Ground Lease SNDA”), executed and acknowledged by the ground lessor and the applicable member of the Seritage Group or Transferred Entity;

(M) a SNDA with respect to each Landlord Mortgage (“Landlord Mortgage SNDA”), executed and acknowledged by the mortgagee and the applicable member of the Seritage Group or Transferred Entity;
(N) at the option of Seritage, the Title Policy (so long as Seritage shall have paid or caused to be paid all title premiums and other costs of the Title Company and shall have satisfied the requirements of the Title Company as applicable to the applicable member of the Seritage Group or Transferred Entity); and

(O) such additional documents as are otherwise provided for herein or as shall be reasonably required by SHC to consummate the Properties Sale and which are not inconsistent with any other provisions herein.

(c) Sale of Transferred Properties “AS IS, WHERE IS”. Except as expressly set forth to the contrary in this Agreement and in the Deeds and subject in all respects to the provisions of Article 5, the sale of the Transferred Properties (including in respect of Transferred Entities) to Seritage is made “AS IS, WHERE IS, WITH ALL FAULTS”, without warranty or representation (express or implied) of any kind by the SHC Group.

3.5 Adjustments and Prorations with respect to the Transaction.

(a) Rents. For the period from and after the Closing Date, rents payable by tenants under the Leases shall be the property of Seritage, and rents payable under the Ground Leases shall be payable by Seritage, subject to the rights and obligations of Tenant and Landlord under the Master Lease and Seritage under the Leases. Therefore, all such rents payable under the Leases (including fixed, percentage and additional (regularly scheduled and recurring) rent) and the Ground Leases shall be apportioned between Seritage and SHC as of the Closing Date, based on the ratio of the number of days in the period for which such rents are paid to the number of days in such period (i) before and including the Closing Date and (ii) after the Closing Date, subject to the further rights and obligations of Tenant and Landlord under the Master Lease and Seritage under the Leases. SHC and Seritage hereby agree that if any of the rents cannot be prorated accurately as of the Closing Date, then the same shall be estimated (based on current information then known) as of the Closing Date and either party owing the other party a sum of money based on subsequent proration calculations once accurate information is obtained shall pay such sum to the other party within thirty (30) days after such accurate information is obtained.

(b) Taxes, Impositions and Other Expenses. At the Closing, (i) real property taxes, common area charges, and all other recurring, scheduled and all other leasing, maintenance, operating and other costs and expenses which have been paid or are payable by the SHC Group with respect to the Transferred Properties and reimbursements in respect of such amounts payable to the SHC Group by tenants under the Leases (other than as included in additional rent), and (ii) all other amount payable by the SHC Group under the REAs, or Ground Leases, shall be apportioned on the same basis as rents under the Leases and Ground Leases are apportioned pursuant to Section 3.5(a) (for the avoidance of doubt, in each case subject to the rights and obligations of Tenant and Landlord under the Master Lease and Seritage under the Leases).

(c) Delinquencies. Notwithstanding anything to the contrary in Section 3.5(a) or (b), all delinquent rents, taxes, impositions and other costs and expenses (if any) contemplated by Section 3.5(a) and 3.5(b) or otherwise shall be paid solely by SHC at the Closing.
3.6 Certain Representations.

(a) Notwithstanding anything in Section 3.4(c) to the contrary, SHC represents and warrants to the Seritage that (except as disclosed to Seritage on or prior to the date hereof and/or on or prior to the Closing Date) (i) as of the date hereof and as of the Closing Date, there is no pending or threatened litigation or regulatory action against any member of the SHC Group that would reasonably be expected to enjoin, prohibit or restrain, or impose or result in the imposition of any material adverse condition upon, the consummation of the Transaction and/or the Financing, (ii) as of the date hereof and as of the Closing Date, no condemnation has been commenced or, to SHC’s knowledge, is threatened in writing with respect to all or any portion of the Transferred Properties or for the relocation of roadways providing access to any of the Transferred Properties and (iii) as of the date hereof, each record fee and/or leasehold owner of the Transferred Properties is as set forth on Exhibits I and II.

(b) Except as set forth on Schedule L, SHC and Seritage each represent and warrant to the other that neither party has dealt with any broker, finder or other Person who is or may be entitled to any broker’s commission, finder’s fee or other similar compensation with respect to the Transaction.

(c) SHC represents and warrants to Seritage, solely as of the Closing Date, that there exists no condition or circumstance, and no event has occurred, which, pursuant to Section C of the Commitment Letter, would cause the Financing to be funded in amount less than the maximum Closing Date funding contemplated by the Commitment Letter. The representation set forth in this Section 3.6(c) shall not survive the Closing Date. Any damages in respect of any breach of the representation set forth in this Section 3.6(c) shall be paid at the Closing and shall in no event exceed, in the aggregate, the amount of any reserve implemented pursuant to Section C of the Commitment Letter. Any amounts paid at Closing in respect of a breach of the representation set forth in this Section 3.6(c) shall be reimbursed to SHC to the extent the corresponding reserve is released to Seritage pursuant to the terms of the Financing without expenditure by Seritage to secure such release.

3.7 Certain Post-Closing Payments. To the extent that (a) a member of the SHC Group has paid any amounts to or on behalf of one or members of the Seritage Group for purposes of funding the Deferred Maintenance and Environmental Escrow Account (as defined in the form of Loan Agreement contemplated by the Financing, the “Escrow Account”) on or prior to the Closing Date and (b) Tenant or any other member of the SHC Group shall incur out-of-pocket costs (“Reimbursable Costs”) in connection with the remediation of any of the related Deferred Maintenance and Environmental Conditions (as defined in the form of Loan Agreement contemplated by the Financing) or any such Deferred Maintenance and Environmental Conditions are otherwise remediated without exhaustion of the Escrow Account, then in either case, upon request of SHC from time to time, Seritage shall request disbursement from the Escrow Account funds sufficient to reimburse SHC for the Reimbursable Costs or the unexhausted balance of the Escrow Account; provided that SHC shall have delivered to Seritage all of the documentation required under the Loan Agreement contemplated by the Financing to obtain such disbursement.

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ARTICLE IV
DISPUTE RESOLUTION

4.1 Disputes. Except as otherwise specifically provided in any Ancillary Agreement (the terms of which, to the extent so
provided therein, shall govern the resolution of “Disputes” as that term or any similar term is defined in the Ancillary Agreements),
the procedures for discussion, negotiation and arbitration set forth in this Article IV shall apply to all disputes, controversies or claims
(whether arising in contract, tort or otherwise) that may arise out of, relate to, arise under or in connection with, this Agreement or
any Ancillary Agreement, or the transactions contemplated hereby or thereby (including, all actions taken in furtherance of the
transactions contemplated hereby or thereby on or prior to the Closing Date), between or among any member of the SHC Group and
any member of the Seritage Group (collectively, “Disputes”).

4.2 Dispute Resolution.

(a) On the Distribution Date, the parties shall form a committee (the “Dispute Resolution Committee”) that shall
attempt to resolve all Disputes. The Dispute Resolution Committee shall initially consist of four (4) representatives, two (2) of which
shall be designated by each party, and each of whom shall be a senior officer of SHC or Seritage, as applicable. Each party may
replace one or more of its representatives at any time upon written notice to the other party. A reasonable number of additional
representatives of each party who have been involved with matters surrounding the Dispute may also participate in Dispute
Resolution Committee meetings, subject to prior written notice being provided to the other party.

(b) If a Dispute arises, no party may take any formal legal action (such as seeking to terminate this Agreement,
seeking arbitration in accordance with Section 4.3, or instituting or seeking any judicial or other legal action, relief, or remedy with
respect to or arising out of this Agreement) unless such party has first (i) delivered a notice of dispute (the “Dispute Notice”) to all of
the members of the Dispute Resolution Committee and (ii) complied with the terms of this Article IV; provided, however, that the
foregoing shall not apply to any Disputes with respect to compliance with obligations relating to confidentiality or preservation of
privilege. The Dispute Resolution Committee shall meet no later than the tenth (10th) Business Day following delivery of the Dispute
Notice (the “Dispute Meeting”) and shall attempt to resolve each Dispute that is listed on the Dispute Notice. Each party shall cause
its designees on the Dispute Resolution Committee to negotiate in Good Faith to resolve all Disputes in a timely manner. If by the end
of the twentieth (20th) Business Day following the Dispute Meeting the Dispute Resolution Committee has not resolved all of the
Disputes, the parties shall proceed to arbitrate the unresolved Disputes in accordance with Section 4.3.

4.3 Arbitration of Unresolved Disputes.

(a) Except as provided in the Master Lease, in the event any Dispute is not finally resolved pursuant to Section 4.2
(a), and unless the parties have mutually agreed to mediate or use some other form of alternative dispute resolution in an attempt to
resolve the Dispute, then such Dispute may be submitted to be finally resolved by binding arbitration pursuant to the AAA
Commercial Arbitration Rules as then in effect.
Without waiving its rights to any remedy under this Agreement and without first complying with the provisions of Section 4.2(a), either party may seek any interim or provisional relief that is necessary to protect the rights or property of that party either (i) before any federal or state court located in Cook County, Illinois, (ii) before a special arbitrator, as provided for under the AAA Commercial Arbitration Rules, or (iii) before the arbitral tribunal established hereunder.

Unless otherwise agreed by the parties in writing, any Dispute to be decided in arbitration hereunder shall be decided (i) before a sole arbitrator if the amount in dispute, inclusive of all claims and counterclaims, totals less than $3 million; or (ii) by an arbitral tribunal of three (3) arbitrators if (A) the amount in dispute, inclusive of all claims and counterclaims, is equal to or greater than $3 million or (B) either party elects in writing to have such dispute decided by three (3) arbitrators when one of the parties believes, in its sole judgment, the issue could have significant precedential value; provided, however, that the party that makes a request referred to in the foregoing clause (B) shall solely bear the increased costs and expenses associated with a panel of three (3) arbitrators (i.e., the additional costs and expenses associated with the two (2) additional arbitrators).

If the arbitration shall be before an arbitral tribunal of three (3) arbitrators, the panel of three (3) arbitrators shall be chosen as follows: (i) upon the written demand of either party and within ten (10) Business Days from the date of receipt of such demand, each party shall name an arbitrator selected by such party in its sole and absolute discretion, and (ii) the two (2) party-appointed arbitrators shall thereafter, within twenty (20) Business Days from the date on which the second of the two (2) arbitrators was named, name a third, independent arbitrator who shall act as chairperson of the arbitral tribunal. In the event that either party fails to name an arbitrator within ten (10) Business Days from the date of receipt of a written demand to do so, then upon written application by either party, that arbitrator shall be appointed pursuant to the AAA Commercial Arbitration Rules. In the event that the two (2) party-appointed arbitrators fail to appoint the third, independent arbitrator within twenty (20) Business Days from the date on which the second of the two (2) arbitrators was named, then upon written application by either party, the third, independent arbitrator shall be appointed pursuant to AAA Commercial Arbitration Rules. If the arbitration shall be before a sole independent arbitrator, then the sole independent arbitrator shall be appointed by agreement of the parties within fifteen (15) Business Days from the date of receipt of written demand of either party. If the parties cannot agree to a sole independent arbitrator, then upon written application by either party, the sole independent arbitrator shall be appointed pursuant to AAA Commercial Arbitration Rules. If the parties have agreed upon a single arbitrator, then each party shall have a one-time right during such arbitration to remove such arbitrator for any reason (in which case the parties shall then re-select their arbitrator(s) as provided above).

All arbitrators selected pursuant to this Section 4.3 shall be practicing attorneys with at least five (5) years’ experience with the technology and/or Law applicable to the technology, services or transactions relevant to the Dispute.

The place of arbitration shall be Cook County, Illinois. Along with the arbitrator(s) appointed, the parties shall agree to a mutually convenient date and time to conduct the arbitration, but in no event shall the final hearing(s) be scheduled more than nine (9) months from submission of the Dispute to arbitration unless the parties agree otherwise in writing.
(g) The arbitral tribunal shall have the right to award, on an interim basis, or include in the final award, any relief that it deems proper in the circumstances, including money damages (with interest on unpaid amounts from the due date), injunctive relief (including specific performance) and only to the extent expressly permitted by Section 4.3(m), attorneys’ fees and costs; provided that the arbitral tribunal shall not award any relief not specifically requested by the parties and, in any event, shall not award any damages of the types prohibited under Section 10.1. Upon constitution of the arbitral tribunal following any grant of interim relief by a special arbitrator or court pursuant to Section 4.3(b), the tribunal may affirm or disaffirm that relief, and the parties shall seek modification or rescission of the order entered by the special arbitrator or court as necessary to accord with the tribunal’s decision.

(h) Neither party shall be bound by Rule 13 of the Federal Rules of Civil Procedure or any analogous Law or provision in the AAA Commercial Arbitration Rules governing deadlines for compulsory counterclaims; rather, each party may only bring a counterclaim within sixty (60) days after the initial submission of the Dispute to arbitration (subject to any applicable statutes of limitation).

(i) So long as either party has a timely claim to assert, the agreement to arbitrate Disputes set forth in this Section 4.3 shall continue in full force and effect subsequent to, and notwithstanding the completion, expiration or termination of, this Agreement.

(j) The interim or final award in an arbitration pursuant to this Section 4.3 shall be conclusive and binding upon the parties, and a party obtaining a final award may enter judgment upon such award in any court of competent jurisdiction.

(k) It is the intent of the parties that the agreement to arbitrate Disputes set forth in this Section 4.3 shall be interpreted and applied broadly such that all reasonable doubts as to arbitrability of a Dispute shall be decided in favor of arbitration.

(l) The parties agree that any Dispute submitted to arbitration shall be governed by, and construed and interpreted in accordance with the Laws of the State of Illinois, as provided in Section 10.11, and, except as otherwise provided in this Article IV or mutually agreed to in writing by the parties, the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., shall govern any arbitration between the parties pursuant to this Section 4.3.

(m) Subject to Section 4.3(c)(ii)(B), each party shall bear its own fees, costs and expenses and shall bear an equal share of the costs and expenses of the arbitration, including the fees, costs and expenses of the three (3) arbitrators; provided that the arbitral tribunal may award the prevailing party its reasonable fees and expenses (including attorneys’ fees), if it finds that there was no good-faith basis for the position taken by the other party in the arbitration.

4.4 Continuity of Service and Performance. Unless otherwise agreed in writing, the parties shall continue to provide undisputed services and honor all other undisputed commitments under this Agreement and each Ancillary Agreement during the course of dispute resolution pursuant to the provisions of this Article IV.
5.1 Release of Pre-Closing Date Claims.

(a) Except as provided in Section 5.1(c) and in this Section 5.1(a), effective as of the Closing Date, Seritage does hereby, for itself and each other member of the Seritage Group, their respective Affiliates, successors and assigns, and all Persons who at any time on or prior to the Closing Date have been stockholders, directors, officers, agents or employees of any member of the Seritage Group and their respective heirs, executors, administrators, successors and assigns (in each case, in their respective capacities as such), remise, release and forever discharge SHC and the other members of the SHC Group, their respective Affiliates, and all Persons who at any time on or prior to the Closing Date have been stockholders, directors, officers, agents or employees of any member of the SHC Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all Liabilities whatsoever, whether at law or in equity (including any right of contribution), whether arising under any contract or agreement, by operation of law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed at or before the Closing Date, including in connection with the transactions and all other activities to implement the Transaction except that, in no event shall the foregoing effect a release of the SHC Group or any other Person from any Liabilities for any willful or intentional misconduct or fraud.

(b) Except as provided in Section 5.1(c) and in this Section 5.1(b), effective as of the Closing Date, SHC does hereby, for itself and each other member of the SHC Group, their respective Affiliates, and all Persons who at any time on or prior to the Closing Date have been stockholders, directors, officers, agents or employees of any member of the SHC Group and their respective heirs, executors, administrators, successors and assigns (in each case, in their respective capacities as such), remise, release and forever discharge Seritage, the other members of the Seritage Group, their respective Affiliates, and all Persons who at any time on or prior to the Closing Date have been stockholders, directors, officers, agents or employees of any member of the Seritage Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all Liabilities whatsoever, whether at law or in equity (including any right of contribution), whether arising under any contract or agreement, by operation of law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed at or before the Closing Date, including in connection with the transactions and all other activities to implement the Transaction, except that, in no event shall the foregoing effect a release of the Seritage Group or any other Person from any Liabilities for any willful or intentional misconduct or fraud.

(c) Nothing contained in Section 5.1(a) or (b) shall impair any right of any Person to enforce this Agreement or any Ancillary Agreement, in each case in accordance with its terms. Nothing contained in Section 5.1(a) or (b) shall release any Person from any obligations set forth in Sections 3.4 through 3.6 or from:

(i) any Liability, contingent or otherwise, assumed, transferred, assigned or allocated to the Group of which such Person is a member in accordance with, or any other Liability of any member of any Group under, this Agreement or any Ancillary Agreement;
(ii) any Liability provided in or resulting from any other agreement or understanding that is entered into on or after the Closing Date between one party (or a member of such party’s Group), on the one hand, and the other party (or a member of such party’s Group), on the other hand;

(iii) any Liability that the parties may have with respect to indemnification or contribution pursuant to this Agreement or any Ancillary Agreement;

(iv) any Liability the release of which would result in the release of any Person not otherwise intended to be released pursuant to this Section 5.1; or

(v) any obligation existing prior to the Closing Date of any member of a Group to indemnify any Person who has been a director, officer, employee, agent or other representative of any member of the Group at any time on or prior to the Closing Date.

(d) Seritage shall not make, and shall not permit any other member of the Seritage Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against SHC or any other member of the SHC Group, or any other Person released pursuant to Section 5.1(a), with respect to any Liabilities released pursuant to Section 5.1(a), subject to the provisions of Section 5.1(c). SHC shall not make, and shall not permit any other member of the SHC Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification against Seritage or any other member of the Seritage Group, or any other Person released pursuant to Section 5.1(b), with respect to any Liabilities released pursuant to Section 5.1(b), subject to the provisions of Section 5.1(c).

(e) It is the intent of each of SHC and Seritage, by virtue of the provisions of this Section 5.1, to provide for a full and complete release and discharge of all Liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or to have failed to occur and all conditions existing or alleged to have existed on or before the Closing Date, between or among Seritage or any other member of the Seritage Group, on the one hand, and SHC or any other member of the Seritage Group, on the other hand (including any contractual agreements or arrangements existing or alleged to exist between or among any such members on or before the Closing Date), except as otherwise set forth in this Section 5.1. At any time, at the request of the other party, each party shall, no later than the fifth (5th) Business Day following the receipt of such request, cause each member of its respective Group to execute and deliver releases reflecting the provisions hereof.

5.2 **Indemnification by Seritage.** Except as provided in Section 5.1, following the Closing Date and subject to Section 10.1 and without duplication of any indemnification in any Ancillary Agreement, Seritage shall, and shall cause the members of the Seritage Group (other
than any such member which is prohibited from providing such indemnity pursuant to the terms of any financing incurred by Seritage in connection with the transactions contemplated herein) to, indemnify, defend and hold harmless each member of the SHC Group and its Affiliates, and each of their respective current or former directors, officers, employees, agents, and each of the heirs, executors, administrators, successors and assigns of any of the foregoing (each, a “SHC Indemnitee”), from and against all Liabilities actually incurred or suffered by the SHC Indemnitee relating to, arising out of or resulting from one or more of the following:

(a) each breach by Seritage or any member of the Seritage Group of this Agreement or any Ancillary Agreement, including any representation, warranty or covenant set forth therein;

(b) other than those Liabilities indemnified pursuant to Section 5.3, any Liability whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the Land, Improvements or Intangibles, including, the physical, environmental and structural condition of any Transferred Property or any Law or regulation applicable thereto, including any claim or matter (regardless of when it first appeared) relating to or arising from (i) any non-compliance with Environmental Law or with Governmental Approvals required by Environmental Law, including the presence of any environmental problems, (ii) the use, spilling, leaking, emitting, injecting, escaping, abandoning, dumping, presence, storage, release, threatened release, discharge, migration of or exposure to Hazardous Substances on, in, under, from or around any Land or Improvements regardless of when such Hazardous Substances were first introduced in, on or about such Land, Improvements or Intangibles (any matters described in (i) and (ii) collectively, “Environmental Problems”), (iii) any patent or latent defects or deficiencies with respect to any Land, Improvements or Intangibles, (iv) any REAs or any other instruments or agreements (A) pertaining to the Land, Improvements or Intangibles or (B) otherwise assigned to or assumed by a member of the Seritage Growth under this Agreement or any Ancillary Agreement, and (v) any and all matters related to any Land, Improvements or Intangibles or any portion thereof, including the condition and/or operation of any Land, Improvements or Intangibles and each part thereof in each case provided in this Section 5.2(b), solely, to the extent arising out of or resulting from any action or failure to act by a member of the Seritage Group (or its Related Users (as such term is defined in the Master Lease), vendors, invitees and tenants that are not members of the SHC Group) following the Closing Date;

(c) any direct or indirect guarantee, indemnification or contribution obligation, surety bond or other credit support agreement, arrangement, commitment or understanding for the benefit of any member of the Seritage Group by any member of the SHC Group that survives the Closing Date, other than with respect to or in connection with this Agreement or any Ancillary Agreements; and

(d) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all Information contained in the Form S-11 (as amended or supplemented), other than with respect to the matters described in Section 5.3(b).
5.3 Indemnification by SHC. Following the Closing Date and subject to Section 10.1 and without duplication of any indemnification in any Ancillary Agreement, SHC shall, and shall cause the members of the SHC Group to, indemnify, defend and hold harmless each member of the Seritage Group and its Affiliates, and each of their respective current or former directors, officers, employees, agents, and each of the heirs, executors, administrators, successors and assigns of any of the foregoing (each, a “Seritage Indemnitee”), from and against any and all Liabilities arising out of or resulting from any of the following:

(a) each breach by SHC or any member of the SHC Group of this Agreement or any Ancillary Agreement, including any representation, warranty or covenant set forth therein;

(b) any Retail Operations Claims;

(c) any Environmental Problems to the extent they (i) exist as of the Closing Date and/or (ii) are caused by Tenant or any of Tenant’s Related Users (as such term is defined in the Master Lease), and in any case become known or disclosed at any time during the Term of the Master Lease or after the expiration or termination of the Master Lease; and

(d) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to statements made explicitly in SHC’s or another member of the SHC Group’s name in the Form S-11 (as amended or supplemented).

5.4 Adjustments to Indemnification Obligations.

(a) The parties intend that each Liability subject to indemnification, contribution or reimbursement pursuant hereto shall be net of (i) all Insurance Proceeds, and (ii) all recoveries, judgments, settlements, contribution, indemnities and other amounts received (including by way of set-off) from all Third Parties, in each case that actually reduce the amount of, or are paid to the applicable indemnitee in respect of, such Liability (“Third-Party Proceeds”). Accordingly, the amount that a party (each, an “Indemnifying Party”) is required to pay to each Person entitled to indemnification hereunder (each an “Indemnitee”) shall be reduced by all Insurance Proceeds and Third-Party Proceeds received by or on behalf of the Indemnitee in respect of the relevant Liability, provided, however, that all amounts described in Section 5.2 or 5.3 that are incurred by an Indemnitee shall be paid promptly by the Indemnifying Party and shall not be delayed pending any determination as to the availability of Insurance Proceeds or Third-Party Proceeds; provided, further, that upon such payment by or on behalf of an Indemnifying Party to an Indemnitee in connection with a Third-Party Claim, to the extent permitted by applicable Laws such Indemnitee shall assign its rights to recover all Insurance Proceeds and Third-Party Proceeds to the Indemnifying Party and such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnitee as to all events and circumstances in respect of which such Indemnitee may have with respect to all rights, defenses, and claims relating to such Third-Party Claim. If, notwithstanding the second proviso in the preceding sentence, an Indemnitee receives a payment required to be made under this Section 5.4(a) (an “Indemnity Payment”) from an Indemnifying Party in respect of a Liability and subsequently receives Insurance Proceeds or Third-Party Proceeds in respect of such Liability, then the Indemnitee shall pay to the Indemnifying Party an amount equal to the excess of the amount paid by the
Indemnifying Party over the amount that would have been due if such Insurance Proceeds and Third-Party Proceeds had been received before the Indemnity Payment was made. Each member of the SHC Group and each member of the Seritage Group shall use commercially reasonable efforts to seek to collect or recover all Insurance Proceeds and all Third-Party Proceeds to which such Person is entitled in respect of a Liability for which such Person seeks indemnification pursuant to this Article V; provided, however, that such Person’s inability to collect or recover any such Insurance Proceeds or Third-Party Proceeds shall not limit the Indemnifying Party’s obligations hereunder.

(b) An insurer that would otherwise be obligated to pay a claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto, it being expressly understood and agreed that no insurer or other third party shall be entitled to a “windfall” (i.e., a benefit it would not have been entitled to receive in the absence of the indemnification provisions hereof) by virtue of the indemnification provisions hereof.

5.5 Contribution. If the indemnification provided for in this Article V is unavailable to, or insufficient to hold harmless, an Indemnitee in respect of a Liability for which indemnification is provided for herein then each Indemnifying Party shall, in lieu of indemnifying such Indemnitee, contribute to the amount paid or payable by such Indemnitee as a result of such Liability, in such proportion as shall be sufficient to place the Indemnitee in the same position as if such Indemnitee were indemnified hereunder. If the contribution provided for in the previous sentence shall, for any reason, be unavailable or insufficient to put the Indemnitee in the same position as if it were indemnified under Section 5.2 or 5.3, as the case may be, then the Indemnifying Party shall contribute to the amount paid or payable by such Indemnitee as a result of such Liability, in such proportion as shall be appropriate to reflect the relative benefits received by and the relative fault of the Indemnifying Party on the one hand and the Indemnitee on the other hand with respect to the matter giving rise to the Liability.

5.6 Procedures for Indemnification of Direct Claims. Each claim for indemnification made directly by the Indemnitee against the Indemnifying Party that does not result from a Third-Party Claim shall be asserted by written notice from the Indemnitee to the Indemnifying Party specifically claiming indemnification hereunder, which notice shall state the amount claimed, if known, and method of computation thereof, and shall contain a reference to the provisions of this Agreement or the applicable Ancillary Agreement in respect of which such right of indemnification is claimed by such Indemnitee. Such Indemnifying Party shall have a period of thirty (30) days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such thirty (30)-day period, such Indemnifying Party shall be deemed to have accepted responsibility for the indemnification sought and shall have no further right to contest the validity of such claim. If such Indemnifying Party does respond within such thirty (30) day period and rejects such claim in whole or in part, such Indemnitee shall be free to pursue resolution as provided in Article IV. Subject to Article VII, the Indemnitee shall make available to the Indemnifying Party all witnesses, all pertinent records, all materials, and all Information in the Indemnitee’s possession or under its control reasonably requested by the Indemnifying Party relating to a claim made pursuant to this Section 5.6.

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5.7 Procedures for Indemnification of Third-Party Claims.

(a) If an Indemnitee shall receive notice of the assertion of a claim, or commencement of an Action, by a Third Party against it (each, a “Third-Party Claim”) that may give rise to a claim for indemnification pursuant to this Agreement, within thirty (30) days of the receipt of such notice, the Indemnitee shall give the Indemnifying Party notice of such Third-Party Claim, which notice shall describe such Third-Party Claim in reasonable detail; provided, however, that the failure to provide such notice as provided in this Section 5.7 shall not release the Indemnifying Party from any of its obligations under this Section 5.7(a), except to the extent such Indemnifying Party is actually prejudiced by such failure to give notice.

(b) Each Indemnifying Party shall be entitled (but shall not be required) to assume and control the defense of each Third-Party Claim at its expense and through counsel of its choice that is reasonably acceptable to the Indemnitee if it gives notice of its intention to do so to the Indemnitee within thirty (30) days of the receipt of notice from the Indemnitee in accordance with Section 5.7(a); provided, however, that the Indemnifying Party shall not, without the prior written consent of the Indemnitee, settle, compromise or offer to settle or compromise such Third-Party Claim; provided, further, that such Indemnitee shall not withhold such consent if the settlement or compromise (i) contains no finding or admission of a violation of applicable Law or a violation of the rights of a Person by the Indemnitee or any of its Affiliates, (ii) contains no finding or admission that would have an adverse effect on the Indemnitee or any of its Affiliates as determined by the Indemnitee in Good Faith, (iii) involves only monetary relief which the Indemnifying Party has agreed to pay and does not contain an injunction or other non-monetary relief affecting the Indemnitee or any of its Affiliates, and (iv) includes a full, irrevocable unconditional release of the Indemnitee from such Third-Party Claim.

(c) If the Indemnifying Party elects to undertake the defense against a Third-Party Claim as provided by Section 5.7(b), the Indemnitee shall cooperate with the Indemnifying Party with respect to such defense and shall have the right, but not the obligation, to participate in such defense and to employ separate counsel of its choosing at its own expense; provided, however, that such expense shall be the responsibility of the Indemnifying Party if (i) the Indemnifying Party and the Indemnitee are both named parties to the proceedings and the Indemnitee shall have reasonably concluded that representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interest (in which case the Indemnifying Party shall not be responsible for expenses in respect of more than one counsel for the Indemnitee in any single jurisdiction), or (ii) the Indemnitee assumes the defense of the Third-Party Claim after the Indemnifying Party has failed, in the reasonable judgment of the Indemnitee, to diligently defend the Third-Party Claim after having elected to assume its defense.

(d) If the Indemnifying Party (i) does not elect to assume the defense in accordance with Section 5.7(b), or (ii) after assuming the defense of a Third-Party Claim, fails to take reasonable steps necessary to defend diligently such Third-Party Claim within ten (10) days after receiving written notice from the Indemnitee to the effect that the Indemnifying Party has so failed, the Indemnitee shall have the right but not the obligation to assume its own defense; provided, however, that the Indemnitee shall not settle or compromise such Third-Party Claim without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld. For the avoidance of doubt, the Indemnitee’s right to indemnification for a Third-Party Claim shall not be adversely affected by assuming the defense of such Third-Party Claim.
(e) Subject to Article VII, the Indemnitee and the Indemnifying Party shall reasonably cooperate in the defense of a Third-Party Claim including by (i) making available all witnesses, all pertinent records, all materials, and all Information in each other’s possession or under each other’s control relating to the Third-Party Claim, (ii) assisting with litigation defense strategy, investigations, discovery preparation, trial preparation, and similar activities with respect to the Third-Party Claim, and (iii) using commercially reasonable efforts to avoid taking any action, or omitting to take any action, that would materially and adversely prejudice each other’s defense of, or actual or potential rights of recovery with respect to, the Third-Party Claim. The Indemnifying Party shall have no obligation in accordance with this Section 5.7(e) to an Indemnitee for any Third-Party Claim to the extent such Indemnitee fails to comply with this Section 5.7(e) with respect to the Third-Party Claim and such failure shall have materially and adversely prejudiced the Indemnifying Party.

5.8 Remedies Cumulative. The remedies provided in this Article V shall be cumulative and, subject to the provisions of 5.7(e), shall not preclude assertion by any Indemnitee of any other rights or the seeking of any and all other remedies against any Indemnifying Party.

5.9 Survival of Indemnities. The rights and obligations of each of SHC and Seritage and their respective Indemnified Parties under this Article V shall survive (a) the sale or other transfer by any member of either party’s Group of any assets or businesses or the assignment by it of any Liabilities and (b) any merger, consolidation, business combination, sale of all or substantially all of its assets, restructuring, recapitalization, reorganization or similar transaction involving any member of either party’s Group, subject to the provisions of Section 10.9.

5.10 No Impairment of Insurance Claims. Without limiting Section 6.2(b), if any Liabilities are or would otherwise be covered by insurance as of the Closing Date absent this Agreement, no provision of this Article 5 or any other provision of this Agreement shall be deemed to prejudice, impair, reduce, offset, negate or otherwise adversely affect such insurance coverage in effect immediately prior to the Closing; and any Indemnifying Party shall succeed to and be entitled to enforce and enjoy all rights of the covered party with respect to such insurance coverage, and such covered party hereby assigns all such coverage and rights to the Indemnifying Party.

5.11 Right of Offset. The members of each of the Seritage Group and the SHC Group shall each be entitled to offset any payments required to be made under this Agreement against any amounts owed to the SHC Group or the Seritage Group, as applicable, under this Agreement. Notwithstanding the foregoing, the parties expressly agree that no amount payable hereunder shall be offset against an amount owing under the Master Lease.

5.12 Treatment of Certain Payments. All indemnification payments made pursuant to this Agreement and all payments made pursuant to Section 3.5 shall be treated as adjustments to the Purchase Price for all tax purposes except as otherwise required pursuant to a “determination” within the meaning of Section 1313(a) of the Internal Revenue Code of 1986, as amended (or any similar provision of state, local or foreign law).
ARTICLE VI
INSURANCE MATTERS

6.1 Insurance Matters.

(a) If not obtained prior to the Closing Date, then within 60 days after the Closing Date, Seritage shall obtain appropriate insurance policies for itself and the Seritage Group covering those risks that, prior to the Closing Date, were jointly insured with the members of the SHC Group. In no event shall SHC, any other member of the SHC Group or any SHC Indemnitee have any Liability or obligation whatsoever to any member of the Seritage Group in the event that any insurance policy or other contract or policy of insurance shall be terminated or otherwise cease to be in effect for any reason, shall be unavailable or inadequate to cover any Liability of any member of the Seritage Group for any reason whatsoever or shall not be renewed or extended beyond the current expiration date. Seritage does hereby, for itself and each other member of the Seritage Group, agree that no member of the SHC Group or any SHC Indemnitee shall have any liability whatsoever as a result of the insurance policies and practices of SHC and its Affiliates as in effect at any time prior to the Closing Date, including as a result of the level or scope of any such insurance, the creditworthiness of any insurance carrier, the terms and conditions of any policy, the adequacy or timeliness of any notice to any insurance carrier with respect to any claim or potential claim or otherwise, any professional or other advice with respect to the initial policies for Seritage, any handling of claims for Seritage, or any oversight or advice with respect to risk management or other insurance-related issues; provided that this Section 6.1(a) shall not negate SHC’s agreement under Section 6.1(b).

(b) SHC agrees to use its commercially reasonable efforts to cause (and, without limitation of the foregoing, to the extent within its control as to self-insurance programs, shall cause) the interests and rights of Seritage and the other members of the Seritage Group as of the Closing Date as insureds or beneficiaries or in any other capacity under occurrence-based insurance policies and programs (and under claims-made policies and programs to the extent a claim has been submitted prior to the Closing Date) of SHC or any other member of the SHC Group in respect of the period prior to the Closing Date to survive the Closing Date for the period for which such interests and rights would have survived without regard to the transactions contemplated hereby to the extent permitted by such policies; and any proceeds received by SHC or any other member of the SHC Group after the Closing Date under such policies and programs in respect of Seritage and the other members of the Seritage Group (other than in respect of amounts previously paid to Seritage and the other members of the Seritage Group) shall be for the benefit of Seritage and such other members of the Seritage Group; provided, that the interests and rights of Seritage and the other members of the Seritage Group shall be subject to the terms and conditions of such insurance policies and programs, including any limits on coverage or scope, any deductibles and other fees and expenses and SHC’s allocation of the cost of claims to its business units, for this purpose including Seritage, according to its allocation program in effect as of the Closing Date, and shall be subject to the following additional conditions:

(i) Seritage shall report, on behalf of itself and the other members of the Seritage Group, as promptly as practicable, claims to SHC’s Vice President for Risk Management and the Deputy General Counsel of Litigation (or such other individuals as SHC may designate in writing) and otherwise in accordance with SHC’s claim reporting procedures in effect immediately prior to the Closing Date (or in accordance with any modifications to such procedures after the Closing Date communicated by SHC to Seritage in writing);
(ii) Seritage and the other members of the Seritage Group shall indemnify, hold harmless and reimburse SHC and the other members of the SHC Group for any premiums, retrospectively rated premiums, defense costs, settlements, judgments, legal fees, indemnity payments, deductibles, retentions, claim expenses and claim handling fees or other charges allocated to the members of the Seritage Group pursuant to the allocation program maintained by SHC in effect as of the Closing Date, whether such underlying claims are made by a member of the Seritage Group, its employees or a Third Party;

(iii) Seritage shall, and shall cause the other members of the Seritage Group to, cooperate with and assist SHC and the other members of the SHC Group and share such Information as is reasonably necessary in order to permit SHC and the other members of the SHC Group to manage and conduct the insurance matters contemplated by this Article VI, including, without limitation, the production of witnesses in accordance with Section 7.4; and

(iv) Seritage shall exclusively bear (and neither SHC nor any other member of the SHC Group shall have any obligation to repay or reimburse Seritage or any other member of the Seritage Group for) and shall be liable for all uninsured, uncovered, unavailable or uncollectible amounts of all such claims made by Seritage or any other member of the Seritage Group under the policies as provided for in this Section 6.1(b). In the event an insurance policy aggregate is exhausted, or believed likely to be exhausted, due to noticed claims, the members of the Seritage Group, on the one hand, and the members of the SHC Group, on the other hand, shall be responsible for their pro rata portion of the reinstatement premium, if any, based upon the losses of such Group submitted to SHC’s insurance carrier(s) (including any submissions prior to the Closing Date). To the extent that either Group is allocated more than its pro rata portion of such premium due to the timing of losses submitted to SHC’s insurance carrier(s), the other party shall promptly pay the first party an amount so that each Group has been properly allocated its pro rata portion of the reinstatement premium. Subject to the following sentence, SHC may elect not to reinstate the policy aggregate. In the event that SHC elects not to reinstate the policy aggregate, it shall provide prompt written notice to Seritage, and Seritage may direct SHC in writing to, and SHC shall, in such case, reinstate the policy aggregate in which case the policy aggregate shall accrue solely to Seritage’s benefit; provided, that Seritage shall be responsible for all reinstatement premiums and other costs associated with such reinstatement; provided, further, that SHC shall have the right to pay its pro rata portion of the reinstatement premium and receive the pro rata benefit of the policy aggregate.
In the event that any member of the Seritage Group incurs any losses, damages or Liability prior to or in respect of the period prior to the Closing Date for which such member of the Seritage Group is entitled to coverage under Seritage’s third-party insurance policies, the same process pursuant to this Section 6.1(b) shall apply, substituting “SHC” for “Seritage” and “Seritage” for “SHC.”

(c) Except as provided in Section 6.1(b), from and after the Closing Date, neither Seritage nor any other member of the Seritage Group shall have any rights to or under any of the insurance policies of SHC or any other member of the SHC Group.

(d) Neither Seritage nor any other member of the Seritage Group, in connection with making a claim under any insurance policy of SHC or any other member of the SHC Group pursuant to this Section 6.1, shall take any action that would be reasonably likely to (i) have an adverse impact on the then-current relationship between SHC or any other member of the SHC Group, on the one hand, and the applicable insurance company, on the other hand, (ii) result in the applicable insurance company terminating or reducing coverage, or increasing the amount of any premium owed by SHC or any other member of the SHC Group under the applicable insurance policy or (iii) otherwise compromise, jeopardize or interfere with the rights of SHC or any other member of the SHC Group under the applicable insurance policy.

(e) Subject to Section 6.1(b), and subject to the provisions of any Ancillary Agreements, SHC and the other members of the SHC Group shall retain the exclusive right to control their insurance policies and programs, including the right to defend, exhaust, settle, release, commute, buy-back or otherwise resolve disputes with respect to any of their insurance policies and programs and to amend, modify or waive any rights under any such insurance policies and programs, notwithstanding whether any such policies or programs apply to any Liabilities Seritage and/or claims Seritage has made or could make in the future, and no member of the Seritage Group shall, without the prior written consent of SHC, erode, exhaust, settle, release, commute, buy-back or otherwise resolve disputes with insurers of SHC or other members of the SHC Group with respect to any of the insurance policies and programs of the members of the SHC Group, or amend, modify or waive any rights under any such insurance policies and programs. Neither SHC nor any other member of the SHC Group shall have any obligation to secure extended reporting for any claims under any of the insurance policies and programs of SHC or other members of the SHC Group for any acts or omissions by any member of the Seritage Group incurred prior to the Closing Date.

(f) This Agreement is not intended as an attempted assignment of any policy of insurance or as a contract of insurance and shall not be construed to waive any right or remedy of any member of the Seritage Group in respect of any insurance policy or any other contract or policy of insurance.

(g) Nothing in this Agreement shall be deemed to obligate SHC or any other member of the SHC Group to obtain or maintain credit insurance coverage to cover any Liabilities of members of the Seritage Group that may at any time arise under any insurance coverage for any member of the Seritage Group.

(h) Nothing in this Agreement shall be deemed to restrict any member of the Seritage Group from acquiring at its own expense any insurance policy in respect of any Liabilities or covering any period.
6.2 Miscellaneous.

(a) Each of the parties intends by this Agreement that a Third-Party, including a third-party insurer or reinsurer, or other Third Party that, in the absence of the Agreement would otherwise be obligated to pay any claim or satisfy any indemnity or other obligation, shall not be relieved of the responsibility with respect thereto and shall not be entitled to a “windfall” (i.e., avoidance of the obligation that such Person would have in the absence of this Agreement). To the extent that any such Person would receive such a windfall, SHC and Seritage shall negotiate in Good Faith concerning an amendment of this Agreement to avoid such a windfall.

(b) This Article 6 shall in all respects be subject to Section 5.10.

ARTICLE VII
CONFIDENTIALITY; EXCHANGE OF INFORMATION

7.1 Agreement for Exchange of Information; Archives.

(a) Except in the case of an Action or threatened Action by either party hereto or any Person in such party’s Group against the other party hereto or any Person in its Group, and subject to Section 7.1(b), each party shall provide, or cause to be provided, to the other party or any member of its Group, at any time before or after the Closing, as soon as reasonably practicable after written request therefor, all Information in the possession or under the control of its Group (and access to the Personnel of its Group during normal business hours and upon reasonable notice in connection with the discussion and explanation of such Information), which any member of the other party’s Group reasonably requests and is necessary or reasonably advisable (i) to comply with reporting, disclosure, filing or other requirements under applicable Law or imposed by any national securities exchange or any Governmental Authority having jurisdiction over such Person, (ii) for use in any other judicial, regulatory, administrative or other proceeding or in order to satisfy audit, accounting, regulatory, litigation or other similar requirements, (iii) to comply with its obligations under this Agreement or any Ancillary Agreement or (iv) in connection with owning, developing, selling, transferring, leasing, managing and financing any of the Transferred Properties and/or the Transferred Entities. The receiving party shall use any Information received pursuant to this Section 7.1(a) solely to the extent reasonably necessary to satisfy the applicable obligations or requirements described in clause (i), (ii), (iii) or (iv) of the immediately preceding sentence.

(b) Subject to the last sentence of this Section 7.1(b), in the event that either SHC or Seritage, as applicable, reasonably determines that the exchange of any Information pursuant to Section 7.1(a) could be competitively sensitive, violate any applicable Law, agreement or policy (including SHC’s or Seritage’s written privacy policies) or waive or jeopardize any attorney-client privilege or attorney work product protection, such party shall not be required to provide access to or furnish such Information to the other party; provided, however, that the parties shall take all commercially reasonable measures to permit compliance with
Section 7.1(a) in a manner that avoids any such harm or consequence (as reasonably determined by the Group providing the Information). Both SHC and Seritage intend that any provision of access to or the furnishing of Information pursuant to this Section 7.1 that would otherwise be within the ambit of any legal privilege shall not operate as waiver of such privilege.

(c) Each party shall, and shall cause the members of its Group to, use and maintain the Information provided by the other party or member of such other party’s Group in accordance with all applicable privacy and data protection Laws, and shall implement and maintain at all times appropriate measures to protect any personal data against unauthorized or unlawful processing and accidental loss, destruction, damage, alteration and disclosure.

(d) The party requesting Information shall reimburse the other party for the reasonable out-of-pocket costs and expenses, if any, in complying with a request for Information pursuant to this Article VII.

(e) The parties hereto agree that from and after the Closing Date, the Seritage Information shall be owned by Seritage and shall not be owned by any member of the SHC Group for purposes of this Agreement (including without limitation this Article VII) or otherwise. Notwithstanding the foregoing, nothing in this Agreement shall prohibit any member of the SHC Group from using retained Seritage Information as is necessary or reasonably advisable (i) to comply with reporting, disclosure, filing or other requirements under applicable Law or imposed by any national securities exchange or any Governmental Authority having jurisdiction over such Person, (ii) for use in any other judicial, regulatory, administrative or other proceeding or in order to satisfy audit, accounting, regulatory, litigation or other similar requirements or (iii) to comply with its obligations under this Agreement or any Ancillary Agreement.

7.2 Ownership of Information. Except as otherwise provided in this Agreement or an Ancillary Agreement, all Information owned by, and provided by or on behalf of, a Disclosing Party to a Receiving Party shall remain the property of the Disclosing Party and nothing herein shall be construed as granting or conferring rights of license or otherwise in any such Information to the Receiving Party or any other Person.

7.3 Record Retention. To facilitate the possible exchange of Information pursuant to this Article VII and other provisions of this Agreement and the Ancillary Agreements, except as otherwise expressly provided in any Ancillary Agreement, (i) each party shall, and shall cause members of its Group to, use reasonable best efforts to retain all Information (including, with respect to the SHC Group, all Seritage Information) in accordance with their respective record retention policies and procedures as in effect as of the Closing Date and (ii) no party shall destroy, or permit any member of its Group to destroy, any Information which any member of the other Group may have the right to obtain pursuant to this Agreement prior to the later of the period in the applicable retention policy or the fifth (5th) anniversary of the Closing Date without first notifying the other party of the proposed destruction and giving the other party the opportunity to take possession of such Information prior to such destruction.
7.4 Production of Witnesses; Records; Cooperation.

(a) After the Closing Date and subject to Section 7.1(b), but only with respect to a Third-Party Claim, each of SHC and Seritage shall, and shall cause the other members of its Group to, use commercially reasonable efforts to, make available, upon written request, their officers, employees, other Personnel and agents (whether as witnesses or otherwise) and any books, records or other documents within their control or that they otherwise have the ability to make available, to the extent that each such Person (giving consideration to business demands of such officers, employees, other Personnel and agents) or books, records or other documents may reasonably be required in connection with any Action or threatened or contemplated Action (including preparation for such Action) in which SHC or Seritage, as applicable, may from time to time be involved, regardless of whether such Action is a matter with respect to which indemnification may be sought hereunder. The requesting party shall bear all reasonable out-of-pocket costs and expenses in connection therewith.

(b) SHC and Seritage shall use their commercially reasonable efforts to cooperate and consult to the extent reasonably necessary with respect to any Actions or threatened or contemplated Actions involving each other’s Group, other than an Action by one or more members of a Group against one or more members of the other Group.

(c) The obligation of SHC and Seritage to make available directors, officers, employees and other Personnel and agents or provide witnesses and experts pursuant to this Section 7.4 is intended to be interpreted in a manner so as to facilitate cooperation and shall include the obligation to make available Personnel and other officers without regard to whether such individual or the employer of such individual could assert a possible business conflict (subject to the exception set forth in the first sentence of Section 7.4(a)). Without limiting the foregoing, each of SHC and Seritage agrees that neither it nor any Person or Persons in its respective Group shall take any adverse action against any Person of its Group based on such Person’s provision of assistance or Information to the other Group pursuant to this Section 7.4.

(d) Upon the reasonable request of a party, the other party shall, and shall cause all other relevant members of its Group to, enter into a mutually acceptable common interest agreement so as to maintain to the extent practicable any applicable attorney-client privilege or work product immunity of any member of either Group.

7.5 Confidential Information.

(a) Subject to Section 7.6 and the Ancillary Agreements, the Receiving Party, its Affiliates and its and their Personnel shall use Information provided by the Disclosing Party only for the uses permitted under this Agreement and, except as expressly permitted by this Agreement and subject to the first sentence of Section 7.5(b), shall not disclose any such Information.

(b) The Receiving Party shall (i) restrict disclosure of Information provided by the Disclosing Party to its and its Affiliates’ Personnel, in the case of those Personnel, with a need to know such Information for purposes of performing the Receiving Party’s responsibilities or exercising the Receiving Party’s rights under this Agreement, (ii) advise those Personnel of the
obligation not to disclose such Information or use such Information in a manner prohibited by this Agreement, (iii) copy such Information only as necessary for those Personnel who need it for performing the Receiving Party’s responsibilities under this Agreement and ensure that confidentiality is maintained in the copying process and (iv) protect such Information, and require those Personnel to protect it, using the same degree of care as the Receiving Party uses with its own Information, but no less than reasonable care. The Receiving Party shall be liable to the Disclosing Party for any unauthorized disclosure or use of such Information by any of its and its Affiliates current or former Personnel in violation of this Section 7.5.

(c) Without limiting the foregoing, when any Information provided by the Disclosing Party is no longer needed for the purposes contemplated by this Agreement, the Receiving Party shall, promptly after request of the Disclosing Party, either return such Information in tangible form (including all copies thereof and all notes, extracts or summaries based thereon) or certify to the Disclosing Party that it has destroyed such Information (other than electronic copies residing in automatic backup systems that are not generally available to the Receiving Party’s Personnel or copies retained to the extent required by applicable Law, regulation or a bona fide document retention policy).

(d) The obligations under this Section 7.5 do not apply to any Information that the Receiving Party can demonstrate (i) was known to the Receiving Party prior to the disclosure thereof to the Receiving Party from the Disclosing Party without any obligation owed to the Disclosing Party or its Affiliates to hold it in confidence, (ii) is disclosed to third parties by the Disclosing Party or its Affiliates without an obligation of confidentiality to the Disclosing Party or its Affiliate, as applicable, (iii) is or becomes available to any member of the public other than by disclosure by the Receiving Party, its Affiliates or its or their Personnel in violation of this Section 7.5, (iv) was or is independently developed by the Receiving Party or its Affiliates or Personnel without use of Information provided by the Disclosing Party, (v) legal counsel’s advice is that such Information is required to be disclosed by applicable Law or the rules and regulations of any applicable Governmental Authority or any stock exchange on which such party’s securities are listed and the Receiving Party has complied with Section 7.6, or (vi) legal counsel’s advice is that such Information is required to be disclosed in response to a valid subpoena or order of a court or other Governmental Authority of competent jurisdiction or other valid legal process and the Receiving Party has complied with Section 7.6. Further, the obligations under this Section 7.5 do not apply to Information delivered pursuant to the Master Lease, confidentiality with respect to which shall be governed by the Master Lease.

7.6 Protective Arrangements. If the Receiving Party determines that the exceptions under Section 7.5(d)(v) or 7.5(d)(vi) apply, the Receiving Party shall give the Disclosing Party, to the extent legally permitted and reasonably practicable, prompt prior notice of such disclosure and an opportunity to contest such disclosure and shall use commercially reasonable efforts to cooperate, at the expense of the Receiving Party, in seeking any reasonable protective arrangements requested by the Disclosing Party. In the event that such appropriate protective order or other remedy is not obtained, the Receiving Party may furnish, or cause to be furnished, only that portion of such Information that the Receiving Party is advised by legal counsel is legally required to be disclosed and shall take commercially reasonable steps to ensure that confidential treatment is accorded such Information.
7.7 Other Agreements Providing for Exchange of Information. The rights and obligations granted or created under this Article VII are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange, retention or confidential treatment of Information set forth in any Ancillary Agreement.

7.8 Privileged Matters. To allocate the interests of each party in the Information as to which either party or any member of their respective Groups is entitled to assert a privilege in connection with professional services that have been provided prior to the Closing Date for the collective benefit of each of the members of the SHC Group and the members of the Seritage Group, whether or not such a privilege exists or the existence of which is in dispute (collectively, “Common Privileges”), the parties agree as follows:

(a) SHC shall be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with privileged Information which does not relate primarily to the Transferred Properties, whether or not the privileged Information is in the possession of or under the control of members of the SHC Group or members of the Seritage Group. SHC also shall be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with privileged Information which relates to any pending or future Action that is, or which SHC reasonably anticipates may become, a Liability of SHC or a member of the SHC Group and that is not also, or that SHC reasonably anticipates will not become, a Liability of Seritage or any member of the Seritage Group, whether or not the privileged Information is in the possession of or under the control of members of the SHC Group or members of the Seritage Group.

(b) Subject to Section 7.8(c), Seritage shall be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with privileged Information which relates primarily to the Transferred Properties, whether or not the privileged Information is in the possession of or under the control of members of the SHC Group or members of the Seritage Group. Seritage also shall be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with privileged Information which relates to any pending or future Action that is, or which Seritage reasonably anticipates may become, a Liability of Seritage or a member of the Seritage Group and that is not also, or that Seritage reasonably anticipates will not become, a Liability of SHC or any member of the SHC Group, whether or not the privileged Information is in the possession of or under the control of members of the SHC Group or members of the Seritage Group.

(c) SHC shall be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with privileged Information which relates to the Transaction or the other transactions contemplated thereby, it being understood and agreed that the expectation and intention as between SHC and Seritage with respect to any communications between advisors to SHC and Seritage occurring up to and including the Closing Date in connection with the Transaction and such other transactions are that the privilege and the expectation of client confidence belong exclusively to SHC.

(d) Subject to the restrictions in this Section 7.8, SHC and Seritage agree that they shall have equal right to assert all Common Privileges not allocated pursuant to the terms of Section 7.8(a), 7.8(b) or 7.8(c) (each, a “Shared Privilege”) with respect to Information as to which the a member of either party’s Group may assert a privilege. Each party shall ensure that no member of its Group may waive any Shared Privilege, without the written consent of the other party which shall not be unreasonably withheld or delayed.
(e) In the event of an Action between one or more members of the Seritage Group, on the one hand, and one or more members of the SHC Group, on the other hand, each such Person shall have the right to use any Information that may be subject to a Shared Privilege, without obtaining the consent of the other party, it being understood and agreed that the use of Information with respect to the Action or other dispute between members of the Seritage Group, on the one hand, and members of the SHC Group, on the other hand, shall not operate as or be used by either party as a basis for asserting a waiver of such Shared Privilege with respect to Third Parties.

(f) If a dispute arises between any member of the Seritage Group, on the one hand, and any member of the SHC Group, on the other hand, regarding whether a Shared Privilege should be waived to protect or advance the interest of either party, each party agrees that it shall negotiate in Good Faith and endeavor to minimize any prejudice to the rights of the other party, and shall not unreasonably withhold consent to any request for waiver by the other party.

(g) Upon receipt by either party or by any member of its Group of any subpoena, discovery or other request that arguably calls for the production or disclosure of Information subject to a Shared Privilege or as to which the other party or a member of such other party’s Group has the sole right hereunder to assert a privilege, or if either party obtains knowledge that any current or former directors, officers, agents or employees of any member of its Group have received any subpoena, discovery or other requests that arguably call for the production or disclosure of such privileged Information, such party shall promptly notify the other party of the existence of the request and shall provide the other party a reasonable opportunity to review the Information and to assert any rights it or any member of its Group may have under this Section 7.8 or otherwise to prevent the production or disclosure of such privileged Information. Each party shall bear its own expenses in connection with any such request.

(h) The transfer of all Records and other Information and each party’s retention of Records and other Information that may include privileged Information of the other party pursuant to this Agreement is made in reliance on the agreement of SHC and Seritage, as set forth in this Article VII to maintain the confidentiality of Information provided by a Disclosing Party and to assert and maintain all applicable privileges. The access to Information being granted and the agreement to provide witnesses herein, the furnishing of notices and documents and other cooperative efforts contemplated hereby, and the transfer of privileged Information between and among the parties and members of their respective Groups pursuant hereto shall not be deemed a waiver of any privilege that has been or may be asserted under this Agreement or otherwise.

ARTICLE VIII
FURTHER ASSURANCES AND ADDITIONAL COVENANTS

8.1 Further Assurances.

(a) The parties shall use all reasonable best efforts to take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper or advisable under
applicable Law, and to execute and deliver such documents and other papers, as may be required to carry out the provisions of this Agreement and the Ancillary Agreements and to consummate and make effective the transactions contemplated by hereby or thereby, whether before, on or after the Closing Date.

(b) Without limiting the foregoing, prior to, on and after the Closing Date, each party shall reasonably cooperate with the other party, and without any further consideration, but at the expense of the requesting party, to execute and deliver, or use its reasonable best efforts to cause to be executed and delivered, all instruments, including, instruments of conveyance, assignment and transfer, and to make all filings with, and to obtain or make any necessary Approvals or Notifications and obtain all necessary Governmental Approvals, including, under any permit, license, agreement, indenture or other instrument, and to take all such other actions as such party may reasonably be requested to take by the other party from time to time, consistent with the terms of this Agreement, in order to effectuate the provisions and purposes of this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby.

8.2 Performance. Each party shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement or in any Ancillary Agreement to be performed by any member of such party’s Group.

8.3 Order of Precedence. Notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, in the case of any conflict between the provisions of this Agreement and the provisions of any Ancillary Agreement, the provisions of the Ancillary Agreement shall prevail.

ARTICLE IX
TERMINATION AND AMENDMENT

9.1 Sole Discretion of SHC. Notwithstanding any other provision of this Agreement or any Ancillary Agreement, until the Closing Date, SHC shall have the sole and absolute discretion:

(a) to determine whether to proceed with all or any part of the Transaction, and to determine the timing of the Transaction and any and all conditions to the Closing or any part thereof or of any other transaction contemplated by this Agreement; and

(b) to amend or otherwise change, delete or supplement, from time to time, any term or element of the Transaction or any other transaction contemplated by this Agreement or any Ancillary Agreement; provided that SHC shall consult with Seritage, to the extent practicable, prior to implementing any such amendment, change, deletion or supplement.

9.2 Amendment and Termination. This Agreement and the Ancillary Agreements may be amended, supplemented, terminated and the transactions contemplated hereby may be modified or abandoned at any time without the approval of or prior notice to Seritage or of the holders of SHC Common Stock in the sole and absolute discretion of SHC prior to the Closing Date, if the SHC Board determines, in its sole and absolute discretion, that (a) any of the conditions set forth in Section 3.3(a) have not been satisfied, (b) the Transaction is not in the best interest of SHC or the holders of SHC Common Stock or (c) that market or other conditions are
such that it is not advisable to consummate the Transaction. In the event of a termination in accordance with the foregoing, this Agreement shall forthwith become void and there shall be no Liability on the part of either party; provided, further, that SHC shall consult with Seritage, to the extent practicable, prior to implementing any amendment, change, deletion or supplement of this Agreement or any Ancillary Agreement. After the Closing Date, this Agreement may not be amended, supplemented or terminated except by an agreement in writing signed by both parties.

ARTICLE X
MISCELLANEOUS

10.1 Limitation of Liability.

(a) IN NO EVENT SHALL EITHER PARTY OR ANY MEMBER OF ITS GROUP BE LIABLE TO THE OTHER PARTY OR ANY MEMBER OF SUCH OTHER PARTY’S GROUP FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT LIMIT AN INDEMNIFYING PARTY’S INDEMNIFICATION OBLIGATIONS HEREUNDER WITH RESPECT TO ANY LIABILITY ANY INDEMNITEE MAY HAVE TO ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS, EXCEPT AS OTHERWISE PROVIDED IN THE ANCILLARY AGREEMENTS.

(b) Neither party nor any member of its Group shall have any Liability to the other party or any member of such other party’s Group in the event that any Information exchanged or provided pursuant to this Agreement that is an estimate or forecast, or that is based on an estimate or forecast, is found to be inaccurate in the absence of willful misconduct by the providing Person. Neither party nor any member of its Group shall have any Liability to the other party or any member of such other party’s Group if any Information is destroyed after reasonable best efforts by the Person from whom Information is requested, to comply with the provisions of Section 7.3.
10.2 Expenses.

(a) Expenses Incurred on or Prior to the Closing Date. Except (i) as otherwise expressly set forth in this Agreement or any Ancillary Agreement or (ii) as otherwise agreed to in writing by the parties, all costs and expenses (including filing and recording fees and transfer taxes) incurred on or prior to the Closing Date in connection with the preparation, execution, delivery and recordation of this Agreement and any Ancillary Agreement, the Transaction, the Form S-11 and the consummation of the transactions contemplated hereby and thereby on or prior to the Closing Date, in each case to the extent approved by SHC, shall be charged to and paid by a member of the SHC Group, except that (A) each Party shall bear its own attorneys’ fees and (B) Seritage shall be solely responsible (and shall reimburse the SHC Group to the extent previously paid) for (I) the Title Company’s previous costs and expenses and (II) all of Seritage’s financing costs and expenses (including mortgage recording taxes), in the case of clauses (I) and (II), in connection with the transactions contemplated by this Agreement.

(b) Expenses Incurred or Accrued After the Closing Date. Except as otherwise expressly set forth in this Agreement or any Ancillary Agreement, or as otherwise agreed to in writing by the parties, each party shall bear its own costs and expenses incurred or accrued after the Closing Date.

10.3 Counterparts. This Agreement may be executed and delivered (including by facsimile or other electronic transmission (e.g., .pdf file)) in counterparts, and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

10.4 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement or any Ancillary Agreement must be in writing and shall be deemed to have been duly given (a) when delivered by hand, (b) three (3) Business Days after mailing, certified or registered mail, return receipt requested, with postage prepaid, (c) on the same Business Day when sent by facsimile or electronic mail (return receipt requested) if the transmission is completed before 5:00 p.m. recipient’s time, or one (1) Business Day after the facsimile or email is sent if the transmission is completed on or after 5:00 p.m. recipient’s time, or (d) one (1) Business Day after it is sent by Express Mail, Federal Express or other courier service, as follows (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.4):

If to SHC, to:

Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates, Illinois 60179
Attn.: General Counsel
Facsimile: [●]
Email: [●]
10.5 Public Announcements. Following the Closing Date, the parties shall be permitted to make, or cause to be made, any press release or public announcement in respect of this Agreement or the transactions contemplated by this Agreement taking place on the Closing Date or otherwise communicate with any news media unless otherwise prohibited by applicable Law or applicable stock exchange regulation or the provisions of this Agreement or any Ancillary Agreement; provided, that the parties shall consult with each other prior to issuing, and shall, subject to the requirements of Section 7.5, provide the other party the opportunity to review and comment upon press releases and other public statements in connection with the Transaction or any of the other transactions contemplated hereby or by any Ancillary Agreement and prior to making any filings with any Governmental Authority or national securities exchange with respect thereto. Notwithstanding the foregoing, except as may be required by federal or state Law including any SEC rules and regulations or the rules and regulations of any securities exchange or any inter-dealer quotation system, neither party shall (a) issue any publicity or press release regarding its relationship with the other party, except as mutually agreed, or (b) disclose or refer to any Ancillary Agreement or the other party in any prospectus, annual report or other filing, without the prior consent of the other party. Neither party shall refer to this Agreement or the other party in the solicitation of business without obtaining the other party’s prior written approval.

10.6 Severability. If any provision of this Agreement is declared by any court of competent jurisdiction to be illegal, invalid, void or unenforceable, such provision shall (to the extent permitted under applicable Law) be construed by modifying or limiting it so as to be legal, valid and enforceable to the maximum extent compatible with, and possibly under, applicable Law, and all other provisions of this Agreement shall not be affected and shall remain in full force and effect.

10.7 Entire Agreement. This Agreement and the Ancillary Agreements, including the exhibits, schedules and appendices thereto and together with all the agreements contemplated hereby and thereby, constitute the entire agreement of the parties with respect to the subject matter hereof and thereof and supersede and integrate all prior or contemporaneous agreements, undertakings, promises and undertakings, both written and oral, between the parties with respect to the subject matter hereof and thereof. Without limiting the foregoing, no agent or representative of any party has made any promises, undertakings or inducements to or for the benefit of any other party which is not completely set forth therein.

10.8 Amendment; No Waiver. Subject to Article IX, the terms, covenants and conditions of this Agreement may be amended, modified or waived only by a written instrument signed by the parties, or in the event of a waiver, by the party waiving such compliance. Either party’s failure at any time to require performance of any provision shall not affect that party’s
right to enforce that or any other provision at a later date. No waiver of any condition or breach of any provision, term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of that or any other condition or of the breach of that or another provision, term or covenant of this Agreement.

10.9 Successors and Assigns. This Agreement shall be binding on, and shall inure to the benefit of, the successors and assigns of the parties.

10.10 Third-Party Beneficiaries. Except for the indemnification rights under this Agreement of any SHC Indemnitee or Seritage Indemnitee in their respective capacities as such and members of each party’s Group, (a) the provisions of this Agreement are solely for the benefit of the parties and their respective successors and assigns and are not intended to confer upon any Person except the parties and their respective successors and assigns any rights or remedies hereunder and (b) there are no third-party beneficiaries of this Agreement and this Agreement shall not provide any other Person (other than the parties hereto and their respective successors and assigns) with any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to this Agreement.

10.11 Governing Law; Jurisdiction. This Agreement (and all claims, controversies or causes of action, whether in contract, tort or otherwise, that may be based upon, arise out of or relate to this Agreement or the negotiation, execution, termination, performance or nonperformance of this Agreement (including any claim, controversy or cause of action based upon, arising out of or relating to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement)) shall be governed by, and construed and enforced in accordance with, the Laws of the State of Illinois, without regard to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Illinois. Each of the parties irrevocably agrees that all proceedings arising out of or relating to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party or its successors or assigns shall be brought, heard and determined exclusively in any federal or state court sitting in Cook County, Illinois. Consistent with the preceding sentence, each of the parties hereby (a) submits to the exclusive jurisdiction of any federal or state court sitting in Cook County, Illinois for the purpose of any proceeding arising out of or relating to this Agreement or the rights and obligations arising hereunder brought by either party and (b) irrevocably waives, and agrees not to assert by way of motion, defense, counterclaim, or otherwise, in any such proceeding, any claim that it or its property is not subject personally to the jurisdiction of the above-named courts, that the proceeding is brought in an inconvenient forum, that the venue of the proceeding is improper, or that this Agreement, the Transaction or any of the other transactions contemplated by this Agreement may not be enforced in or by any of the above-named courts. Each party agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 10.4.

10.12 Waiver of Jury Trial. EACH OF THE PARTIES HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO
A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH OF THE PARTIES HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAVERS AND CERTIFICATIONS IN THIS SECTION 10.12.

10.13 **Headings.** The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

10.14 **Interpretation.** In this Agreement:

(a) “include,” “includes,” and “including” are inclusive and mean, respectively, “include without limitation,” “includes without limitation,” and “including without limitation,”

(b) “or” is disjunctive but not necessarily exclusive,

(c) numbered “Section” references refer to sections of this Agreement unless otherwise specified,

(d) section headings are for convenience only and have no interpretive value,

(e) unless otherwise indicated all references to a number of days mean calendar (and not business) days and all references to months or years mean calendar months or years,

(f) “to the extent” shall be construed to measure the degree to which an event has occurred and does not merely mean “if”.

(g) references to $ or Dollars mean U.S. Dollars, and

(h) hereof,” “herein” and “herewith” and words of similar import, unless otherwise stated, shall be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement.

10.15 **Fair Construction.** This Agreement shall be deemed to be the joint work product of the parties without regard to the identity of the draftsperson, and any rule of construction that a document is interpreted or construed against the drafting party shall not be applicable.

10.16 **Specific Performance.** In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the affected party shall
have the right to specific performance and injunctive or other equitable relief of its rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The other party shall not oppose the granting of such relief. The parties agree that the remedies at law for any breach or threatened breach hereof, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived.

10.17 **Good Faith.** Each of SHC and Seritage shall exercise Good Faith in the performance of its obligations under this Agreement.

10.18 **Force Majeure.** Neither party shall be responsible to the other for any delay in or failure of performance of its obligations under this Agreement to the extent such delay or failure is attributable to any act of God, act of terrorism, fire, accident, war, embargo or other governmental act, or riot; provided, however, that the party affected thereby gives the other party prompt written notice of the occurrence of any event which is likely to cause any delay or failure setting forth its best estimate of the length of any delay and any possibility that it shall be unable to resume performance; provided, further, that said affected party shall use its commercially reasonable efforts to expeditiously overcome the effects of that event and resume performance.

10.19 **Payment Terms.**

(a) Except as expressly provided to the contrary in this Agreement or in any Ancillary Agreement, (i) any amount to be paid or reimbursed by one party (the “Paying Party”) to the other (the “Payee Party”) under this Agreement or any Ancillary Agreement shall be paid or reimbursed hereunder within fifteen (15) days after presentation of an invoice or a written demand therefor, and (ii) upon request of the Payee Party, the Paying Party shall provide to the Payee Party reasonable documentation or other reasonable explanation supporting such amount to the extent such Information is then readily available to Paying Party.

(b) Except for any amounts due under the Master Lease and except as expressly provided to the contrary in this Agreement or in any other Ancillary Agreement, any amount not paid when due pursuant to this Agreement or any Ancillary Agreement (and any amount billed or otherwise invoiced or demanded and properly payable that is not paid within fifteen (15) days of such bill, invoice or other demand) shall bear interest at a rate per annum equal to the Prime Rate plus 2% (or the maximum legal rate, whichever is lower), calculated for the actual number of days elapsed, accrued from the date on which such payment was due up to the date of the actual receipt of payment.

10.20 **Survival of Covenants.** Except as expressly set forth in this Agreement, the covenants, representations and warranties contained in this Agreement, and the Liabilities for the breach of any obligations contained herein, shall survive the Closing Date and shall remain in full force and effect.

10.21 **No Agency.** Nothing in this Agreement shall or shall be construed to create or establish a relationship of agency, partnership, employer/employee or any other fiduciary relationship between any member of the SHC Group and any member of the Seritage Group, and

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it is the intent and desire of the parties that the relationship be and be construed as that of independent contracting parties and not as agents, partners, joint venturers or a relationship of employer/employee.

10.22 Risk of Loss. The risk of loss or damage to the Transferred Properties (which shall include those Transferred Properties for which Interests are being acquired) by fire, flood, casualty, condemnation or act of God ("Loss") shall be borne by the parties as hereinafter provided in this Section 10.22.

(a) If any Loss occurs before the Closing Date with respect to any one (1) Transferred Property, then the following shall apply: in the event of a Loss (other than a Total Destruction as defined in the Master Lease), so long as (i) SHC Group completely restores the Transferred Property or Seritage is fully compensated for the complete cost of restoration (as reasonably estimated by Seritage) from SHC’s own funds and/or the assignment of all net insurance proceeds at the Closing, and (ii) SHC Group covenants to comply or cause Tenant to comply with all terms and conditions of the Master Lease with respect to such Transferred Property (including completion of restoration thereof), Seritage shall proceed to purchase and accept the Transferred Property subject to any unrestored Loss without adjustment of the Purchase Price;

(b) In the event of (i) a Total Destruction (which is not totally restored at the Closing (whether or not Seritage is not fully compensated by SHC Group and/or net insurance proceeds)) or (ii) any other Loss which is not fully restored at the Closing and for which Seritage is not fully compensated by SHC Group and/or net insurance proceeds, Seritage shall have the right to either (A) refuse to purchase the applicable Transferred Property and receive a reduction of the Purchase Price in the amount of the allocated portion of the Purchase Price with respect to such Transferred Property set forth on Schedule B (and in such event shall not receive any such compensation or reserve proceeds) or (B) proceed to purchase and take such Transferred Property subject to the unrestored or unreimbursed Loss and receive a reduction of the Purchase Price in the amount equal to the value of the entire Loss in excess of the compensation actually received from SHC Group and/or net insurance proceeds, not to exceed the allocated portion of the Purchase Price set forth on Schedule B.

(c) If there is a Loss with respect to a Transferred Property and the Closing proceeds with respect to such Transferred Property are adjusted as provided above, the amount of any suspension or abatement in rents or other charges to which the tenant is entitled under any Leases or any Lands’ End Leases shall be credited to Seritage as an adjustment to the allocated portion of the Purchase price for such Transferred Property.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

SEARS HOLDINGS CORPORATION

By: ______________________________
   Name: __________________________
   Title: ____________________________

SERITAGE GROWTH PROPERTIES

By: ______________________________
   Name: __________________________
   Title: ____________________________

[Signature Page to Subscription and Distribution Agreement]
## Exhibit I

### Interests in Transferred Entities

<table>
<thead>
<tr>
<th>Entity to be Transferred (each, a “Transferred Entity”)</th>
<th>Equity Interests to be Transferred (the “Interests”)</th>
<th>Seritage Group Transferee</th>
<th>Transferred Properties (Store Number) / JV Interests¹</th>
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¹ Will be indirectly held by Transferred Entity after implementation of steps set forth on Schedule J.
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<tr>
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### Exhibit II

**Transferred Properties and JV Interests**

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50% interest in SPS Portfolio Holdings, LLC  
Sears, Roebuck and Co.  
Seritage SPS Holdings LLC

II-1
SECTION 1. BACKGROUND AND PURPOSE

The name of this Plan is the Seritage Growth Properties 2015 Share Plan. The purpose of this Plan is to promote the interests of the Company and its Subsidiaries through grants to Eligible Individuals of Restricted Shares, Share Units, Other Share-Based Awards, Options, and Share Appreciation Rights in order (1) to attract and retain the services of Eligible Individuals, (2) to provide an additional incentive to each Eligible Individual to work to increase the value of the Shares and (3) to provide each Eligible Individual with a stake in the future of the Company which corresponds to the stake of each Company shareholder.

SECTION 2. DEFINITIONS

Each term set forth in this Section 2 shall have the meaning set forth opposite such term for purposes of this Plan and, for purposes of such definitions, the singular shall include the plural and the plural shall include the singular.

2.1. Board shall mean the Board of Trustees of the Company.

2.2. Change in Control shall mean an event described in Treasury Regulation 1.409A-3(i)(5), where references to the term “corporation” shall be deemed to refer to the Company.

2.3. Code shall mean the Internal Revenue Code of 1986, as amended.

2.4. Committee shall mean the Compensation Committee of the Board to which the responsibility to administer this Plan is delegated by the Board and which shall consist of at least two members of the Board, each of whom shall be a non-employee director (within the meaning of Rule 16b-3 under the Exchange Act) and to the extent applicable, each of whom shall be an outside director for purposes of Code Section 162(m).

2.5. Company shall mean Seritage Growth Properties, a Maryland real estate investment trust, and any successor to such entity.

2.6. Employee shall mean any individual employed by the Company or a Subsidiary on the payroll records thereof. An Employee shall not include any individual during any period he or she is classified or treated by the Company (or any Subsidiary) as an independent contractor or any employee of an employment or temporary agency or firm, without regard to whether such individual is subsequently determined to have been or is subsequently retroactively reclassified as a common-law employee of the Company or any Subsidiary during such period.

2.7. Eligible Individual shall mean an Employee, Non-Employee Director or other individual performing advisory or consulting services for the Company or a Subsidiary, as determined and designated by the Committee. An award may be granted to an Eligible Individual, in connection with hiring, retention or otherwise, prior to the date the Employee,
Non-Employee Director or service provider first performs service for the Company or the Subsidiaries, provided such award shall not become vested prior to the date the Employee, Non-Employee Director or other service provider first performs such service.


2.9. Fair Market Value shall mean, for any given date, the fair market value of the Shares as of such date, as determined by the Committee on a basis consistently applied by the Company based on actual transactions in Shares on the exchange on which the Shares generally have the greatest trading volume. If the Shares are not readily tradable on an established market, fair market value shall be determined by the Board based on a reasonable application of a reasonable valuation methodology.

2.10. Non-Employee Director shall mean a member of the Board who is not an Employee of the Company or a Subsidiary.

2.11. Option shall mean an option granted under Section 8 to purchase Shares and evidenced by an Option Agreement, which Option shall not be treated as an “incentive stock option” under Code Section 422.

2.12. Option Agreement shall mean the written agreement or instrument which sets forth the terms of an Option granted to an Eligible Individual under this Plan.

2.13. Option Price shall mean the price which shall be paid to purchase one Share upon the exercise of an Option granted under this Plan.

2.14. Other Share-Based Award shall mean a grant under Section 7 to an Eligible Individual of Shares or other type of equity-based or equity-related award not otherwise described by the terms of this Plan, including without limitation, the grant or offer for sale of unrestricted Shares or the grant of Shares in settlement of an award under an incentive program of the Company or any Subsidiary, and which may also mean an LTIP Unit (as defined in Section 7), in such amounts and subject to such terms and conditions, as the Committee shall determine.

2.15. Performance Period shall mean the period selected by the Committee during which performance is measured for purpose of determining the extent to which an award of SARs, Options, Restricted Shares, Share Units or Other Share-Based Awards has been earned.

2.16. Plan shall mean this Seritage Growth Properties 2015 Share Plan, as amended from time to time.

2.17. Restricted Shares shall mean Shares granted to an Eligible Individual pursuant to Section 7.

2.18. SAR Agreement shall mean the written agreement or instrument which sets forth the terms of a SAR granted to an Eligible Individual under this Plan.
2.19. **SAR Share Value** shall mean the figure which is set forth in each SAR Agreement and which is no less than the Fair Market Value of a Share on the date the related SAR is granted.

2.20. **Shares** shall mean the Class A common shares of the Company, par value $0.01 per share (or else shall mean, with respect to any LTIP Unit, the applicable partnership interest under the Operating Partnership Agreement (as such term is defined in Section 7)).

2.21. **Share Appreciation Right or SAR** shall mean a right which is granted pursuant to the terms of Section 8 to the appreciation in the Fair Market Value of a Share in excess of the SAR Share Value for such a Share.

2.22. **Share Award Agreement** shall mean the written agreement or instrument which sets forth the terms of a Restricted Share, Share Unit or Other Share-Based Award grant to an Eligible Individual under this Plan.

2.23. **Share Unit** shall mean a right granted to an Eligible Individual pursuant to Section 7 to receive a payment in cash or Shares based on the Fair Market Value of the number of Shares described in such grant.

2.24. **Subsidiary** shall mean, with respect to the Company, any corporation, entity or other organization whether incorporated or unincorporated, of which (a) the Company directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions, or (b) the Company is a general partner or managing member, including any Operating Partnership. For purposes of granting Options or SARs, an entity shall not be treated as a Subsidiary unless the Company holds a “controlling interest” in such entity, where the term “controlling interest” has the meaning provided in Treasury Regulation Section 1.414(c)-2(b)(2)(i), provided that the language “at least 50 percent” is used instead of “at least 80 percent” in Treasury Regulation Section 1.414(c)-2(b)(2)(i), and, provided further, that where the granting to such grantee of Options or SARs with respect to the Shares is based upon a legitimate business criteria, the language “at least 20 percent” is used instead of “at least 80 percent” each place it appears in Treasury Regulation Section 1.414(c)-2(b)(2)(i).

**SECTION 3. SHARES RESERVED UNDER PLAN**

3.1. Shares. There shall be reserved for issuance under this Plan 6,500,000 Shares.

3.2. Share Counting. The Shares described in Section 3.1 shall be reserved to the extent that the Company deems appropriate from authorized but unissued Shares and from Shares which have been reacquired by the Company. Furthermore, any Shares issued pursuant to a Restricted Share or Other Share-Based Award grant which are forfeited or cancelled thereafter shall again become available for issuance under this Plan. The number of Shares issued under a Share Unit or Other Share-Based Award, if applicable, shall not again become available under Section 3.1 for issuance under this Plan. If a Share Unit or Other Share-Based Award is forfeited or settled in cash, the related Shares shall again become available for issuance under this Plan. The number of Shares issued under an Option or SAR, to the extent it is exercised, shall not again become available under Section 3.1 for issuance under this Plan. If
an Option or SAR is forfeited or settled in cash, if applicable, the related Shares shall again become available for issuance under this Plan. Shares not delivered as a result of net settlement shall not again become available for issuance under this Plan.

3.3. Use of Proceeds. The proceeds which the Company receives from the sale of any Shares under this Plan shall be used for general corporate purposes and shall be added to the general funds of the Company.

3.4. Substitute Awards. Awards may be granted under the Plan from time to time in substitution for stock options and other awards held by employees or directors of other entities who are about to become Employees, whose employer is about to become an affiliate as the result of a merger or consolidation of the Company with another real estate investment trust or corporation, or the acquisition by the Company of substantially all the assets of another real estate investment trust or corporation, or the acquisition by the Company of at least fifty percent (50%) of the issued and outstanding stock of another real estate investment trust or corporation as the result of which such other real estate investment trust or corporation will become a Subsidiary. The terms and conditions of the substitute awards so granted may vary from the terms and conditions set forth in the Plan to such extent as the Committee at the time of grant may deem appropriate to conform, in whole or in part, to the provisions of the award in substitution for which they are granted. If Shares are issued under the Plan with respect to a substitute award granted under this Section 3.4, as described above, to the extent permitted by applicable law and exchange rules, such Shares will not count against the maximum number of Shares reserved for issuance under the Plan, as set forth in Section 3.1.

SECTION 4. EFFECTIVE DATE

This Plan shall become effective immediately prior to the closing date of the rights offering for the Shares of the Company by Sears Holdings Corporation to the holders of common stock of Sears Holdings Corporation.

SECTION 5. PLAN ADMINISTRATION

5.1. Authority of Committee. The Plan shall be administered by the Committee. Except as limited by law, or by the Declaration of Trust or By-Laws of the Company, and subject to the provisions of this Plan, the Committee shall have full power, authority, and sole and exclusive discretion to construe, interpret and administer this Plan, including without limitation, the power and authority to make determinations relating to Plan grants and correct mistakes in any Share Award, Option or SAR Agreement, and to take such other action in the administration and operation of this Plan as the Committee deems equitable under the circumstances. The Committee, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective. In addition, the Committee shall have full and exclusive power to adopt such rules, regulations and guidelines for carrying out the Plan as it may deem necessary or proper, all of which power shall be executed in the best interests of the Company and in keeping with the objectives of the Plan. This power includes, but is not limited to, selecting award recipients and establishing all award terms and conditions. Notwithstanding the foregoing, to the extent that an employment, consulting or similar agreement between the
Company or any of its Subsidiaries and an Eligible Individual or a Share Award, Option or SAR Agreement (any foregoing agreement, an “Individual Agreement”), conflicts with the terms of the Plan, the terms and conditions of the Individual Agreement shall govern.

5.2. Amendment of Awards. The Committee, in its sole discretion, may amend any outstanding award at any time in any manner not inconsistent with the terms of the Plan, provided that no outstanding, vested award may be amended without the grantee’s consent if the amendment would have a materially adverse effect on the grantee’s rights under the award. Notwithstanding the foregoing, the Committee, in its sole discretion, may amend an award if it determines such amendment is necessary or advisable for the Company to comply with applicable law (including Code Section 409A), regulation, rule, or accounting standard.

5.3. Delegation. To the extent permitted by applicable law, the Committee may delegate its authority as identified herein to one or more officers of the Company or members of the Board, including without limitation the authority to approve grants to Eligible Individuals other than any of the Company’s officers. To the extent that the Committee delegates its authority to make grants as provided by this Section 5.3, all references in the Plan to the Committee’s authority to make grants and determinations with respect thereto shall be deemed to include the Committee’s delegate(s). In addition, the Committee may delegate to one or more of its members, officers of the Company or agents or advisors such administrative duties or powers as it may deem advisable. Any such delegate shall serve at the pleasure of, and may be removed at any time by, the Committee.

5.4. Decisions Binding. In making any determination or in taking or not taking any action under the Plan or any Share, Option or SAR Agreement, the Committee or its delegate(s) may obtain and may rely on the advice of experts, including Employees of and professional advisors to the Company. Any action taken by, or inaction of, the Committee or its delegate(s) relating to or pursuant to the Plan or any Share, Option or SAR Agreement shall be within the absolute discretion of the Committee or its delegate. Such action or inaction of the Committee or its delegate(s) shall be conclusive and binding on the Company, on each affected Eligible Individual and on each other person directly or indirectly affected by such action.

SECTION 6. ELIGIBILITY

Eligible Individuals shall be eligible for the grant of awards under this Plan.

SECTION 7. RESTRICTED SHARE, SHARE UNITS AND OTHER SHARE-BASED AWARDS

7.1. Committee Action.

(a) General. The Committee, acting in its absolute discretion, shall have the right to grant Restricted Shares, Share Units and Other Share-Based Awards to Eligible Individuals from time to time.

(b) LTIP Units. “LTIP Units” are intended to be profits interests in the operating partnership affiliated with the Company, if any, including for this purpose Seritage Growth Properties, L.P. (any such operating partnership, if any, the “Operating
Partnership”), the rights and features of which, if applicable, will be set forth in the agreement of limited partnership for the Operating Partnership, as the same may be amended from time to time (the “Operating Partnership Agreement”). Subject to the terms and provisions of the Plan and the Operating Partnership Agreement, the Committee, at any time and from time to time, may grant LTIP Units to any person eligible for an award under Section 6 in such amounts and upon such terms as the Committee shall determine. LTIP Units must be granted for service to the Operating Partnership.

(c) Limitations:

(i) Other than Non-Employee Directors. Except as provided herein and subject to subsection (b)(2) immediately below, no Restricted Share, Share Unit or Other Share-Based Award grants in any combination may be made to an Eligible Individual in any calendar year with respect to more than 2,000,000 Shares. Each grant of Restricted Shares, Share Units and Other Share-Based Awards shall be evidenced by a Share Award Agreement. Notwithstanding the foregoing, separate and in addition to the above limit, no more than 2,000,000 Shares may be awarded to any Eligible Individual in any calendar year with respect to Shares that are granted in settlement of an award under any incentive program of the Company or any Subsidiary established thereunder.

(ii) Non-Employee Directors. Notwithstanding subsection (b)(1) immediately above, no Restricted Share, Share Unit and Other Share-Based Award grants in any combination may be made to a Non-Employee Director in any calendar year with respect to more than $1,000,000 in aggregate value at grant date(s). Each grant of Restricted Shares, Share Units and Other Share-Based Awards to a Non-Employee Director shall be evidenced by a Share Award Agreement.

7.2. Forfeiture Conditions. The Committee may make a Restricted Share, Share Unit or Other Share-Based Award grant subject to one or more employment, performance or other forfeiture conditions which the Committee acting in its absolute discretion deems appropriate under the circumstances, and the related Share Award Agreement shall set forth each such forfeiture condition and the deadline for satisfying each such forfeiture condition. Any Restricted Share or Other Share-Based Award issued hereunder may be evidenced in such manner, as the Committee, in its sole discretion, shall deem appropriate, including without limitation, book entry registration or issuance of a share certificate or certificates. In the event any physical share certificate is issued in respect of Restricted Shares or Other Share-Based Award granted under the Plan, such certificates shall be registered in the name of the Eligible Individual, shall bear an appropriate legend referring to the terms, conditions and restrictions applicable to the award, and shall be held by the Company as escrow agent until the restrictions on such award have lapsed.
7.3. Rights Under Awards.

(a) Cash Dividends. Each Share Award Agreement which evidences a Restricted Share or Other Share-Based Award grant shall state whether the Eligible Individual shall have a right to receive any cash dividends which are paid after any Restricted Shares or Other Share-Based Award are issued to him or her and before the first day that the Eligible Individual’s interest in such Shares are forfeited. If such a Share Award Agreement provides that an Eligible Individual has no right to receive a cash dividend when paid, such agreement shall set forth the conditions, if any, under which the Eligible Individual will be eligible to receive one, or more than one, payment in the future to compensate the Eligible Individual for the fact that he or she had no right to receive any cash dividends on his or her Restricted Shares or Other Share-Based Award when such dividends were paid. If such a Share Award Agreement calls for any such payments to be made, the Company shall make such payments from the Company’s general assets, and the Eligible Individual shall be no more than a general and unsecured creditor of the Company with respect to such payments. Unless otherwise set forth in the Share Award Agreement which evidences a Share Unit grant, if a cash dividend is paid on the Shares described in a Share Unit grant, such cash dividend shall be treated as reinvested in Shares and shall increase the number of Shares described in such Share Unit grant.

(b) Share and Other Dividends. Unless otherwise provided in the related Share Award Agreement, and subject to such rules as the Committee shall adopt with respect to each dividend, if a Share dividend is declared on a Restricted Share or Other Share-Based Award, such Share dividend shall be treated as part of the grant of the related Restricted Share or Other Share-Based Award, and an Eligible Individual’s interest in such Share dividend shall be forfeited or shall become nonforfeitable at the same time as the Share with respect to which the Share dividend was paid is forfeited or becomes nonforfeitable. Unless otherwise set forth in the Share Award Agreement which evidences a Share Unit grant, and subject to such rules as the Committee shall adopt with respect to each dividend, if a Share dividend is declared on any Shares described in a Share Unit grant, such dividend shall increase the number of Shares described in such Share Unit grant. If a dividend is paid on a Share of Restricted Shares or Other Share-Based Award or on a Share described in a Share Unit grant other than in cash or Shares, the disposition of such dividend with respect to such Restricted Shares or Other Share-Based Award grant and the treatment of such dividend with respect to such Share Unit grant shall be effected in accordance with the terms of the related Share Award Agreement or such rules as the Committee shall adopt with respect to each such dividend.

(c) Voting Rights. An Eligible Individual shall have the right to vote Restricted Shares or shares subject to any Other Share-Based Award unless otherwise provided in the related Share Award Agreement. An Eligible Individual receiving a Share Unit grant shall not possess any voting rights with respect to such Share Units.

(d) Effect of Termination. In the discretion of the Committee, a Share Award Agreement may provide for vesting, payment, or other applicable terms after the Eligible Individual ceases to be employed or provide services to the Company or Subsidiary for any reason whatsoever, including death or disability.
(e) **Nontransferability.** No Restricted Share or Other Share-Based Award grant and no Shares issued pursuant to a Restricted Share or Other Share-Based Award grant shall be transferable by an Eligible Individual other than by will or by the laws of descent and distribution before an Eligible Individual’s interest in such shares have become completely nonforfeitable, and no interests in a Share Unit grant shall be transferable other than by will or the laws of descent and distribution, except as otherwise provided in the related Share Award Agreement.

(f) **Creditor Status.** An Eligible Individual to whom a Share Unit is granted shall be no more than a general and unsecured creditor of the Company with respect to any payment due under such grant.

7.4. **Satisfaction of Forfeiture Conditions.** A Share shall cease to be a Restricted Share or Other Share-Based Award at such time as an Eligible Individual’s interest in such Share becomes nonforfeitable under this Plan and the terms of the related Share Award Agreement. Upon vesting of a Share Unit, the Eligible Individual shall receive payment in cash or Shares in accordance with the terms of the related Share Award Agreement.

SECTION 8. OPTIONS AND SARs

8.1. **Options.** The Committee acting in its absolute discretion shall have the right to grant Options to purchase Shares to Eligible Individuals from time to time, and Options may be granted for any reason the Committee deems appropriate under the circumstances. Each grant of an Option shall be evidenced by an Option Agreement, and each Option Agreement shall set forth that such Option is not an incentive stock option and shall set forth such other terms and conditions, including without limitation any performance-based vesting conditions or forfeiture provisions, of such grant, as the Committee acting in its absolute discretion deems consistent with the terms of this Plan.

8.2. **Option Price, Exercise Period and No Dividend Equivalents.**

(a) **Option Price.** The Option Price for each Share subject to an Option shall be no less than the Fair Market Value of a Share on the date the Option is granted. The Option Price shall be payable in full upon the exercise of any Option. Except in accordance with the provisions of Section 12, the Committee shall not, absent the approval of the Company’s shareholders, take any action, whether through amendment, cancellation, replacement grants, exchanges or any other means, to directly or indirectly reduce the Option Price of any outstanding Option. For the avoidance of doubt, such prohibition includes taking any action with respect to an Option that would be treated as a “repricing” under the rules and regulations of the principal U.S. national securities exchange on which the Shares are listed.

(b) **Exercise Period.** Each Option granted under this Plan shall be exercisable in whole or in part at such time or times as set forth in the related Option Agreement, but no Option Agreement shall make an Option exercisable before the date such Option is
granted or on or after the date which is the tenth anniversary of the date such Option is granted. In the discretion of the Committee, an Option Agreement may provide for the exercise of an Option after the Eligible Individual ceases to be employed or provide services to the Company or a Subsidiary for any reason whatsoever, including death or disability.

(c) No Dividend Equivalents. In no event shall any Option or Option Agreement granted under the Plan include any right to receive dividend equivalents with respect to such award.

8.3. Method of Exercise.

(a) Committee Rules. An Option may be exercised as provided in this Section 8.3 pursuant to procedures (including, without limitation, procedures restricting the frequency or method of exercise) as shall be established by the Committee or its delegate from time to time for the exercise of Options.

(b) Notice and Payment. An Option shall be exercised by delivering to the Committee or its delegate during the period in which such Option is exercisable, (1) written notice of exercise in a form acceptable to the Committee indicating the specific number of Shares subject to the Option which are being exercised and (2) payment in full of the Option Price for such specific number of Shares. An Option Agreement, at the discretion of the Committee, may provide for the payment of the Option Price by any of the following means:

(i) in cash, electronic funds transfer or a check acceptable to the Committee;

(ii) in Shares which have been held by the Eligible Individual for a period acceptable to the Committee and which Shares are otherwise acceptable to the Committee, provided that the Committee may impose whatever restrictions it deems necessary or desirable with respect to such method of payment;

(iii) through a broker-facilitated cashless exercise procedure acceptable to the Committee; or

(iv) in any combination of the methods described in this Section 8.3(b) which is acceptable to the Committee.

Any payment made in Shares shall be treated as equal to the Fair Market Value of such Shares on the date the properly endorsed stock certificate for such Shares is delivered to the Committee (or to its delegate) or, if payment is effected through a certification of ownership of Shares in lieu of a Share certificate, on the date the Option is exercised.

(c) Restrictions. The Committee may from time to time establish procedures for restricting the exercise of Options on any given date as the result of excessive volume of exercise requests or any other problem in the established system for processing Option exercise requests or for any other reason the Committee or its delegate deems appropriate or necessary.
8.4. SARs.

(a) SARs and SAR Share Value.

The Committee acting in its absolute discretion may grant an Eligible Individual a SAR which will give the Eligible Individual the right to the appreciation in one, or more than one, Share, and any such appreciation shall be measured from the related SAR Share Value; provided, however, in no event shall the SAR Share Value be less than the Fair Market Value of a Share on the date such SAR is granted. The Committee shall have the right to make any such grant subject to such additional terms, including without limitation any performance-based vesting conditions or forfeiture provisions, as the Committee deems appropriate and such terms shall be set forth in the related SAR Agreement.

Each SAR granted under this Plan shall be exercisable in whole or in part at such time or times as set forth in the related SAR Agreement, but no SAR Agreement shall make a SAR exercisable before the date such SAR is granted or on or after the date which is the tenth anniversary of the date such SAR is granted. In the discretion of the Committee, a SAR Agreement may provide for the exercise of a SAR after the Eligible Individual ceases to be employed or provide services to the Company or Subsidiary for any reason whatsoever, including death or disability.

Except in accordance with the provisions of Section 12, the Committee shall not, absent the approval of the Company’s shareholders, take any action, whether through amendment, cancellation, replacement grants, exchanges or any other means, to directly or indirectly reduce the SAR Share Value of any outstanding SAR. For the avoidance of doubt, such prohibition includes taking any action with respect to a SAR that would be treated as a “repricing” under the rules and regulations of the principal U.S. national securities exchange on which the Shares are listed.

(b) Procedure. The exercise of a SAR shall be effected by the delivery of the related SAR Agreement to the Committee together with a statement signed by the Eligible Individual which specifies the number of Shares as to which the Eligible Individual exercises his or her SAR.

(c) Payment. An Eligible Individual who exercises his or her SAR will receive a payment in cash or in Shares, or in a combination of cash and Shares, equal in amount to the product of (i) the number of Shares with respect to which the SAR is exercised multiplied by (ii) the excess of the Fair Market Value of a Share on the exercise date over the applicable SAR Share Value. The Committee acting in its absolute discretion shall determine the form of such payment. Any cash payment shall be made from the Company’s general assets, and an Eligible Individual shall be no more than a general and unsecured creditor of the Company with respect to such payment.

(d) No Dividend Equivalents. In no event shall any SAR or SAR Agreement granted under the Plan include any right to receive dividend equivalents with respect to such award.
8.5. **Nontransferability.** Except to the extent the Committee deems permissible and consistent with the best interests of the Company, no Option or SAR shall be transferable by an Eligible Individual other than by will or by the laws of descent and distribution, and any grant by the Committee of a request by an Eligible Individual for any transfer (other than a transfer by will or by the laws of descent and distribution) of an Option or SAR shall be conditioned on the transfer not being made for value or consideration. Any such Option or SAR granted under this Plan shall be exercisable during an Eligible Individual’s lifetime, as the case may be, only by (subject to the first sentence in this Section 8.5) the Eligible Individual, provided that in the event an Eligible Individual is incapacitated and unable to exercise such Eligible Individual’s Option or SAR, such Eligible Individual’s legal guardian or legal representative whom the Committee deems appropriate based on all applicable facts and circumstances presented to the Committee may exercise such Eligible Individual’s Option or SAR, in accordance with the provisions of this Plan and the applicable Option or SAR Agreement. The person or persons to whom an Option or SAR is transferred by will or by the laws of descent and distribution (or pursuant to the first sentence of this Section 8.5) thereafter shall be treated as the Eligible Individual under this Plan.

8.6. **Share Limitations.**

(a) **Other than Non-Employee Directors.** Subject to subsection (b) immediately below, an Eligible Individual may not be granted in any calendar year Options, or SARs, or one or more Options and SARs in any combination which in the aggregate relate to more than 2,000,000 Shares.

(b) **Non-Employee Directors.** Notwithstanding subsection (a) immediately above, a Non-Employee Director may not be granted in any calendar year Options, or SARs, or one or more Options and SARs in any combination which in the aggregate relate to more than $1,000,000 in aggregate value at grant date(s), based on the accounting value as recognized by the Company.

SECTION 9. PERFORMANCE-BASED AWARDS

9.1. **Establishment of Performance Goals.** If, at the time of grant, the Committee intends an award to qualify as performance based compensation within the meaning of Code Section 162(m)(4), the Committee must establish in writing, objective performance goals for the applicable Performance Period no later than ninety (90) days after the Performance Period begins (but in no event after twenty-five percent (25%) of the Performance Period has elapsed), and while the outcome as to the performance goals is substantially uncertain. Such performance goals established by the Committee may be with respect to corporate performance, operating group or sub-group performance, individual company performance, other group or individual performance, or division performance, and shall be based on one or more of the criteria described in Section 9.2.

9.2. **Performance Measures.** A performance goal may be based on any one or more or any combination (in any relative proportion) of the following: share price, market share, cash flow, revenue, revenue growth, earnings per share, operating earnings per share, operating earnings, earnings before interest, taxes, depreciation and amortization, return on equity, return
on assets, total shareholder return, return on capital, return on investment, net income, net income per share, economic value added, market value added, store sales growth, customer and member growth, maintenance and satisfaction performance goals and employee opinion survey results measured by an independent firm, and strategic business objectives, consisting of one or more objectives based on meeting specific expense, cost or profit targets or margins, business expansion goals and goals relating to acquisitions, divestitures, leasing activities, diversification of portfolio income, or development or re-development of assets. Each goal, with respect to a performance period, may be expressed on an absolute and/or relative basis, may be based on the Company as a whole or on any one or more business units of the Company, or its Subsidiaries, and may be based on or otherwise employ comparisons based on internal targets, the past performance of the Company or of any one or more business units of the Company or its Subsidiaries, and/or the past or current performance of other companies, or an index.

9.3. Certification of Performance. An Eligible Individual otherwise entitled to receive an award intended to meet the requirements of performance-based compensation under Code Section 162(m) and the regulations thereunder for any Performance Period shall not receive a settlement of the award until the Committee has determined that the applicable performance goal(s) have been attained. To the extent that the Committee exercises discretion in making the determination required by this subsection, such exercise of discretion may not result in an increase in the amount of the payment with respect to such award.

9.4. Extraordinary Items. In establishing any performance goals, the Committee may, no later than the date such performance goals are established in accordance with Section 9.1, provide for the exclusion of the effects of the following items, to the extent identified in the audited financial statements of the Company, including footnotes, or in the Management Discussion and Analysis of Financial Condition and Results of Operations accompanying such financial statements: (a) asset write-downs; (b) litigation or claim judgments or settlements; (c) extraordinary, unusual, and/or nonrecurring items of gain or loss; (d) gains or losses on acquisitions or divestitures or store closings; (e) domestic pension expenses; (f) noncapital, purchase accounting items; (g) changes in tax or accounting principles, regulations or laws; (h) mergers or acquisitions; (i) integration costs disclosed as merger related; (j) accruals for reorganization or restructuring programs; (k) investment income or loss; (l) foreign exchange gains and losses; and (m) tax valuation allowances and/or tax claim judgment or settlements. To the extent the exclusion of any item affects awards intended to constitute performance-based compensation under Code Section 162(m), such exclusion shall be specified in a manner that satisfies the requirements of Code Section 162(m) and the regulations thereunder, including without limitation the requirement that performance goals be objectively determinable.

SECTION 10. SECURITIES REGISTRATION

For Shares issued pursuant to this Plan, the Company at its expense shall take such action as it deems necessary or appropriate to register the original issuance of such Shares to an Eligible Individual under the Securities Act of 1933, as amended, or under any other applicable securities laws or to qualify such Shares for an exemption under any such laws prior to the issuance of such Shares to an Eligible Individual; however, the Company shall have no obligation whatsoever to take any such action in connection with the transfer, resale or other disposition of such Shares by an Eligible Individual.
SECTION 11. LIFE OF PLAN

No award shall be granted under this Plan on or after the earlier of: (a) the tenth (10th) anniversary of the date the Company adopts this Plan, in which event this Plan otherwise thereafter shall continue in effect until all Options and SARs have been exercised in full or no longer are exercisable and all Restricted Shares, Share Units and Other Share-Based Award grants under this Plan have been forfeited or the forfeiture conditions on the related Share or cash payments have been satisfied in full, or (b) the date on which all of the Shares reserved under Section 3 has been issued or is no longer available for use under this Plan and all cash payments due under any Share Unit grants have been paid or forfeited, in which event this Plan also shall terminate on such date.

SECTION 12. ADJUSTMENT

12.1. Corporate Transactions. Subject to the further provisions of Section 13, the Committee shall make equitable adjustments or substitutions to reflect any “corporate transaction” (defined below), which may include (a) adjusting the number, kind or class (or any combination thereof) of Shares reserved under Section 3, the grant limitations described in Section 7.1(b) and Section 8.6, the number, kind or class (or any combination thereof) of Shares subject to Options and SARs granted under this Plan and the applicable Option Price and SAR Share Value, as well as the number, kind or class of Shares subject to Restricted Share, Share Unit and Other Share-Based Award grants under this Plan, (b) replacing outstanding awards with other awards of comparable intrinsic value (it being understood that such value shall be based on the Fair Market Value of the Shares underlying such awards at the time of such transaction), (c) cancelling outstanding awards in return for a cash payment (the amount of which shall be based on the Fair Market Value of the Shares underlying such awards at the time of such transaction), other than Options or SARs where the Option Price or SAR Share Value, respectively, is greater than the Fair Market Value at the time of the transaction, and (d) any other adjustments that the Committee determines to be equitable. For purposes of this paragraph, a “corporate transaction” includes, without limitation, any dividend (other than a cash dividend that is not an extraordinary cash dividend) or other distribution (whether in the form of cash, Shares, securities of a subsidiary of the Company, other securities or other property), Change in Control, recapitalization, share split, reverse share split, combination of shares, reorganization, merger, consolidation, acquisition, split-up, spin-off, combination, repurchase or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event. Notwithstanding anything in this paragraph to the contrary, an adjustment to an Option or SAR under this paragraph shall be made in a manner that will not result in the grant of a new Option or SAR under Code Section 409A or cause the Option or SAR to fail to be exempt from Code Section 409A.

12.2. General. If any adjustment under this Section 12 would create a fractional Share or a right to acquire a fractional Share, such fractional Share shall be disregarded and the number of Shares reserved under this Plan and the number subject to any grant shall be the next lower number of Shares, rounding all fractions downward. Any adjustment made under this Section 12 by the Committee shall be conclusive and binding on all affected persons.
SECTION 13. Change in Control.

Upon the occurrence of a Change in Control, except to the extent specified in an Individual Agreement, any non-vested portion of an Eligible Individual’s Award shall fully vest in the event of either: (a) the failure by the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the “Acquiror”), to assume or continue the Company’s rights and obligations under each or any award or portion thereof outstanding immediately prior to the Change in Control, or to substitute for each or any such outstanding award or portion thereof a substantially equivalent award with respect to the Acquiror’s stock or other consideration of equivalent value as of the effective date of the Change in Control (in which case, the provisions of Section 12.1(b) or (c) shall apply to such award, as the Committee shall determine); or (b) the Eligible Individual’s termination of employment within twelve (12) months following a Change in Control on account of a termination by the Company (or any Acquiror) for any reason other than Cause (as such term is defined in and determined under the applicable Individual Agreement) or (if an Individual Agreement contains a definition of “Good Reason” or term of similar import) on account of an Eligible Individual’s resignation for Good Reason (as determined under such agreement).

SECTION 14. AMENDMENT OR TERMINATION

The Board or the Committee may at any time in its sole discretion, for any reason whatsoever, terminate or suspend the Plan, and from time to time may amend or modify the Plan; provided that without the approval of shareholders of the Company, no amendment or modification to the Plan may (a) materially modify the Plan in any way that would require shareholder approval under any regulatory requirement that the Committee determines to be applicable, including without limitation, the rules of any exchange or (b) modify the prohibition on repricing of Options or SARs as set forth in Sections 8.3 and 8.5, respectively. No amendment, modification, suspension or termination of the Plan shall have a materially adverse effect on any vested and outstanding award on the date of such amendment, modification, suspension or termination, without the written consent of the affected grantee. Notwithstanding the foregoing, no Eligible Individual consent shall be needed for an amendment, modification, or termination of the Plan if the Committee determines such amendment, modification, or termination is necessary or advisable for the Company to comply with applicable law (including Code Section 409A), regulation, rule, or accounting standard. Suspension or termination of the Plan shall not affect the Committee’s ability to exercise the powers granted to it with respect to awards under this Plan prior to the date of such suspension or termination.

SECTION 15. MISCELLANEOUS

15.1. Stockholder Rights. No Eligible Individual shall have any rights as a shareholder of the Company as a result of the grant of an Option or SAR under this Plan or his or her exercise of such Option or SAR pending the actual delivery of any Shares subject to such Option or SAR to such Eligible Individual. Except as otherwise provided in this Plan, an Eligible Individual’s rights as a shareholder in the Shares related to a Restricted Share or Other Share-Based Award grant shall be set forth in the related Share Award Agreement.
15.2. No Contract of Employment or Contract for Services. The grant of an award to an Eligible Individual under this Plan shall not constitute a contract of employment or contract for the performance of services or an agreement to continue his or her status as an Eligible Individual and shall not confer on an Eligible Individual any rights in addition to those rights, if any, expressly set forth in any Share, Option or SAR Agreement.

15.3. Coordination with Corporate Policies. Shares and cash acquired by an Eligible Individual under this Plan shall be subject to share retention, forfeiture, and clawback policies established by the Company in accordance with the terms of such policies or as required by applicable law.

15.4. Withholding. The exercise of any Option or SAR granted under this Plan and the acceptance of a Restricted Share, Share Unit or Other Share-Based Award grant shall constitute an Eligible Individual’s full and complete consent to whatever action the Committee deems necessary to satisfy the minimum tax withholding requirements, if any, which the Committee acting in its discretion deems applicable. Subject to applicable law, the Committee, in its discretion, shall have the right to condition the delivery of any Shares (or other benefit) under the Plan on the satisfaction of an Eligible Individual’s applicable withholding obligation and shall have the right to satisfy such tax withholding requirements, if any: (a) through cash payment by the Eligible Individual; (b) with the Committee’s consent, through the surrender of Shares which the Eligible Individual already owns (provided, however, that to the extent Shares described in this subsection (b) are used to satisfy more than the minimum statutory withholding obligation, then, except as otherwise provided by the Committee, payments made with Shares in accordance with this subsection (b) shall be limited to Shares held by the Eligible Individual for not less than six (6) months prior to the payment date); or (c) through the surrender of Shares to which the Eligible Individual is otherwise entitled under the Plan; provided, however, that such Shares under this subsection (c) may be used to satisfy not more than the Company’s minimum statutory withholding obligation.

15.5. Compliance with Code Section 409A. To the extent that amounts payable under this Plan are subject to Code Section 409A, the Plan is intended to comply with Code Section 409A and official guidance issued thereunder. Notwithstanding anything herein to the contrary, the Plan shall be interpreted, operated and administered in a manner consistent with this intention.

15.6. Requirements of Law. The granting of awards and the issuance of Shares under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

15.7. Indemnification. Each person who is or shall have been a member of the Committee and each delegate of such Committee shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be made a party or in which he or she may be involved in
by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company’s approval, or paid by him or her in satisfaction of any judgment in any such action, suit, or proceeding against him or her, provided that the Company is given an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it personally. Such foregoing right of indemnification shall not apply in circumstances involving such person’s bad faith or willful misconduct. The foregoing right of indemnification shall not be exclusive and shall be independent of any other rights of indemnification to which such persons may be entitled under the Company’s Declaration of Trust or By-laws, by contract, as a matter of law, or otherwise.

15.8. **Headings and Captions.** The headings and captions here are provided for reference and convenience only, shall not be considered part of this Plan, and shall not be employed in the construction of this Plan.

15.9. **Governing Law.** This Plan shall be governed under the internal laws of the state of Maryland without regard to principles of conflicts of laws, to the extent not superseded by federal law. The state and federal courts located in the state of Maryland shall have exclusive jurisdiction in any action, lawsuit or proceeding based on or arising out of the Plan.

15.10. **Invalid Provisions.** In the event any provision of this Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of this Plan, and this Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

15.11. **Conflicts.** In the event of a conflict between the terms of this Plan and any Share, Option or SAR Agreement, the terms of the Plan shall prevail.

15.12. **Successors.** All obligations of the Company under the Plan with respect to awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

15.13. **Deferral of Awards.** The Committee may, in a Share Award Agreement or otherwise, establish procedures for the deferral of Shares or cash deliverable upon settlement, vesting or other events with respect to Restricted Shares, Share Units or Other Share-Based Awards. Notwithstanding anything herein to the contrary, in no event will any deferral of Shares or any other payment with respect to any award granted under the Plan be allowed if the Committee determines, in its sole discretion, that the deferral would result in the imposition of the additional tax under Code Section 409A.

15.14. **Employees in Foreign Jurisdictions.** Notwithstanding any provision of this Plan to the contrary, in order to achieve the purposes of this Plan or to comply with provisions of the laws in countries outside the United States in which the Company operates or has Employees, the Committee, in its sole discretion, shall have the power and authority to (i) determine which Eligible Individuals (if any) employed by the Company outside the United States should participate in the Plan, (ii) modify the terms and conditions of any awards made to such Eligible Individuals, and (iii) establish sub-plans and other award terms, conditions and procedures to the extent such actions may be necessary or advisable to comply with provisions of the laws in such countries outside the United States in order to assure the lawfulness, validity and effectiveness of awards granted under this Plan.
FORM OF
REGISTRATION RIGHTS AGREEMENT
BY AND AMONG
SERITAGE GROWTH PROPERTIES,
ESL INVESTMENTS, INC.
AND
solely for purposes of Section 7.1,
SERITAGE GROWTH PROPERTIES, L.P.
DATED AS OF [●], 2015
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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this “Agreement”) is dated as of [●], 2015, by and among SERITAGE GROWTH PROPERTIES, a Maryland real estate investment trust (the “Company”), ESL Investments, Inc., a Delaware corporation (“Shareholder”), the Permitted Transferees (as defined below) of Shareholder who become party hereto in accordance with this Agreement (Shareholder and such entities or Permitted Transferees are sometimes referred to herein individually as an “Investor” and collectively as the “Investors”) and, solely for purposes of Section 7.1, SERITAGE GROWTH PROPERTIES L.P., a Delaware limited partnership (the “Partnership”).

W I T N E S S E T H:

WHEREAS, the Company is the sole general partner of the Partnership;

WHEREAS, the Investor is receiving on the date hereof certain Class A common shares of beneficial interest, par value $0.01 per share, of the Company (“Common Shares”) and Common Units (as defined below);

WHEREAS, pursuant to Section 8.6 and the other related provisions of the First Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of [●], 2015 (as the same may be amended, restated or supplemented from time to time, the “Partnership Agreement”), subject to the various limitations contained in the Partnership Agreement, the Investors are entitled to redeem their Common Units for cash or, at the Company’s election, Common Shares (which may be delivered to the Investor or its designee); and

WHEREAS, the Company has agreed to provide to the Investor certain registration rights as set forth herein with respect to the Common Shares held as of the date hereof or issuable by the Company in respect of the redemption of Common Units pursuant to the Partnership Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to and on the terms and conditions herein set forth, the parties hereto agree as follows:

ARTICLE I
CERTAIN DEFINITIONS


1.2. “Agreement” is defined in the first paragraph of this Agreement.

1.3. “beneficial ownership” and “beneficial owner” shall have the meanings ascribed thereto in Section 13(d) of the Exchange Act and the rules promulgated thereunder.
1.4. “Business Day” means any day on which the New York Stock Exchange or such other exchange as the Common Shares are listed is open for trading.

1.5. “Common Shares” is defined in the recitals of this Agreement, and shall include equivalent securities of any successor to the Company.

1.6. “Common Units” has the meaning given to such term in the Partnership Agreement.

1.7. “Company” is defined in the first paragraph of this Agreement and shall include any entity that becomes the general partner of the Partnership after the date hereof.

1.8. “Effectiveness Period” is defined in Section 3.2(a) hereof.

1.9. “Eligible Securities” means all or any portion of the Common Shares acquired or that may be acquired by an Investor or its designee upon redemption, conversion or exchange of the Common Units. Eligible Securities shall cease to be Eligible Securities when (i) a registration statement with respect to the sale of such Common Shares shall have become effective under the Securities Act and such Common Shares shall have been disposed of in accordance with such registration statement, (ii) such Common Shares shall have been otherwise transferred pursuant to Rule 144 (or any successor rule) or pursuant to another applicable exemption from registration under the Securities Act, new certificates for such Common Shares not bearing a legend restricting further transfer shall have been delivered by the Company and such Common Shares shall be freely transferable to the public without registration under the Securities Act or (iii) such Common Shares are no longer outstanding.


1.11. “Information Blackout” is defined in Section 4.3(a) hereof.

1.12. “Investor” is defined in the first paragraph of this agreement.

1.13. “Lock-up Commitment” is defined in Section 6.1(a) hereof.

1.14. “Other Securities” is defined in Section 3.1 hereof.

1.15. “Participating Holder” is defined in Section 2.3 hereof.

1.16. “Partnership” is defined in the preamble of this Agreement.

1.17. “Partnership Agreement” is defined in the recitals of this Agreement.

1.18. “Person” means an individual, a partnership (general or limited), corporation, real estate investment trust, joint venture, business trust, cooperative, limited liability company, association or other form of business organization, whether or not
regarded as a legal entity under applicable law, a trust (inter vivos or testamentary), an estate of a deceased, insane or incompetent person, a quasi-governmental entity, a government or any agency, authority, political subdivision or other instrumentality thereof, or any other entity.

1.19. “Permitted Transferees” means any Affiliate of Shareholder that has become a party hereto in accordance with Section 9.8 hereof.

1.20. “Qualifying Other Holder” is defined in Section 2.2.

1.21. “Registration Expenses” means all expenses incurred in connection with the Company’s performance of or compliance with the registration requirements set forth in this Agreement including, without limitation, the following: (i) the fees, disbursements and expenses of the Company’s counsel(s) (United States and foreign), accountants, experts and other persons retained by the Company in connection with the registration, offering and sale of Eligible Securities to be disposed of under the Securities Act; (ii) all expenses in connection with the preparation, printing and filing of any registration statement, any preliminary prospectus, final prospectus or free writing prospectus, any other offering document and amendments and supplements thereto and the mailing and delivering of copies thereof to the underwriters and dealers; (iii) the cost of printing or producing any agreement(s) among underwriters, underwriting agreement(s) and blue sky or legal investment memoranda, any selling agreements and any other documents in connection with the offering, sale or delivery of Eligible Securities to be disposed of; (iv) all expenses in connection with the qualification of Eligible Securities to be disposed of for offering and sale under state securities laws; (v) the filing fees incident to securing any required review by the Financial Industry Regulatory Authority (or any successor thereto) of the terms of the sale of Eligible Securities to be disposed of; (vi) SEC and blue sky registration fees attributable to Eligible Securities; (vii) fees and expenses incurred in connection with the listing of Eligible Securities on each securities exchange or quotation system on which the Common Shares are then listed; (viii) the reasonable fees and disbursements for one counsel or firm to the Investors selected by Shareholder; (ix) Securities Act liability insurance or similar insurance if the Company so desires or the underwriters so require in accordance with then-customary underwriting practice; and (x) all expenses related to the “road-show” for any underwritten offering, including all travel, meals and lodging, to the extent not borne by the underwriters; provided, however, that Registration Expenses with respect to any registration pursuant to this Agreement shall not include underwriting discounts or commissions attributable to Eligible Securities, any out-of-pocket expenses of the Selling Investors (including any fees and expenses of their brokers) or transfer taxes applicable to Eligible Securities.

1.22. “Requesting Investor” means an Investor requesting registration of its Eligible Securities in accordance with the terms hereof.

1.23. “Sales Blackout Period” is defined in Section 4.3(a) hereof.

1.25. “Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC thereunder, all as the same shall be in effect at the relevant time.

1.26. “Selling Investor” means the Requesting Investor and each Investor who has requested registration pursuant to Article II or Article III hereof, as applicable.

1.27. “Shelf Registration Statement” is defined in Section 3.2 hereof.

1.28. “Underwritten Offering Notice” is defined in Section 6.1(a) hereof.

ARTICLE II
REGISTRATION REQUEST

SECTION 2.1 Request. Upon written request from a Requesting Investor requesting that the Company effect the registration under the Securities Act of all or part of the Eligible Securities held by such Investor, which notice may be delivered at any time and which notice shall specify the intended method or methods of disposition of such Eligible Securities, unless such Eligible Securities are included in a currently effective registration statement of the Company permitting the resale of such Eligible Securities in the manner contemplated by the Requesting Investor, the Company will use its reasonable best efforts to (as promptly as reasonably practicable, but in any event within 120 days of such request) cause the registration statement to be declared effective by the SEC and to permit the disposition of such Eligible Securities in accordance with the intended method or methods of disposition stated in such request; provided that:

a. if the Company shall have previously caused a registration statement to be declared effective by the SEC with respect to Eligible Securities pursuant to Article III hereof, the Company shall not be required to cause a subsequent registration statement to be declared effective by the SEC pursuant to this Article II until a period of ninety (90) days shall have elapsed from the effective date of the most recent such previous registration;

b. if, while a registration request is pending pursuant to this Article II or Article III, (i) the Board of Trustees of the Company determines that any such filing or the offering of any Eligible Securities would be reasonably likely to materially adversely affect or materially delay any proposed material financing, offer or sale of securities, acquisition, corporate reorganization or other material transaction involving the Company or the Partnership or (ii) the Board of Trustees of the Company determines in good faith, with the advice of counsel, that the filing of a registration statement would be reasonably likely to require the disclosure of non-public material information the disclosure of which would not otherwise be required to be disclosed and which would be reasonably likely to have a material adverse effect on the Company, then, in each case described in the foregoing clauses (i) or (ii), the Company shall deliver to the Investors a certificate to such effect signed by its Chief Executive Officer or Chief Financial Officer, and the Company shall not be required to file a registration statement, prospectus or any amendment or any supplement thereto pursuant to this Article II until the earlier of (i)
the date upon which such financing, offer or sale of securities, acquisition, corporate reorganization or other material transaction concludes, or the date upon which such material information is disclosed to the public or ceases to be material, respectively, or (ii) sixty (60) days after the Company makes such good faith determination; provided, that only two (2) such certificates may be delivered to the Investors in any twelve (12) consecutive month period, and the aggregate number of days in which any Sales Blackout Periods may be in effect in any twelve (12) consecutive month period shall not exceed ninety (90) days;

c. the Company shall not be required to effect (i) more than three (3) registrations pursuant to this Article II in any calendar year or (ii) a registration of Eligible Securities, the fair market value of which on the date of the registration request is less than $5,000,000. No registration of Eligible Securities under this Article II shall relieve the Company of its obligation (if any) to effect registrations of Eligible Securities pursuant to Section 3.1 hereof; and

d. the Company shall not file any registration statement or effect a public offering of its securities during the period of time covered by a certificate relating to an event described in clause (b)(i) (other than in connection with such proposed transaction described in clause (b)(i)) or (b)(ii) above.

SECTION 2.2 Piggyback Registration. The Company may agree to register Common Shares in a registration statement for resale by any holder of registration rights, pursuant to a registration rights agreement entered into by it with the Company on or after the date of this Agreement (a “Qualifying Other Holder”) and who is proposing to register Common Shares with an aggregate fair market value as of the time of the initial filing of such registration statement of at least $10,000,000. Upon written request from a Qualifying Other Holder requesting that the Company effect the registration under the Securities Act of all or part of the Eligible Securities held by such Qualifying Other Holder, the Company shall give written notice to the Investors of its intention to so register Common Shares at least thirty (30) days before the initial filing of the registration statement related thereto. The Company shall include in any registration statement filed pursuant to this Article II the Eligible Securities of any Investor (a “Participating Holder”) who has delivered written notice to the Company within ten (10) Business Days of the date of the Company’s receipt of the above-referenced written notice from the Qualifying Other Holder. A notice from a Participating Holder under this Section 2.3 shall specify the number of Eligible Securities to be included in the registration statement and the intended method of disposition.

If the Company shall have been advised by a nationally recognized independent investment banking firm selected by the Company and reasonably acceptable to the Participating Holders to act as lead underwriter in connection with the public offering of securities by the Company that, in such firm’s opinion, a registration of Eligible Securities requested to be registered at that time would materially and adversely affect the scheduled offering of securities, then the aggregate number of Eligible Securities requested to be included in such registration by the Participating Holders and the Qualifying Other Holder(s) shall be reduced pro rata among the Participating Holders and the Qualifying Other Holder(s) according to the total number of eligible securities requested to be registered by such Persons.
SECTION 2.3 Expenses. The Company shall bear all Registration Expenses in connection with any demand registration pursuant to this Article II, whether or not such registration statement becomes effective; provided, however, that if the Investors request a registration pursuant to this Section 2.1 and subsequently withdraw their request, then such Investors shall either pay all Registration Expenses incurred in connection with such registration or forfeit the right to request another registration during the subsequent ninety (90) days unless the withdrawal of such request is the result of facts or circumstances relating to the Company or the Common Shares that arise after the date on which such request was made and would have a material adverse effect on the offering of the Eligible Securities.

ARTICLE III
INCIDENTAL AND SHELF REGISTRATION

SECTION 3.1 Notice and Incidental Registration. If the Company proposes to register any Common Shares, any equity securities exercisable for, convertible into or exchangeable for Common Shares, or other securities issued by it having terms substantially similar to Eligible Securities ("Other Securities") for public sale by the Company under the Securities Act on a form and in a manner which would permit registration of Eligible Securities for sale to the public under the Securities Act, it will give prompt written notice to the Investors of its intention to do so, and upon the written request of any Investor delivered to the Company within ten (10) Business Days after the giving of any such notice (which request shall specify the number of Eligible Securities intended to be disposed of by the Investor and the intended method of disposition thereof), the Company will use reasonable best efforts to effect, in connection with the registration of the Other Securities, the registration under the Securities Act of all Eligible Securities which the Company has been so requested to register by the Selling Investor(s), to the extent required to permit the disposition (in accordance with the intended method or methods thereof as aforesaid) of Eligible Securities so to be registered; provided that:

a. If, at any time after giving such written notice of its intention to register any Other Securities and prior to the effective date of the registration statement filed in connection with such registration, the Company or such Qualifying Other Holder shall determine for any reason not to register the Other Securities, the Company may, at its election, give written notice of such determination to the Selling Investors and thereupon the Company shall be relieved of its obligation to register such Eligible Securities in connection with the registration of such Other Securities (but not from its obligation to pay Registration Expenses to the extent incurred in connection therewith as provided in Section 3.2 hereof), without prejudice, however, to the rights (if any) of the Selling Investors immediately to request that such registration be effected as a registration under Article II hereof.

b. The Company shall not be required to give notice of or effect any registration of Eligible Securities under this Section 3.1 incidental to the registration of any of its securities in connection with mergers, acquisitions, exchange offers, subscription offers, dividend reinvestment plans or share options or other employee benefit plans.

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c. Notwithstanding any request under this Section 3.1, a Selling Investor may elect in writing prior to the effective date of a registration under this Section 3.1 not to register its Eligible Securities in connection with such registration.

d. No registration of Eligible Securities effected under this Section 3.1 shall relieve the Company of its obligation (if any) to effect registration of other Eligible Securities pursuant to Article II or Section 3.2 hereof.

e. Neither the Company nor the Partnership shall enter into any agreement with a holder of securities of the Company or the Partnership that prevents the Company from complying with its obligations under this Section 3.1 to include Eligible Securities in any registration statement filed by the Company.

f. The Company will not be required to effect any registration pursuant to this Section 3.1 if the Company shall have been advised by a nationally recognized independent investment banking firm selected by the Company to act as lead underwriter in connection with the public offering of securities by the Company that, in such firm’s opinion, a registration of Eligible Securities requested to be registered at that time would materially and adversely affect the scheduled offering of securities; provided, however, that if an offering of some but not all of the Eligible Securities requested to be registered by the Investor(s) would not materially adversely affect the Company’s offering of securities, the aggregate number of Eligible Securities requested to be included in such offering by the Investors shall be reduced such that securities are included as follows: (1) first, 100% of the securities that the Company proposes to sell, (2) second, and only if all the securities referred to in clause (1) have been included, the number of securities eligible for inclusion in such registration that all other Persons have requested to include, allocated pro rata among such Persons according to the total number of eligible securities requested to be registered by such Persons.

g. The Company shall be responsible for the payment of all Registration Expenses in connection with any registration pursuant to this Section 3.1.

SECTION 3.2 Shelf Registration Statement.

(n) **Shelf Registration Statement.** Subject to Section 2.1(b), the Company shall, upon request of any Investor, as promptly as reasonably practicable file with the SEC a registration statement for an offering to be made on a continuous basis pursuant to Rule 415 covering the resale of all of the Eligible Securities (the “Shelf Registration Statement”). The Shelf Registration Statement shall be on the appropriate form permitting registration of such Eligible Securities for resale by Investors in the manner or manners designated by them (including, without limitation, one or more underwritten offerings). The Company will notify each Investor when such Shelf Registration Statement has become effective. The Company shall not be required to maintain in effect more than one shelf registration at any one time pursuant to this Section 3.2(a). The Company shall (subject to the limitations on registration obligations of the Company set forth in Articles II and III hereof, which shall be applicable with respect to the Shelf Registration) use its reasonable best efforts to cause the Shelf Registration Statement to be declared effective under the Securities Act as promptly as practicable after the filing of the Shelf
Registration Statement, or automatically if the Company is eligible to file an automatically effective shelf registration statement, and to keep the Shelf Registration Statement continuously effective under the Securities Act until the date (“Effectiveness Period”) when all Eligible Securities covered by the Shelf Registration Statement have been sold in the manner set forth and as contemplated in the Shelf Registration Statement.

(b) **Shelf Offerings.** The Investors shall have the right to conduct a limited number of offerings, provided, that the Company shall have no obligation to effect more than one underwritten offering in every 90 day period, pursuant to an effective Shelf Registration Statement during the Effectiveness Period.

(c) **Withdrawal of Stop Orders.** If the Shelf Registration Statement ceases to be effective for any reason at any time during the Effectiveness Period (other than because of the sale of all of the securities registered thereunder), the Company shall use its reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof.

(d) **Supplement and Amendments.** Subject to Section 2.1(b), the Company shall promptly supplement and amend the Shelf Registration Statement and the prospectus included therein if required by the rules, regulations or instructions applicable to the registration form used for such Shelf Registration Statement or by the Securities Act.

(e) **Other Shares.** Except as provided in Section 2.2, in no event shall the Company agree to register Common Shares or any other securities for issuance by the Company or resale by any Persons other than the Investors in any registration statement filed pursuant to this Section 3.2 without the express written consent of Shareholder, which consent shall be entirely discretionary.

(f) **Other Registrations.** Notwithstanding any other provisions contained herein to the contrary, the Company shall not be required to effect any shelf registration or to keep any shelf registration statement effective pursuant to this Section 3.2 if the Investors exercise their right to request a demand registration pursuant to Article II, and such demand registration includes all of the Eligible Securities owned by all of the Investors and such securities are sold pursuant to such demand registration.

(g) **Expenses.** The Company shall bear all Registration Expenses in connection with any shelf registration pursuant to this Section 3.2, whether or not such shelf registration becomes effective; provided, however, that if the Investor(s) request a shelf registration and subsequently withdraw their request, then such Investors shall either pay all Registration Expenses incurred in connection with such shelf registration or forfeit the right to request another shelf registration during the subsequent ninety (90) days unless the withdrawal of such request is the result of facts or circumstances relating to the Company or the Common Shares that arise after the date on which such request was made and would have an adverse effect on the offering of the Eligible Securities.
ARTICLE IV
REGISTRATION PROCEDURES

SECTION 4.1 Registration and Qualification. If and whenever the Company is required to use all reasonable best efforts to effect the registration of any Eligible Securities under the Securities Act as provided in Articles II or III hereof, and subject to the limitations set forth in Section 2.1, 3.1 and 3.2, the Company will, as promptly as is practicable:

a. prepare, file and use all reasonable best efforts to cause to become effective and to remain continuously effective a registration statement under the Securities Act regarding the Eligible Securities to be offered;

b. prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Eligible Securities until such time as all of such Eligible Securities have been disposed of in accordance with the intended methods of disposition by the Selling Investors set forth in such registration statement;

c. furnish to the Investor and any Selling Investors and to any underwriter of such Eligible Securities such number of conformed copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits), such number of copies of the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus), in conformity with the requirements of the Securities Act, such documents incorporated by reference in such registration statement or prospectus, and such other documents as the Selling Investors or such underwriter may reasonably request;

d. use all reasonable best efforts to register or qualify all Eligible Securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as the Investor or any Selling Investors or any underwriter of such Eligible Securities shall reasonably request, and use all reasonable best efforts to do other acts and things which may be reasonably requested by the Investor or any Selling Investors or any underwriter to consummate the disposition in such jurisdictions of the Eligible Securities covered by such registration statement, except the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it is not so qualified, or to subject itself to taxation on its income in any jurisdiction where it is not then subject to taxation, or to consent to general service of process in any jurisdiction where it is not then subject to service of process;

e. use all reasonable best efforts to list the Eligible Securities on each national securities exchange or quotation system on which the Common Shares are then listed, if the listing of such securities is then permitted under the rules of such exchange;
f. (i) furnish to the Selling Investors opinions of counsel for the Company, addressed to them, dated the date of the closing under the underwriting agreement, in customary form, scope and substance, (ii) in the case of an underwritten offering, upon such Selling Investor’s request, furnish to the Selling Investors a “comfort letter” signed by the independent public accountants who have audited the Company’s financial statements included in such registration statement, addressed to them and, subject to the Selling Investors providing to the independent public accountants such information and representations as reasonably requested by such independent public accountants to render such “comfort letter”, provided that with respect to such opinion and “comfort letter,” the following shall apply: the opinion and “comfort letter” shall cover such matters as the Selling Investors may reasonably request, but only to the extent substantially the same matters with respect to such registration statement (and the prospectus included therein) are customarily covered in opinions of issuer’s counsel and in accountants’ letter delivered to underwriters in underwritten public offerings of securities, and (iii) furnish to the Selling Investors such other certificates and documents, dated the date of closing under the underwriting agreement, as are reasonably requested by the Selling Investors and customarily delivered at closing;

g. notify the Investor and any Selling Investors as soon as reasonably practicable and, if requested by any such person, confirm such notice in writing:

(i) (A) when a prospectus, any prospectus supplement or free writing prospectus or post-effective amendment is proposed to be filed in respect of a registration statement filed pursuant to this Agreement, and (B) with respect to such registration statement or any post-effective amendment thereto, when the same has become effective;

(ii) of any written comments from the SEC with respect to any filing and of any request by the SEC or any other federal or state governmental authority for amendments or supplements to such registration statement or related prospectus or for additional information related thereto;

(iii) of the issuance by the SEC, any state securities commission, any other governmental agency or any court of any stop order, order or injunction suspending or enjoining the use or effectiveness of any registration statement filed pursuant to this Agreement or the initiation of any proceedings for that purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of qualification or exemption from qualification of any of the Eligible Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose;

(v) of the existence of any fact or the happening of any event that makes any statement of material fact made in any registration statement filed pursuant to this Agreement or related prospectus untrue in any material respect, or that requires the making of any changes in such registration statement or prospectus so that, in the case of the registration statement, it will not contain any
untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and that, in the case of the prospectus, such prospectus will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(vi) of the determination by the Company that a post-effective amendment to a registration statement filed pursuant to this Agreement will be filed with the SEC; and

h. upon the occurrence of any event contemplated by Section 4.1(g)(v) hereof, at the request of the Investor or a Selling Investor, prepare and furnish to the Investor and any Selling Investors as many copies as requested of a supplement or amendment, including, if appropriate, a post-effective amendment to the registration statement or a supplement to the related prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, such prospectus will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

The Company may require the Investor(s) and any Selling Investors to furnish the Company such information regarding the Investor(s) and any Selling Investors and the distribution of such securities as the Company may from time to time reasonably request in writing and as shall be required by law or by the SEC in connection with any registration.

SECTION 4.2 Underwriting. (a) If any Selling Investor(s) so elects, an offering under this Agreement shall, by written notice delivered to the Company, be in the form of an underwritten offering (for the avoidance of doubt, underwritten offerings pursuant to a shelf registration statement under Section 3.2 shall be subject to Section 2.1(b)). With respect to any such underwritten offering, the Selling Investors shall select an investment banking firm of international standing to be the managing underwriter for the offering, which firm shall be reasonably acceptable to the Company, following which selection the Company and the Selling Investors shall cooperate to effect such transaction as promptly as reasonably practicable.

(b) In the case of an underwritten offering, the Company will, and will cause the Partnership to, enter into and perform their obligations under an underwriting agreement with such underwriters for such offering, such agreement to contain such representations and warranties by the Company and the Partnership and such other terms and provisions as are customarily contained in underwriting agreements with respect to secondary distributions, which may include, without limitation, indemnities and contribution to the effect and to the extent provided in Article VII hereof and the provision of opinions of counsel and accountants’ letters to the effect and to the extent provided in Section 4.1(f) hereof. The holders of Eligible Securities on whose behalf such securities are to be distributed by such underwriters shall be parties to any such underwriting agreement and the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such underwriters shall
also be made to and for the benefit of such holders of such securities, but only to the extent such representations and warranties and other agreements are customarily made by issuers to selling stockholders in secondary underwritten public offerings.

(c) In the event that any registration pursuant to Section 3.1 hereof shall involve, in whole or in part, an underwritten offering, the Company may require Eligible Securities requested to be registered pursuant to Article III hereof to be included in such underwriting on the same terms and conditions as shall be applicable to the Other Securities being sold through underwriters under such registration. In such case, the holders of Eligible Securities on whose behalf Eligible Securities are to be distributed by such underwriters shall be parties to any such underwriting agreement. Such agreement shall contain such representations and warranties by the Company, the Partnership and the Selling Investors and such other terms and provisions as are customarily contained in underwriting agreements with respect to secondary distributions, which may include, without limitation, indemnities and contribution to the effect and to the extent provided in Article VII hereof. The representations and warranties in such underwriting agreement by, and the other agreements on the part of, the Company and the Partnership to and for the benefit of such underwriters shall also be made to and for the benefit of such holders of Eligible Securities, but only to the extent such representations and warranties and other agreements are customarily made by issuers to selling stockholders in secondary underwritten public offerings.

SECTION 4.3 Blackout Periods. (a) At any time when a registration statement effected pursuant to Article II hereof relating to Eligible Securities is effective, upon written notice from the Company to the Selling Investors that the Board of Trustees of the Company has determined in good faith, with the advice of counsel, that the Selling Investors’ sale of Eligible Securities pursuant to the registration statement would be reasonably likely to require disclosure of non-public material information the disclosure of which would not otherwise be required to be disclosed and would be reasonably likely to have a material adverse effect on the Company (an “Information Blackout”), the Selling Investors shall suspend sales of Eligible Securities pursuant to such registration statement until the earliest of:

(i) the date upon which such material information is disclosed to the public or ceases to be material;

(ii) sixty (60) days after the Company’s delivery of such written notice to the Selling Investors; and

(iii) such time as the Company notifies the Selling Investors that sales pursuant to such registration statement may be resumed.

The number of days from such suspension of sales by the Selling Investors until the day when such sales may be resumed under clause (i), (ii) or (iii) hereof is hereinafter called a “Sales Blackout Period”. In no event may the Company deliver more than two (2) notices of an Information Blackout in any twelve (12) consecutive month period and the aggregate number of days in which any Sales Blackout Periods may be in effect in any twelve (12) consecutive month period shall not exceed ninety (90) days.
(b) Any delivery by the Company of a written notice of an Information Blackout during the sixty (60) days immediately following effectiveness of any registration statement effected pursuant to Article II hereof shall give the Investors the right, by written notice to the Company within twenty (20) Business Days after the end of such Sales Blackout Period, to cancel such registration and obtain one additional registration right during such calendar year under Article II hereof.

(c) The Company shall not effect any public offering of its securities during any Sales Blackout Period.

SECTION 4.4 Qualification for Rule 144 Sales. The Company covenants that it will use its reasonable best efforts to file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Issuer is not required to file such reports, it will, upon the written request of an Investor use its reasonable best efforts to make publicly available such necessary information for so long as necessary to permit sales pursuant to Rule 144 under the Securities Act), and it will use its reasonable best efforts to take any such further action as reasonably requested by any Investors, all to the extent required from time to time to enable Investors to sell Eligible Securities without Registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144, 144A or Regulation S under the Securities Act, as such Rules may be amended from time to time, or (b) any similar rule or regulation hereafter adopted by the SEC. Upon the reasonable request of any Investor, the Company will deliver to such Investor a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

SECTION 4.5 Investor Transferees and Designees. In the event that the Investor sells or otherwise transfers its Common Units to a third party for redemption for Common Shares pursuant to Section 8.6.G of the Partnership Agreement for the purpose of effecting an offering of such Common Shares, the proceeds of which (less any applicable expenses and commissions) will be received by the Investor, the Company’s obligations hereunder with respect to such Common Shares shall continue in all respects with respect to such offering or offerings and shall not be relieved in any way by reason of such sale or transfer.

ARTICLE V
PREPARATION; REASONABLE INVESTIGATION

SECTION 5.1 Preparation; Reasonable Investigation. In connection with the preparation and filing of each registration statement registering or offering Eligible Securities under the Securities Act, the Company will give the Investor, any Selling Investors and the underwriters, if any, and their respective counsel and accountants, drafts of such registration statement for their review and comment prior to filing and such reasonable and customary access to its books and records and such opportunities to discuss the business of the Company with its officers, counsel and the independent public accountants who have certified its financial statements as shall be necessary to conduct a reasonable investigation within the meaning of the Securities Act, provided that the Company may require them to enter into a customary confidentiality agreement.
ARTICLE VI
RESTRICTIONS ON PUBLIC SALE

SECTION 6.1 Restrictions on Public Sale.

(a) Notwithstanding any registration rights set forth in this Agreement, upon written notice by the Company to the Investors, the Investors shall, in the event (x) the Company is issuing equity securities with an aggregate fair market value of at least $50,000,000 to the public, or (y) any Qualifying Other Holder is proposing to sell Common Shares with an aggregate fair market value of at least $50,000,000, in each case in an underwritten offering, and, if requested in writing by the managing underwriter or underwriters for such underwritten offering, not effect (and sign a written commitment to the underwriter(s) (a “Lock-up Commitment”) to not effect) any public sale or distribution of Eligible Securities or any securities convertible into or exchangeable or exercisable for such Eligible Securities, including a sale pursuant to Rule 144 (or any similar provision then in force) under the Securities Act, for a period commencing on the seventh (7th) day prior to the date such underwritten offering commences (such offering being deemed to commence for this purpose on the later of the effective date for the registration statement for such offering or, if applicable, the date of the prospectus supplement for such offering) or, if later, the date of such written request of the underwriter(s), and ending ninety (90) days after the closing of such underwritten offering, so long as the managing underwriter or underwriters obtains a written commitment of each Company trustee and executive officer and each Qualifying Other Holder to agree to the same restrictions; provided, however, that such restrictions shall not apply to any distributions-in-kind to an Investor’s partners or members. Any notice delivered to the Investors pursuant to this Section 6.1(a) (an “Underwritten Offering Notice”) shall be delivered not less than five (5) business days prior to the date of the underwriting agreement for such offering. The Company shall not deliver more than two (2) Underwritten Offering Notices pursuant to clause (x) of Section 6.1(a) in any twelve (12) consecutive month period.

(b) In the event of a sale of Common Shares by the Investors in an underwritten offering pursuant to Section 4.2, if requested in writing by the managing underwriter or underwriters for such underwritten offering, the Company shall use reasonable best efforts to cause its trustees and executive officers and each Qualifying Other Holder to sign a Lock-Up Commitment to the underwriter(s) to not effect any public sale or distribution of Common Shares or any securities convertible into or exchangeable or exercisable for Common Shares, including a sale pursuant to Rule 144 (or any similar provision then in force) under the Securities Act, for a period commencing on the seventh (7th) day prior to the date such underwritten offering commences (such offering being deemed to commence for this purpose on the later of the effective date for the registration statement for such offering or, if applicable, the date of the prospectus supplement for such offering) or, if later, the date of such written request of the underwriter(s), and ending no later than the earlier of (i) ninety (90) days after the closing of such underwritten offering and (ii) the date of the expiration of the lock-up imposed on the Investors in respect of such offering; provided, however, that such obligations of the Company with respect to any Qualifying Other Holder shall not apply unless such Qualifying Other Holder is permitted to participate in the underwritten offering in accordance with Section 2.2. Notwithstanding anything to the contrary in this Section 6.1, (x) if the Investors fail to sign a Lock-Up Commitment in accordance with, and subject to the terms and limitations set forth in,
Section 6.1(a), then the Company’s obligations under this Section 6.1(c) shall terminate, and (y) if a Qualifying Other Holder fails to sign a Lock-Up Commitment in accordance with, and subject to the terms and limitations set forth in, this Section 6.1(d), then the Investors’ obligations under Section 6.1(a)(y) shall terminate.

(c) Notwithstanding the foregoing, the Company shall not, and shall not be required to use reasonable best efforts to impose, restrictions on sales and distributions of Eligible Securities by the Investors for more than one hundred (100) days in the aggregate in any twelve (12) consecutive month period.

ARTICLE VII
INDEMNIFICATION AND CONTRIBUTION

SECTION 7.1 Indemnification. (a) In the event of any registration of Eligible Securities hereunder, the Company and the Partnership jointly and severally will, and hereby do, indemnify and hold harmless, each Selling Investor, its respective directors, trustees, officers, partners, agents, and employees and each other Person who participates as an underwriter in the offering or sale of such securities and each other Person, if any, who controls each such Selling Investor or any such underwriter within the meaning of the Securities Act, against any and all losses, claims, damages, expenses or liabilities, joint or several, actions or proceedings (whether commenced or threatened) in respect thereof, to which each such indemnified party may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages, expenses or liabilities (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any registration statement contemplated hereby under which Eligible Securities were registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained therein, or any amendment or supplement thereto, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances in which they were made not misleading, and the Company or the Partnership will reimburse each such Selling Investor and each such director, trustee, officer, partner, agent, or employee, underwriter and controlling person for any legal or any other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, expense, liability, action, or proceeding: provided, however, that the Company and the Partnership shall not be liable in any such case to the extent that any such loss, claim, damage, expense or liability (or action or proceeding in respect thereof) arises out of or is based upon an untrue statement or alleged untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, any such preliminary prospectus, final prospectus, summary prospectus, amendment or supplement in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Selling Investor or underwriter specifically for inclusion in such registration statement, preliminary prospectus, final prospectus, summary prospectus, amendment or supplement.

(b) Each Selling Investor severally will, and hereby does, indemnify and hold harmless the Company, its trustees, its officers, employees, agents and each person who
participates as an underwriter in the offering or sale of such securities, and each Person, if any, who controls the Company within the meaning of the Securities Act against any and all losses, claims, damages, expenses or liabilities, joint or several, actions or proceedings (whether commenced or threatened) in respect thereof, to which each such indemnified party may become subject under the Securities Act or otherwise insofar as such losses, claims, damages, expenses or liabilities (or actions or proceedings, whether commenced or threatened in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact in or omission or alleged omission to state a material fact in such registration statement, any preliminary prospectus, final prospectus or summary prospectus contained therein, or any amendment or supplement thereto, but only to the extent that such statement or omission was made in reliance upon and, in conformity with, written information furnished by or on behalf of such Selling Investor to the Company specifically for inclusion in such registration statement, preliminary prospectus, final prospectus, summary prospectus, amendment or supplement.

(c) Promptly after receipt by any indemnified party hereunder of notice of the commencement of any action or proceeding involving a claim referred to in paragraphs (a) or (b) of this Section 7.1, the indemnified party will notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party will not relieve the indemnifying party from any liability which it may have to any indemnified party under paragraphs (a) or (b) of this Section 7.1 (except to the extent that is has been prejudiced in any material respect by such failure). In case any such action, suit, claim or proceeding is brought against any indemnified party, the indemnifying party shall be entitled to participate therein and, to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party. Notwithstanding the foregoing, the indemnified party shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the employment of such counsel shall have been authorized in writing by the indemnifying party in connection with the defense of such suit, action, claim or proceeding, (ii) the indemnifying party shall not have employed counsel to take charge of the defense of such action, suit, claim or proceeding within a reasonable time after notice of commencement of the action, suit, claim or proceeding, or (iii) such indemnified party shall have reasonably concluded, based on the advice of counsel, that there may be defenses available to it which are different from or additional to those available to the indemnifying party which, if the indemnifying party and the indemnified party were to be represented by the same counsel, could result in a conflict of interest for such counsel or materially prejudice the prosecution of the defenses available to such indemnified party. If any of the events specified in clauses (i), (ii) or (iii) of the preceding sentence shall have occurred or shall otherwise be applicable, then the reasonable fees and expenses of one counsel selected by a majority in interest of the indemnified parties shall be borne by the indemnifying party. If, in any case specified in the foregoing clauses (i), (ii) or (iii), the indemnified party employs separate counsel, the indemnifying party shall not have the right to direct the defense of such action, suit, claim or proceeding on behalf of the indemnified party. Anything in this paragraph to the contrary notwithstanding, an indemnifying party shall not be liable for the settlement of any action, suit, claim or proceeding effected without its prior written consent (which consent in the case of an action, suit, claim or proceeding exclusively seeking monetary relief shall not be unreasonably withheld or delayed). Such indemnification shall remain in full force and effect irrespective of any investigation made by or on behalf of an indemnified party.
(d) If for any reason the indemnity under this Section 7.1 is unavailable or is insufficient to hold harmless any indemnified party under paragraphs (a) or (b) of this Section 7.1, then the indemnifying parties shall contribute to the amount paid or payable to the indemnified party as a result of any loss, claim, expense, damage or liability (or actions or proceedings, whether commenced or threatened, in respect thereof), and legal or other expenses reasonably incurred by the indemnified party in connection with investigating or defending any such loss, claim, expense, damage, liability, action or proceeding, in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party on the other. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Selling Investor and the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. If, however, the allocation provided in the second preceding sentence is not permitted by applicable law or provides a lesser sum to the indemnified party than the amount hereinbefore calculated, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party in such proportion as is appropriate to reflect not only such relative fault but also the relative benefits of the indemnifying party and the indemnified party as well as any other relevant equitable considerations. The parties hereto agree that it would not be just and equitable if contributions pursuant to this paragraph (d) of Section 7.1 were to be determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the preceding sentences of this paragraph (d) of Section 7.1.

(e) Notwithstanding any other provision of this Section 7.1, to the extent that any director, trustee, officer, partner, agent, employee, or other representative (current or former) of any indemnified party is a witness in any action or proceeding, the indemnifying party agrees to pay to the indemnified party all expenses reasonably incurred by, or on the behalf of, the indemnified party and such witness in connection therewith.

(f) All legal and other expenses reasonably incurred by or on behalf of any indemnified party in connection with investigating or defending any loss, claim, expense, damage, liability, action or proceeding which are to be borne by the indemnifying party pursuant to this Section 7.1 shall be paid by the indemnifying party in advance of the final disposition of such investigation, defense, action or proceeding within thirty (30) days after the receipt by the indemnifying party of a statement or statements from the indemnified party requesting from time to time such payment, advance or advances. The entitlement of each indemnified party to such payment or advancement of expenses shall include those incurred in connection with any action or proceeding by the indemnified party seeking an adjudication or award in arbitration pursuant to this Section 7.1. Such statement or statements shall reasonably evidence such expenses incurred by the indemnified party in connection therewith.

(g) The termination of any proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, adversely affect the rights of any indemnified party to indemnification hereunder or create a presumption that any indemnified party violated any federal or state securities laws.
(h) In the event that advances are not made pursuant to this Section 7.1 or payment has not otherwise been timely made, each indemnified party shall be entitled to seek a final adjudication in an appropriate court of competent jurisdiction of the entitlement of the indemnified party to indemnification or advances hereunder.

(ii) The Company, the Partnership and the Selling Investors agree that they shall be precluded from asserting that the procedures and presumptions of this Section 7.1 are not valid, binding and enforceable. The Company, the Partnership and the Selling Investors further agree to stipulate in any such court that the Company, the Partnership and the Selling Investors are bound by all the provisions of this Section 7.1 and are precluded from making any assertion to the contrary.

(iii) To the extent deemed appropriate by the court, interest shall be paid by the indemnifying party to the indemnified party at a reasonable interest rate for amounts which the indemnifying party has not timely paid as the result of its indemnification and contribution obligations hereunder.

(i) In the event that any indemnified party is a party to or intervenes in any proceeding to which the validity or enforceability of this Section 7.1 is at issue or seeks an adjudication to enforce the rights of any indemnified party under, or to recover damages for breach of, this Section 7.1, the indemnified party, if the indemnified party prevails in whole in such action, shall be entitled to recover from the indemnifying party and shall be indemnified by the indemnifying party against, any expenses reasonably incurred by the indemnified party. If it is determined that the indemnified party is entitled to indemnification for part (but not all) of the indemnification so requested, expenses incurred in seeking enforcement of such partial indemnification shall be reasonably prorated among the claims, issues or matters for which the indemnified party is entitled to indemnification and for such claims, issues or matters for which the indemnified party is not so entitled.

(j) The indemnity agreements contained in this Section 7.1 shall be in addition to any other rights (to indemnification, contribution or otherwise) which any indemnified party may have pursuant to law or contract and shall remain operative and in full force and effect regardless of any investigation made or omitted by or on behalf of any indemnified party and shall survive the transfer of any Eligible Securities by any Investor.

ARTICLE VIII

BENEFITS OF REGISTRATION RIGHTS

SECTION 8.1 Benefits of Registration Rights. The Investors may severally or jointly exercise the registration rights hereunder in such proportion as they shall agree among themselves. In the event that the Company receives conflicting direction from Investors with respect to actions to be taken hereunder, the direction of Shareholder shall be the only direction the Company shall be required to follow.

SECTION 8.2 General Partner of the Partnership. The Company agrees not to take any action that results in another Person becoming general partner of the Partnership, by merger, agreement or otherwise, without causing such Person to expressly assume all of the obligations of the Company (including as general partner of the Partnership) hereunder.
ARTICLE IX
MISCELLANEOUS

SECTION 9.1 No Inconsistent Agreements. Neither the Company nor the Partnership has entered and neither of them will enter into any agreement that is inconsistent with the rights granted to the Investors in this Agreement or that otherwise conflicts with the provisions hereof in any material respect. The rights granted to the Investors hereunder do not in any material way conflict with and are not inconsistent with the rights granted to the holders of the Company’s or the Partnership’s other issued and outstanding securities under any such agreements.

SECTION 9.2 Captions. The captions or headings in this Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Agreement.

SECTION 9.3 Severability. If any clause, provision or section of this Agreement shall be invalid or unenforceable, the invalidity or unenforceability of such clause, provision or section shall not affect the enforceability or validity of any of the remaining clauses, provisions or sections hereof to the extent permitted by applicable law.

SECTION 9.4 Governing Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of New York, without reference to its rules as to conflicts or choice of laws.

SECTION 9.5 Modification and Amendment. This Agreement may not be changed, modified, discharged or amended, except by an instrument signed by all of the parties hereto.

SECTION 9.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

SECTION 9.7 Entire Agreement. This Agreement constitutes the entire agreement and understanding among the parties and supersedes any prior understandings and/or written or oral agreements among them respecting the subject matter herein.

SECTION 9.8 Assignment, Successors and Assigns. Except as set forth in the next sentence, this Agreement and the rights granted hereunder may not be assigned by any Investor without the prior written consent of the Company, which may be granted or withheld by the Company in its sole and absolute discretion. Each Investor will be permitted to assign its rights under this Agreement to its Permitted Transferees, so long as the Investor provides to the Company at least five (5) business days’ advance written notice of the transfer, and the transferee executes and delivers to the Company an instrument, in form and substance acceptable to the
Company, agreeing to be bound by the terms of this Agreement as if it were an original party hereto. This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective successors and permitted assigns.

SECTION 9.9 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (c) one (1) Business Day after deposit with a nationally recognized overnight courier, specifying next Business Day delivery, with written verification of receipt. All notices and other communications shall be sent to the Company or the Investors, respectively, at the address listed on the signature page hereof or at such other address as the Company or the Investors, respectively, may designate by ten (10) days’ advance written notice to the other parties hereto.

SECTION 9.10 Specific Performance. The parties agree that, to the extent permitted by law, (i) the obligations imposed on them in this Agreement are special, unique and of an extraordinary character, and that in the event of a breach by any such party, damages would not be an adequate remedy; and (ii) each of the other parties shall be entitled to specific performance and injunctive and other equitable relief in addition to any other remedy to which it may be entitled at law or in equity.

[Signature pages follow]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed as of the day and year first above written.

SERITAGE GROWTH PROPERTIES, a Maryland real estate investment trust

By: 

Name: 
Title: 

[3333 Beverly Road
Hoffman Estates, Illinois 60179]
Attn: Secretary
Phone: [●]
Email: [●]

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attn: Robin Panovka
Phone: 212-403-1000
Email: RPanovka@wrk.com

[Signatures continued on next page]
[SIGNATORY]

By: 
Name: 
Title: 

[address]  
Attn.: [ ]

with copies to:

[address]  
Attn.: [ ]

[Signatures continued on next page]
Solely for purposes of Section 7.1:

SERITAGE GROWTH PROPERTIES L.P., a Delaware limited partnership

By: ____________________________________________
    Name: _________________________________________
    Title: __________________________________________

[3333 Beverly Road
Hoffman Estates, Illinois 60179]
Attn: Secretary
Phone: [●]
Email: [●]

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attn: Robin Panovka
Phone: 212-403-1000
Email: RPanovka@wlrk.com
Exhibit 10.12

COMMITMENT LETTER

May 27, 2015

Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates, Illinois 60179
Attention: Robert Schriesheim

Seritage Growth Properties
3333 Beverly Road
Hoffman Estates, Illinois 60179
Attention: Benjamin Schall

Re: Project Madison

Ladies & Gentlemen:

This letter shall confirm the agreement of H/2 Capital Partners LLC (together with its successors and assigns, “H/2”) and JPMorgan Chase Bank, National Association (together with its successors and assigns, “JPM”, and together with H/2, collectively, “Lender”) to provide, or cause an affiliate to provide, subject to the satisfaction of the conditions set forth in this Commitment (as hereinafter defined), one or more mortgage and mezzanine loans in the maximum principal amount of $1,261,195,656 (collectively, the “Loan”) to one or more entities (collectively, “Borrower”) that are or on the date of the closing of the Loan will become direct or indirect subsidiaries of Seritage Growth Properties (“Seritage”) on the terms and conditions set forth in this letter and the Summary of Terms and Conditions attached hereto as Annex A (as modified and/or supplemented by the terms of the Agreed Loan Documents (as defined below), the “Term Sheet”; the Term Sheet and this letter, together with that certain Fee Letter by and among Seritage, SHLD (as defined below) and Lender of even date herewith (including all annexes, exhibits and/or schedules thereto, the “Fee Letter”), collectively, the “Commitment”).

As used herein, “Loan Parties” shall mean, collectively, the Guarantor (including Seritage), Borrower and any other obligor or pledgor under the definitive documentation with respect to the Loan, and “SHLD” shall mean Sears Holdings Corporation. Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Agreed Loan Documents, and if not defined therein, the meaning set forth in the Term Sheet. Notwithstanding references to JPM and H/2 collectively as “Lender” herein, all liability of JPM and H/2...
hereunder shall be several and not joint and all obligations to and indemnifications of “Lender” pursuant to this Commitment shall be
deemed to include direct obligations to JPM and H/2 individually for the respective portions of such obligations and indemnifications,
as to which JPM and H/2 shall be separately individually entitled.

This Commitment is being issued in connection with the indirect acquisition of the Properties and the other Collateral and the
JV Collateral (as each is defined in the Loan Agreement) by Seritage pursuant to and in accordance with that certain Subscription,
Distribution and Purchase and Sale Agreement by and between SHLD and Seritage (together with all exhibits, annexes and schedules
thereto, as the same may be amended, restated, replaced or modified from time to time in accordance with the terms of this
Commitment, the “SHLD PSA”). Upon the execution and delivery of this Commitment, each of SHLD and Seritage shall use
commercially reasonable efforts (i) to launch, as soon as reasonably practicable, the “rights offering” described in Seritage’s
Registration Statement on Form S-11 in effect on the date of this Commitment (the “Rights Offering”) and (ii) to execute, as soon as
reasonably practicable and prior to the launch of the Rights Offering, the SHLD PSA.

A. **Commitment**

If on the date hereof, SHLD and Seritage shall have countersigned this Commitment (including the Fee Letter) and delivered to
Lender: (i) the Good Faith Deposit (as defined in the Fee Letter); and (ii) the Commitment Fee (as defined in the Fee Letter) then in
consideration of the payment of the Good Faith Deposit and the Commitment Fee and other good and valuable consideration, and
subject to satisfaction of the conditions set forth herein, including Section B below, Lender shall provide or cause its affiliated
designee to provide the Loan on or before the Expiration Date (as defined below) on the terms and subject to the conditions described
herein.

The obligations of each Lender executing this Commitment shall be several and not joint and no Lender shall be responsible for
the obligations of any other Lender. Each Lender’s obligations hereunder shall be limited to its respective share of the Loan as set
forth in the Fee Letter. Notwithstanding anything to the contrary herein, all indemnities by SHLD and Seritage and obligations to pay
or reimburse the Lender for costs, fees, expenses, damages or advances set forth herein shall run to and benefit each Lender.

B. **Conditions Precedent**

This Commitment and Lender’s obligation to consummate and fund the Loan are subject to and conditioned upon:
(i) satisfaction (or waiver by Lender, in its sole discretion) of the terms and conditions in this Commitment; (ii) delivery to Lender of
the items and completion of the Due Diligence Items (as defined in the Fee Letter) and approval thereof, or, as the case may be,
reservation therefor in accordance with Section C hereof, by Lender in accordance with the terms and conditions set forth herein and
therein; (iii) satisfaction (or waiver by Lender, in its sole discretion) of the conditions precedent set forth in Annex B hereto (the
“Conditions Precedent”) and (iv) the execution and delivery by the Loan Parties of the definitive documentation relating to the Loan
described in Section D hereof, including the Agreed Loan Documents (as defined below).
C. Due Diligence

SHLD and Seritage acknowledge that Lender’s due diligence investigations described in the Due Diligence Items are intended to proceed simultaneously with Lender’s Counsel’s (defined below) preparation of documentation and scheduling for closing of the Loan, and that Lender’s Counsel’s activities in this regard shall not be construed as evidence of the waiver or satisfactory completion of such investigations. Notwithstanding anything to the contrary contained herein, to the extent that Lender identifies in any Due Diligence Items: (i) material physical or legal defects disclosed by current engineering, environmental, title, zoning reports or otherwise, or other due diligence shortfalls (inclusive of ground lease deficiencies), if any, with respect to the Properties whereby any Property would not otherwise meet the customary standards for mortgage and mezzanine financing of a large portfolio of properties similar in size and character to the Properties, or any material damage, material destruction or material alteration with respect to the improvements located on any Property whether or not covered by insurance and/or any condemnation proceedings that are pending or threatened against any part of any Property; (ii) any material uninsured liability or lack of required license/permit, that either have, or can reasonably be expected to have, a material adverse effect on the value or operations of a Property, the Loan or on any Loan Parties’ performance thereunder; or (iii) any material default or termination under any lease, REA, ground lease or other material agreement with respect to any Property (such matters described in clauses (i), (ii) and (iii) being referred to herein as “Material Defects”), then: (w) subject to satisfaction of the conditions set forth in this Commitment, the Loan shall nevertheless be funded; (x) the Exception Report (as referenced in the Loan Documents (as defined below)) shall include such Material Defects as express exceptions to applicable representations and warranties of the Loan Parties in the applicable Loan Documents; (y) Borrower shall covenant to use commercially reasonable efforts to correct such Material Defects within a reasonable period of time following closing; and (z) Lender may establish one or more reserves (“Defect Reserves”) in respect thereof from the proceeds of the Loan (over and above the reserves specified in the Agreed Loan Documents), in such amount as may be reasonably required to remedy or compensate for such Material Defects.

D. Transaction Documentation

The definitive documentation for the Loan shall include the Agreed Loan Documents (as defined in the Fee Letter) and shall also include the other documents described in the Fee Letter (collectively, the “Loan Documents”). All such Loan Documents (i) shall be reasonably satisfactory to the parties thereto, (ii) in the case of the Agreed Loan Documents, shall be in substantially the respective forms agreed as of the date hereof, modified and supplemented by Lender and the Loan Parties as they may reasonably agree and (iii) subject to clause (ii), be substantially consistent with the terms and conditions set forth in the Conditions Precedent. The Approved Transaction Documents (as defined in the Fee Letter) have been approved by Lender. From and after the date of this Commitment, each of SHLD and Seritage agree that none of the Approved Transaction Documents shall be amended, restated, supplemented or otherwise modified nor shall any of their terms be waived, in each case except with the prior written consent of Lender in its reasonable discretion.
The Loan Documents shall be prepared, and certain of the due diligence investigations outlined above shall be conducted, by Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, New York 10006, special counsel for Lender (“Lender’s Counsel”), and, to the extent deemed necessary and proper by Lender, other counsel retained by Lender including local counsel in the states where the Properties are located.

F. Syndication; Securitization

SHLD and Seritage each acknowledges that Lender intends to syndicate and/or securitize the Loan, any portion thereof or interest therein in one or more offerings, assignments and/or participations in its sole discretion, subject to the further terms described in the Agreed Loan Documents. SHLD and Seritage each acknowledges and agrees that the commencement of syndication and/or securitization shall occur in the discretion of Lender. SHLD, Seritage and each of the other Loan Parties agree to reasonably cooperate with Lender, at Lender’s sole expense, in any syndication, securitization and/or tranching of the Loan (except that SHLD and each of the Loan Parties shall pay their own respective legal costs).

In Lender’s sole discretion, either before or after closing, the Loan may be bifurcated into mortgage loans and mezzanine debt secured by direct and/or indirect equity interests in Borrower. The loan documentation for any mezzanine debt shall conform to the Agreed Loan Documents, with customary conforming changes to reflect structural differences between mortgage and mezzanine debt, and shall be subject to the further terms described in the Agreed Loan Documents.

G. Information

Each of SHLD and Seritage represents and covenants that: (i) to the knowledge of SHLD and/or Seritage all information, documentation or other materials (“Information”) (other than the Projections (as defined below) and other forward-looking information and information of a general economic or industry specific nature) provided by or on behalf of SHLD, Seritage or any of their respective subsidiaries or affiliates, to Lender in connection with the Loan is and, in the case of Information made available after the date hereof, will be, when furnished, in each case, taken as a whole with all Information theretofore disclosed, complete and correct in all material respects and, to the knowledge of SHLD and/or Seritage, does not, and in the case of Information made available after the date hereof, will not, when furnished, in each case, taken as a whole with all Information theretofore disclosed, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and (ii) all financial projections concerning the Seritage, Borrower, the Properties or any other Collateral or the JV Collateral taking into account the consummation of the Loan, that have been or will be made available to Lender by or on behalf of (and that have been or will be prepared by or on behalf of) SHLD, Seritage or any of their respective subsidiaries or affiliates (the “Projections”) to the extent prepared by SHLD, Seritage or any of their respective subsidiaries or affiliates have been and will be prepared in good faith based upon assumptions that are believed by the preparer thereof.
to be reasonable at the time such financial Projections are prepared, it being understood that such Projections are not to be viewed as facts and are subject to significant uncertainties and contingencies, many of which are beyond your control, and actual results may vary materially from the Projections. Each of SHLD and Seritage agrees that if at any time prior to the closing of the Loan, to the knowledge of SHLD and/or Seritage, any of the representations in the preceding sentence would be incorrect if the Information and Projections were being furnished, then each of SHLD and Seritage agrees to supplement, or cause to be supplemented, the Information and the Projections from time to time so that the conditions and representations and warranties contained in the preceding sentence are correct in all material respects. In syndicating and/or securitizing the Loan, Lender will be entitled to use and rely on the Information and the Projections without responsibility for independent verification thereof. Information provided to Lender will be included in offering documents in connection with a syndication or securitization of the Loan. Subject to the confidentiality provisions of Section M, in connection therewith, Lender and its representatives may share all such information and material with: (x) the investment banking firms, rating agencies, accounting firms, law firms and other third-party advisory firms involved with the Loan and the Loan Documents or the applicable secondary market transaction; and (y) various investors, some of whom may see some or all of such information by way of dissemination through one or more internet sites (the “Platform”) created for purposes of syndicating or securitizing the Loan or otherwise, in accordance with Lender’s standard syndication and/or securitization practices, and each of SHLD and Seritage acknowledges that neither Lender nor any of its affiliates will be responsible or liable to SHLD, Seritage or any other person or entity for damages arising from the use by others of any Information or other materials obtained on the Platform or otherwise obtained as provided herein. Lender will have no obligation to conduct any independent evaluation or appraisal of the assets or liabilities of SHLD, Seritage, the Borrower, or any other party or to advise or opine on any related solvency issues.

H. **Assignment; Amendment**

None of SHLD, Seritage or any other Loan Party may assign, transfer or encumber any of its respective rights or obligations pursuant to this Commitment, directly or indirectly. Any attempt to make such an assignment, transfer or encumbrance in violation of this Section H shall be null and void *ab initio*.

Except as set forth in the Fee Letter, Lender may assign its commitment and agreements hereunder to an affiliate of Lender or any other party without the prior written consent of SHLD, Seritage or any other Loan Party, but any assignment by Lender to any potential lender made prior to the closing of the Loan will only relieve Lender of its obligations set forth herein to fund that portion of the commitment so assigned if such assignment was approved by Seritage, unless such assignment is made to another Lender party to this Commitment, in which case such assignment shall relieve Lender of its obligations to fund that portion of the commitment so assigned. Any limitations on transferability of Lender’s commitment and agreements hereunder shall terminate upon closing of the Loan and shall not limit in any respect Lender’s right to syndicate or securitize the Loan as provided in Section F hereof.

This Commitment may not be amended or any term or provision hereof waived or otherwise modified except by an instrument in writing signed by each of the parties hereto, and any term or provision hereof may be amended or waived only by a written agreement executed and delivered by all parties hereto.
I. **Costs**

Costs and fees incurred by Lender in connection with this Commitment shall be payable as provided in the Fee Letter.

J. **Brokers**

Each of SHLD and Seritage represents to Lender that it has not contracted with, nor does it know of, any broker who has participated in the application for the Loan or the transactions contemplated by this Commitment except Eastdil Secured (“Eastdil”), none of whose fees or expenses shall be payable by Lender. By signing below, each of SHLD and Seritage agrees to pay, and to indemnify and hold Lender harmless from any and all loss, cost or expense arising from the breach of the foregoing representation. Lender represents to each of SHLD and Seritage that it has not contracted with any broker who has participated in the application for the Loan or the transactions contemplated by this Commitment, and that it does not know of any such broker other than Eastdil.

K. **Termination**

Lender may, at its option (in its sole discretion), exercised by written notice to SHLD and Seritage, terminate this Commitment in its entirety in the event of the occurrence of any of the following:

(i) any direct or indirect sale, transfer, pledge, encumbrance, assignment or other disposition of: (A) the interest of SHLD, Seritage or any Loan Party in the Properties, the other Collateral or the JV Collateral; or (B) any direct or indirect equitable or beneficial ownership interests of Borrower (other than, in each case, pursuant to the Approved Separation Transaction or the Loan);

(ii) SHLD or Seritage breaches any material provision contained in this Commitment;

(iii) any representation or warranty to Lender by SHLD or Seritage under this Commitment is determined to have been untrue or false when made or becomes untrue or false and which, individually or in the aggregate, could reasonably be expected to materially adversely affect the Loan;

(iv) (A) any petition of bankruptcy, insolvency or reorganization is filed by or against SHLD, Guarantor or any other Loan Party or (B) on the proposed Closing Date, there shall be any pending or threatened litigation or regulatory action against SHLD, Guarantor and/or any other Loan Party that, in Lender’s reasonable judgment, if determined adversely to SHLD, Guarantor and/or such Loan Party, would materially impair the collateral for the Loan or the Borrower’s ability to repay the Loan;
Delay in the exercise of Lender’s right to terminate this Commitment in part or in whole upon the occurrence of any of the events listed above shall not be construed as a waiver of such right. The failure of Lender to act in any such event shall not be construed as a waiver of its right to act with respect to any subsequent event of a similar nature. Upon termination as set forth above, all of the obligations of Lender pursuant to this Commitment shall cease and be of no further force and effect whatsoever.

From the execution of this Commitment until the earlier to occur of (a) 45 days after this Commitment is terminated in accordance with Section K hereof or expires by its terms and (b) the willful default by Lender of its obligation to close and fund the Loan following the satisfaction by each of you and/or the other Loan Parties in all respects of all conditions to closing as set forth in this Commitment prior to the Expiration Date (the “Exclusivity Period”), neither SHLD nor Seritage, nor any of their respective affiliates or representatives, including, without limitation, any broker on behalf of any of the foregoing (collectively, the “SHLD/Seritage Parties”), shall, directly or indirectly (i) solicit or encourage any inquiries, discussions or proposals regarding, (ii) continue, propose or enter into negotiations or discussions with respect to, or (iii) enter into any agreement or other understanding providing for, any Alternative Transaction (as defined below); nor shall any of the SHLD/Seritage Parties provide any information to any other person or entity for the purpose of making, evaluating or determining whether to make or pursue, any inquiries or proposals with respect to, any Alternative Transaction. Each of SHLD and Seritage will promptly advise Lender of any such inquiry or proposal that any of the SHLD/Seritage Parties may receive or of which they become aware, including the identity of the party that made such inquiry or proposal. “Alternative Transaction” means any transaction, including (without limitation) any substitution for or addition to the Loan, which would reasonably be expected to impede, interfere with, prevent, materially delay or limit the economic benefit to Lender of providing the Loan; provided that if the Loan shall fail to close as a consequence of the failure of SHLD, Seritage and/or any other

L. Exclusivity

From the execution of this Commitment until the earlier to occur of (a) 45 days after this Commitment is terminated in accordance with Section K hereof or expires by its terms and (b) the willful default by Lender of its obligation to close and fund the Loan following the satisfaction by each of you and/or the other Loan Parties in all respects of all conditions to closing as set forth in this Commitment prior to the Expiration Date (the “Exclusivity Period”), neither SHLD nor Seritage, nor any of their respective affiliates or representatives, including, without limitation, any broker on behalf of any of the foregoing (collectively, the “SHLD/Seritage Parties”), shall, directly or indirectly (i) solicit or encourage any inquiries, discussions or proposals regarding, (ii) continue, propose or enter into negotiations or discussions with respect to, or (iii) enter into any agreement or other understanding providing for, any Alternative Transaction (as defined below); nor shall any of the SHLD/Seritage Parties provide any information to any other person or entity for the purpose of making, evaluating or determining whether to make or pursue, any inquiries or proposals with respect to, any Alternative Transaction. Each of SHLD and Seritage will promptly advise Lender of any such inquiry or proposal that any of the SHLD/Seritage Parties may receive or of which they become aware, including the identity of the party that made such inquiry or proposal. “Alternative Transaction” means any transaction, including (without limitation) any substitution for or addition to the Loan, which would reasonably be expected to impede, interfere with, prevent, materially delay or limit the economic benefit to Lender of providing the Loan; provided that if the Loan shall fail to close as a consequence of the failure of SHLD, Seritage and/or any other

H/2 Capital Partners

J.P. Morgan
Loan Party to satisfy the conditions precedent set forth in Section B above, provided that SHLD, Seritage and the other Loan Parties shall have made commercially reasonable efforts to satisfy such conditions precedent to closing, the consummation of the Approved Separation Transaction solely with the proceeds of the Rights Offering and the other equity sales contemplated thereby (an “Equity Only Transaction”) shall not be deemed to be an Alternative Transaction; provided, further, that the provisions of this Section L shall nevertheless continue to apply to any subsequent Alternative Transaction until expiration of the Exclusivity Period. Upon any breach of the foregoing provisions of this Section L, in addition to all other rights and remedies, whether at law or in equity, that are available to Lender in respect of such breach, each of SHLD and Seritage shall be liable (on a joint and several basis) for the fees, costs and expenses provided in the Fee Letter.

M. Confidentiality

This Commitment, the name or identity of Lender and any written communications provided by, or oral discussions with, Lender or any of its subsidiaries or affiliates in connection with the Loan are exclusively for the information of SHLD and Seritage and may not be disclosed by SHLD or Seritage or any of their subsidiaries or affiliates to any third party or circulated or referred to publicly without our prior written consent except pursuant to a subpoena or order issued by a court of competent jurisdiction or by a judicial, administrative or legislative body or committee (in which case SHLD and Seritage agree to inform Lender promptly thereof in advance, if not prohibited by law); provided that Lender hereby consents to disclosure by SHLD and/or Seritage of: (i) this Commitment and such communications and discussions to the respective affiliates of each of SHLD and Seritage and their and their respective affiliates’ respective officers, directors, agents and advisors and any potential equity investors or partners who are directly involved in the Approved Separation Transaction and the other transactions contemplated by this Commitment or the Loan and who have been informed by you of the confidential nature thereof; (ii) this Commitment as required by applicable law or compulsory legal process (in which case SHLD and Seritage agree to inform Lender promptly thereof to the extent not prohibited by law); (iii) the terms of this Commitment to the extent required in connection with filings with the Securities and Exchange Commission and other applicable statutory authorities and stock exchanges and otherwise as may be required or compelled by law, rule or regulation (provided that any disclosure regarding this Commitment in Seritage’s S-11 or similar filing (including any exhibits thereto) shall be shared with Lender in advance and Lender shall be entitled to comment on and approve such filing and exhibits, it being understood this letter shall be an exhibit to Seritage’s S-11); (iv) this Commitment in any action or proceeding to enforce the terms of this Commitment; and (v) this Commitment if and to the extent same become publicly available other than as a result of a breach by SHLD, Seritage or their respective affiliates, officers, directors, agents, advisors and any potential equity investors or partners in the Approved Separation Transaction. Notwithstanding the foregoing, Lender acknowledges that Lender has requested that SHLD/Seritage Parties and their attorneys and advisors make requests from third parties (including space tenant, reciprocal agreement counterparties and ground landlords and ground sublandlords) for estoppels, subordination, non-disturbance and attornment agreements, side letters and other documents and instruments in connection with this Commitment and the Loan.
Except as expressly set forth below, Lender shall hold all Information regarding SHLD, Seritage and the other Loan Parties disclosed by any of the SHLD/Seritage Parties in connection with this Commitment, whether prior to or following the date of this Commitment, confidential, except such Information that (i) is or becomes publicly available other than as a result of disclosure by Lender or (ii) is or becomes available to the Lender from a source other than the SHLD/Seritage Parties, provided that such source is not known by Lender to be subject to a confidentiality obligation to the Borrower or (iii) is independently developed by the Lender without reference to the Information received from any of the SHLD/Seritage Parties. Lender shall have the right to disclose any and all Information provided to Lender by any of the SHLD/Seritage Parties (a) to affiliates of Lender and to Lender’s agents and advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such confidential information and instructed to keep such confidential information confidential), (b) to any actual or potential assignee, transferee or participant in connection with the contemplated syndication or securitization of all or any portion of the Loan, and their respective advisors and agents (including in any disclosure document prepared in connection with any syndication or securitization of all or any portion of the Loan), provided that any such actual or potential assignee, transferee or participant shall be informed of the confidential nature thereof and that, by accepting any such confidential information, it shall be deemed to be bound to keep such information confidential subject to the exceptions set forth in this paragraph (it being agreed that Lender will have satisfied the foregoing obligation if it uses the legend(s) provided in the Approved Loan Documents), (c) to any rating agency in connection with a securitization of all or any portion of the Loan, (d) to any person necessary or desirable in connection with the exercise of any remedies hereunder and (e) to any governmental agency or authority that may exercise authority over Lender or any assignee, transferee, participant or investor, in each case, if requested by such governmental agency or authority or otherwise required to comply with the applicable rules and regulations of such governmental agency or authority or if required pursuant to legal or judicial process.

Notwithstanding the foregoing, without Borrower’s consent in its sole discretion, no Person listed on Schedule J-2 to the loan agreement included in the Agreed Loan Documents, and no agent, attorney, advisor or representative of any such Person, shall be entitled to receive, and no Lender shall disclose to any such Person, any Proprietary Information; provided that the foregoing shall not apply with respect to information provided in connection with any securitization of all or any part of the Loan.

Each party hereto (and each of their respective affiliates, employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Loan and all materials of any kind (including opinions and other tax analyses) that are provided to any such party relating to such tax treatment and tax structure. For this purpose, “tax treatment” means U.S. federal or state income tax treatment, and “tax structure” is limited to any facts relevant to the U.S. federal income tax treatment of the transactions contemplated by this Commitment but does not include information relating to the identity of the parties hereto or any of their respective affiliates.

With respect to each of (i) that certain Confidentiality Agreement dated February 11, 2015 executed by H/2 for the benefit of SHLD and Seritage and (ii) that certain Confidentiality Agreement...
Agreement dated February 11, 2015 executed by JPM for the benefit of SHLD and Seritage (collectively, the “Confidentiality Agreements”), the parties agree that such Confidentiality Agreements are hereby terminated and superseded in their entirety by the confidentiality undertakings of Lender above.

N. Indemnification and Certain Waivers

Each of SHLD and Seritage (for itself and for the other Loan Parties), on a joint and several basis (collectively, the “Indemnifying Parties”), agrees to indemnify and hold harmless Lender and its respective officers, directors, employees, affiliates, advisors, agents and controlling persons (collectively, the “Indemnified Parties”) from and against any and all losses, claims, damages and liabilities actually incurred by any Indemnified Party arising out of or in connection with this Commitment or the use of any proceeds of the Loan, or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any of such Indemnified Parties is a party thereto, and to reimburse each of such Indemnified Parties on written demand for any reasonable out-of-pocket fees and expenses actually incurred (including, without limitation, the reasonable fees and expenses of outside counsel) in connection with investigating or defending any of the foregoing; provided, that the foregoing indemnity will not, as to any Indemnified Party, apply to losses, claims, damages, liabilities or related expenses to the extent they have resulted from the willful misconduct or gross negligence of such Indemnified Party. IN NO EVENT SHALL ANY INDEMNIFIED PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION LOSS OF BUSINESS PROFITS OR OPPORTUNITY) IN CONNECTION WITH THIS COMMITMENT OR THE LOAN.

Lender and its affiliates (collectively, “Lender Parties”) may have economic interests that conflict with those of SHLD, Seritage and/or their respective direct or indirect equity holders and/or affiliates. You agree that Lender Parties will each act under this Commitment as an independent contractor and that nothing in this Commitment or otherwise will be deemed to create an advisory, joint or co-venture, fiduciary or agency relationship or fiduciary or other implied duty between or among any Lender Party, on the one hand, and SHLD, Seritage and/or their respective direct or indirect equity holders and/or affiliates, on the other. You acknowledge and agree that the transactions contemplated by this Commitment (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions among Lender Parties, SHLD, Seritage and the other Loan Parties, and in connection therewith and with the process leading thereto: (i) no Lender Party has assumed: (A) an advisory responsibility in favor of SHLD or Seritage or its respective equity holders or its affiliates with respect to the financing transactions contemplated hereby; or (B) a fiduciary responsibility in favor of SHLD or Seritage its respective equity holders or its affiliates with respect to the transactions contemplated hereby or, in each case, the exercise of rights or remedies with respect thereto or the process leading thereto (irrespective of whether a Lender Party has advised, is currently advising or will advise SHLD or Seritage or its respective equity holders or its affiliates on other matters) or any other obligation to SHLD or Seritage except the obligations expressly set forth in this Commitment; and (ii) each Lender Party is acting solely as a principal and not as the agent or fiduciary of SHLD or Seritage or its respective management, equity holders, affiliates, creditors or any other person. Each of SHLD and Seritage acknowledges and agrees that it has
consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each of SHLD and Seritage agrees that it will not claim that any Lender Party has rendered advisory services of any nature or respect with respect to the financing transactions contemplated hereby or owes a fiduciary or similar duty to SHLD or Seritage its respective equity owners or its affiliates, in connection with such transactions or the process leading thereto. In addition, the Lender Parties may each employ the services of their respective affiliates in providing services and/or performing its obligations hereunder and may exchange with such affiliates information concerning SHLD, Seritage and their respective businesses and such affiliates will be entitled to the benefits afforded to Lender Parties, as applicable, hereunder. No Lender Party provides accounting, tax or legal advice.

O. Notices

All notices hereunder shall be given in writing by hand or by expedited prepaid delivery service, either commercial or United States Postal Service, with proof of delivery or attempted delivery, addressed as follows (or at such other address and person as shall be designated from time to time by either party hereto, as the case may be, in a written notice to the other party hereto in the manner provided for in this Section O). A notice shall be deemed to have been given when delivered or upon refusal to accept delivery.

If to Lender:

H/2 Capital Partners LLC
680 Washington Boulevard, Seventh Floor
Stamford, Connecticut 06901
Attention: Spencer Haber

and

JPMorgan Chase Bank, National Association
383 Madison Avenue
New York, New York 10179
Attention: Joseph E. Geoghan

with a copy to:

H/2 Capital Partners LLC
680 Washington Boulevard, Seventh Floor
Stamford, Connecticut 06901
Attention: Daniel Ottensoser
and:

H/2 Capital Partners LLC
680 Washington Boulevard, Seventh Floor
Stamford, Connecticut 06901
Attention: William Stefko, Esq.

JPMorgan Chase Bank, National Association
383 Madison Avenue
New York, New York 10179
Attention: Nancy Alto

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York NY 10006
Attention: Kimberly Brown Blacklow

and

Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: William P. McInerney, Esq.

If to SHLD:

Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates, Illinois 60179
Attention: Robert Schriesheim

With a copy to:

Josh Feltman
Wachtell, Lipton, Rosen & Katz
51 W. 52nd Street
New York, NY 10019

If to Seritage:

Seritage Growth Properties
3333 Beverly Road
Hoffman Estates, Illinois 60179
Attention: Benjamin Schall
With a copy to:

Wachtell, Lipton, Rosen & Katz
51 W. 52nd Street
New York, NY 10019
Attention: Joshua Feltman

and

Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606
Attention: Heather W. Adkerson

P. Miscellaneous

Each of Lender, SHLD and Seritage (for itself and the other Loan Parties) hereby waives any right which it may have to a trial by jury in any action brought in respect of this Commitment or in any way connected with or related to the Loan. Each of Lender, SHLD and Seritage (for itself and the other Loan Parties) hereby agrees that any legal proceeding relating to this Commitment or the transactions contemplated hereby shall be maintained in a State or United States court of competent jurisdiction sitting in the City, State and County of New York, as Lender shall elect. Lender, SHLD and Seritage (for itself and the other Loan Parties) hereby consent and submit themselves to the jurisdiction of the State and United States courts of New York for the purposes of the adjudication of such legal proceedings. The interpretation and enforcement of the parties’ rights and obligations under, and any claim, controversy or dispute arising under or related to, this Commitment and the Loan Documents shall be governed by New York law.

Time shall be of the essence with respect to all dates and time periods set forth in this Commitment. IN NO EVENT SHALL LENDER OR ANY OTHER INDEMNIFIED PARTY OR ANY SHLD/SERITAGE PARTIES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION LOSS OF BUSINESS PROFITS OR OPPORTUNITY) IN CONNECTION WITH THIS COMMITMENT OR THE LOAN.

This Commitment may be signed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered (which delivery may include an electronic or “pdf” signature) shall be an original, but all of which shall together constitute one and the same instrument.

This Commitment sets forth the entire agreement between Lender, SHLD and Seritage with respect to the subject matter hereof, and all other prior agreements, if any, shall be deemed to have merged herewith. The provisions of this Commitment cannot be waived, amended or modified orally, or by an act or failure to act on the part of Lender, SHLD and/or Seritage, but only by an agreement in writing signed by Lender, SHLD and Seritage. Without limiting the foregoing, and notwithstanding the receipt and/or deposit by Lender of any deposits or fees tendered by SHLD or Seritage, no changes to this Commitment, whether by handwritten notation, “rider”, cover letter or otherwise, shall be effective unless expressly agreed to in writing by Lender, SHLD and Seritage.
In the event that the Loan fails to close prior to the Expiration Date for any reason other than a willful default by Lender following the satisfaction by SHLD, Seritage and the other Loan Parties in all material respects of all material conditions to closing set forth in this Commitment, then Lender, as its sole and exclusive remedy at law or in equity, shall be entitled to reimbursement for all of Lender’s costs and expenses as provided in Section I hereof and to retain the Commitment Fee to the extent set forth in the Fee Letter.

Lender hereby notifies each of SHLD and Seritage that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”) Lender may be required to obtain, verify and record information that identifies SHLD and Seritage and certain of their affiliates, which information includes the name and address of such party and other information that will allow Lender to identify such party in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act and is effective for each Lender.

The provisions set forth under Sections A, I, J, L, M, N and this Section P will remain in full force and effect notwithstanding the expiration or termination of this Commitment or Lender’s commitment and agreements hereunder.

For the purposes hereof: (i) the term “Business Day” shall mean any day other than a Saturday or Sunday or any other day on which banks are required or authorized to close in New York City; (ii) the singular case shall include the plural and the plural the singular; and (iii) the terms “include(s)” and “including” shall mean “include(s), without limitation,” and “including, without limitation,” respectively.

Unless otherwise expressly set forth herein, whenever pursuant to this Commitment (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender shall be in the sole and absolute discretion of Lender and shall be final and conclusive.

Q. Expiration: Extension

Notwithstanding anything contained herein to the contrary, this Commitment shall terminate on, and be of no further force and effect (except for the provisions that by their terms survive termination of this Commitment), at 3:00 p.m. (Eastern) on July 17, 2015, unless terminated earlier pursuant to the terms hereof (such date, the “Expiration Date”). If any such date falls on a day that is not a Business Day, then such date shall be extended to the next day that is a Business Day.

The Expiration Date of this Commitment may only be extended by a written instrument executed by Lender, SHLD and Seritage specifically providing for such extension. Each of SHLD and Seritage acknowledges and agrees that no course of dealing among Lender, SHLD and Seritage and their respective counsel (including investigations or the negotiation or exchange
of draft or final, unexecuted loan documents) prior to or after such Expiration Date shall constitute an extension of such Expiration Date or otherwise form the basis of any claim against Lender as to any purported extension of the Expiration Date.

R. Acceptance

If the terms and conditions of this Commitment are acceptable to you, please sign this Commitment in the space provided below and return the same to Lender on May 27, 2015. Your failure to comply with the instructions set forth in the preceding sentence shall result in this Commitment becoming null and void and of no further force or effect. By signing and returning this Commitment, you hereby accept this Commitment on the terms and provisions set forth herein.
Please confirm that the foregoing is in accordance with your understanding by signing and returning to Lender a copy of this Commitment Letter and remitting to us the Good Faith Deposit and the Commitment Fee. We look forward to working with you on this transaction.

Very truly yours,

H/2 CAPITAL PARTNERS LLC

By: ________________________________
   Name: ___________________________
   Title: ____________________________

[Signatures continue on following page]
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

By: ________________________________
    Name: ______________________________
    Title: ______________________________

[Signatures continue on following page]
AGREED TO AND ACCEPTED THIS 27TH DAY OF MAY, 2015

SEARS HOLDINGS CORPORATION

By: ________________________________
   Name: ______________________________
   Title: ______________________________

[Signatures continue on following page]
SERITAGE GROWTH PROPERTIES

By: 
Name: 
Title: 

H/2 Capital Partners

J.P. Morgan
Annex A

Project Madison
Secured Financing (the “Loan”)

Summary of Terms and Conditions

Collateral: The fee (and, with respect to ground-leased properties, the leasehold) interest in 235 properties as more particularly set forth on Exhibit A-1 (each, a “Property” and, collectively, the “Properties”), together with the improvements and fixtures thereon and all of Borrower’s personal property (tangible and intangible) relating thereto and, subject to the provisions under “Security” below, a pledge of the equity in the JVs with GGP, Simon and Macerich (the “JV Interests”) with respect to the properties more particularly described on Exhibit A-2 (the “JV Properties”).

Use of Proceeds: Acquisition of the Properties pursuant to the Approved Separation Transaction (defined below) and the subsequent operation, renovation and re-leasing of the Properties

“Approved Separation Transaction” means the acquisition of Mezzanine Borrower, Borrower and the other assets contemplated thereby by the Guarantor pursuant to the SHLD PSA for a purchase price not less than the Minimum Purchase Price, funded by a combination of (i) proceeds of the Loan and (ii) the proceeds from a subscription-rights offering to SHLD shareholders and a sale of equity in Guarantor to Simon and GGP that will raise, in the aggregate, not less than the Minimum Cash Equity (as defined below) on such terms as are set forth in the Form S-11 filed with the Securities and Exchange Commission.

SHLD will use proceeds of the Approved Separation Transaction solely for general corporate purposes and/or to repay debt and not for distribution to shareholders.

Borrower: One or more newly-formed special purpose, bankruptcy-remote entities with two independent directors provided by a nationally-recognized provider of independent directors (collectively, “Borrower”). The organizational documents of Borrower shall contain customary bankruptcy-remote SPE provisions.

Lender: H/2 Capital Partners LLC or its designee and JPMorgan Chase Bank, National Association or its designee, and its respective successors and assigns.

Loan Amount: Up to $1,261,195,656, inclusive of additional funding as described under “Additional Funding” below.

Additional Funding: $100,000,000 of additional funding will be available to support the recapture, lease-up and redevelopment of the Properties until June 30, 2017; provided that, if no event of default is continuing, Borrower may draw the remaining line and deposit the proceeds in the applicable reserve with Lender. Funding will be subject to the disbursement conditions described in the definitive loan documents.
Project Madison
Secured Financing

Security:
The Loan will be secured by, *inter alia*:

(i) a first priority, perfected mortgage on Borrower’s fee and/or leasehold interest in each Property and a first priority, perfected security interest in the JV Interests;

(ii) a first priority, perfected assignment of leases, rents, operating accounts and profits (including a collateral assignment of the Master Lease and any guaranty of the Master Lease);

(iii) a first priority, perfected assignment of all assignable contracts (which shall in all events include a collateral assignment of the rights under the SHLD PSA and the SHLD TSA), agreements and personal property associated with the ownership and operation of the Property, including reciprocal easement agreements, permits, contracts, operating agreements, licenses, insurance proceeds of any kind, intellectual property, tenant/FF&E, management agreements, plans and specifications, etc.;

(iv) upfront and ongoing reserves and a first priority, perfected pledge of all Borrower operating and other accounts; and

(v) a first priority, perfected pledge of 100% of the equity interests in Borrower.

All security will be subject to customary “Permitted Encumbrances” as defined in the definitive loan documentation.

Recourse:
The Loan will be non-recourse to Borrower or any affiliate thereof, except that Borrower and Guarantor will be liable, on a joint and several basis, for the actual losses, costs and damages incurred by Lender (and costs of enforcement and collection) arising from customary recourse carve-outs to be agreed between Borrower and Lender.

In addition, the Loan shall become fully recourse to Borrower and Guarantor in connection with prohibited transfers, prohibited liens (including prohibited mezzanine financing), voluntary or involuntary and substantive consolidation of Borrower.

Guarantor:
Collectively, Seritage Growth Properties, a Maryland real estate investment trust (“Seritage REIT”), and Seritage Growth Properties, L.P., a Delaware limited partnership (“Seritage OP”), jointly and severally.

Term:
4 years (the “Initial Term”).
Borrower shall have the option to extend the term of the Loan for up to 2 additional 1-year periods (each, an “Extension Term”, and together with the Initial Term, the “Term”). Each Extension Term shall be conditioned on the satisfaction of the conditions set forth in the loan documents including no default, payment of applicable extension fee and satisfaction of debt yield and third-party revenue tests.

* * * * *
Annex B

Conditions Precedent

1. Loan Agreement Conditions Precedent. Each of those conditions set forth in Article 8 of the Loan Agreement.

2. Fee Payment. Payment of the Funding Fee and all Lender expenses incurred to the Closing Date as set forth in the “Expenses” section of the Term Sheet (the Good Faith Deposit shall be credited against such expenses and any unused portion of the Good Faith Deposit shall be refunded).

3. Loan Documents. Completion of negotiation of the Loan Documents on terms reasonably satisfactory to Lender and Borrower.

4. Due Diligence Completion. Completion and approval, or reserve imposition, as applicable, by Lender of the Due Diligence Items listed on Annex A.

5. Appraisals. Delivery of 235 appraisals in conformance with FIRREA standards from appraiser engaged by Lender.

6. Insurance. Insurance policies and certificates of insurance for each Property in conformance with Section 5.15 of the Loan Agreement.


9. UCC Policies. A mezzanine endorsement to the owner’s policy of title insurance if applicable) and Eagle 9 insurance (or the equivalent) in respect of any mezzanine loan, each in a form reasonably acceptable to Lender and from First American Title or another title insurance company reasonably agreed.

10. Existing Liens. Evidence of release of all existing debt secured by the Properties, including UCC-3 terminations.

11. True Sale. Delivery of a true sale opinion with respect to the separation transaction in form acceptable to Lender.

12. True Lease. Delivery of a true lease opinion with respect to the Master Lease in form acceptable to Lender.


14. Fairness Opinion. Delivery of a copy of a fairness opinion delivered to the Board of Directors of SHLD in form acceptable to Lender.

15. Budget. Delivery of a monthly operating and capital budget for each Property and for the Borrower as a whole (including allocable expenses of Guarantor/overhead), in each case for the twelve month period following the Closing Date and subject to review and reasonable approval by Lender.
<table>
<thead>
<tr>
<th>Name of Subsidiary</th>
<th>State of Organization</th>
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<tr>
<td>Seritage Growth Properties, L.P.</td>
<td>Delaware</td>
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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Amendment No. 4 to Registration Statement No. 333-203163 on Form S-11 of our report dated May 26, 2015 relating to the combined statement of investments of real estate assets to be acquired by Seritage Growth Properties and financial statement schedule appearing in the Prospectus, which is a part of such Registration Statement, and to the reference to us under the heading “Experts” in such Prospectus.

/s/ Deloitte & Touche LLP

Chicago, Illinois
June 8, 2015
CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Amendment No. 4 to Registration Statement No. 333-203163 on Form S-11 of our report dated May 26, 2015 relating to the combined statement of investments of real estate assets of JV properties to be acquired by Seritage Growth Properties and financial statement schedule appearing in the Prospectus, which is a part of such Registration Statement, and to the reference to us under the heading “Experts” in such Prospectus.

/s/ Deloitte & Touche LLP

Chicago, Illinois
June 8, 2015
We consent to the use in this Amendment No. 4 to Registration Statement No. 333-203163 of our report dated June 5, 2015 relating to the balance sheet of Seritage Growth Properties appearing in the Prospectus, which is a part of such Registration Statement, and to the reference to us under the heading “Experts” in such Prospectus.

/s/ Deloitte & Touche LLP

Chicago, Illinois
June 8, 2015
Consent of Trustee Nominee

In connection with the filing by Seritage Growth Properties of a Registration Statement on Form S-11 (Registration No. 333-203163) with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), I hereby consent, pursuant to Rule 438 under the Securities Act, to being named as a nominee to the board of trustees of Seritage Growth Properties in the Registration Statement (including any and all amendments or supplements thereto). I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

/s/ David S. Fawer
Name: David S. Fawer
Consent of Trustee Nominee

In connection with the filing by Seritage Growth Properties of a Registration Statement on Form S-11 (Registration No. 333-203163) with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), I hereby consent, pursuant to Rule 438 under the Securities Act, to being named as a nominee to the board of trustees of Seritage Growth Properties in the Registration Statement (including any and all amendments or supplements thereto). I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

/s/ Edward S. Lampert
Name: Edward S. Lampert
Consent of Trustee Nominee

In connection with the filing by Seritage Growth Properties of a Registration Statement on Form S-11 (Registration No. 333-203163) with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), I hereby consent, pursuant to Rule 438 under the Securities Act, to being named as a nominee to the board of trustees of Seritage Growth Properties in the Registration Statement (including any and all amendments or supplements thereto). I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

/s/ Thomas M. Steinberg
Name: Thomas M. Steinberg
Consent of Trustee Nominee

In connection with the filing by Seritage Growth Properties of a Registration Statement on Form S-11 (Registration No. 333-203163) with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), I hereby consent, pursuant to Rule 438 under the Securities Act, to being named as a nominee to the board of trustees of Seritage Growth Properties in the Registration Statement (including any and all amendments or supplements thereto). I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

/s/ Kenneth T. Lombard
Name: Kenneth T. Lombard
Consent of Trustee Nominee

In connection with the filing by Seritage Growth Properties of a Registration Statement on Form S-11 (Registration No. 333-203163) with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), I hereby consent, pursuant to Rule 438 under the Securities Act, to being named as a nominee to the board of trustees of Seritage Growth Properties in the Registration Statement (including any and all amendments or supplements thereto). I also consent to the filing of this consent as an exhibit to such Registration Statement and any amendments thereto.

/s/ John T. McClain
Name: John T. McClain
CONSENT OF DUFF & PHELPS, LLC

We hereby consent to the filing of our fairness opinion regarding Seritage Growth as Exhibit 99.7 to this Registration Statement on Form S-11. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933.

Duff & Phelps, LLC

By: /s/ Jeffrey S. Schiedemeyer
Title: Managing Director
Chicago, IL

June 8, 2015
CONSENT OF CUSHMAN & WAKEFIELD, INC.

June 8, 2015

Seritage Growth Properties
c/o Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates, Illinois 60179

RE: Registration Statement on Form S-11 (Reg. No. 333-203163) (the “Registration Statement”)

We refer to the Registration Statement of Seritage Growth Properties (the “Company”) relating to the offering of subscription rights and shares of the Company issuable upon the exercise of subscription rights.

We hereby consent to:

(i) being named in the Registration Statement; and
(ii) the use of the summary our Appraisal Reports dated as of June 1, 201 containing the individual market values of the Acquired Properties (as defined in the Registration Statement) for the purposes of the Registration Statement.

CUSHMAN & WAKEFIELD, INC.

By: /s/ James J. Moran
Name: James J. Moran
Title: Executive Managing Director