

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

WEDNESDAY, THE 4TH

JUSTICE HAINEY

)

DAY OF OCTOBER, 2017

)



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

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

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

APPROVAL AND VESTING ORDER – LEASE AMENDING AGREEMENT

AVALON MALL, ST. JOHN’S (STORE #1639)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving the amendment of the lease (the “**Transaction**”) contemplated by a Lease Amending Agreement between Sears Canada Inc. (“**Sears Canada**”), as Tenant, and Crombie Developments Limited (the “**Landlord**”) as Landlord dated September 25, 2017 (the “**Lease Amending Agreement**”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn on September 28, 2017 including the exhibits thereto, and the Third Report of FTI

Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Landlord, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Waleed Malik sworn October 1, 2017, filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the Lease Amending Agreement, as applicable.

APPROVAL OF THE LEASE AMENDING AGREEMENT

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the Lease Amending Agreement by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor after consultation with the DIP Lenders) and the Landlord may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Lease Amending Agreement and this Order, and shall not incur any liability as a result thereof. The legal descriptions with respect to the Sears Store Premises (as defined in the Lease Amending Agreement) are as set out on Schedule “B” hereto.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Landlord substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Lease and the Sears Store Premises shall be free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts

(whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Lease and the Sears Store Premises (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

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

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Lease and/or the Sears Store Premises are hereby expunged and discharged as against the Lease and/or the Sears Store Premises including the real or immovable property identified in Schedule “B”; provided however that nothing herein shall expunge, discharge or otherwise impair the Landlord’s and Sears Canada’s respective rights, obligations, title and interests in and to the Lease and the Sears Store Premises for the Term of the Lease as amended by the Lease Amending Agreement.

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

6. THIS COURT ORDERS that from and after the delivery of the Monitor’s Certificate, all Claims and Encumbrances shall attach to the Surrender Fee (as defined in the Lease Amending

Agreement), with the same priority as they had with respect to the Lease and the Sears Store Premises immediately prior to the Effective Date of the Transaction, as if the Transaction had not been completed.

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

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

9. THIS COURT ORDERS that, notwithstanding:

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

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

10. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor

shall be entitled to retain the Surrender Fee or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

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

12. THIS COURT ORDERS that notwithstanding anything else contained in the Lease Amending Agreement or the Effective Date of the Transaction, the Landlord shall be bound by and benefit from the Initial Order until the earlier of (a) six months from the date of this Order, and (b) the duration of the period during which any other owners, operators, managers or landlords of commercial shopping centres or other commercial properties in which there is a store, office or warehouse owned or operated by the Tenant, is bound by or obtains any benefit from same. Without limiting the generality of the foregoing, during such period, the Landlord shall benefit from the stay of proceedings provision provided for at paragraph 15 of the Initial Order.

SEALING

13. THIS COURT ORDERS that Confidential Appendix "C" to the Third Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

GENERAL PROVISIONS

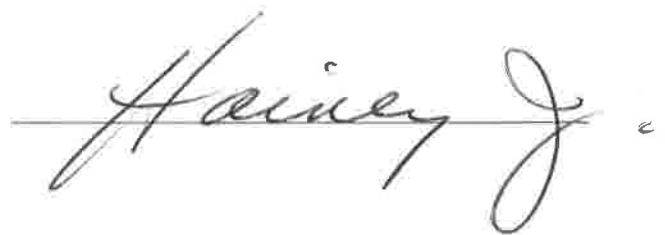
14. THIS COURT ORDERS that, notwithstanding:

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

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

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

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

A handwritten signature in cursive script, reading "Hainey J.", written over a horizontal line.

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

OCT 05 2017

PER / PAR:

A small, stylized handwritten signature or mark.

SCHEDULE "A"

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

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS
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CANADA INC.

(each, an "**Applicant**", and collectively, the "**Applicants**")

MONITOR'S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2017 (the "**Approval and Vesting Order**") approving the Lease Amending Agreement between Sears Canada Inc. ("**Sears Canada**"), as Tenant, and Crombie Developments Limited (the "**Landlord**") as Landlord dated September 25, 2017 (the "**Lease Amending Agreement**"), a copy of which is attached as Exhibit A to the Affidavit of Billy Wong dated September 28, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the Lease Amending Agreement, which Lease Amending Agreement is to be effective with respect to the Lease and the Sears Store Premises upon the delivery by the Monitor to the Landlord and Sears Canada of a certificate confirming that (i) the Approval and Vesting Order has been issued and entered by the Court, and (ii) the Surrender Fee (as defined in the Lease Amending Agreement) has been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The Approval and Vesting Order has been issued and entered by the Court; and
2. The Surrender Fee has been received by the Monitor.

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

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

Per: _____
Name:
Title:

SCHEDULE "B"

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrance s to be Expunged/ Deleted
1.	48 Kenmount Rd., St. John's	NF	Registry of Deeds	<p>ALL that piece or parcel of land situate and being on the southeastern side of O'Leary Avenue, 18.29 metres wide, at St. John's, Newfoundland, in the electoral district of St. John's North, and being bounded and abutted as follows, that is to say:</p> <p>BEGINNING at a point southeastern side of O'Leary Avenue, at St. John's, said point having coordinates of North 5 269 084.20 metres and East 322 967.10 metres in the Modified Three Degree Transverse Mercator Projection for the province of Newfoundland, Zone One;</p> <p>THENCE running along the southeastern side of O'Leary Avenue, North 72° 43' 33" East, 141.229 metres; thence along the arc of counter-clockwise curve, 71.246 metres long with a radius of 89.992 metres on a chord bearing and distance of, North 44° 50' 26" East, 69.400 metres; thence North 24° 48' 24" East, 119.732 metres;</p> <p>THENCE turning and running along the southern side of Thorborn Road, varying width, South 70° 20' 05" East, 79.399 metres; thence along the arc of a counter-clockwise curve, 61.416 metres long with a radius of 700.000 metres on a chord bearing and distance of, South 72° 59' 10" East, 61.396 metres; thence along the arc of a clockwise curve, 97.620 metres long with a radius of 1057.400 metres on a chord bearing and distance of, South 77° 45' 03" East, 97.585 metres; thence South 81° 03' 00" East, 18.504 metres; thence South 78° 37' 02" East, 47.066 metres; thence South 76° 15' 20" East, 37.343 metres; thence South 77° 36' 08" East, 50.780 metres; thence South 81° 18' 42" East, 55.928 metres; thence South 81° 55' 20" East, 12.994 metres; thence South 84° 16' 59" East, 12.940 metres; thence South 87° 52' 20" East, 11.547 metres; thence South 81° 49' 58" East, 14.278 metres;</p> <p>THENCE turning and running along the Off Ramp for Columbus Drive, South 6° 39' 59" East, 5.648 metres; thence South 6° 17' 13" East, 12.703 metres; thence South 3° 42' 30" East, 13.295 metres; thence South 0° 14' 38" East, 13.988 metres; thence South 1° 19' 09" West, 13.858 metres; thence South 7° 43' 31" West, 14.312 metres; thence along the arc of a clockwise curve, 35.477 metres long with a radius of 74.000 metres on a chord bearing and distance of, South 26 ° 55' 26" West, 35.138 metres;</p> <p>THENCE turning and running along the northwestern side of Kenmount Road, varying width, South 53° 01' 15" West, 55.896 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Canadian Shopping Centres Ltd., North 36° 08' 35" West, 77.084 metres; thence South 59° 08' 13" West, 99.679 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, South 66 ° 53' 01" West, 43.190 metres;</p>	NIL

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrance s to be Expunged/ Deleted
				<p>THENCE turning and running along the land, now or formerly, of Tom Woodford Limited, South 73° 53' 00" West, 48.616 metres; thence South 30° 27' 00" East, 100.584 metres;</p> <p>THENCE turning and running along the northwestern side of Kenmount Road, South 68° 39' 36" West, 40.916 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Ultramar Canada Inc., North 18° 53' 49" West, 97.485 metres; thence South 73° 50' 12" West, 53.858 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, North 86° 15' 48" West, 32.802 metres; thence North 76° 47' 57" West, 106.846 metres;</p> <p>THENCE turning and crossing Leary's Brook, North 06° 21' 37" East, 8.506 metres;</p> <p>THENCE turning and running along the northern side of Leary's Brook, South 81° 52' 32" West 42.428 metres; thence South 74° 08' 56" West, 45.750 metres; thence South 67° 11' 07" West, 46.329 metres; thence South 65° 06' 11" West, 30.480 metres; thence South 86° 58' 11" West, 46.116 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Canadian Shopping Centres Ltd., North 17° 03' 49" West, 115.519 metres, more or less, to the point of commencement and containing an area of 12.610 hectares, more or less, Job No. 96-063, dated May 24, 1996.</p> <p>The above described piece or parcel of land, being subject to two Nfld. Light & Power easements, 5.49 metres wide, extending onto the northeastern portion of the property. There is a ancillary easement, 9.14 metres wide, running through portions of the southeastern boundary.</p> <p>The above described piece or parcel of land, being subject to a sanitary and storm sewer easement, 4.57 metres wide, running through the property.</p> <p>CONTAINED within the above described piece or parcel of land, an area leased from the City of St. John's, situate and being on the south side of Thorbom Road and being bounded and abutted as follows, that is to say:</p> <p>BEGINNING at a point on the southern side of Thorburn Road, said point having co-ordinates of North 5 269 168.88 metres and East 323 620.17 metres in the Modified Three Degree Transverse Mercator Projection for the Province of Newfoundland, Zone One;</p> <p>THENCE running across Leary's Brook, South 48° 42' 48" East, 19.964 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, South 28° 33' 12" West, 30.480 metres; thence South 50° 10' 12" West, 50.719 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Canadian Shopping Centres Limited, South 59°</p>	

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrance s to be Expunged/ Deleted
				<p>08' 13" West, 99.679 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, South 66° 53' 01" West, 43.190 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Tom Woodford Limited, South 73° 53' 00" West, 48,616 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, South 63° 23' 53" West, 20.923 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Ultramar Canada Inc., South 73° 50' 12" West, 53.858 metres;</p> <p>THENCE turning and running along the land, now or formerly, or Atlantic Shopping Centres Limited, North 86° 15' 48" West, 32.802 metres; thence North 76° 47' 57" West, 106.846 metres;</p> <p>THENCE turning and crossing Leary's Brook, North 06° 21' 37" East, 8.506 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, North 81° 52' 32" East, 17.099 metres; thence South 16° 19' 28" East, 4.481 metres; thence South 78° 23' 28" East, 59.162 metres; thence South 80° 39' 28" East, 28.255 metres; thence South 80° 50' 07" East, 11.600 metres; thence North 74° 38' 12" East, 79.614 metres; thence North 67° 17' 12" East, 131.430 metres; thence North 57° 12' 12" East, 89.245 metres; thence North 33° 03' 12" East, 51.816 metres, more or less, to the point of commencement, and ,containing an area of, 8,224.7 square metres, more or less.</p> <p>ALSO, an area of land, leased by Ultramar Canada Inc. from Atlantic Shopping Centres Limited, at Registry of Deeds, Volume 837 and Folio 158.</p> <p>All bearings are Grid bearings referred in Grid North of the Three Degree Modified Transverse Mercator Projection at Central Meridian 53° West. All distances are horizontal ground distances.</p>	

SCHEDULE "C"
PERMITTED ENCUMBRANCES

NIL.

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

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

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

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

ORDER
(Approval And Vesting Order – Lease Amending
Order Avalon Mall, St. John's (Store #1639))

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