

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

WEDNESDAY, THE 4TH

JUSTICE HAINEY

)

DAY OF OCTOBER, 2017

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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 SURRENDER AGREEMENT – CF
FAIRVIEW POINTE-CLAIRE AND CF FAIRVIEW MALL (STORES #1305 AND
#1322)**

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 lease surrender and resiliation transaction (the “**Transaction**”) contemplated by a Lease Surrender Agreement between Sears Canada Inc. (“**Sears Canada**”), as Tenant, and Fairmall Leaseholds Inc. and Fairview Pointe-Claire Leaseholds Inc. (the “**Landlord Entities**”) as Landlords dated September 27, 2017 (the “**Lease Surrender 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 Entities, 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 Affidavits of Service of Waleed Malik and Justine Erickson sworn October 1, 2 and 3, 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 Surrender Agreement, as applicable.

APPROVAL OF THE LEASE SURRENDER 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 Surrender 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 Entities may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the surrender by Sears Canada of its right, title and interest in and to the Surrendered Leases and the Surrendered Real Property Interests and the Surrendered Premises (each as defined in the Lease Surrender Agreement) (collectively, the “**Surrendered Assets**”) to the applicable Landlord Entities and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Lease Surrender Agreement and this Order, and shall not incur any liability as a result thereof. The legal descriptions with respect to the Surrendered Assets are as set out on Schedule “B-1” hereto.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Landlord Entities 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 Surrendered Assets shall be surrendered to the Landlord Entities (with the Leases being resiliated) free and clear of and from any and all Encumbrances (as defined in the Lease Surrender Agreement), security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens (whether contractual, statutory or otherwise), leases, notices of lease, subleases, licenses, levies, restrictions, rights of retention, judgments, notices of sale, contractual rights, options, rights of first refusal, renewals, extensions, liabilities (direct, indirect, absolute or contingent), obligations, 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 Surrendered Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) those Claims listed on Schedule “B-2”; and
- (c) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Register of Personal and Movable Real Rights* or any other personal property registry system;

(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 (i) the construction liens and certificates of action listed on Schedule “B-2” (the “**Liens**”) are hereby vacated, as if an order had been made to vacate them by the posting of security for claim and costs pursuant to s. 44(1) of the *Construction Lien Act*, and (ii) that the remaining Claims and Encumbrances affecting or relating to the Surrendered Assets are hereby expunged and discharged as against the Surrendered Assets.

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, as set out in Schedule "B-2", is hereby directed to specifically (i) vacate the Liens, and (ii) discharge, cancel, delete, vacate and expunge from title to the applicable real or immovable property described in Schedule "B-1" all of the Encumbrances that are not Liens listed in Schedule "B-2" hereto.

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

7. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Net Proceeds, subject to the Construction Lien Claim Reserve (as defined below) to the DIP ABL Agent or the DIP Term Agent, as applicable, 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 the Monitor shall hold back from any distributions of proceeds as permitted hereunder, \$2,160,675.05, being the aggregate amounts claimed by the holders of the construction liens listed on Schedule "B-2" (the "**Construction Lien Claim Reserve**"). The Construction Lien Claim Reserve shall only be distributed on further Order of this Court. For greater certainty, the creation of the Construction Lien Claim Reserve does not in itself create, enhance, affect or impair any rights of persons or parties in such funds.

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

12. THIS COURT DECLARES THAT the only recourse of the Lien claimants in respect of their Liens shall be against the Construction Lien Claim Reserve and, for greater certainty, no Person shall have any recourse against the Landlord Entities or their subsidiaries and affiliates, the Surrendered Assets and the Properties in respect of the Liens.

13. 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 Surrender Agreement.

14. THIS COURT ORDERS that notwithstanding anything else contained in the Lease Surrender Agreement or the Closing of the Transaction, the Landlord Entities 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 Entities shall benefit from the stay of proceedings provision provided for at paragraph 15 of the Initial Order.

SEALING

15. THIS COURT ORDERS that Confidential Appendix "C" to the Third Report or 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

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

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

18. 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.



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

OCT 05 2017

PER / PAR.



SCHEDULE "A" to Approval and Vesting Order

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

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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

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

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

MONITOR'S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2017 (the "Approval and Vesting Order") approving the Lease Surrender Agreement between Sears Canada Inc. ("Sears Canada"), as Tenant, and Fairmall Leaseholds Inc. and Fairview Pointe-Claire Leaseholds Inc. (the "Landlord Entities") as Landlords dated September 27, 2017 (the "Lease Surrender 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 Surrender Agreement and provided for the surrender to the Landlord Entities of Sears Canada's right, title and interest in and to the Surrendered Leases, the Surrendered Real Property Interests and the Surrendered Premises (as defined in the Lease Surrender Agreement), which surrender is to be effective with respect to the Surrendered Leases, the Surrendered Real Property Interests and the

Surrendered Premises upon the delivery by the Monitor to the Landlord Entities and Sears Canada of a certificate confirming that (i) the conditions to Closing set out in sections 7.1, 7.2 and 7.3 of the Lease Surrender Agreement have been satisfied or waived by the Landlord Entities and Sears Canada, as applicable, and (ii) the Surrender Consideration (as defined in the Lease Surrender Agreement), subject to the adjustments in accordance with the Lease Surrender Agreement, and any GST/QST Amount has been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing set out in sections 7.1, 7.2 and 7.3 of the Lease Surrender Agreement have been satisfied or waived by the Landlord Entities and Sears Canada, as applicable; and
2. The Surrender Consideration, subject to the adjustments in accordance with the Lease Surrender Agreement, and any GST/QST Amount, 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-1" to Approval and Vesting Order
LEGAL DESCRIPTIONS OF SURRENDERED ASSETS**

No.	Location/ Address	Legal Description
1.	CF Fairview Pointe Claire / 6801, route Transcanadienne Pointe-Claire, Québec	Those parcels of land known and designated as Lot number 2 530 450 of the Cadastre of Quebec, Registration Division of Montreal, Province of Quebec
2.	CF Fairview Mall / 1800 Sheppard Avenue East, Suite 330, Willowdale, Ontario	<p>FIRSTLY - FREEHOLD LANDS:</p> <p>PIN 10048-0078(LT)</p> <p>Firstly: Parts of Lots 16 and 17, Concession 3, East of Yonge Street, designated as Part 4 on Plan R-3563, save and except those portions of said Lots 16 and 17, Concession 3, East of Yonge Street, designated as Parts 5, 6 and 7 on Plan 66R-13970. Plan BA-658 registered as D293 confirms part of the boundaries of this land - See No. A501297; Secondly: Part of Lot 1, Expropriation Plan MX41 designated as Parts 2 and 3 on Plan 66R-13970. Plan BA-2408 registered as D948 confirms part of the boundaries of this land - See No. C522526; SAVE AND EXCEPT Part of Lot 16, Concession 3, East of Yonge Street, designated as Parts 1, 2, 3, 4, 6, 8, 14, 16, 17, 20, 23, 24, 27, 28, 34, 35, 50 and 66 on Plan 66R-17954, City of Toronto, being the whole of the PIN.</p> <p>SECONDLY - LEASEHOLD LANDS:</p> <p>PIN 10048-0080(LT)</p> <p>Firstly: Parts of Lots 16 and 17, Concession 3, East of Yonge Street, designated as Part 4 on Plan R-3563, save and except those portions of said Lots 16 and 17, Concession 3, East of Yonge Street, designated as Parts 5, 6 and 7 on Plan 66R-13970. Plan BA-658 registered as D293 confirms part of the boundaries of this land - See No. A501297; Secondly: Part of Lot 1, Expropriation Plan MX41 designated as Parts 2 and 3 on Plan 66R-13970. Plan BA-2408 registered as D948 confirms part of the boundaries of this land - See No. C522526; SAVE AND EXCEPT Part of Lot 16, Concession 3, East of Yonge Street, designated as Parts 1, 2, 3, 4, 6, 8, 14, 16, 17, 20, 23, 24, 27, 28, 34, 35, 50 and 66 on Plan 66R-17954, City of Toronto, being the whole of the PIN.</p>

SCHEDULE "B-2" to Approval and Vesting Order
LIENS AND CERTIFICATES OF ACTION TO BE VACATED,
NOTICE OF LEASE TO BE EXPUNGED/DELETED

No.	Location/ Address	Land Registry Office	Legal Description	Encumbrances to be Vacated/Expunged/ Deleted, as applicable
1.	CF Fairview Pointe Claire / 6801, route Transcanadienne, Pointe- Claire, Québec	Land Registry Office for the Registration Division of Montreal	See Schedule "B-1"	Nil
2.	CF Fairview Mall / 1800 Sheppard Avenue East, Suite 330, Willowdale, Ontario	Toronto (No. 64)	See Schedule "B-1"	<p>Construction lien in favour of Tag Electric Ltd. in the amount of \$197,845.21 registered as Instrument No. AT4643425 on August 1, 2017 against CF Fairview Mall.</p> <p>Construction lien in favour of Abbarch Architecture Inc. in the amount of \$106,032.03 registered as Instrument No. AT4623149 on July 10, 2017 against CF Fairview Mall.</p> <p>Construction lien in favour of APM Construction Services Inc. in the amount of \$1,589,520.93 registered as Instrument No. AT4629454 on July 17, 2017 against Fairview Mall.</p> <p>Certificate of Action in favour of APM Construction Services Inc. registered as Instrument No. AT4653888 against CF Fairview Mall regarding the Construction Lien registered as Instrument No. AT4629454.</p> <p>Construction lien in favour of Sterling Concrete Sawing & Drilling Ltd. in the amount of \$94,183.80 registered as Instrument No. AT4645580 on August 2, 2017 against CF Fairview Mall.</p> <p>Construction lien in favour of Belmont Concrete Services Inc. in the amount of \$164,437.60 registered as Instrument No. AT4644554 on August 1, 2017 against CF Fairview Mall.</p> <p>Construction lien in favour of Kone Inc. in the amount of \$8,655.48 registered as Instrument No. AT4697152 on October 3, 2017 against CF Fairview Mall.</p> <p>Certificate of Action in favour of Abbarch Architecture Inc. registered as Instrument No. AT4681134 against CF Fairview Mall regarding the Construction Lien registered as Instrument No. AT4623149.</p>

No.	Location/ Address	Land Registry Office	Legal Description	Encumbrances to be Vacated/Expunged/ Deleted, as applicable
				<p>Certificate of Action in favour of Sterling Concrete Sawing & Drilling Ltd. registered as Instrument No. AT4681232 against CF Fairview Mall regarding the Construction Lien registered as Instrument No. AT4645580.</p> <p>Instrument No. A310935 registered February 24, 1971 being a Notice of Lease in favour of Simpsons Limited partially determined by Instrument No. C312649</p>

**SCHEDULE "C" to Approval and Vesting Order
PERMITTED ENCUMBRANCES**

"Permitted Encumbrances" means, collectively: (a) any Encumbrances encumbering the freehold or other ownership interest in the Properties or any other interest in the Properties of the Landlord Entities, but excludes any Encumbrances solely encumbering the Tenant's leasehold interest (or the rights of the Tenant as lessee) in and to any Properties situated outside of the Province of Québec on which any Surrendered Premises are located or the rights of the Tenant as lessee under the Leases; (b) Encumbrances resulting from any Landlord Entity's actions or omissions; and (c) the items identified in Schedule "J" of the Lease Surrender Agreement. In no event shall an Encumbrance arising as a result of work completed by or on behalf of the Tenant in respect of any Premises constitute a Permitted Encumbrance.

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 Surrender
Agreement – CF Fairview Pointe-Claire And CF Fairview
Mall (Stores #1305 And #1322)

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