

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 13TH
)
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 SURRENDER AGREEMENT

PROMENADE MALL (STORE #1097)

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 Promenade Limited Partnership (the “**Landlord**”) as Landlord dated as of October 3, 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 October 10, 2017 including the exhibits thereto, and the Fourth 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 Geoffrey Grove sworn on October 11, 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 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 Lease and the Real Property Interests (each as defined in the Lease Surrender Agreement) to the Landlord 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 and applicable land registry offices with respect to the Premises 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 Real Property Interests shall be surrendered to the Landlord (with the Lease being resiliated) 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 Real Property Interests (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;
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) 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 (i) the construction liens and certificates of action listed on Schedule “B” (the “**Liens**”) are hereby vacated, as if an order had been made on motion by Sears Canada to vacate them by the posting of security for claim and costs pursuant to s. 44(1) of the *Construction Lien Act*, and (ii) the remaining Claims and Encumbrances affecting or relating to the Lease, the Real Property Interests, the Property and/or the Premises are hereby expunged and discharged as against the Lease, the Real Property Interests, the Property and/or the Premises, including the real or immovable property identified in Schedule “B”.

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 (i) vacate the Liens, and (ii) discharge, cancel, delete and expunge from title to the applicable real or immovable property described in Schedule “B” all of the Encumbrances that are not Liens 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 net proceeds from the Transaction (the “**Net**

Proceeds”), with the same priority as they had with respect to the Lease, the Real Property Interests, the Property and/or the Premises immediately prior to the Closing 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 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, \$24,866.66, being the aggregate amounts claimed by the holders

of construction liens registered in respect of the Lease, the Real Property Interests, the Property and/or the Premises (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 or its subsidiaries and affiliates (including without limitation Promenade General Partner Inc.), the Lease, the Real Property Interests, the Premises and the Property 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 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

15. THIS COURT ORDERS that unredacted Exhibit “A” to the Affidavit of Billy Wong sworn October 10, 2017 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 Lease and the Real Property Interests to the Landlord and the resiliation of the Lease 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 À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
OCT 13 2017

Hanley J.

PER / PAR:

[Signature]

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 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 October 13, 2017 (the "**Approval and Vesting Order**") approving the Lease Surrender Agreement between Sears Canada Inc. ("**Sears Canada**"), as Tenant, and Promenade Limited Partnership (the "**Landlord**") as Landlord dated October 3, 2017 (the "**Lease Surrender Agreement**"), a copy of which is attached as Exhibit A to the Affidavit of Billy Wong sworn on October 10, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the Lease Surrender Agreement and provided for the surrender to the Landlord of Sears Canada's right, title and interest in and to the Lease and the Real Property Interests (as defined in the Lease Surrender Agreement), which surrender is to be effective with respect to the Lease and the Real Property Interests upon the delivery by the Monitor to the Landlord and Sears Canada of a certificate confirming that (i) the conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the Lease Surrender Agreement

have been satisfied or waived by the Landlord and Sears Canada, as applicable, and (ii) the Surrender Consideration and any Taxes payable (each as defined in the Lease Surrender Agreement) to Sears Canada that are not self-assessed and remitted by the Landlord have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the Lease Surrender Agreement have been satisfied or waived by the Landlord and Sears Canada, as applicable; and
2. The Surrender Consideration and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Landlord have 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	Encumbrances to be Expunged/ Deleted/Vacated, as applicable
1.	1 Promenade Circle, Vaughan	ON	LRO No. 65 (York Region)	PIN 03240-0003 (LT) PCL 1-1, SEC 65M2325; BLKS 1, 2, 3, 4 & 10, PL 65M2325, T/W LT233364; T/W PT BLK 6, PL 65M2325, PT 2, 65R8239, PT BLK 8, PL 65M2325, PT 4, 65R8239 AS IN LT237284 ; S/T PTS 12 & 21, 65R8239 AS IN LT280252; T/W PT BLK 5, PL 65M2325, PTS 13 & 22, 65R8239 AS IN LT281620 ; T/W PT BLK 7, PL 65M2325, PTS 3, 15, & 16, 65R8239 AS IN LT281621; T/W PT BLK 5, PL 65M2325, PT 14, 65R8239, PT BLK 7, PL 65M2325, PTS 16 & 17, 65R8239, PT BLK 9, PL 65M2325, PT 8 & 19, 65R8239 AS IN LT281623 ; T/W PTS 1 & 2, 65R10617 AS IN LT390395; S/T BLK 10, PL 65M2325, IN FAVOUR OF PTS 1,2, & 3, 65R9143 AS IN LT379503; S/T BLK 10, PL 65M2325, IN FAVOUR OF PTS 1 TO 10, 17 TO 19, 22 & 23, 65R9806 AS IN LT390398; S/T BLK 10, PL 65M2325, IN FAVOUR OF PTS 11 TO 16, 20 & 21, 65R9806 AS IN LT390399; T/W PT BLK 5, PL 65M2325, PT 2, 65R11022 AS IN LT422092, PARTIALLY RELEASE BY EXPROP PLAN YR2523097 ; S/T BLK 10, PL 65M2325 AS IN LT681847; S/T BLK 10, PL 65M2325 AS IN LT681848 ; S/T LT233365, L1237683,LT237684,(S/T LT1119733) S/T EASE OVER PT BLK 10, PL 65M2325 PTS 1 TO 7 INCL. 65R29894 IN FAVOUR OF PT BLK 7, PL 65M2325 PT 26 TO 33, 65R13968 AS IN YR986985; S/T EASE OVER PT BLK 10, PL 65M2325, PT 1, 65R31337, AS IN YR1292299.; CITY OF VAUGHAN	Construction lien in favour of Hanson + Jung Architects Inc. in the amount of \$24,867 registered as Instrument No. YR2712604 on August 3, 2017 against Promenade Limited Partnership, Promenade General Partner Inc., Promenade General Partners Inc. and Sears Canada Inc. Certificate of Action in favour of Hanson + Jung Architects Inc. registered as Instrument No. YR2732486 against Promenade Limited Partnership, Promenade General Partner Inc., Promenade General Partners Inc. and Sears Canada Inc. regarding the Construction Lien registered as Instrument No. YR2712604.

SCHEDULE "C"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, collectively: (a) any Encumbrances encumbering the freehold or other ownership interest in the Property or any other interest in the Property of the Landlord, but excludes any Encumbrances solely encumbering the Tenant's leasehold interest in and to any Property situated outside of the Province of Québec on which the Premises are located or the rights of the Tenant as lessee under the Lease; (b) Encumbrances resulting from the Landlord's actions or omissions; and (c) the items identified in Schedule "J" of the Lease Surrender Agreement.

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. (collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
Proceeding commenced at Toronto

ORDER
Approval and Vesting Order – Lease Surrender Agreement
Promenade Mall (Store #1097)

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