

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

**SEARS CANADA INC.,
AND RELATED APPLICANTS**

FIFTEENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

March 12, 2018

**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., 9370-2751 QUÉBEC INC., 191020 CANADA 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

**FIFTEENTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. INTRODUCTION

1. On June 22, 2017, Sears Canada Inc. (“**Sears Canada**”) and a number of its operating subsidiaries (collectively, with Sears Canada, the “**Applicants**”) sought and obtained an initial order (as amended and restated on July 13, 2017, the “**Initial Order**”), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The relief granted pursuant to the Initial Order was also extended to Sears Connect, a partnership forming part of the operations of the Applicants (and together with the Applicants, the “**Sears Canada Entities**”). The proceedings commenced under the CCAA by the Applicants are referred to herein as the “**CCAA Proceedings**”.

2. The Initial Order, among other things:
 - (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017; and
 - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. A copy of the Initial Order is attached hereto as **Appendix “A”**.
4. Following the Comeback Motion, the Court extended the stay of proceedings to October 4, 2017 and approved a sale and investor solicitation process (the “**SISP**”) to solicit interest in potential transactions involving the business, property and assets and/or leases of the Applicants.
5. Since the date of the Comeback Motion, the stay period has been extended a number of times, most recently to April 27, 2018.
6. On December 8, 2017, the Court issued an Order (the “**Claims Procedure Order**”) approving a claims process (the “**Claims Process**”) for the identification, determination and adjudication of claims of creditors against the Sears Canada Entities and their current and former officers and directors.
7. The liquidation of assets at Sears Canada’s retail locations is now complete and all of Sears Canada’s retail locations are now closed.
8. In connection with the CCAA Proceedings, the Monitor has provided fourteen reports and five supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada/ (the “**Monitor's Website**”).

B. PURPOSE

9. The purpose of this Fifteenth Report is to provide the Court with additional information regarding the Monitor's motion for the return of certain Pre-Filing Tax Payments (as defined in the Supplement to the Monitor's Eleventh Report, dated January 21, 2018 (the "**Supplement**")) and regarding discussions with counsel to certain of the landlords of Sears Canada's premises regarding rent reconciliation matters described in the Supplement.

C. ESCROWED AMOUNT AND RENT RECONCILIATION ISSUES

10. In the Supplement, the Monitor described a matter that arose in connection with rent payments by Sears Canada as follows:

Sears Canada advised the Monitor on December 11th that Sears Canada unintentionally made payments to certain landlords on account of certain real property taxes payable that accrued during the pre-filing period. The Monitor understands that these payments were made in error as a result of modifications to Sears Canada's financial accounting systems for identifying and tracking pre-filing period amounts in anticipation of reconciling claims in the Claims Process. The Monitor believes payment of these amounts was not permitted under the terms of the Initial Order. These payments were in the aggregate amount of approximately \$2.4 million. On January 5, 2018, the Monitor wrote to the landlords who received these payments advising of the error and proposing that the matter be rectified through repayment of the overpaid amount. In absence of such repayment, the landlords were advised that Sears Canada would offset the amount of the overpayment against rent payments due from Sears Canada to the applicable landlord or its affiliates. To date, Sears Canada has advised the Monitor that they have recovered through offset against rent, property taxes or other amounts owing to the applicable landlord or its affiliates, approximately \$1,755,000 of the improper payments.¹

The payments of \$2.4 million noted above are referred to in this report as the "**Pre-filing Tax Payments**".

¹ Following the date of the Supplement, the amounts recovered through offset have increased to \$2.01 million.

11. Based upon the evidence available to the Monitor, including:
- (a) Sears Canada's payment records, copies of which are attached hereto as **Appendix "B"**; and
 - (b) the fact that the amounts of these payments equal the amounts shown in the Applicants' accounting system as amounts attributable to property taxes accrued during the pre-filing period,

the Monitor concluded that the amounts paid in error on December 11th were paid in respect of property taxes accrued in the period prior to June 22, 2017.

12. In January 2018, the Monitor was contacted by counsel to certain landlords who raised two primary concerns regarding the payment of rent by Sears Canada at their leased locations. First, certain of these landlords took the position that the offset of \$1,755,000 described above was a violation of paragraph 11 of the Initial Order and that rent should be paid in full without offset for the December and January period (the "**Pre-filing Tax Issue**"). Second, certain of these landlords stated that their records showed that they had outstanding balances of rent and associated costs payable for the post-filing period, even excluding the amounts of the Pre-filing Tax Payments that were offset. The amounts claimed to be due according to the landlords did not match with the amounts shown in Sears Canada's records (the "**Ordinary Course Payment Issue**").
13. Given the number of leased locations that Sears Canada had and the time required to fully reconcile the amounts claimed by certain landlords against amounts paid by Sears Canada, the Monitor advised in the Supplement that it would take some time to resolve the Ordinary Course Payment Issue. Subject to receiving necessary information, the Monitor estimated that the reconciliation process would take approximately 5 weeks to complete.
14. In the circumstances, the Monitor, following consultation with Sears Canada, agreed to an interim resolution of the Pre-filing Tax Issue and the Ordinary Course Payment Issue pursuant to which the Monitor would retain an amount of \$4,300,000 (the

“Escrowed Amount”) to satisfy, if necessary, any amounts that were determined, either by agreement between Sears Canada and a landlord or by order of the Court, to be payable on account of rent pursuant to Paragraph 11 of the Initial Order but that remain unpaid.

15. The Escrowed Amount was to be held in respect of specific ordinary course rent payment issues in order to protect landlords who may not have been paid all outstanding post-filing rent amounts in the ordinary course on the first and fifteenth days of each month as required by the Initial Order due to potential errors in accounting for such payments in the Sears Canada payment system or due to the offset of Pre-filing Tax Payment amounts by Sears Canada.
16. The Escrowed Amount was not specifically allocated to any individual landlords and was not intended to serve as continuing security for general obligations owing, or that may in the future become owing, to landlords.
17. The Escrowed Amount was not intended to be the sole source of recovery for landlords who claim to be owed unpaid rent in the post-filing period. To the extent such unpaid amounts exist, such amounts can also be paid from Sears Canada’s general operating funds.
18. The proposed Escrowed Amount was established based upon a total of: (i) the amount of the \$1,755,000 disputed offset described above; and (ii) additional amounts that counsel to certain landlords claimed to be owing as unpaid rent accruing during the post-filing period.
19. The Monitor believed that the proposed Escrowed Amount included material excess protection over and above the amounts claimed by the landlords because Sears Canada paid an additional amount of rent to landlords generally on January 15th and January 18th in an aggregate amount of \$1,317,790 that was not yet reflected in the amounts that landlords claimed as unpaid and that was not credited against the Escrowed Amount.

20. The Supplement explained that portions of the Escrowed Amount would be released periodically as determined appropriate by the Monitor when rent amounts were reconciled and, if necessary, paid. Landlords would be able to raise any future concerns with the quantum of the Escrowed Amount if such concerns arose.

D. REMINGTON PROPERTIES MOTION

21. On January 22, 2018, the Court heard a motion by Remington Properties Inc. (“**Remington**”), one of Sears Canada’s landlords, for an order for advice and directions regarding the proper characterization of amounts owing under Remington’s invoice dated June 21, 2017 for property taxes. The specific legal question was whether portions of the Remington invoice that were related to taxes accrued in the pre-filing period were to be considered amounts owing under the Remington lease for the period commencing from and including the date of commencement of these CCAA Proceedings.
22. The Court determined that the property taxes accrued during the period prior to the commencement of these CCAA Proceedings were not amounts owing under the Remington lease for the period commencing from and including the date of commencement of these CCAA Proceedings and that Sears Canada was not required to pay these amounts under the terms of the Initial Order.
23. A copy of the Endorsement of Justice Hainey in connection with the Remington motion is attached hereto as **Appendix “C”**.

E. REMAINING DISPUTES REGARDING PRE-FILING TAX MATTERS

24. In the Monitor’s view, the decision on the Remington motion sets out the principles that are relevant to the dispute on the Pre-filing Tax Issue for all landlords as there is no meaningful distinction between the position of Remington or any other landlord on these matters. The Monitor has inquired as to whether any landlord has an alternative view on this issue and has not received any responses setting out any such alternative view.

25. On January 29, 2018, the Monitor's legal counsel wrote to counsel for landlords who appeared on the January 22nd motion setting out the Monitor's view on the Pre-Filing Tax Issue following the decision on the Remington motion and proposed two potential resolutions: (i) the applicable landlords would return the Pre-Filing Tax Payments received and then receive a cash payment of the rent amounts that were previously offset against the Pre-Filing Tax Payments; or (ii) the applicable landlords would retain the Pre-Filing Tax Payments to the extent of the amounts previously offset by Sears Canada and return any residual portion of the Pre-Filing Tax Payments. Either option would resolve any preferential effect arising from the Pre-Filing Tax Payments.
26. The Monitor requested responses to those proposed resolutions by February 2, 2018.
27. As of February 12, 2018, the Monitor had received no response to the letters delivered by its counsel to counsel for the landlords. On that day, the Monitor's counsel wrote to advise that the Monitor intended to release \$1,755,000 of the Escrowed Amount, being an amount equivalent to the offset of the Pre-Filing Tax Payments, as the Monitor believed the Pre-filing Tax Issues had been resolved by the Remington decision. The Monitor also advised that it intended to schedule a motion to seek the Court's direction to have applicable landlords return that portion of the Pre-Filing Tax Payment that they received but that Sears Canada was not able to offset against any future rent payments.
28. The Monitor believed these proposed steps were appropriate and justified in the circumstances as:
 - (a) the Supplement stated that portions of the Escrowed Amount would be released periodically as determined appropriate by the Monitor when rent amounts were reconciled and, if necessary, paid. The \$1,755,000 portion of the Escrowed Amount equal to the offset of Pre-Filing Tax Payments had been effectively resolved by the decision on the Remington motion, which in the Monitor's view confirmed that the Pre-Filing Tax Payments should not have been made under the terms of the Initial Order; and

- (b) the Escrowed Amount that would remain following the release of the \$1,755,000 amount should be sufficient to satisfy any remaining known discrepancies between the post-filing rent paid by Sears Canada and the post-filing rent claimed as payable by the landlords.
29. Following the February 12th email from Monitor's counsel, responses were received from various landlords who took one or more of the following positions:
- (a) one landlord reserved its rights with respect to the Pre-Filing Tax Issue but did not expressly object to the proposed release of the \$1,755,000 portion of the Escrowed Amount;
 - (b) counsel for a second landlord group took the position that the funds held in escrow could not be released from escrow unilaterally by the Monitor, that no funds should be released from the Escrowed Amount until confirmation is received from all landlords that all post-filing rent amounts have been paid, and further that a portion of the amount that the Monitor believes is a Pre-Filing Tax Payment may in fact be attributable to taxes accrued in the post-filing period;
 - (c) counsel for a third landlord group expressed the view that there was no urgency to releasing these funds and that these funds should only be released after landlords have had an opportunity to make submissions to the Court on the release of these funds; and
 - (d) counsel for a final landlord group advised that they believed the portion of the Pre-Filing Tax Payment that was delivered to their client was, in fact, a payment that was to be properly allocated to the post-filing rent for the month of December 2017.
30. The Monitor has not yet released any portion of the Escrowed Amount. Due to the objections raised by the various landlords described above, the Monitor believed the best approach would be to seek further direction from the Court on this matter.

31. The Monitor disagrees with many of the objections raised by the landlords. First, there has never been any suggestion from the Monitor that the Escrowed Amount must be held in its entirety pending further Court order. The Monitor would not have agreed to such a procedure and no party suggested such a procedure was required when this matter was raised before the Court at the January 22nd stay extension hearing. The escrow arrangement was not the subject of a Court order and was intended to be a flexible arrangement that would provide the landlords with additional comfort but that was not intended to unduly restrict the Applicants' access to cash. Second, the Escrowed Amount was never intended to be held in its entirety until every potential rent reconciliation dispute with all landlords was resolved. This is clear from the description of the Escrowed Amount in the Supplement. To the extent a landlord believed the Pre-Filing Tax Payments were, in fact, payments properly attributable to post-filing obligations, the rent reconciliation process would identify these amounts and they would be included in the Ordinary Course Payment Disputes described below.
32. The Monitor's information indicates that the current status of the Pre-Filing Tax Issue is as follows:

Aggregate Pre-Filing Tax Payments	\$2,377,210.83
Amount of final off-set against post-filing rent obligations (including amounts offset following the date of the Supplement)	\$2,012,182.42
Pre-Filing Tax Payments not recovered through offset	\$365,028.41

33. One remaining landlord takes the position that all or a portion of the Pre-Filing Tax Payments for which Sears Canada did not identify sufficient post-filing obligations to complete an offset may also be allocable to rent or taxes accruing in the post-filing period that were not previously identified by Sears Canada. This landlord

accounts for \$66,247.90 of the non-offset Pre-Filing Tax Payments (the “**Potential Pre-Filing Non-Offset Dispute**”). Details of the Pre-Filing Non-Offset Dispute are attached hereto as **Appendix “D”**.²

F. STATUS OF RENT RECONCILIATIONS

34. Immediately following the stay extension hearing on January 22nd, the Monitor began working with Sears Canada’s landlords to reconcile Sears Canada’s records regarding rent paid and payable in the post-filing period with the records of various landlords who claimed to be owed unpaid rent in the post-filing period to seek to resolve the Ordinary Course Payment Issue.
35. To date, the Monitor has received detailed statements of outstanding rent from the following landlord groups:
 - (a) Oxford Properties;
 - (b) Cadillac Fairview;
 - (c) Cominar;
 - (d) Morguard;
 - (e) Ivanhoe;
 - (f) Cushman & Wakefield; and
 - (g) Crombie.
36. Based upon information received from the above noted landlords, aggregate unresolved disputes in respect of the Ordinary Course Payment Issue total \$2,852,803.59 (the “**Detailed Ordinary Course Payment Disputes**”). A summary of locations for which these disputes arise is attached hereto as **Appendix “E”**.

²The aggregate amount of Pre-Filing Tax Payments that have not been recovered by Sears Canada through offset against additional post-filing rent amounts and that are not the subject of Potential Pre-Filing Non-Offset Disputes are also summarized in Appendix “D” hereto. These amounts total \$298,780.51

37. Despite multiple requests for information to allow the Monitor to reconcile any discrepancies between amounts of rent paid and amounts of rent payable, the Monitor has received no information identifying any specific outstanding amounts from other landlords who previously indicated that they may have had an Ordinary Course Payment Issue that led to the establishment of the Escrowed Amount. The Monitor has been advised by counsel to certain landlords that they continue to collect information on this matter from their clients, but no specific arrears have been identified to the Monitor at this time.

G. PROPOSED INTERIM RELEASE OF ESCROWED AMOUNT

38. The Monitor believes that the release of a portion of the Escrowed Amount is appropriate at this time based upon the current status of the rent reconciliation process.

39. The portion of the Escrowed Amount that the Monitor proposes to release is calculated as follows:

Initial Escrowed Amount	\$4,300,000.00
Less: Portion of Escrowed Amount retained equal to Detailed Ordinary Course Payment Disputes	\$2,852,803.59
Aggregate Released Amount	\$1,447,196.41

40. In summary, the Monitor proposes to release all escrowed amounts not required to satisfy disputed amounts that have been identified through the ordinary course reconciliation process.

41. The Monitor believes the proposed release from the Escrowed Amount represents a very conservative calculation that ensures any known potential claims of landlords for post-filing rent amounts remain protected. The Monitor notes that the Escrowed Amount would continue to be sufficient to satisfy any amounts specifically claimed

as post-filing rent in detailed statements provided by landlords. The proposed Escrowed Amount would also not be reduced to account for credit balances owing to Sears Canada as shown in the statements provided by landlords at certain locations.

42. Consistent with the original calculation of the Escrowed Amount, the reduced Escrowed Amount is calculated based upon the quantum of known potential rent claims at this time.
43. The Monitor does not believe a specific Court order is necessary to release such funds. However, in view of the positions taken by various landlords on this matter, the Monitor is bringing the proposed reduction of the Escrowed Amount to the attention of the Court and stakeholders.
44. The Monitor recognizes that the Escrowed Amount does not include any excess amounts for any additional post-filing rent that has not been identified to the Monitor as unpaid. In the Monitor's view, this is appropriate as any landlord having unpaid rent amounts has had a sufficient opportunity to identify such amounts to Sears Canada and to the Monitor. The rent reconciliation issue was publicly disclosed by the Monitor over one month ago in the Supplement and counsel to those landlords who took positions on the motion regarding the establishment of the original Escrowed Amount have been contacted on multiple occasions in an effort to obtain even preliminary information on any post-filing rent amounts that remain unpaid. In addition, as previously noted, the Escrowed Amount is not intended to be the sole source of recovery for landlords who claim to be owed unpaid rent in the post-filing period. To the extent such unpaid amounts exist, such amounts can also be paid from Sears Canada's general operating funds

H. RECOVERY OF PRE-FILING TAX PAYMENTS

45. The Monitor also believes, based upon the principles set out in the decision on the Remington motion, that the Pre-Filing Tax Payments must be repaid to Sears Canada to the extent that Sears Canada has not been able to offset such payments against valid post-filing rent obligations. The only appropriate exception in the Monitor's

view would be the amounts that are the subject of the Potential Pre-Filing Non-Offset Dispute.

46. The Monitor has requested repayment of such amounts, or agreement that such amounts are to be offset against post-filing amounts due, from landlords who received such amounts, starting on January 5, 2018 and continuing thereafter on several occasions. The Monitor has received no substantive responses to these repayment requests to date from certain landlords.
47. To the extent a landlord continues to hold Pre-Filing Tax Payments that have not been offset against post-filing rent amounts and are not the subject of the known Potential Pre-Filing Non-Offset Dispute, the Monitor believes the Remington decision makes clear that such landlords have received an impermissible preference that must be remedied and requests that the Court grant an order directing the repayment of such amounts.
48. In aggregate, the Monitor is requesting the return of an amount of \$298,780.51 as set out in more detail below:

Location	Landlord	Original Pre-Filing Payment	Pre-Tax	Offsets Applied	Remaining Pre-Filing Tax Payment amount
Regina Home	3015 Quance Street Properties LP	\$83,042.82		\$0.10	\$83,042.72
Guelph	Stone Road Mall Holdings Inc.	\$160,479.01		\$108,026.95	\$52,452.06
Langley	BCIM Realty Corporation	\$59,388.28		\$58,951.70	\$436.58
Vancouver – Capilano	BCIM Realty Corporation	\$89,479.64		\$85,337.49	4,142.15
Hamilton	Eastgate Square GP Inc.	\$102,380.65		\$101,157.44	\$1,223.21
Victoria	Hillside Centre Holdings Inc.	\$166,913.39		\$100,316.70	\$66,596.69
Edmonton North Home Store	Skyview Equities	\$90,887.10		0.00	\$90,887.10
Total		\$750,319.47		\$453,790.38	\$298,780.51

49. Attached hereto as **Appendix “F”** are the letters from the Monitor to each of the foregoing landlords in early January setting out the Monitor’s request to remedy the Pre-Filing Tax Payments.

50. The Monitor is therefore seeking an order as against each of the landlords itemized in the table above for payment of the applicable remaining pre-filing tax payment amount.

I. DEADLINE FOR SUBMISSION OF RENT STATEMENTS

51. The reduction of the Escrowed Amounts proposed by the Monitor will result in the remaining Escrowed Amount to be \$2,852,803.59

52. The Monitor proposes that if landlords do not deliver detailed statements that will permit reconciliation of any remaining potential disputed amounts on or before April 2, 2018 (the “**Statement Submission Deadline**”), all remaining Escrowed Amounts, other than those amounts for which detailed statements have been delivered evidencing a remaining dispute regarding outstanding rent balances, would be released.
53. The Escrowed Amount must be dealt with in a manner that balances the Applicants’ rights to access their remaining liquidity with the landlords’ interests in ensuring that outstanding post-filing rent obligations that may not have been paid in the ordinary course at the time of the January 22nd stay extension hearing are paid. The Monitor believes the proposed Statement Submission Deadline will provide more than adequate time for any landlord who had a material concern regarding non-payment of rent as of January 22nd to provide details of that concern so that it can be resolved in a timely manner, keeping in mind that the Escrowed Amount was intended as a temporary measure to deal with specific non-payment concerns raised by landlords in connection with the last stay extension hearing and not as a pool of funds to serve as ongoing security for any past or future obligations that may arise.

The Monitor respectfully submits to the Court this, its Fifteenth Report.

Dated this 12th day of March, 2018.

FTI Consulting Canada Inc.
in its capacity as Monitor of
the Sears Canada Entities



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

Appendix “A”

Initial Order

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST



THE HONOURABLE MR.)

JUSTICE HAINEY)

THURSDAY, THE 22ND

DAY OF JUNE, 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**”)

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Billy Wong sworn June 22, 2017, and the Exhibits thereto (collectively, the “**Wong Affidavit**”), and the pre-filing report dated June 22, 2017 of FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the proposed Monitor of the Applicants (the “**Pre-Filing Report**”), and on hearing the submissions of counsel to the Applicants and SearsConnect (the “**Partnership**”, and collectively with the Applicants, the “**Sears Canada**

Entities”), counsel to the Board of Directors (the “**Board of Directors**”) of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors (the “**Special Committee**”) of SCI, counsel to FTI, counsel to Wells Fargo Capital Finance Corporation Canada (the “**DIP ABL Agent**”), as administrative agent under the DIP ABL Credit Agreement (as defined herein), and counsel to GACP Finance Co., LLC (the “**DIP Term Agent**”), as administrative agent under the DIP Term Credit Agreement (as defined herein), Koskie Minsky LLP as counsel for Store Catalogue Retiree Group, counsel for the Financial Services Commission of Ontario, and on reading the consent of FTI to act as the Monitor.

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants, individually or collectively, shall have the authority to file and may, subject to further Order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Sears Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). For greater certainty, the “**Property**” includes all inventory, assets, undertakings and property of the Sears Canada Entities in the possession or control of the Hometown Dealers (as defined in the Wong Affidavit) and all inventory, assets, undertakings and property of the Sears Canada

Entities in the possession or control of the Corbeil Franchisees (as defined in the Wong Affidavit). Subject to further Order of this Court, the Sears Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the “**Business**”) and Property. The Sears Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein) to retain such further Assistants, as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Sears Canada Entities shall be entitled to continue to utilize the central cash management services currently in place as described in the Wong Affidavit, or, with the consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders (as defined herein) and the DIP Term Agent on behalf of the DIP Term Lenders (as defined herein), replace it with another substantially similar central cash management services (the “**Cash Management System**”) and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Sears Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Sears Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; provided, however, that no bank or other institution providing such Cash Management System shall be obliged to extend any overdraft credit, on an aggregate net basis, directly or indirectly in connection therewith and further provided that, to the extent any overdraft occurs, on an aggregate net basis, the Sears Canada Entities shall make arrangements to repay such overdraft forthwith.

6. **THIS COURT ORDERS** that the Sears Canada Entities, subject to availability under, and in accordance with the terms of the DIP Facilities (as defined herein) and the Definitive Documents, and subject to further Order of this Court, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order to the extent that such expenses are incurred and payable by the Sears Canada Entities:

- (a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, medical, dental, life insurance and similar benefit plans or arrangements), pension benefits or contributions, vacation pay, expenses, and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements (but not including termination or severance payments), and all other payroll, pension and benefits processing and servicing expenses;
- (b) all outstanding and future amounts owing to or in respect of Persons working as independent contractors in connection with the Business;
- (c) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (d) all outstanding or future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including customer financing, product warranties, pre-payments, deposits, gift cards, Sears Club programs (including redemptions of Sears Club points) and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (e) the fees and disbursements of any Assistants retained or employed by the Sears Canada Entities at their standard rates and charges; and
- (f) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Sears Canada Entities prior to the date of this Order by:

- (i) logistics or supply chain providers, including customs brokers and freight forwarders, fuel providers, repair, maintenance and parts providers, and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
- (ii) providers of information, internet, and other technology, including e-commerce providers and related services;
- (iii) providers of credit, debit and gift card processing related services; and
- (iv) other third party suppliers up to a maximum aggregate amount of \$25 million, if, in the opinion of the Sears Canada Entities, the supplier is critical to the business and ongoing operations of the Sears Canada Entities.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Sears Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance (including environmental remediation) and security services; and
- (b) payment for goods or services actually supplied to the Sears Canada Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Sears Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Sears Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Sears Canada Entities in connection with the sale of goods and services by the Sears Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers’ compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Sears Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statutes to the extent that such taxing statutes give rise to statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Sears Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Sears Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any further Order of this Court.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Sears Canada Entities shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations, and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction or \$5 million in the aggregate in any series of related transactions, provided that, with respect to leased premises, the Sears Canada Entities may, subject to the requirements of the CCAA and paragraphs 11 to 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the relevant Sears Canada Entity deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Sears Canada Entities to proceed with an orderly restructuring of the Sears Canada Entities and/or the Business (the “**Restructuring**”).

REAL PROPERTY LEASES

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Sears Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any or all of the Sears Canada Entities or the making of this Order) or as otherwise may be negotiated between the applicable Sears Canada Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that the Sears Canada Entities shall provide each of the relevant landlords with notice of the relevant Sears Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Sears Canada Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Sears Canada Entity, or by further Order of this Court upon application by the Sears Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Sears Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Sears Canada Entity's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Sears Canada Entities, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Sears Canada Entity and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Sears Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE SEARS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the

Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

16. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the Hometown Dealers or the Corbeil Franchisees shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

17. **THIS COURT ORDERS** that during the Stay Period all rights and remedies, of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in

such capacities, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (a) empower the Sears Canada Entities to carry on any business that the Sears Canada Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; (d) prevent the registration of a claim for lien; (e) prevent any holder of a valid and enforceable right of first refusal, option to purchase or other similar right in respect of any real property from being entitled to exercise all such rights; or (f) empower the Sears Canada Entities to fail to comply with their obligations under leases (other than the payment of rent on a twice-monthly basis, in accordance with paragraph 11 herein), operating agreements or similar agreements for the period from and after the commencement of this proceeding.

NO INTERFERENCE WITH RIGHTS

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Sears Canada Entities, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Sears Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Sears Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Sears Canada Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other

intellectual property as may be required by the Sears Canada Entities, and that the Sears Canada Entities shall be entitled to the continued use of the trademarks and other intellectual property currently licensed to, used or owned by the Sears Canada Entities, premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Sears Canada Entities in accordance with normal payment practices of the Sears Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Sears Canada Entities and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Sears Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

21. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Wong Affidavit, is hereby approved and the Sears Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$4.6 million (the “**KERP Priority Charge**”) to secure the first \$4.6 million payable to the Key Employees under the KERP; and (b) an aggregate amount of \$4.6 million (the “**KERP Subordinated Charge**”) to secure any other payments to the Key Employees under the KERP. The KERP Priority Charge and the KERP Subordinated Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

23. **THIS COURT ORDERS** that the agreement dated May 15, 2017 engaging BMO Nesbitt Burns Inc. (the “**Financial Advisor**”) as financial advisor to SCI and attached as Confidential Appendix C to the Pre-Filing Report (the “**Financial Advisor Agreement**”), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved and SCI is authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

24. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “**FA Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$3.3 million, as security for the fees and disbursements payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Sears Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Sears Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Sears Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Sears Canada Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

26. **THIS COURT ORDERS** that the Sears Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Sears Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or

liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Sears Canada Entities shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$44 million (the "**Directors' Priority Charge**"); and (b) an aggregate amount of \$19.5 million (the "**Directors' Subordinated Charge**"), respectively, and in each case, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Priority Charge and the Directors' Subordinated Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Priority Charge and the Directors' Subordinated Charge; and (b) the Sears Canada Entities' directors and officers shall only be entitled to the benefit of the Directors' Priority Charge and the Directors' Subordinated Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

APPOINTMENT OF MONITOR

29. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Sears Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Sears Canada Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Sears Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Sears Canada Entities' receipts and disbursements;

- (b) liaise with the Sears Canada Entities and the Assistants and, if determined by the Monitor to be necessary, the Hometown Dealers and Corbeil Franchisees, with respect to all matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (d) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, in their dissemination of financial and other information to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (e) advise the Sears Canada Entities in their preparation of the Sears Canada Entities' cash flow statements and any reporting required by the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (f) advise the Sears Canada Entities in their development of the Plan and any amendments to the Plan;
- (g) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property (including any Property in the possession of the Hometown Dealers and the Corbeil Franchisees), including the premises, books, records, data, including data in electronic form, and other financial documents of the Sears Canada Entities, to the extent that is necessary to adequately

assess the Business and the Sears Canada Entities' financial affairs or to perform its duties arising under this Order;

- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (j) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Sears Canada Entities, including retaining independent legal counsel, agents, experts, accountants, or such other persons as the Monitor deems necessary or desirable respecting the exercise of this power; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of

any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders with information provided by the Sears Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Sears Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Sears Canada Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Sears Canada Entities as part of the costs of these proceedings. The Sears Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee on a weekly basis and, in addition, the Sears Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee, retainers in the aggregate amount of \$700,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

DIP FINANCING

38. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, on a joint and several basis, under:

- (a) the Senior Secured Superpriority Debtor-in-Possession Amended and Restated Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP ABL Agent and the lenders from time to time party thereto (the “**DIP ABL Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP ABL Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under DIP ABL Credit Agreement shall not exceed \$300 million unless permitted by further Order of this Court (the “**DIP ABL Credit Facility**”); and
- (b) the Senior Secured Superpriority Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP Term Agent and the lenders from time to time party thereto (the “**DIP Term Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP Term Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Credit Agreement shall not exceed \$150 million

unless permitted by further Order of this Court (the “**DIP Term Credit Facility**”, and together with the DIP ABL Credit Facility, the “**DIP Facilities**”).

39. **THIS COURT ORDERS** that the DIP Facilities shall be on the terms and subject to the conditions set forth in the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

40. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to execute and deliver the DIP ABL Credit Agreement, the DIP Term Credit Agreement and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including any schedules (as amended and updated from time to time) thereto, the “**Definitive Documents**”), as are contemplated by the DIP ABL Credit Agreement and the DIP Term Credit Agreement or as may be reasonably required by the DIP ABL Agent on behalf of the DIP ABL Lenders and the DIP Term Agent on behalf of the DIP Term Lenders pursuant to the terms thereof, as applicable, and the Sears Canada Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. **THIS COURT ORDERS** that the DIP ABL Agent and the DIP ABL Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP ABL Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in the DIP ABL Credit Agreement) other than the Prepetition Obligations (as defined in the DIP ABL Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP ABL Obligations**”), which DIP ABL Lenders’ Charge shall be in the aggregate amount of the DIP ABL Obligations outstanding at any given time under the DIP ABL Credit Agreement. The DIP ABL Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP ABL Lenders’ Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

42. **THIS COURT ORDERS** that the DIP Term Agent and the DIP Term Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Term Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in DIP Term Credit Agreement)

(including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP Term Obligations**”), which DIP Term Lenders’ Charge shall be in the aggregate amount of the DIP Term Obligations outstanding at any given time under the DIP Term Credit Agreement. The DIP Term Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP Term Lenders’ Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

43. [Intentionally deleted.]

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP ABL Agent on behalf of the DIP ABL Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP ABL Lenders’ Charge, the DIP ABL Credit Agreement or any of the other Definitive Documents;
- (b) the DIP Term Agent on behalf of the DIP Term Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Term Lenders’ Charge, the DIP Term Credit Agreement or any of the other Definitive Documents;
- (c) upon the occurrence of an event of default under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders’ Charge, the DIP ABL Agent and the DIP ABL Lenders, as applicable, may, subject to the provisions of the DIP ABL Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP ABL Credit Agreement, the other related Definitive Documents and the DIP ABL Lenders’ Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP ABL Agent and the DIP ABL Lenders must apply to this Court on seven (7) days’ prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP Term Agent, the DIP Term Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts

owing by the DIP ABL Agent and the DIP ABL Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP ABL Agent and the DIP ABL Lenders under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities;

- (d) upon the occurrence of an event of default under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge, the DIP Term Agent and the DIP Term Lenders, as applicable, may, subject to the provisions of the DIP Term Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Term Credit Agreement, the other related Definitive Documents and the DIP Term Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP Term Agent and the DIP Term Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Term Agent and the DIP Term Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP Term Agent and the DIP Term Lenders under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities; and
- (e) the foregoing rights and remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Sears Canada Entities or the Property.

45. **THIS COURT ORDERS AND DECLARES** that the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Sears Canada Entities or any of them under the CCAA, or any proposal filed by the Sears Canada Entities or any of them under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

46. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP ABL Credit Agreement, the DIP Term Credit Agreement, the other Definitive Documents, the DIP ABL Lenders’ Charge or the DIP Term Lenders’ Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “**Variation**”) whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders whether under this Order (as made prior to the Variation), under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents, with respect to any advances made prior to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent or the DIP Term Lenders being given notice of the Variation and the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP ABL Lenders’ Charge and the DIP Term Lenders’ Charge) for all advances so made.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

47. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the Directors’ Priority Charge, the Directors’ Subordinated Charge, the KERP Priority Charge and the KERP Subordinated Charge (collectively, the “**Charges**”), as among them, with respect to ABL Priority Collateral (as defined in the Intercreditor Agreement dated March 20, 2017 and attached as Exhibit J to the Wong Affidavit) shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors' Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP ABL Lenders' Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Fifth – the DIP Term Lenders' Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors' Subordinated Charge, to the maximum amount of \$19.5 million.

48. **THIS COURT ORDERS** that the priorities of the Charges as among them, with respect to all Property other than the ABL Priority Collateral shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors' Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP Term Lenders' Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Fifth – DIP ABL Lenders' Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors' Subordinated Charge, to the maximum amount of \$19.5 million.

49. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as

against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

50. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property, and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including without limitation any deemed trust that may be created under the Ontario *Pension Benefits Act*) (collectively, “**Encumbrances**”) other than (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

51. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Sears Canada Entities shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Sears Canada Entities also obtain the prior written consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders, the DIP Term Agent on behalf of the DIP Term Lenders and the other beneficiaries of affected Charges, or further Order of this Court.

52. **THIS COURT ORDERS** that the Charges, the DIP ABL Credit Agreement, the DIP Term Credit Agreement, and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Sears Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Sears Canada Entities of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Sears Canada Entities entering into the DIP ABL Credit Agreement and the DIP Term Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and
- (iii) the payments made by the Sears Canada Entities pursuant to this Order, the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

53. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Sears Canada Entity's interest in such real property leases.

54. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the L/C Collateral Account (as defined in the DIP ABL Credit Agreement) shall be deemed to be subject to a lien, security, charge and security interest in favour of the DIP ABL Agent solely for the reimbursement obligation of SCI related to the letters of credit issued under the Wells Fargo Credit Agreement which remain undrawn from and after the Comeback Motion (as defined herein). The Charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP ABL Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Entity to the return of any cash from the L/C Collateral Account in accordance with the DIP ABL Credit Agreement.

CORPORATE MATTERS

55. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

56. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to appoint any new directors until further Order of this Court.

SERVICE AND NOTICE

57. **THIS COURT ORDERS** that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Sears Canada Entities of more than \$1,000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

58. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website (as defined herein) as part of the public materials to be made available thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

59. **THIS COURT ORDERS** that any employee of any of the Sears Canada Entities that receives a notice of termination from any of the Sears Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such notice of termination is delivered, if such notice of termination is sent by ordinary mail, courier or registered mail.

60. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List

website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: cfcanada.fticonsulting.com/searscanada (the “**Monitor’s Website**”).

61. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sears Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Sears Canada Entities’ creditors or other interested parties at their respective addresses as last shown on the records of the Sears Canada Entities and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

62. **THIS COURT ORDERS** that the Applicants, the Monitor, the Financial Advisor, the DIP Term Agent on behalf of the DIP Term Lenders and the DIP ABL Agent on behalf of the DIP ABL Lenders, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

COMEBACK MOTION

63. **THIS COURT ORDERS** that the comeback motion shall be heard on July 13, 2017 (the “**Comeback Motion**”).

GENERAL

64. **THIS COURT ORDERS** that the Sears Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

65. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Sears Canada Entities, the Business or the Property.

66. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Sears Canada Entities, 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 Sears Canada Entities 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 Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

67. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as the foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1515, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto, and to take such other steps as may be authorized by the Court.

68. **THIS COURT ORDERS** that any interested party (including the Sears Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Motion

on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

69. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

70. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

A handwritten signature in cursive script, appearing to read "Haiman J.", written over a horizontal line.

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

JUL 13 2017

PER / PAR:

Handwritten initials "pl" in cursive script.

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. (collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

OSLER, HOSKIN & HARCOURT LLP
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Tel: 416.862.5997

Lawyers for the Applicants

Appendix “B”
Payment Records

VENDOR_ID	AMOUNT	SI_EFFTRAD_CDATTIM	SI_RAD_LINE_NO	PYMT_DT	VENDOR_NAME	VENDOR_NAME 2	INVOICE_ID	INVOICE_DT	VOUCHER_ID
0000626986	228,175.75	20171207211921	1	11/12/2017	KINGSWAY GARDEN HOLDINGS INC 410		626986PREFILINGPROPTAX	05/12/2017	23290454
0000894709	193,645.21	20171207211921	1	11/12/2017	CATARAQUI TOWN CENTRE	PRIMARIS MANAGEMENT INC	894709PREFILINGPROPTAX	05/12/2017	23290482
0000127746	166,913.39	20171207211921	1	11/12/2017	HILLSIDE CENTRE HOLDINGS INC	C/O-BENTAL KENEDY(CANADA)LTD PARTN	127746PREFILINGPROPTAX	05/12/2017	23290573
0000496257	160,479.01	20171207211921	1	11/12/2017	STONE ROAD MALL HOLDINGS INC.	STONE ROAD MALL	496257PREFILINGPROPTAX	05/12/2017	23290531
0000888792	133,285.01	20171207211921	1	11/12/2017	OXFORD PROPERTIES RETAIL HOLDINGS	MALL ADMINISTRATION OFFICE, SOUTH	888792PREFILINGPROPTAX	05/12/2017	23290435
0000044313	118,485.01	20171207211921	1	11/12/2017	KS MIDTOWN PLAZA LP	20 VIC MANAGEMENT INC	44313PREFILINGPROPTAX	05/12/2017	23290585
0000127761	102,380.65	20171207211921	1	11/12/2017	EASTGATE SQUARE GP INC.	C/O EASTGATE SQUARE ADMIN OFFICE	127761PREFILINGPROPTAX	05/12/2017	23290538
0000714097	97,855.83	20171207211921	3	11/12/2017	3015 QUANCE STREET PROPERTIES LP		714097PREFILINGPROPTAX	05/12/2017	23290563
0000117408	97,681.48	20171207211921	1	11/12/2017	MORGUARD REAL ESTATEINVESTMENT TRS	C/O MORGUARD INVESTMENT LTD	117408PREFILINGPROPTAX	05/12/2017	23290456
0000042531	95,323.86	20171207211921	1	11/12/2017	KS LAMBTON MALL INC	C/O 20 VIC MANAGEMENT INC	042531PREFILINGPROPTAX	05/12/2017	23290583
0000352369	93,649.29	20171207211921	1	11/12/2017	OPB REALTY (ST. VITAL) INC	C/O VIC MANAGEMENT	352369PREFILINGPROPTAX	05/12/2017	23290470
0000564948	90,887.10	20171207211921	1	11/12/2017	SKYVIEW EQUITIES INC.	C/O TRIOVEST REALTY ADVISORS INC	564948PREFILINGPROPTAX	05/12/2017	23290569
0000464594	89,479.64	20171207211921	1	11/12/2017	BCIMC REALTY CORPORATION	C/O BENTALL LP	464594PREFILINGPROPTAX	05/12/2017	23290584
0000465369	88,635.68	20171207211921	1	11/12/2017	TANURB (FESTIVAL MARKETPLACE) INC.		465369PREFILINGPROPTAX	05/12/2017	23290499
0000042432	85,513.40	20171207211921	1	11/12/2017	KS HERITAGE PLACE INC	C/O 20 VIC MANAGEMENT INC	042432PREFILINGPROPTAX	05/12/2017	23290508
0000666388	76,652.77	20171207211921	1	11/12/2017	CROMBIE DEVELOPMENTS LIMITED		666388PREFILINGPROPTAX	05/12/2017	23290450
0000824136	74,536.99	20171207211921	1	11/12/2017	GERANCES WESTCLIFF	C/O LES GALERIES CHAGNON INC.	824136PREFILINGPROPTAX	05/12/2017	23290446
0000986208	66,247.90	20171207211921	1	11/12/2017	HOOPP REALTY INC O/A	20 VIC MANAGEMENT INC.	986208PREFILINGPROPTAX	05/12/2017	23290436
0000556035	62,106.08	20171207211921	1	11/12/2017	LES CENTRES D'ACHATS BEAUWARD LTEE	50/1750	556035PREFILINGPROPTAX	05/12/2017	23290532
0000635995	59,388.28	20171207211921	1	11/12/2017	BCIMC REALTY CORPORATION	C/O BENTALL KENNEDY (CANADA)	635995PREFILINGPROPTAX	05/12/2017	23290574
0000495531	46,670.98	20171207211921	1	11/12/2017	PARK PLACE MALL HOLDINGS INC.	PRIMARIS MANAGEMENT INC.	495531PREFILINGPROPTAX	05/12/2017	23290448
0000204313	41,355.06	20171207211921	1	11/12/2017	STC HOLDINGS INC.		204313PREFILINGPROPTAX	05/12/2017	23290525
0000288027	33,910.63	20171207211921	1	11/12/2017	COMINAR		288027PREFILINGPROPTAX	05/12/2017	23290562
0000625160	30,833.73	20171207211921	1	11/12/2017	PROMENADES ST BRUNO LSHDS INC	C/O CADILLAC FAIRVIEW CORP	625160PREFILINGPROPTAX	05/12/2017	23290519
0000065383	27,416.34	20171207211921	1	11/12/2017	IVANHOE CAMBRIDGE INC.	CARREFOUR DE L'ESTRIE	065383PREFILINGPROPTAX	05/12/2017	23290560
0000624700	14,310.39	20171207211921	1	11/12/2017	AMENAGEMENT WESTCLIFFE LTEE 038	ATTN: MME MORIN	624700PREFILINGPROPTAX	05/12/2017	23290461
0000982413	12,852.13	20171207211921	1	11/12/2017	HAL LAND CORPORATION		982413PREFILINGPROPTAX	05/12/2017	23290551
0000378620	2,175.03	20171207211921	1	11/12/2017	HOOPP REALTY INC.	C/O 20 VIC MANAGEMENT INC.	378620PREFILINGPROPTAX	05/12/2017	23290438
0000449686	557.63	20171207211921	1	11/12/2017	COMINAR REIT		449686PREFILINGPROPTAX	05/12/2017	23290442
0000624692	540.34	20171207211921	1	11/12/2017	IMM DU CARREFOUR RICHELIEU (037)		624692PREFILINGPROPTAX	05/12/2017	23290459
0000204867	79.25	20171207211921	1	11/12/2017	CITY OF CORNWALL	(702D)	204867PREFILINGPROPTAX	05/12/2017	23290575
0000273078	-	20171207211921	1	11/12/2017	LES FIDUCIAIRES DU FONDS DE PLACEMENT	COMINAR REAL ESTATE INVESTMENT TRU	273078PREFILINGPROPTAX	05/12/2017	23290490

Appendix “C”

Endorsement of Justice Hailey

CITATION: Sears Canada Inc. (Re), 2018 ONSC 540
COURT FILE NO.: CV-17-11846-00CL
DATE: 20180124

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

RE: 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.

APPLICANTS

BEFORE: HAINEY J.

COUNSEL: *Jeremy Dacks and Shawn Irving*, for the Applicants, Sears Canada
Alan Merskey and Evan Cobb, for the Monitor, FTI Consulting Canada Inc.
Susan Ursel and Katy O'Rourke, Employee Representative Counsel
Mudasir Marfatia, for Oxford Properties Group
Bevan Brooksbank, for Sears Holdings
Mark Ross and Sarah Walker, for Remington Properties
Lily Harmer, for Superintendent of Financial Services
Pamela Huff and Kiran Patel, for Morneau Shepell in its capacity of Pension Plan
Administrator
Lou Brzezinski and Andy Seretis, for 1291079 Ontario Limited
Sean Zweig, for the Board and Special Committee
Edmond Lamek, for RioCan and CT REIT
Linda Galessiere, for various landlords, Ivanhoe, Cushman, Morguard, Triovest,
Crombie, Cominar
David Ullmann, for Bentall Kennedy, Quadreal, Primaris, Westcliff (landlords)
Andrew Hatnay, Representative Counsel for Pensioners/Retirees
Natasha MacParland, for Cadillac Fairview

HEARD: January 22, 2018

ENDORSEMENT

[1] Remington Properties Inc. (“Remington”) moves for an order for advice and directions regarding whether Remington’s invoice dated June 21, 2017 in the amount of \$191,651.71 for property taxes is properly considered an amount owing under a real property lease for the period of time commencing from and including the date of my order dated June 22, 2017 (“Initial Order”) or whether it should otherwise be payable.

[2] In 1998, Remington entered into a lease agreement with Sears Canada Inc. (“Sears”) for a portion of the property at 70 Glendeer Circle SE Calgary, Alberta (“Lease”).

[3] In accordance with s. 8.1(a) of the Lease, Sears is required to:

pay and discharge on or before the date when the same or the installments for the same come due:

(a) All real property taxes...

[4] From the outset of the Lease, the practice of the parties had been as follows with respect to the annual property taxes for 70 Glendeer Circle:

- At the end of May every year, Remington received its annual property tax bill for 70 Glendeer Circle from the City of Calgary;
- In accordance with s. 8.1(a) of the Lease, Remington issued an invoice to Sears for Sears’ portion of the property tax bill for the entire year;
- Remington required that Sears pay its portion of the annual property tax bill by June 30th of the year in which it was sent, as the bill was due and payable to the City of Calgary by June 30th every year;
- It had been the usual practice of the parties over the past 20 years for Sears to pay its portion of the annual property tax in one payment in June when the taxes were due to the City of Calgary.

[5] On June 22, 2017, Sears was granted protection under the *Companies’ Creditors Arrangement Act* by the Initial Order. Paragraph 11 of the Initial Order provides as follows:

REAL PROPERTY TAXES

11. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Sears Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any or all of Sears Canada Entities or the making of this Initial Order) or as otherwise may be negotiated between the applicable Sears Canada Entity and the landlord from time to time (“Rent”), for the period commencing from and including the date of this

Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

[6] In May 2017, Remington received the annual property tax bill for 70 Glendeer Circle from the City of Calgary. Remington issued an invoice to Sears on June 21, 2017 in respect of Sears' portion of the annual property taxes, which was due and owing June 30, 2017 in the amount of \$191,651.71.

[7] Sears paid Remington \$66,159.22 which is the portion owed for property taxes from the date of the Initial Order to the date that Remington's lease was disclaimed as of October 25, 2017 ("post-filing tax amount").

[8] The amounts which are the subject of this motion are: (i) the amount attributable to the pre-filing period – January 1, 2017 to June 21, 2017 – \$90,312.59 ("pre-filing tax amount"); and (ii) the amount attributable to the period commencing from October 25, 2017, the effective date of the disclaimer of the Remington Lease, to December 31, 2017, \$35,179.36 ("post-disclaimer tax amount").

[9] Sears submits that Remington's claim for the pre-filing tax amount is stayed pursuant to the Initial Order and there is no basis for its claim for the post-disclaimer tax amount because the Lease was not in force during this period.

[10] Remington submits that it is entitled to full payment of the pre-filing tax amount and the post-disclaimer tax amount because the invoice it issued to Sears Canada was for a lump sum for the entire 2017 tax year that became due in full on June 30, 2017. Remington also argues that it is unfair to treat it as if it has a lease that provides for monthly payments and that Sears is attempting to "re-write" the Lease to avoid paying the balance of the annual property tax bill.

[11] I do not accept Remington's submissions for the reasons that follow.

[12] Remington's argument ignores the distinction between when an obligation to pay is incurred (*i.e.*, when the service is rendered) and when an obligation to pay crystallizes (*i.e.*, when an invoice becomes payable). In my view, it is when the obligation to pay is incurred that determines whether it is a pre-filing or post-filing obligation.

[13] Paragraph 11 of the Initial Order makes it clear that realty taxes can only be paid by Sears "for the period commencing from and including the date" of the Initial Order. Paragraph 9 of the Initial Order prohibits Sears from making any payments to its creditors not otherwise permitted by the Initial Order. This includes the payment of rent and realty taxes. These paragraphs of the Initial Order make it clear that Sears cannot pay Remington the pre-filing tax amount.

[14] Further, because the Lease was disclaimed as of October 25, 2017 it was no longer in force after that date. Accordingly, no obligation on the part of Sears to pay realty taxes after that date can arise. Sears is therefore not responsible for the post-disclaimer tax amount.

[15] My conclusion that Sears is not required to pay the pre-filing tax amount or the post-filing tax amount is supported by two decisions of Morawetz J. (as he then was). In both *Nortel*

Networks Corp. and *Windsor Machine & Stamping Ltd.*,¹ Justice Morawetz considered an analogous issue in the context of severance payments. Like property taxes, severance payments are debts that crystallize and become payable at a fixed point in time, but relate to obligations incurred over the duration of a previous period.

[16] In *Nortel*, Morawetz J. held that severance payments related to employment in the pre-filing period constituted pre-filing obligations, even though the severance payments only became due and payable post-filing. At para 67 of his judgment he concluded that the determinative factor was not when the debt became due, but when the underlying obligation was incurred. He stated as follows:

The exact time of when the payment obligation crystallized is not, in my view, the determining factor... Rather, the key factor is whether the employee performed services after the date of the Initial Order. If so, he is entitled to compensation benefits for such current service.

[17] In *Windsor*, Morawetz J. also concluded that when a lump sum debt crystallizes post-filing, the Court can divide the total debt into amounts attributable to services rendered pre-filing and services rendered post-filing, with different payment obligations attaching to each pro-rated portion. He held that where employees had provided both pre-filing and post-filing employment services to the debtor, the amount of severance payable as a post-filing claim could be pro-rated by the duration of the service. He also held that severance pay attributable to pre-filing services constituted pre-filing claims that were stayed and that incremental increases to severance pay resulting from post-filing services constitute payable post-filing claims.

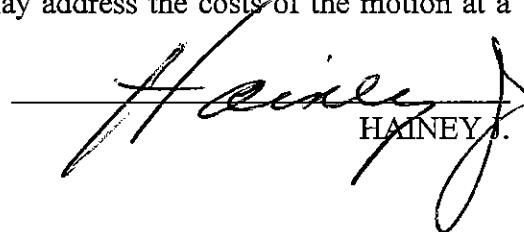
[18] In my view the principles enunciated by Justice Morawetz in *Nortel* and *Windsor*, with which I agree, apply to and are determinative of Remington's motion. I note that Sears' position is supported by counsel for the Monitor, representative counsel for the retirees and representative counsel for the employees.

[19] I also reject Remington's submission that it is being treated unfairly because Sears is attempting to re-write the Lease. The Initial Order effectively re-writes the Lease by prohibiting Sears from paying any pre-filing debts including property taxes. To accept Remington's position would be unfair to Sears' other creditors as it would give Remington a priority to which it is not entitled.

[20] For all of these reasons Remington's motion is dismissed. The balance of its invoice dated June 21, 2017 is not required to be paid by Sears.

[21] If counsel cannot settle the issue of costs they may address the costs of the motion at a 9:30 a.m. attendance with me.

Date: January 24, 2018


HAINEY J.

¹ *Nortel Networks Corp, Re*, [2009] O.J. No. 2558 [*Nortel*]; *Windsor Machine & Stamping Ltd, Re*, [2009] O.J. No. 3195 [*Windsor*].

**Appendix “D”
Pre-Filing Tax Payment Disputes**

Potential Pre-Filing Non-Offset Disputes

Location	Landlord	Potential Dispute Amount
Calgary – Marlborough Mall	20 VIC Management Inc.	\$66,247.90

Appendix “E”

Detailed Ordinary Course Payment Disputes

Location	Landlord / Manager	Potential Dispute Amount
Prince George	Morguard	\$3,185.33
Cambridge	Morguard	\$179,786.36
Thunder Bay	Morguard	\$122,245.98
Brampton	Morguard	\$132,858.09
Coquitlam	Morguard	\$11,198.88
Sudbury	Morguard	\$14,661.80
Ottawa – St. Laurent	Morguard	\$10,534.03
Northgate	Hoopp	\$33,254.62
Ottawa – Carlingwood	Cushman & Wakefield	\$203,939.17
Sarnia – Lambton	Cushman & Wakefield	\$142,871.92
Cornwall	Cushman & Wakefield	\$2,761.25
Halifax Shopping Centre	Cushman & Wakefield	\$54,844.21
Saskatoon	Cushman & Wakefield	\$34,633.72
Erin Mills	Cushman & Wakefield	\$34,736.00
St. Catherines	Cushman & Wakefield	\$230,694.25
St. Vital Centre	Cushman & Wakefield	\$30,768.60
Belleville (Full Line)	Cushman & Wakefield	\$38,778.03
Pickering	Cushman & Wakefield	\$113,983.64
L’Estrie	Ivanhoe	\$47,677.30
Southgate	Ivanhoe	\$90,828.94
Laurier	Ivanhoe	\$168,319.64
Mapleview	Ivanhoe	\$39,485.63
Laval	Cadillac Fairview	\$19,489.28
Champlain	Cadillac Fairview	\$36,450.09
Les Galeries D’Anjou	Cadillac Fairview	\$63,915.37
St. Bruno	Cadillac Fairview	\$75,487.73
Sears Whole Home	Cadillac Fairview	\$5,545.72
Fairview Park Mall	Cadillac Fairview	\$123,410.20
Head Office	Cadillac Fairview	\$452,240.51
Champlain Mall	Cominar	\$6,987.43
Galeries de Hull	Cominar	\$1,874.16
Laval	Cominar	\$8,028.07
Bertrand	Cominar	\$35,370.20
Galerie Rive Nord	Cominar	\$37,064.87
St. Johns Avalon	Crombie	\$218,602.51
Dartmouth	Crombie	\$26,290.06
Total		\$2,852,803.59

Appendix “F”

Letters Requesting Return of Pre-Filing Tax Payments

January 4, 2018

Sent By Email: jlee@hungerfordproperties.com

Attn: James Lee

Re: Sears Canada Inc. (“Sears Canada”), Lease dated March 27, 2017 between 3015 Quance Street Properties Limited Partnership and Sears Canada Inc. (the “Lease”)

We write to you as the court-appointed Monitor of Sears Canada in connection with the proceedings of Sears Canada and its affiliates under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).

As you know, Sears Canada commenced proceedings under the CCAA on June 22, 2017. In connection with those proceedings, an Initial Order was granted by the Ontario Superior Court of Justice (Commercial List) (as amended and restated on July 13, 2017, the “**Initial Order**”).

A copy of the Initial Order is attached for your reference.

Pursuant to paragraph 9 of the Initial Order, Sears Canada was directed, until further order of the court, to make no payments of principal, interest or otherwise on account of amounts owing by Sears Canada to any of its creditors as of June 22, 2017.

The Monitor has been informed that on or about December 11, 2017, payments were made to your organization in the amount of **\$83,042.82** on account of certain taxes payable that accrued under the Lease during the period prior to June 22, 2017 (the “**Pre-Filing Payments**”).

These Pre-Filing Payments were made unintentionally and in error by Sears Canada and were not permitted under the Initial Order.

In order to reverse this error and to bring the parties into compliance with the Initial Order as efficiently as possible, Sears Canada has offset, or will offset, those Pre-Filing Payments against other amounts that have become, or will become, payable in accordance with the Initial Order under the Lease or under other leases between Sears Canada and 3015 Quance Street Properties LP or its affiliates. This is intended to achieve the same result as reversing the Pre-Filing Payments but with reduced administrative cost.

As an alternative, the Pre-Filing Payments could also be reversed and Sears Canada could then pay amounts owing in the ordinary course under the Lease and the other leases between Sears Canada and 3015 Quance Street Properties LP or its affiliates to the extent permitted and required under the Initial Order.

The Monitor trusts this matter will be resolved between Sears Canada and your organization in a manner consistent with the terms of the Initial Order. The Monitor is available to assist as necessary in resolving these issues.

Yours truly,

FTI Consulting Canada Inc,
in its capacity as court-appointed Monitor
of Sears Canada Inc.

January 4, 2018

Sent By Email: tstapley@primarisreit.com

Attn: Terry Stapley

Re: Sears Canada Inc. (“Sears Canada”), Lease dated March 1, 1978, between Sfton Properties Limited and Simpsons Sears Limited (the “Lease”)

We write to you as the court-appointed Monitor of Sears Canada in connection with the proceedings of Sears Canada and its affiliates under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).

As you know, Sears Canada commenced proceedings under the CCAA on June 22, 2017. In connection with those proceedings, an Initial Order was granted by the Ontario Superior Court of Justice (Commercial List) (as amended and restated on July 13, 2017, the “**Initial Order**”).

A copy of the Initial Order is attached for your reference.

Pursuant to paragraph 9 of the Initial Order, Sears Canada was directed, until further order of the court, to make no payments of principal, interest or otherwise on account of amounts owing by Sears Canada to any of its creditors as of June 22, 2017.

The Monitor has been informed that on or about December 11, 2017, payments were made to your organization in the amount of **\$160,479.01** on account of certain taxes payable that accrued under the Lease during the period prior to June 22, 2017 (the “**Pre-Filing Payments**”).

These Pre-Filing Payments were made unintentionally and in error by Sears Canada and were not permitted under the Initial Order.

In order to reverse this error and to bring the parties into compliance with the Initial Order as efficiently as possible, Sears Canada has offset, or will offset, those Pre-Filing Payments against other amounts that have become, or will become, payable in accordance with the Initial Order under the Lease or under other leases between Sears Canada and Stone Road Mall Holdings Inc. or its affiliates. This is intended to achieve the same result as reversing the Pre-Filing Payments but with reduced administrative cost.

As an alternative, the Pre-Filing Payments could also be reversed and Sears Canada could then pay amounts owing in the ordinary course under the Lease and the other leases between Sears Canada and Stone Road Mall Holdings Inc. or its affiliates to the extent permitted and required under the Initial Order.

The Monitor trusts this matter will be resolved between Sears Canada and your organization in a manner consistent with the terms of the Initial Order. The Monitor is available to assist as necessary in resolving these issues.

Yours truly,

FTI Consulting Canada Inc,
in its capacity as court-appointed Monitor
of Sears Canada Inc.

January 4, 2018

Sent By Email: CKogler@bentallkennedy.com

Attn: Christinia Kogler

Re: Sears Canada Inc. (“Sears Canada”), Lease Agreement dated August 5, 1992 made between Bentall Properties Ltd, London Life Insurance Co. and Sears Canada Inc. (the “Lease”)

We write to you as the court-appointed Monitor of Sears Canada in connection with the proceedings of Sears Canada and its affiliates under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).

As you know, Sears Canada commenced proceedings under the CCAA on June 22, 2017. In connection with those proceedings, an Initial Order was granted by the Ontario Superior Court of Justice (Commercial List) (as amended and restated on July 13, 2017, the “**Initial Order**”).

A copy of the Initial Order is attached for your reference.

Pursuant to paragraph 9 of the Initial Order, Sears Canada was directed, until further order of the court, to make no payments of principal, interest or otherwise on account of amounts owing by Sears Canada to any of its creditors as of June 22, 2017.

The Monitor has been informed that on or about December 11, 2017, payments were made to your organization in the amount of **\$59,388.28** on account of certain taxes payable that accrued under the Lease during the period prior to June 22, 2017 (the “**Pre-Filing Payments**”).

These Pre-Filing Payments were made unintentionally and in error by Sears Canada and were not permitted under the Initial Order.

In order to reverse this error and to bring the parties into compliance with the Initial Order as efficiently as possible, Sears Canada has offset, or will offset, those Pre-Filing Payments against other amounts that have become, or will become, payable in accordance with the Initial Order under the Lease or under other leases between Sears Canada and BCIM Realty Corporation or its affiliates. This is intended to achieve the same result as reversing the Pre-Filing Payments but with reduced administrative cost.

As an alternative, the Pre-Filing Payments could also be reversed and Sears Canada could then pay amounts owing in the ordinary course under the Lease and the other leases between Sears Canada and BCIM Realty Corporation or its affiliates to the extent permitted and required under the Initial Order.

The Monitor trusts this matter will be resolved between Sears Canada and your organization in a manner consistent with the terms of the Initial Order. The Monitor is available to assist as necessary in resolving these issues.

Yours truly,

FTI Consulting Canada Inc,
in its capacity as court-appointed Monitor
of Sears Canada Inc.

January 8, 2018

Sent By Email: CFranzen@bentallkennedy.com

Attn: Carole Franzen

Re: Sears Canada Inc. (“Sears Canada”), Lease dated November 11, 1974, between Lanch Holdings Limited and Simpsons Sears and amendments (the “Lease”)

We write to you as the court-appointed Monitor of Sears Canada in connection with the proceedings of Sears Canada and its affiliates under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).

As you know, Sears Canada commenced proceedings under the CCAA on June 22, 2017. In connection with those proceedings, an Initial Order was granted by the Ontario Superior Court of Justice (Commercial List) (as amended and restated on July 13, 2017, the “**Initial Order**”).

A copy of the Initial Order is attached for your reference.

Pursuant to paragraph 9 of the Initial Order, Sears Canada was directed, until further order of the court, to make no payments of principal, interest or otherwise on account of amounts owing by Sears Canada to any of its creditors as of June 22, 2017.

The Monitor has been informed that on or about December 11, 2017, payments were made to your organization in the amount of **\$89,479.64** on account of certain taxes payable that accrued under the Lease during the period prior to June 22, 2017 (the “**Pre-Filing Payments**”).

These Pre-Filing Payments were made unintentionally and in error by Sears Canada and were not permitted under the Initial Order.

In order to reverse this error and to bring the parties into compliance with the Initial Order as efficiently as possible, Sears Canada has offset, or will offset, those Pre-Filing Payments against other amounts that have become, or will become, payable in accordance with the Initial Order under the Lease or under other leases between Sears Canada and BCIM Realty Corporation or its affiliates. This is intended to achieve the same result as reversing the Pre-Filing Payments but with reduced administrative cost.

As an alternative, the Pre-Filing Payments could also be reversed and Sears Canada could then pay amounts owing in the ordinary course under the Lease and the other leases between Sears Canada and BCIM Realty Corporation or its affiliates to the extent permitted and required under the Initial Order.

The Monitor trusts this matter will be resolved between Sears Canada and your organization in a manner consistent with the terms of the Initial Order. The Monitor is available to assist as necessary in resolving these issues.

Yours truly,

FTI Consulting Canada Inc,
in its capacity as court-appointed Monitor
of Sears Canada Inc.

January 4, 2018

Sent By Email: BMillar@bentallkennedy.com

Attn: Brenda Millar

Re: Sears Canada Inc. (“Sears Canada”), Lease made between Eastgate Square Holdings Inc. and Sears Canada Inc. dated October 22, 2009 (the “Lease”)

We write to you as the court-appointed Monitor of Sears Canada in connection with the proceedings of Sears Canada and its affiliates under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).

As you know, Sears Canada commenced proceedings under the CCAA on June 22, 2017. In connection with those proceedings, an Initial Order was granted by the Ontario Superior Court of Justice (Commercial List) (as amended and restated on July 13, 2017, the “**Initial Order**”).

A copy of the Initial Order is attached for your reference.

Pursuant to paragraph 9 of the Initial Order, Sears Canada was directed, until further order of the court, to make no payments of principal, interest or otherwise on account of amounts owing by Sears Canada to any of its creditors as of June 22, 2017.

The Monitor has been informed that on or about December 11, 2017, payments were made to your organization in the amount of **\$102,380.65** on account of certain taxes payable that accrued under the Lease during the period prior to June 22, 2017 (the “**Pre-Filing Payments**”).

These Pre-Filing Payments were made unintentionally and in error by Sears Canada and were not permitted under the Initial Order.

In order to reverse this error and to bring the parties into compliance with the Initial Order as efficiently as possible, Sears Canada has offset, or will offset, those Pre-Filing Payments against other amounts that have become, or will become, payable in accordance with the Initial Order under the Lease or under other leases between Sears Canada and Eastgate Square GP Inc. or its affiliates. This is intended to achieve the same result as reversing the Pre-Filing Payments but with reduced administrative cost.

As an alternative, the Pre-Filing Payments could also be reversed and Sears Canada could then pay amounts owing in the ordinary course under the Lease and the other leases between Sears Canada and Eastgate Square GP Inc. or its affiliates to the extent permitted and required under the Initial Order.

The Monitor trusts this matter will be resolved between Sears Canada and your organization in a manner consistent with the terms of the Initial Order. The Monitor is available to assist as necessary in resolving these issues.

Yours truly,

FTI Consulting Canada Inc,
in its capacity as court-appointed Monitor
of Sears Canada Inc.

January 4, 2018

Sent By Email: kshular@bentallkennedy.com

Attn: Kerry Shular

Re: Sears Canada Inc. (“Sears Canada”), Lease dated May 11, 2017 between OPB Realty Inc. and Sears Canada Inc. (the “Lease”)

We write to you as the court-appointed Monitor of Sears Canada in connection with the proceedings of Sears Canada and its affiliates under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).

As you know, Sears Canada commenced proceedings under the CCAA on June 22, 2017. In connection with those proceedings, an Initial Order was granted by the Ontario Superior Court of Justice (Commercial List) (as amended and restated on July 13, 2017, the “**Initial Order**”).

A copy of the Initial Order is attached for your reference.

Pursuant to paragraph 9 of the Initial Order, Sears Canada was directed, until further order of the court, to make no payments of principal, interest or otherwise on account of amounts owing by Sears Canada to any of its creditors as of June 22, 2017.

The Monitor has been informed that on or about December 11, 2017, payments were made to your organization in the amount of **\$166,913.39** on account of certain taxes payable that accrued under the Lease during the period prior to June 22, 2017 (the “**Pre-Filing Payments**”).

These Pre-Filing Payments were made unintentionally and in error by Sears Canada and were not permitted under the Initial Order.

In order to reverse this error and to bring the parties into compliance with the Initial Order as efficiently as possible, Sears Canada has offset, or will offset, those Pre-Filing Payments against other amounts that have become, or will become, payable in accordance with the Initial Order under the Lease or under other leases between Sears Canada and Hillside Centre Holdings Inc. or its affiliates. This is intended to achieve the same result as reversing the Pre-Filing Payments but with reduced administrative cost.

As an alternative, the Pre-Filing Payments could also be reversed and Sears Canada could then pay amounts owing in the ordinary course under the Lease and the other leases between Sears Canada and Hillside Centre Holdings Inc. or its affiliates to the extent permitted and required under the Initial Order.

The Monitor trusts this matter will be resolved between Sears Canada and your organization in a manner consistent with the terms of the Initial Order. The Monitor is available to assist as necessary in resolving these issues.

Yours truly,

FTI Consulting Canada Inc,
in its capacity as court-appointed Monitor
of Sears Canada Inc.

January 4, 2018

Sent By Email: jcrombie@triovest.com

Attn: John Crombie

Re: Sears Canada Inc. (“Sears Canada”), Lease dated August 1, 2003 between Staburn 137 Avenue Holdings Ltd and Skyview Alberta JV Ltd and Sears Canada Inc. (the “Lease”)

We write to you as the court-appointed Monitor of Sears Canada in connection with the proceedings of Sears Canada and its affiliates under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).

As you know, Sears Canada commenced proceedings under the CCAA on June 22, 2017. In connection with those proceedings, an Initial Order was granted by the Ontario Superior Court of Justice (Commercial List) (as amended and restated on July 13, 2017, the “**Initial Order**”).

A copy of the Initial Order is attached for your reference.

Pursuant to paragraph 9 of the Initial Order, Sears Canada was directed, until further order of the court, to make no payments of principal, interest or otherwise on account of amounts owing by Sears Canada to any of its creditors as of June 22, 2017.

The Monitor has been informed that on or about December 11, 2017, payments were made to your organization in the amount of **\$90,887.10** on account of certain taxes payable that accrued under the Lease during the period prior to June 22, 2017 (the “**Pre-Filing Payments**”).

These Pre-Filing Payments were made unintentionally and in error by Sears Canada and were not permitted under the Initial Order.

In order to reverse this error and to bring the parties into compliance with the Initial Order as efficiently as possible, Sears Canada has offset, or will offset, those Pre-Filing Payments against other amounts that have become, or will become, payable in accordance with the Initial Order under the Lease or under other leases between Sears Canada and Skyview Equities Inc. or its affiliates. This is intended to achieve the same result as reversing the Pre-Filing Payments but with reduced administrative cost.

As an alternative, the Pre-Filing Payments could also be reversed and Sears Canada could then pay amounts owing in the ordinary course under the Lease and the other leases between Sears Canada and Skyview Equities Inc. or its affiliates to the extent permitted and required under the Initial Order.

The Monitor trusts this matter will be resolved between Sears Canada and your organization in a manner consistent with the terms of the Initial Order. The Monitor is available to assist as necessary in resolving these issues.

Yours truly,

FTI Consulting Canada Inc,
in its capacity as court-appointed Monitor
of Sears Canada Inc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**FIFTEENTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

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Lawyers for FTI Consulting Canada Inc., in its capacity as
Monitor