

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 4TH
)
JUSTICE HAINEY) DAY OF JULY, 2018
)



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

APPROVAL AND VESTING ORDER
(Fleur de Lys)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: the sale of lands and buildings located at 500 Wilfrid Hamel Boulevard, City of Québec (Borough of Des Rivières), Province of Québec, G1M 2S5, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and, pursuant to an assignment agreement dated June 26, 2018, KS PFDL LP, acting by its general partner, KS PFDL GP Inc. (the “**Purchaser**”) as purchaser dated with effect as of June 19, 2018 and as assigned (collectively the “**APS**”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Philip Mohtadi affirmed on June 27, 2018 including the exhibits thereto (the “**Mohtadi Affidavit**”), the Affidavit of Mark Caiger sworn on May 28, 2018 including the exhibits thereto (the “**Caiger Affidavit**”), the 19th Report and the Third Supplement to the 19th Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Lia Bruschetta sworn June 28, 2018, filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the APS, as applicable.

APPROVAL OF THE APS

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the APS by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor) and the Purchaser may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the sale, assignment and transfer by Sears Canada of its right, title and interest in and to the Subject Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APS and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Subject Assets are as set out on Schedule “B” hereto.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the

“**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

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

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to Sears Canada’s right, title and interest in and to the Subject Assets are hereby expunged and discharged as against Sears Canada’s right, title and interest in and to the Subject Assets including the real or immovable property identified in Schedule “B” hereto (the “**Immovable Property**”).

5. THIS COURT ORDERS the Land Registrar in the Land Registry Office for the Registration Division of Québec, upon presentation of the Monitor’s Certificate substantially in the form appended as Schedule “A” hereto and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing the Purchaser as the owner of the Immovable Property, and (ii) to totally cancel and discharge any and all Claims and Encumbrances, including the Claims and Encumbrances listed in Schedule “B” hereto, on the

said Immovable Property (other than the Permitted Encumbrances listed in Schedule "C" hereto), and to cause such Claims and Encumbrances to appear as totally discharged on the index of immovables for the said Immovable Property.

6. THIS COURT ORDERS the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Monitor's Certificate, to reduce the scope of and/or strike the Claims and Encumbrances, including the Claims and Encumbrances listed in Schedule "B" hereto, in connection with the Subject Assets in order to allow the transfer to the Purchaser of the Subject Assets free and clear of such registrations.

7. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds received on the Closing of the Transaction shall stand in the place and stead of the Subject Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the "**Net Proceeds**") with the same priority as they had with respect to the Subject Assets immediately prior to the Closing of the Transaction, as if the Transaction had not been completed.

8. THIS COURT ORDERS that the Monitor shall be entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

9. THIS COURT ORDERS AND DIRECTS the Monitor to distribute the Termination Payment (as defined in the Mohtadi Affidavit) to Groupe Mach Inc. from the funds currently held in trust for that purpose by the Monitor.

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

SEALING

11. THIS COURT ORDERS that Confidential Appendices “B”, “C”, “D”, “E”, and “G” to the Third Supplement to the 19th Report of the Monitor shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

GENERAL PROVISIONS

12. THIS COURT ORDERS that, notwithstanding:

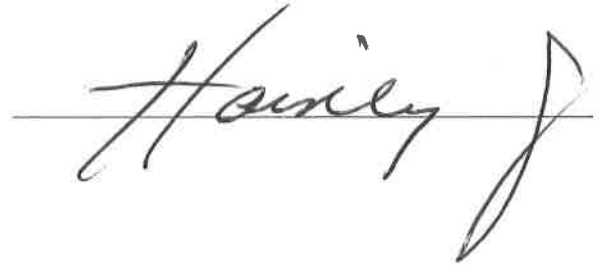
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy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

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

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

14. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such

assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

JUL 04 2018

PER / PAR: RW

SCHEDULE “A”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 9370-2751
QUEBEC 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.

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

MONITOR’S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2018 (the “**Approval and Vesting Order**”) approving the Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and, pursuant to an assignment agreement dated June 26, 2018, KS PFDL LP, acting by its general partner, KS PFDL GP Inc. (the “**Purchaser**”) as purchaser dated with effect as of June 19, 2018 and as assigned (collectively the “**APS**”), a copy of which is attached as Exhibit “A” to the Affidavit of Philip Mohtadi affirmed June 27, 2018.

B. Pursuant to the Approval and Vesting Order the Court approved the APS and provided for the sale, assignment and transfer to the Purchaser of Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the APS), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the delivery by the Monitor to the Purchaser and Sears Canada of a certificate confirming that (i) the conditions to Closing as set out in

sections 7.1, 7.2 and 7.3 of the APS have been satisfied or waived by the Purchaser and Sears Canada, as applicable, and (ii) the Purchase Price and any Taxes payable (each as defined in the APS) to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APS have been satisfied or waived by the Purchaser and Sears Canada, as applicable; and
2. The Purchase Price and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

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

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

Per: _____
Name:
Title:

SCHEDULE "B"

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
1.	500 Wilfrid Hamel Boulevard, Québec City, Québec, G1M 2S5	QC	Land Registry Office for the Registration Division of Québec	<p>An emplacement situated in the City of Québec (Borough of Des Rivières), Province of Québec and composed of lot number ONE MILLION NINE HUNDRED FORTY THOUSAND THIRTY-THREE (1 940 033) of the Cadastre du Québec, Registration Division of Québec.</p> <p>With all buildings thereon erected and, more particularly, the building bearing civic number 500 Wilfrid Hamel Boulevard, City of Québec (Borough of Des Rivières), Province of Québec, G1M 2S5.</p>	Hypothecs created under the Supplemental Trust Deed executed on August 10, 1965 and registered at the Land Registry Office for the Registration Division of Québec under number 572 613 in favour of Montreal Trust Company.

SCHEDULE "C"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, collectively, (a) any Encumbrances resulting from the Purchaser's actions; and (b) the following items:

GENERAL ENCUMBRANCES

- (a) The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any royalties, mines and minerals in the Crown or in any other person.
- (b) Subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements with Governmental Authorities or private or public utilities affecting the development or use of any Property, in each of the foregoing cases, Disclosed to the Purchaser.
- (c) Any easements, servitudes, or rights-of-way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner, in each of the foregoing cases, Disclosed to the Purchaser.
- (d) Any unregistered easements, servitudes, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property, in each of the foregoing cases, Disclosed to the Purchaser.
- (e) Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable Law (which, if exercised shall be governed by the terms of this Agreement).
- (f) Encumbrances for real or immovable property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
- (g) Minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners.
- (h) The provisions of all applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property.
- (i) The exceptions and qualifications contained in Section 44(1) of the Land Titles Act (Ontario) (other than paragraphs 4, 6 and 11) or the Land Titles Act (Alberta).
- (j) Security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the

municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property.

- (k) Any minor title defects, irregularities, easements, servitudes, encroachments, rights of way or other discrepancies in title or possession relating to the Property, in each of the foregoing cases, Disclosed to the Purchaser.
- (l) Permits, licenses, agreements, servitudes, easements, (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, options, rights-of-way, public ways, rights in the nature of an easement or servitude and other similar rights in land granted to or reserved by other persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) (other than those described in paragraph (c) and (d) of this Schedule) which do not materially impair the current operation of the Property.
- (m) All Off-Title Compliance Matters.
- (n) Any reference plans or plans registered pursuant to the Boundaries Act (Ontario).
- (o) Any unregistered interests in the Property of which the Purchaser has actual notice.
- (p) All instruments which are registered against title to a Property: (i) as of the date that is one (1) Business Days prior to the Execution Date; or (ii) otherwise agreed to by the Purchaser; or (iii) permitted by this Agreement, except for those Encumbrances to be vested off pursuant to the Approval and Vesting Order.

SPECIFIC ENCUMBRANCES

Nil.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC 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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
(Fleur de Lys)**

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