

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

MONDAY, THE 20TH

JUSTICE HAINEY

)

DAY OF AUGUST, 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 – LANSDOWNE PLACE (STORE #1020)

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 637 Lansdowne Street West, Peterborough, Ontario, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and Lansdowne Mall Inc. (the “**Purchaser**”), as purchaser, dated with effect as of July 25, 2018 (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 August 8, 2018 including the exhibits thereto, and the Fourth 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 August 9, 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, without further instrument of transfer or assignment, 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, (whether contractual, statutory, or otherwise), executions, writs of seizure and sale, leases, notices of lease, subleases, licenses, levies, restrictions, rights of retention, judgments,

notices of sale, contractual rights, options, liabilities (direct, indirect, absolute or contingent), obligations, cautions, charges, debentures, 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) (the “**PPSA**”) or pursuant to or registered at any other personal property registry system; and
- (c) those Claims listed on Schedule “B” hereto;

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that (i) all construction liens and certificates of action registered against the Subject Assets, including the construction liens and certificates of action listed on Schedule “B” (collectively, the “**Liens**”), are hereby vacated, as if an order had been made on motion by Sears Canada to vacate them by the posting of security for claim and costs pursuant to s. 44(1) of the *Construction Lien Act*, and (ii) the remaining Claims and Encumbrances affecting or relating to the Subject Assets are hereby expunged and discharged as against the Subject Assets including the real or immovable property identified in Schedule “B”.

5. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Peterborough (No. 45) of an Application for Vesting Order in the manner prescribed by the *Land Titles Act* (Ontario), the Land Registrar is hereby directed to enter LANSDOWNE MALL INC. as owner of the subject real property described in Schedule “B” hereto in fee simple, and is hereby directed to specifically (i) vacate the Liens, and (ii) discharge, cancel, delete and expunge from title to the real property described in Schedule “B” hereto all of

the Encumbrances that are not Liens listed in Part 1 of Schedule "B" hereto, notwithstanding that the time for appeal of this Order has not yet expired.

6. 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.

7. 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.

8. 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.

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

SEALING

10. THIS COURT ORDERS that Confidential Appendices "B", "C", "D", "E" and "F" to the Fourth 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

11. THIS COURT ORDERS that, notwithstanding:

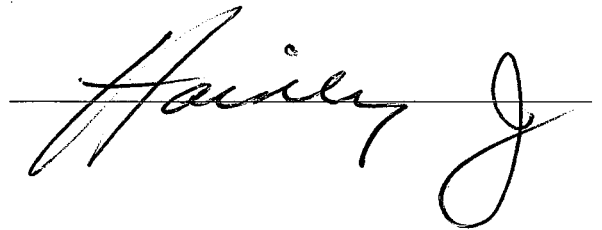
- (a) the pendency of these proceedings;

- (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.

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

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



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

AUG 20 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 Lansdowne Mall Inc. (the "Purchaser") as purchaser dated with effect as of July 25, 2018 (the "APS"), a copy of which is attached as Exhibit "A" to the Affidavit of Philip Mohtadi dated August 8, 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"

1. Land Registry Office

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted/Vacated, as applicable
Section 1.	Lansdowne Place, 637 Lansdowne St. W., Peterborough	Ontario	Peterborough (no. 45)	PIN 28071-0011 (LT) PT LT 1 PL 17Q NORTH MONAGHAN; PT LTS 1 TO 3, 84 TO 94, PT LANE PL 58Q NORTH MONAGHAN PTS 4, 7, 10 & 11 45R3439; S/T R340536, R332740 AND S/T R363603; T/W R363605 ; S/T EASE OVER PT 2, 45R12580 AS IN LT116472; PETERBOROUGH	See below

Encumbrances to be Expunged/Deleted/Vacated, as applicable, from Title:

- (a) Instrument No. PE277987 registered on October 3, 2017, being a construction lien in favour of Kone Inc. in the amount of \$11,734.56.
- (b) Instrument No. PE277987 registered on November 14, 2017, being a certificate of action in favour of Kone Inc. and relating to construction lien registered as Instrument No. PE277987.

2. Personal Property Security Act (Ontario)

PPSA File No.	Registration No.	Secured Party
725643558	20170315 1622 1590 9711	GACP Finance Co., LLC as agent

SCHEDULE "C"
PERMITTED ENCUMBRANCES

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

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 in each case with Governmental Authorities or private or public utilities affecting the development or use of any Property.
- (c) Rail siding agreements or facility, cost sharing, servicing, reciprocal use or other similar agreements.
- (d) Any easements, servitudes, or rights-of-way in favour of any Governmental Authority, and any easements, servitudes, or rights-of-way in favour of any private or public utility, any railway company or any adjoining owner which do not materially impair the current use, operation or marketability of the Property.
- (e) 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.
- (f) Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable Law.
- (g) Restrictive covenants, private deed restrictions and other similar land use control agreements that are Disclosed to the Purchaser.
- (h) 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 which do not materially impair the current use, operation or marketability of the Property.
- (i) The provisions of all applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property.
- (j) The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) (other than paragraphs 3, 4, 6 and 11)
- (k) Rights arising from applicable Laws 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.

- (l) Any minor title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Property which would be disclosed by an up-to-date plan of survey, real property report, certificate of location, or technical description which do not materially impair the current use, operation or marketability of the Property.
- (m) To the extent any of the following are Disclosed to the Purchaser, 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 (d) and (e) of this Schedule) which do not materially impair the current use, operation or marketability of the Property.
- (n) Any reference plans or plans registered pursuant to the Boundaries Act (Ontario).
- (o) All Off-Title Compliance Matters.
- (p) All rights of first refusal, option to purchase or similar rights relating to the Property that are Disclosed to the Purchaser.
- (q) Any instruments which are registered against title to the Property that are: (i) otherwise agreed to by the Purchaser; or (ii) permitted by the APS, except in each case for those Encumbrances to be discharged, cancelled, deleted and expunged from title to the Property pursuant to the Approval and Vesting Order.

SPECIFIC ENCUMBRANCES

The characterization or descriptions of those items on the balance of this Schedule "C" is prepared for purposes of convenience only and for accurate reference, recourse should be had to the registration itself.

1. A Right of Way in favour of National Trust Company in common with others entitled thereto for access by persons, animals and vehicles, which right of way was registered as Instrument No. R332740 on June 2, 1978.
2. A Right of Way in favour of National Trust Company in common with others entitled thereto for access by persons, animals and vehicles, which right of way was registered as Instrument No. R340536 on December 5, 1978.

3. A Right of Way in favour of The Cadillac Fairview Corporation Limited for parking purposes, which right of way was registered as Instrument No. R363603 on August 19, 1980.
4. A Development Agreement dated October 30, 1979, between Simpsons-Sears Limited, Wittington Leased Properties Limited, Wittington Leaseholds Limited and Cadillac Fairview Corporation Limited, collectively as developer, and The Corporation of the City of Peterborough, which Agreement was registered as Instrument No. R355822 on December 7, 1979.
5. An Operating Agreement dated October 29, 1980, between The Cadillac Fairview Corporation Limited and Simpsons-Sears Limited, which Agreement was registered as Instrument No. R380363 on December 7, 1981, as amended by a Lansdowne Place Operating Agreement Amendment dated October 4, 2007 between Lansdowne Place Inc. and Sears Canada Inc.
6. Instrument No. R380363 registered December 7, 1981 being an Agreement.
7. Instrument No. R380364 registered December 7, 1981 being an Agreement.
8. Instrument No. R380861 registered December 23, 1981 being an Agreement.
9. A Transfer of Easement in favour of Peterborough Distribution Inc. to enter on, install, construct, maintain, inspect, add to, alter, repair and maintain, remove, replace, relocate, reconstruct and operate an electric power transmission line, which easement was registered as Instrument No. LT116472 on September 23, 2003.
10. A Site Plan Agreement dated February 9, 2007, between Lansdowne Place Inc. and Sears Canada Inc., collectively as owners, and The Corporation of the City of Peterborough, which Agreement was registered as Instrument No. PE50772 on April 10, 2007.
11. A Site Plan Agreement dated September 21, 2007, between Lansdowne Place Inc. and Sears Canada Inc., collectively as owners, and The Corporation of the City of Peterborough, which Agreement was registered as Instrument No. PE73307 on February 26, 2008.
12. A Site Plan Agreement dated September 22, 2008, between Lansdowne Place Inc. and Sears Canada Inc., collectively as owners, and The Corporation of the City of Peterborough, which Agreement was registered as Instrument No. PE95429 on January 15, 2009.

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
(Lansdowne Place)**

OSLER, HOSKIN & HARCOURT, LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M
Tel: 416.862.4908

Tracy Sandler LSUC# 32443N
Tel: 416.862.5890

Jeremy Dacks LSUC# 41851R
Tel: 416.862.4923

Karin Sachar LSUC# 59944E
Tel: 416.862.5949
Fax: 416.862.6666

Lawyers for the Applicants