

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

) MONDAY, THE 19<sup>TH</sup>

)

JUSTICE HAINEY

) DAY OF NOVEMBER, 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.

**Applicants**

**APPROVAL AND VESTING ORDER  
(Newmarket Full Line)**

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as court-appointed Monitor (the "**Monitor**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order approving the sale of lands and buildings located at 17600 Yonge Street, Newmarket, Ontario (the "**Transaction**") pursuant to an Option Agreement (the "**Option Agreement**") made as of January 21, 1994 between Sears Canada Inc. ("**Sears Canada**") and Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (as successor to Regional Shopping Centres Limited) (collectively, the "**Purchaser**", which defined term shall include the entity that takes title to the UCM Full Line Property, as defined below) in

accordance with the terms of the Option Agreement and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the Sixth Supplement to the Nineteenth Report of FTI Consulting Canada Inc., in its capacity as Monitor, filed, and on hearing the submissions of respective counsel for 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 Catherine Ma sworn November 15, 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 Option Agreement, as applicable.

### **APPROVAL OF THE TRANSACTION**

3. THIS COURT ORDERS AND DECLARES that the implementation of the Transaction pursuant to the Option Agreement is hereby approved and ratified. Sears Canada and the Monitor are hereby authorized and directed to take such additional steps and execute such additional documents (including all Transfer 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 former Sears full line store and lands located adjacent to the Upper Canada Mall as described on Schedule “B” hereto (the “**UCM Full Line Property**”) to the Purchaser and Sears Canada and the Monitor shall be authorized and directed to take such additional steps in furtherance of their responsibilities under this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the UCM Full Line Property 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 UCM Full Line Property shall be sold, assigned and transferred to the Purchaser (in such name as it may direct), 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, work orders, 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 UCM Full Line Property (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 hereinbefore or 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; 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 UCM Full Line Property are hereby expunged and discharged as against the UCM Full Line Property identified in Schedule "B".

5. THIS COURT ORDERS that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar is hereby directed to specifically discharge,

cancel, delete and expunge from title to the applicable real or immovable property described in Schedule "B" all of the Encumbrances listed in Schedule "B" hereto and reflect the Purchaser as the registered legal owner of the UCM Full Line Property.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds received on the completion of the Transaction shall stand in the place and stead of the UCM Full Line Property, and that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach only to the net proceeds from the Transaction (the "**Net Proceeds**") with the same priority as they had with respect to the UCM Full Line Property immediately prior to the completion 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 Sears Canada 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.

#### **SEALING**

9. THIS COURT ORDERS that Confidential Appendices "D" and "E" to the Sixth Supplement to the Nineteenth 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**

10. THIS COURT ORDERS that, notwithstanding:

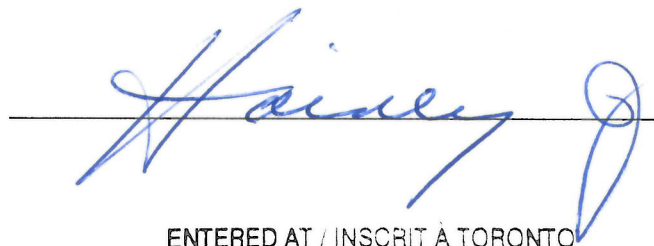
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or

(c) any assignment in bankruptcy made in respect of any of the Applicants;

the sale, assignment and transfer of the UCM Full Line Property to 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.

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

12. 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:

NOV 19 2018

PER / PAR:



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.,  
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CANADA INC., AND 3339611 CANADA INC.

**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 sale transaction (the "**Transaction**") between Sears Canada Inc. ("**Sears Canada**") and Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (as successor to Regional Shopping Centres Limited) (collectively, the "**Purchaser**", which defined term shall include the entity that takes title to the UCM Full Line Property) pursuant to an Option Agreement (the "**Option Agreement**") made as of January 21, 1994.

B. Pursuant to the Approval and Vesting Order, the Court approved the Transaction and provided for the sale, assignment and transfer to the Purchaser of Sears Canada's right, title and interest in and to the UCM Full Line Property, which sale, assignment and transfer is to be effective with respect to the UCM Full Line Property upon the delivery by the Monitor to the Purchaser and Sears Canada of a certificate confirming that (i) the

conditions to Closing (as defined in the Option Agreement) have been satisfied or waived by the Purchaser and Sears Canada, as applicable, and (ii) 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.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in the Option Agreement 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 pursuant to the Option Agreement 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"**

<b>Location/ Address</b>	<b>Land Registry Office</b>	<b>Legal Description</b>	<b>Encumbrances to be Expunged/ Deleted</b>
17600 Yonge St. Newmarket, Ontario	LRO 65	Part of Lot 96, Concession 1, West of Yonge Street (East Gwillimbury), Part 3 on Plan 65R-899, Town of Newmarket, Region of York being PIN 03554-0077 (LT)	<ol style="list-style-type: none"> <li>1. Instrument No. YR2697645 registered July 6, 2017 being a Construction Lien in favour of 152610 Canada Inc.;</li> <li>2. Instrument No. YR2699418 registered July 10, 2017 being a Construction Lien in favour of Abbarch Architecture Inc.;</li> <li>3. Instrument No. YR2707284 registered July 25, 2017 being a Construction Lien in favour of Citymark Construction and Drywall Ltd.;</li> <li>4. Instrument No. YR2713246 registered August 4, 2017 being a Construction Lien in favour of Industrial Floor Systems Corp.;</li> <li>5. Instrument No. YR2713248 registered August 4, 2017 being a Construction Lien in favour of Central Painting Inc.;</li> <li>6. Instrument No. YR2728921 registered September 8, 2017 being a Certificate of Action in favour of 152610 Canada Inc. related to Construction Lien No. YR2697645;</li> <li>7. Instrument No. YR2731478 registered September 14, 2017 being a Certificate of Action in favour of Abbarch Architecture Inc. related to Construction Lien No. YR2699418;</li> </ol>



Location/ Address	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
			<p>8. Instrument No. YR2732163 registered September 15, 2017 being a Certificate of Action in favour of Central Painting Inc. related to Construction Lien No. YR2713248;</p> <p>9. Instrument No. YR2732180 registered September 15, 2017 being a Certificate of Action in favour of Industrial Floor Systems Corp. related to Construction Lien No. YR2713246;</p> <p>10. Instrument No. YR2732960 registered September 18, 2017 being a Certificate of Action in favour of Citymark Construction and Drywall Ltd. related to Construction Lien No. YR2707284;</p> <p>11. Instrument No. YR2740593 registered October 3, 2017 being a Construction Lien in favour of Kone Inc.</p> <p>12. Instrument No. YR2769896 registered December 6, 2017 being a Certificate of Action in favour of Kone Inc. related to Construction Lien No. YR2740593; and</p> <p>13. Instrument No. R633095 registered January 21, 1994 being a Lease in favour of Sears Properties Inc. as partially released by Instrument No. R720275 registered April 21, 1998.</p>

**SCHEDULE "C"**  
**PERMITTED 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 and airport zoning regulations with Governmental Authorities or private or public utilities affecting the development or use of the UCM Full Line Property, in each case as disclosed by registration on title to the UCM Full Line Property.
- (c) Rail siding agreements or facility, cost sharing, servicing or reciprocal use agreements, in each case as disclosed by registration on title to the UCM Full Line Property.
- (d) 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 case as disclosed by registration on title the UCM Full Line Property.
- (e) Any unregistered easements, servitudes or rights-of-way provided same have been disclosed to the Purchaser in respect of the provision of utilities to the UCM Full Line Property which do not materially impair the current use, operation or marketability of the UCM Full Line Property.
- (f) Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable law.
- (g) 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 UCM Full Line Property that have either accrued but are not yet due and owing, or, if same are due and owing, in each case as adjusted for on Closing.
- (h) Restrictive covenants or private deed restrictions which do not materially impair the current use, operation or marketability of the UCM Full Line Property, in each case as disclosed by registration on title to the UCM Full Line Property.
- (i) Minor encroachments by the UCM Full Line Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the UCM Full Line Property by

improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners in each case, which do not materially impair the current use, operation or marketability of the UCM Full Line Property.

- (j) The provisions of all applicable laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the UCM Full Line Property.
- (k) The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) (other than paragraphs 3, 4, 5, 6, 11 and 14).
- (l) Security given to a public utility or any municipality or governmental or other public authority when required by the operations of the UCM Full Line Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the UCM Full Line 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 UCM Full Line Property, provided that the Purchaser shall not be obligated to deliver any additional or replacement security in connection therewith.
- (m) Any reference plans or plans registered pursuant to the *Boundaries Act* (Ontario).
- (n) All rights of first refusal, option to purchase or similar rights relating to the UCM Full Line Property to extent disclosed by registered title.
- (o) The Operating Agreement dated July 25, 1973 among Regional Shopping Centres Limited and Sears Canada Inc. (as amended or supplemented from time to time).
- (p) The Option Agreement.

### **SPECIFIC ENCUMBRANCES**

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

- (a) Instrument No. EG15610 registered October 31, 1933 being a Transfer Easement in favour of The Hydro-Electric Power Commission of Ontario;
- (b) Instrument No. EG20073 registered January 11, 1952 being Transfer of Easement in favour of The Bell Telephone Company of Canada;
- (c) Instrument No. R161412 registered July 18, 1974 being a Restrictive Covenant Agreement;

- (d) Instrument No. R383631 registered November 14, 1985 being a Transfer Easement in favour of Her Majesty the Queen in Right of the Province of Ontario as Represented by the Minister of Transportation and Communications;
- (e) Instrument No. R586207 registered January 9, 1992 being a Notice of Claim re Instrument No. EG20073;
- (f) Instrument No. R633096 registered January 21, 1994 being an Agreement;
- (g) Instrument No. R633169 registered January 24, 1994 being an Agreement;
- (h) Instrument No. R633159 registered January 24, 1994 being an Option to Purchase between Sears Canada Inc. and Regional Shopping Centres Limited;
- (i) Instrument No. R633172 registered January 24, 1994 being an Assignment General re re-assignment of option to purchase re R633159;
- (j) Instrument No. R719692 registered April 9, 1998 being an Transfer/Deed of Land and Easement Agreement;
- (k) Instrument No. R719693 registered April 9, 1998 being an Transfer/Deed of Land and Easement Agreement;
- (l) Instrument No. R719696 registered April 9, 1998 being an Operating Agreement between Regional Shopping Centres Limited and Simpsons-Sears Properties Limited and Simpsons-Sears Limited (now known as Sears Canada Inc.);
- (m) Instrument No. R719697 registered April 9, 1998 being an Agreement re Nos. R161412, R633096, R633169 and R719696 between Regional Shopping Centres Limited and OMERS Realty Corporation, Sears Canada Inc., Cambridge Leaseholds Limited, The Prudential Insurance Company of America, The Canada Life Assurance Company and London Life Insurance Company;
- (n) Instrument No. R719735 registered April 9, 1998 being a Partial Release of Option to Purchase No. R633159 and Assignment No. R633172 between Sears Canada Inc. and Regional Shopping Centres Limited and OMERS Realty Corporation;
- (o) Instrument No. YR753905 registered December 22, 2005 being an Application of Notice of Change of Name-Owner from Simpsons-Sears Properties Limited and Sears Canada Inc.;

- (p) Instrument No. YR1030677 registered August 3, 2007 being a Notice of Agreement with Corporation of the Town of Newmarket;
- (q) Instrument No. YR1059308 registered September 25, 2007 being a Notice of Agreement with Corporation of the Town of Newmarket;
- (r) Instrument No. YR2674522 registered May 26, 2017 being a Land Registrar's Order from Land Registrar, York Region Land Registry Office; and
- (s) Instrument No. R720275 registered April 21, 1998, being a Release from Regional Shopping Centres Limited to Sears Canada Inc.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., *et al.*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER  
(Newmarket Full Line)**

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