

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., INITIUM LOGISTICS
SERVICES INC., INITIUM COMMERCIAL LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR COVERING
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC.,
6988747 CANADA INC., 10011711 CANADA INC., 1592580
ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA
INC., 168886 CANADA INC., AND 3339611 CANADA INC.**

RESPONDING MOTION RECORD OF THE LANDLORDS

(Motion Returnable May 7, 2019)

April 15, 2019

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

John C. Wolf (LSO # 30165B)
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Lawyers for the Landlords

TO: Service List (see attached)

ONTARIO
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INDEX

Tab	Document
1	Notice of Cross-Motion of the Landlords
2	Affidavit of Babita Ramkissoon sworn April 15, 2019
A	Exhibit A – Bentall Kennedy Joinder Agreement
B	Exhibit B – Cogir Joinder Agreement
C	Exhibit C – Tanurb Joinder Agreement
D	Exhibit D – Primaris Joinder Agreement
E	Exhibit E – Quadreal Joinder Agreement
F	Exhibit F – Westcliff Joinder Agreement
G	Exhibit G – Email from Blaney to Monitor’s counsel dated December 10, 2018
H	Exhibit H – Email chain between Monitor’s counsel and Blaney in March 2019
I	Exhibit I – Email from Blaney to Monitor’s counsel dated April 8, 2019

TAB 1

**ONTARIO
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**IN THE MATTER OF THE COMPANIES CREDITORS
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NOTICE OF CROSS-MOTION OF THE LANDLORDS

THE RESPONDENTS, Bentall Kennedy (Canada) LP, QuadReal Property Group, Primaris Management Inc., Westcliff Management Ltd., Tanurb (Festival Marketplace) Inc., and Cogir Real Estate (collectively, the "**Landlords**"), will make a motion to the Court on a date to be set by the Court at 10:00 a.m. at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) if necessary, leave of the Court to bring this motion seeking relief from the FTI Consulting Canada Inc. (the "**Monitor**") ,
- (b) an order compelling the Monitor to complete its obligations in the Settlement Agreement (described below) executed between the Monitor and the Landlords;

- (c) an order compelling the Monitor to pay the Landlord of Primaris Management Inc.'s property in Cataraqui Town Centre, Cataraqui Town Centre Inc., ("**Primaris**") \$281,000.00 which funds were provided to the Monitor under settlement terms which the Monitor did not fulfill; and
- (d) a declaration that Norton Rose Fulbright LLP ("**Norton Rose**") cannot act as counsel for the Monitor in respect of any dispute as to the enforceability of the Settlement since it is a witness to what transpired between the Monitor and the Landlords in the settlement negotiations;
- (e) an order that this manner be case-managed and that a litigation schedule be established once the parties have selected counsel;
- (f) an order sealing certain confidential information provided or to be provided in support of this Motion; and
- (g) the costs of this Motion, payable to the Landlords.

THE GROUNDS FOR THE MOTION ARE:

Background of the CCAA Proceeding

- (a) On June 22, 2017, Sears Canada Inc. and various of its operating subsidiaries (the "**Applicants**") obtained an initial order granting the Applicants protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 ("**CCAA**") and commencing the within CCAA proceedings;
- (b) on December 8, 2017, the Court issued a further Order approving the claims process for the Applicants' CCAA proceeding (the "**Claims Procedure Order**");
- (c) section 57(b) of the Claims Procedure Order specifically states:

For greater certainty, any party may file additional evidence, documentation, reports or information on any hearing to resolve the issues raised in a Notice of Dispute of Revisions or Disallowance and no party will object to the filing of such addition evidence on the basis that such evidence, documentation, report or information was not included in the initial Proof of Claim, D&O Proof of Claim or Notice of Revisions or Disallowance.

The Landlords' Claims

- (d) in accordance with the Claims Procedure Order, the Landlords filed 27 Proof of Claims in the CCAA proceeding (the "**Landlords' Claims**");
- (e) subsequently, the Monitor issued Notices of Revision and Disallowance ("**NORDs**") for the Landlords' Claims;
- (f) the Landlords responded to the NORDs by filing Notices of Dispute ("**NODs**") for each of their claims;

The Settlement Agreement

- (g) throughout October and November of 2018, counsel for the Landlords, Blaney McMurtry LLP ("**Blaneys**"), and counsel for the Monitor, Norton Rose, engaged in discussions and judicial mediation to resolve the dispute between the parties regarding 22 of the 27 Landlords' Claims;
- (h) on or about December 3, 2018, the Landlords and the Monitor, in conjunction with Judicial Mediation, entered into a confidential Settlement Agreement consisting of (1) the Term Sheet, (ii) Schedule 'A' to the Term Sheet with the defined terms of the agreement, (iii) Schedule 'B' to the Term Sheet with the agreed amount of each claim blank (the "**Joinder Agreement**"), and (iv) a settlement agreement (the "**Settlement Agreement**");

- (i) the Settlement Agreement provided a formula which eliminated the need to calculate actual damages for subjective items such as damage claims and co-tenancy claims and replaced those issues with uniform amounts payable to all landlords (the “**Formula Amounts**”). The Settlement Agreement also provided a formulaic approach to the subjective question of how much future rent would be allowed and how much mitigation would be included for the balance of the lease term. (the “**Formula Term**”)
- (j) the Settlement Agreement also required that outstanding and future rent be calculated on a property by property basis for the Formula Term and added to the Formula Amounts.
- (k) the Settlement Agreement provided a brief delay following execution to allow the Landlords to provide Joinder Agreements which set out the rent due on a property by property basis, for the Formula Term.
- (l) the Landlords have performed the settlement by delivering the Joinder Agreements detailing each claim amount in accordance with the Settlement Agreement, along with additional supporting documentation.
- (m) The Monitor has not performed the Settlement. In particular, the Monitor disputes its obligation to issue final Notices of Disallowance finalizing the claim amounts in accordance with Settlement Agreement;
- (n) The Monitor has instead purported to unilaterally fix the per property amounts, allegedly in accordance with the Sears books and records and without regard to the information provided by the Landlords in its proofs of claim or Joinder Agreements.

- (o) For example, even though the proof of claim amounts expressly state that the amounts claimed were filed exclusive of HST or GST or QST (as applicable) and even though it is beyond dispute that Sears paid these taxes with its rent and the Landlords are obliged to collect it, the Monitor has rejected that inclusion in the Joinder Agreements. This alone accounts for **REDACTED** of the dispute at issue.
- (p) The Monitor's position is, in the aggregate, approximately \$18,000,000 (inclusive of the above tax amount) less than the Landlord's position. Assuming a claims value of \$0.07, there is approximately \$1,260,000 of actual value in dispute.
- (q) the Monitor has refused to provide the Landlords any supporting financial documents or calculations for its proposed value which it has assigned to the Landlords' Claims;
- (r) this dispute can be resolved by the Monitor reviewing the Landlords' documentation on the value of their claims and the application of the formula, and identifying where it differs from Sears' books and records and producing evidence of those books and records upon which the Monitor relies;
- (s) however, the Monitor has refused to address the validity of the Landlords' valuation of their Claims in accordance with the formula;

Alleged Pre-Filing Tax Overpayment

- (t) in accordance with the settlement, Blaney provided the Monitor with its reconciliation of the accounts related to overpayments to the Orchard Park landlord. This reconciliation confirmed that nothing was owing by the Orchard Park landlord.

- (u) At the same time, Blaney identified an apparent overpayment made by Sears to a different property represented by Blaney and proposed a settlement which the Monitor disputed.
- (v) Blaney provided \$281,000 to the Monitor by cheque as a proposed settlement to the dispute, and subject to certain express terms.
- (w) The Monitor previously reported to the Court in great detail with respect to amounts owing for alleged pre-filing tax overpayments (in its 15th Report to Court, among others). The contested amount at issue was not identified in those materials, even though the Monitor turned its attention to the subject property (among others).
- (x) The Monitor exhaustively and extensively litigated and sought orders and endorsements where required in dealing with this issue in April 2018 in order to collect similar amounts. No such order was sought with respect to this landlord because the Monitor reported to the court it had resolved this issue.
- (y) The \$281,000 was provided to the court officer by cheque under the express terms that it was only to be cashed upon the acceptance of the proposed settlement or otherwise returned.
- (z) The Monitor waited in excess of 15 days following the receipt of these funds, and then deliberately rejected the settlement and cashed and deposited the settlement funds in violation of the terms under which it was provided.
- (aa) the funds should be returned in accordance with the terms under which they were provided.

Dispute on What the Parties Agree to

- (bb) To the extent that the Monitor wishes to dispute what was agreed to with the Landlords in the terms of the Settlement Agreement, Blaneys will be conflicted from representing the Landlords as it will be a witness required to speak to what was negotiated and agreed to between the parties;
- (cc) Norton Rose would also be conflicted out from representing the Monitor as it will be a witness required to speak to what was negotiated and agreed to between the parties;
- (dd) any dispute in respect of the enforceability of the Settlement Agreement will require evidence not only of what the documents do or do not say, but of the entire factual matrix as to why the documents were prepared in the manner in which they were prepared and what the parties reasonably expected or intended in entering into the Settlement Agreement.
- (ee) there is no urgency with respect to this matter as the delta in dispute is immaterial to the Sears restructuring or its pending plan of arrangement.
- (ff) the amount in question is material in terms of the total dividend which may be payable, in the aggregate, to the parties represented by Blaney, and as such it should not be dealt with summarily on an incomplete record;
- (gg) the exhibits to the Affidavit contain confidential business information about the Landlords which should be sealed pending a further order of this court; and
- (hh) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the affidavit of Babita Ramkissoon sworn April 15, 2019;
- (b) such further and other affidavits which may be filed hereafter in accordance with the relief sought herein;
- (c) the Reports of the Monitor filed in this proceeding, including the 15th and 30th Reports (filed); and
- (d) such further and other evidence as counsel may advise and this Honourable Court permit.

April 15, 2019

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

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Tel: (416) 593-2994
Email: jwolf@blaney.com

David T. Ullmann (LSO #423571)
Fax: (416) 594-2437
Email: dullmann@blaney.com

Lawyers for the Moving Landlords

TO: Service List (see attached)

TAB 2

ONTARIO
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ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA
INC., 168886 CANADA INC., AND 3339611 CANADA INC.**

AFFIDAVIT OF BABITA RAMKISSOON

(Sworn April 15, 2019)

I, Babita Ramkissoon, of the City of Vaughan, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an assistant at Blaney McMurtry LLP ("**Blaney**"), lawyers for the Landlords, and as such, have knowledge of the matters to which I hereinafter depose.
2. Where this affidavit is based upon information received from others, I have identified the source of that information, and verily believe that information to be true.
3. To the extent that any information and belief set out in this affidavit is based on my review of documents, I verily believe the information in such documents to be true.

Background

4. Blaney has filed notices of appearance for and represents Bentall Kennedy (Canada) LP, QuadReal Property Group, Primaris Management Inc., Westcliff Management Ltd., Tanurb (Festival Marketplace) Inc., and Cogir Real Estate (collectively, the "**Landlords**") in respect of

THIS IS EXHIBIT

"A"

TO THE AFFIDAVIT OF

BABITA RAMKISSOON

SWORN BEFORE ME ON

APRIL 15, 2019

A handwritten signature in blue ink, appearing to read 'David Ullmann', written over a horizontal line.

David Ullmann

David T Ullmann
416-596-4289
dullmann@blaney.com

December 10, 2018

VIA E-MAIL

Ms. Virginie Gauthier
Norton Rose Fulbright LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario, M5J 2Z4
virginie.gauthier@nortonrosefulbright.com

Dear Virginie:

Re: Bentall Kennedy (Canada) L.P. in the matter of Sears Canada Entities under the Companies' Creditors Arrangement Act

Enclosed is the joinder to Term Sheet (this "**Joinder Agreement**") dated December 10, 2018, executed by Eastgate Square L.P. in respect of Eastgate Shopping Mall managed by Bentall Kennedy (Canada) L.P., ITF Hillside Centre LP & Hillside Centre LP in respect of Hillside Centre managed by Bentall Kennedy (Canada) L.P., and PenRetail III Ltd. in respect of Westmount Shopping Centre managed by Bentall Kennedy (Canada) L.P. (the "**Landlord**").

We have taken the opportunity to review the amount calculated by the Monitor with our clients against our clients' accounts and the terms of the term sheet and the lease. We would like to draw your attention to the changes in the Agreed Claim Amount. The changes to the Agreed Claim Amount reflect the calculations of lost future rent for each property based on the definition of "rent" for each particular lease. Our clients' statements of account and lease excerpts for each property are included in the attachments.

There have been no other changes to the Joinder Agreement. For ease of reference, we have enclosed additional documentation for your review:

TAB NO.	DOCUMENT
1	Executed Joinder Agreement dated December 10, 2018
2	Eastgate Square L.P. in respect of Eastgate Shopping Mall managed by Bentall Kennedy (Canada) L.P.
A	Statement of Account for Future Rent
B	Statement of Account for Future Utilities
C	Excerpts of the Lease
3	ITF Hillside Centre LP & Hillside Centre LP in respect of Hillside Centre managed by Bentall Kennedy (Canada) L.P.

A	Statements of Account for Future Rent
B	Statement of Account for Future Utilities
C	Excerpts of the Lease
4	PenRetail III Ltd. in respect of Westmount Shopping Centre managed by Bentall Kennedy (Canada) L.P.
A	Statement of Account for Future Rent
B	Excerpts of the Lease

By signing the attached Joinder Agreements, you also agree that the Monitor has no further claim for any post-filing sums against this Landlord.

As evidenced in the Proof of Claim, the Landlord filed claims against Sears. These post-filing claims are unaffected by the Joinder Agreement.

Yours very truly,

Blaney McMurtry LLP



David T Ullmann

DTU/JW

Encl.

REDACTED

THIS IS EXHIBIT

"B"

TO THE AFFIDAVIT OF

BABITA RAMKISSOON

SWORN BEFORE ME ON

APRIL 15, 2019

A handwritten signature in black ink, appearing to be 'D. Ullmann', written over a horizontal line.

David Ullmann

David T Ullmann
416-596-4289
dullmann@blaney.com

December 10, 2018

VIA E-MAIL

Ms. Virginie Gauthier
Norton Rose Fulbright LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario, M5J 2Z4
virginie.gauthier@nortonrosefulbright.com

Dear Virginie:

Re: Montez in the matter of Sears Canada Entities under the Companies' Creditors Arrangement Act

Enclosed is the executed joinder to Term Sheet (this "**Joinder Agreement**") dated December 10, 2018, executed by Montez (Sorel) Inc. in respect of Shopping Centre known as "Promenade Sorel" and managed by Societe de Gestion Cogir s.e.n.c., and Montez (Corner Brook) Inc. (the "**Landlord**").

We have taken the opportunity to review the amount calculated by the Monitor with Montez (Sorel) Inc. against its accounts and the terms of the term sheet and the lease. We would like to draw your attention to the changes in the Agreed Claim Amount. The changes to the Agreed Claim Amount reflect the current calculation of lost future rent for the property based on the definition of "rent" in the lease. At this time we have not been provided with the final amounts for utilities which form part of rent. As such, we have provided a conservative estimate over the balance of the term of the lease in the amount of \$184,000. This amount is based upon the per month average expense for Quebec properties. It is our expectation that the final amount is likely higher than this, but our client is prepared to accept this amount.

We have also taken the opportunity to review the amount calculated by the Monitor with Montez (Corner Brook) Inc. against its accounts and the terms of the term sheet and the lease. We would like to draw your attention to the changes in the Agreed Claim Amount. The changes to the Agreed Claim Amount reflect the current calculation of lost future rent for the property based on the definition of "rent" in the lease. As shown in the attached Annual Utilities Fees at Tab C, **REDACTED** is added to the claim based on the cost of utilities for the remainder of the term. HST was also added to the calculation of future rent.

There have been no other changes to the Joinder Agreement. For ease of reference, we have enclosed additional documentation for your review:

TAB NO.	DOCUMENT
A	Executed Joinder Agreement dated December 10, 2018
B	Lease Excerpts for the lease with Montez (Corner Brook) Inc.
C	Annual Utilities Fees included in Rent

D	Lease Excerpts for the lease with Montez (Sorel) Inc.
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By signing the attached Joinder Agreement, you also agree that the Monitor has no further claim for any post-filing sums against this Landlord.

As evidenced in the Proof of Claim, Montez (Sorel) Inc. in respect of Shopping Centre known as "Promenade Sorel" and managed by Societe de Gestion Cogir s.e.n.c. filed a post-filing claim against Sears. This post-filing claim is unaffected by the Joinder Agreement.

Yours very truly,

Blaney McMurtry LLP



David T Ullmann

DTU/JW
Encl.

REDACTED

THIS IS EXHIBIT

"C"

TO THE AFFIDAVIT OF

BABITA RAMKISSOON

SWORN BEFORE ME ON

APRIL 15, 2019



David Ullmann

David T Ullmann
416-596-4289
dullmann@blaney.com

December 10, 2018

VIA E-MAIL

Ms. Virginie Gauthier
Norton Rose Fulbright LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario, M5J 2Z4
virginie.gauthier@nortonrosefulbright.com

Dear Virginie:

Re: Tanurb (Festival Marketplace) in the matter of Sears Canada Entities under the Companies' Creditors Arrangement Act

Enclosed is the executed joinder to Term Sheet (this "**Joinder Agreement**") dated December 10, 2018, for Tanurb (Festival Marketplace) Inc. (the "**Landlord**").

We have taken the opportunity to review the amount calculated by the Monitor with our client against our client's account and the terms of the term sheet and the lease. We would like to draw your attention to the changes in the Agreed Claim Amount. The changes to the Agreed Claim Amount reflect the most current calculations of lost future rent for the property based on the definition of "rent" for the lease. Our client's statement of account and lease excerpts for the property are included in the attachments.

There have been no other changes to the Joinder Agreement. For ease of reference, we have enclosed additional documentation for your review:

TAB NO.	DOCUMENT
A	Executed Joinder Agreement dated December 10, 2018
B	Statement of Account
C	Lease Excerpts

By signing the attached Joinder Agreements, you also agree that the Monitor has no further claim for any post-filing sums against this Landlord.

Yours very truly,

Blaney McMurtry LLP

A handwritten signature in black ink, appearing to read 'D. Ullmann', written over a horizontal line.

David T Ullmann

DTU/JW
Encl.

REDACTED

THIS IS EXHIBIT

"D"

TO THE AFFIDAVIT OF

BABITA RAMKISSOON

SWORN BEFORE ME ON

APRIL 15, 2019

A handwritten signature in blue ink, appearing to read 'D. Ullmann', is written over a horizontal line.

David Ullmann

David T Ullmann
416-596-4289
dullmann@blaney.com

December 10, 2018

VIA E-MAIL

Ms. Virginie Gauthier
Norton Rose Fulbright LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario, M5J 2Z4
virginie.gauthier@nortonrosefulbright.com

Dear Virginie:

Re: Primaris Management Inc. in the matter of Sears Canada Entities under the Companies' Creditors Arrangement Act

Enclosed is the executed joinder to Term Sheet (this "**Joinder Agreement**") dated December 10, 2018, executed by Cataraqui Town Centre Inc. in respect of Cataraqui Town Centre, Medicine Hat Mall Ltd. in respect of Medicine Hat Mall, Kildonan Place Ltd. in respect of Kildonan Place Mall, Park Place Mall Holdings Inc. in respect of Park Place Mall, Regent Mall Holdings Inc. in respect of Regent Mall, and Stone Road Mall Holdings Inc. in respect of Stone Road Mall (the "**Landlord**").

We have taken the opportunity to review the amount calculated by the Monitor with our clients against our clients' accounts and the terms of the term sheet and the lease. We would like to draw your attention to the changes in the Agreed Claim Amount. The changes to the Agreed Claim Amount reflect the updated calculations of lost future rent for each property based on the definition of "rent" for each particular lease. Our clients' statements of account and lease excerpts for each property are included in the attachments. As shown in the attached tabs, the additional amounts added to the claims reflect the cost of utilities and other annual costs for the remainder of the term.

There have been no other changes to the Joinder Agreement. For ease of reference, we have enclosed additional documentation for your review:

TAB NO.	DOCUMENT
A	Executed Joinder Agreement dated December 10, 2018
B	Statement of Account dated December 6, 2018 and excerpts of the lease for Cataraqui Town Centre Inc. in respect of Cataraqui Town Centre
C	Statement of Account dated December 5, 2018 and excerpts of the lease for McAllister Place Holdings Inc. in respect of McAllister Place
D	Statement of Account dated December 6, 2018 and excerpts of the lease for Medicine Hat Mall Ltd. in respect of Medicine Hat Mall
E	Statement of Account dated December 6, 2018 and excerpts of the lease for Kildonan Place

	Ltd. in respect of Kildonan Place Mall
F	Statement of Account dated December 5, 2018 and excerpts of the lease for Park Place Mall Holdings Inc. in respect of Park Place Mall
G	Statement of Account dated December 6, 2018 and excerpts of the lease for Regent Mall Holdings Inc. in respect of Regent Mall
H	Statement of Account dated December 6, 2018 and excerpts of the lease for Stone Road Mall Holdings Inc. in respect of Stone Road Mall

By signing the attached Joinder Agreements, you also agree that the Monitor has no further claim for any post-filing sums against the Landlord.

As evidenced in the Proof of Claim, the Landlord filed post-filing claims against Sears. These post-filing claims are unaffected by the Joinder Agreement.

Yours very truly,

Blaney McMurtry LLP



David T Ullmann

DTU/JW

Encl.

REDACTED

THIS IS EXHIBIT

"E"

TO THE AFFIDAVIT OF

BABITA RAMKISSOON

SWORN BEFORE ME ON

APRIL 15, 2019

A handwritten signature in blue ink, appearing to read "David Ullmann", written over a horizontal line.

David Ullmann

David T Ullmann
416-596-4289
dullmann@blaney.com

December 10, 2018

VIA E-MAIL

Ms. Virginie Gauthier
Norton Rose Fulbright LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario, M5J 2Z4
virginie.gauthier@nortonrosefulbright.com

Dear Virginie:

Re: Quadreal in the matter of Sears Canada Entities under the *Companies' Creditors Arrangement Act*

Enclosed is the executed joinder to Term Sheet (this "**Joinder Agreement**") dated December 10, 2018, for BCIMC Realty Corp. in respect of Bower Place Shopping Centre, BCIMC Realty Corp. in respect of Capilano Mall, BCIMC Realty Corp. in respect of Meridian Drive, Winnipeg as managed by Quadreal Property Group, and BCIMC Realty Corp. in respect of the Willowbrook Shipping Centre (the "**Landlord**").

We have taken the opportunity to review the amount calculated by the Monitor with our clients against our clients' accounts and the terms of the term sheet and the lease. We would like to draw your attention to the changes in the Agreed Claim Amount. The changes to the Agreed Claim Amount reflect the updated calculations of lost future rent for each property based on the definition of "rent" for each particular lease. Our clients' statements of account and lease excerpts for each property are included in the attachments.

There have been no other changes to the Joinder Agreement. For ease of reference, we have enclosed additional documentation for your review:

TAB NO.	DOCUMENT
A	Executed Joinder Agreement dated December 10, 2018
B	Statement of Account for Future Rent for all Four Quadreal Properties (Annualized)
C	Excerpts of the Lease for BCIMC Realty Corp. in respect of Bower Place Shopping Centre
D	Excerpts of the Lease for BCIMC Realty Corp. in respect of Capilano Mall
E	Excerpts of the Lease for BCIMC Realty Corp. in respect of Meridian Drive, Winnipeg as managed by Quadreal Property Group
F	Excerpts of the Lease of BCIMC Realty Corp. in respect of the Willowbrook Shipping Centre

By signing the attached Joinder Agreements, you also agree that the Monitor has no further claim for any post-filing sums against this Landlord.

As evidenced in the Proof of Claim, the Landlord filed post-filing claims against Sears. These post-filing claims are unaffected by the Joinder Agreement.

Yours very truly,

Blaney McMurtry LLP

A handwritten signature in black ink, appearing to read 'DTU', with a stylized flourish at the end.

David T Ullmann

DTU/JW
Encl.

REDACTED

THIS IS EXHIBIT

"F"

TO THE AFFIDAVIT OF

BABITA RAMKISSOON

SWORN BEFORE ME ON

APRIL 15, 2019

A handwritten signature in blue ink, appearing to read 'David Ullmann', is written over a horizontal line.

David Ullmann

David T Ullmann
416-596-4289
dullmann@blaney.com

December 10, 2018

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Ms. Virginie Gauthier
Norton Rose Fulbright LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario, M5J 2Z4
virginie.gauthier@nortonrosefulbright.com

Dear Virginie:

Re: Westcliff in the matter of Sears Canada Entities under the Companies' Creditors Arrangement Act

Enclosed in the executed joinder to Term Sheet (this "**Joinder Agreement**") dated December 10, 2018, for Westcliff Development Ltd. in respect of a shopping mall in Granby, Quebec, Les Immeubles Carrefour Richelieu Ltee in respect of a shopping centre in Drummondville, Quebec, Les Immeubles Carrefour Richelieu Ltee in respect of a shopping mall in St. Jean, Quebec, Les Immeubles Carrefour Richelieu Ltee in respect of a shopping centre in St. Jerome, Quebec, and Les Immeubles Carrefour Richelieu Ltee in respect of Carrefour Angrignon (the "**Landlord**").

We have taken the opportunity to review the amount calculated by the Monitor with our clients against our clients' accounts and the terms of the term sheet and the lease. We would like to draw your attention to the changes in the Agreed Claim Amount. The changes to the Agreed Claim Amount reflect the current calculations of lost future rent for each property based on the definition of "rent" for each particular lease. Our clients' statements of account and lease excerpts for each property are included in the attachments.

There have been no other changes to the Joinder Agreement. For ease of reference, we have enclosed additional documentation for your review:

TAB NO.	DOCUMENT
A	Executed Joinder Agreement dated December 10, 2018 for Granby
B	Executed Joinder Agreement dated December 10, 2018 for Les Immeubles Carrefour
C	Additional Rent for Utilities (annualized)
D	Excerpts of the Lease with Granby, Quebec
E	Excerpts of the Lease with Les Immeubles Carrefour Richelieu Ltee in respect of a shopping mall in St. Jean, Quebec
F	Excerpts of the Lease with Les Immeubles Carrefour Richelieu Ltee in respect of a shopping

	centre in St. Jerome, Quebec
G	Excerpts of the Lease with Les Immeubles Carrefour Richelieu Ltee in respect of Carrefour Angrignon
H	Excerpts of the Lease with Les Immeubles Carrefour Richelieu Ltee in respect of a shopping centre in Drummondville, Quebec

By signing the attached Joinder Agreements, you also agree that the Monitor has no further claim for any post-filing sums against this Landlord.

As evidenced in the Proof of Claim, the Landlord filed post-filing claims against Sears. These post-filing claims are unaffected by the Joinder Agreement.

Yours very truly,

Blaney McMurtry LLP



David T Ullmann

DTU/JW

REDACTED

THIS IS EXHIBIT

"G"

TO THE AFFIDAVIT OF

BABITA RAMKISSOON

SWORN BEFORE ME ON

APRIL 15, 2019



David Ullmann

From: David T. Ullmann
Sent: December 10, 2018 10:24 PM
To: Gauthier, Virginie
Cc: John C. Wolf
Subject: FW: Cataraqi/Orchard Park reconciliation
Importance: High

Virginie,

In accordance with our client's obligation under the settlement agreement reached on December 3rd, and after much work by Blaney's here is our reconciliation and recommendation on the alleged over payment of \$410,000 to Orchard Park.

Primaris received a payment from Sears in the amount of \$410,933.14 on October 31st, 2017. The payment was received at the same time as a further \$38,936.55 was paid to Orchard Park for post-closing adjustments on that transaction on the same day. We believe that may be why the Monitor believed this was a payment in respect of Orchard Park. It was not. It was actually a payment of the attached invoice from Primaris for the full year of realty taxes, pre and post filing, on the Cataraqi property. You will see the amounts in the attached match perfectly. Our client applied the amount received to this invoice.

We have reviewed with our client the decision re Remington and advised our client that it is not entitled to retain the pre filing portion of this payment. Primaris has agreed to pay to the Monitor an amount equal to the pre-filing taxes owing on Cataraqi which for the period of January 1st to June 21st 2017 should be \$193,645.21, less our reasonable substantial indemnity costs of addressing these matters, and subject to the following setoff for post filing amounts due.

As you can see from the attached Proof of Claim and NORD, Primaris has an accepted post filing claim for Cataraqi against Sears in the amount of \$96,174.30. This amount is still outstanding. The Monitor has accepted this amount as payable in its NORD (attached). This amount should be set off against the funds on hand.

In light of the foregoing, it is our client's position that this matter should be resolved upon Primaris making a payment in the amount of \$87,470.90 (being \$193,645.21 less \$96,174.30. less \$8,850 plus hst for costs) to the Monitor/Sears and that it will retain the balance of the payment made on October 31, 2017 (\$313,462.24) on account of post filing taxes of \$217,287.93 plus the post filing amount of \$96,174.30 and costs. It will also amend its claim against Sears by the amount of this payment, which is not currently reflected in the Joinder Agreement (which was/will be sent to you separately).

Accordingly, our client will send Sears, via the Monitor, a payment in the amount of \$87,470.90 by wire at the end of this week, after which the parties will consider any matters of the alleged overpayment to the Blaney landlord group fully resolved.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

🌐 Blaney.com



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THIS IS EXHIBIT

"H"

TO THE AFFIDAVIT OF

BABITA RAMKISSOON

SWORN BEFORE ME ON

APRIL 15, 2019



David Ullmann

REDACTED

THIS IS EXHIBIT

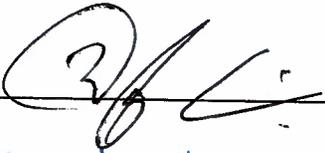
"1"

TO THE AFFIDAVIT OF

BABITA RAMKISSOON

SWORN BEFORE ME ON

APRIL 15, 2019



David Ullmann

REDACTED

From: David T. Ullmann
Sent: Monday, April 8, 2019 12:13 AM
To: 'Merskey, Alan'; steven.bissell@fticonsulting.com
Cc: John C. Wolf; Jessica Wuthmann
Subject: Meeting tomorrow re Sears and Moving Landlords
Attachments: Sears vs Landlord Delta Chart.pdf

WITHOUT PREJUDICE

Alan and Steven,

In anticipation of our meeting tomorrow, we provide, on a strictly without prejudice basis, the attached chart. The attached sets out, on a property by property basis, the difference between our two versions of the amounts owing. In each case, the amounts owing are backed up by the materials provided to the monitor previously provided to you, which appear in your motion record and report.

We recognize that it is the Monitor's position that under the settlement you are not required to review or comment on our claims any further. Respectfully, we disagree. In any event, even if you are correct that our client's claims were to be restricted to the books and records of Sears, it should make no difference to the outcome of our dispute. We do not believe that the claims as summarized by the Monitor so far, correctly reflect the amounts which will be shown to be set out in those books and records. In particular, as you will see from the attached, the amount calculated as "rent" has, in general, not been calculated in accordance with the lease or the past practices of the parties (which would be reflected in the books and records of Sears). Also, as we mentioned to the court in our 9:30, the Monitor's calculations in many instances fail to account for HST and QST on rent payments. This alone accounts for at least \$4.3M of the delta we are disputing. If we litigate this issue, you will at a minimum be required to expose those books and records, and the relevant personnel, for review on a property by property basis. We are quite confident that such a review will in each case demonstrate the correctness of our client's claim amounts.

We believe that the information provided makes it quite clear that the claims as filed by our clients are accurate and are in keeping with the settlement process. As we will discuss with you at the meeting, we hope the Monitor will, upon reviewing this further, change its approach to this matter. The Monitor has repeatedly expressed the view that it is not trying to win or lose. It simply wants to make sure the correct amounts are paid. That is all we are asking for, and what we believed we negotiated, and what any litigation over this issue will show.

REDACTED

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com

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 Blaney.com



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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 ELECTRIQUE 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 ALBERT LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

AFFIDAVIT OF BABITA RAMKISSOON
(Sworn April 15, 2019)

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
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John C. Wolf (LSO # 30165B)
Tel: (416) 593-2994
Email: jwolf@blaney.com

David T. Ullmann (LSO #423571)
Fax: (416) 594-2437
Email: dullmann@blaney.com

Lawyers for the Landlords

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 ELECTRIQUE 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 ALBERT LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
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RESPONDING MOTION RECORD OF THE LANDLORDS

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Lawyers for the Landlords