

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC.,  
191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC.,  
INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC.,  
INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING  
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741  
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED,  
955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC.,  
AND 3339611 CANADA INC.

Applicants

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**MOTION RECORD  
(Motion Returnable October 16, 2018)**

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Date: September 6, 2018

**BORDEN LADNER GERVAIS LLP**  
Barristers and Solicitors  
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Lawyers for The Children's Place  
(Canada), LP

**TO: SERVICE LIST**

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# Tab 1

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

Applicants

**NOTICE OF MOTION**

**THE CHILDREN'S PLACE (CANADA), LP ("TCP")** will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on October 16, 2018 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. A declaration that the stay of proceedings (the "**Co-Tenancy Stay**") provided in paragraph 15 of the Initial Order of the Honourable Mr. Justice Hainey dated June 22, 2017, as amended and restated on July 13, 2017 (the "**Initial Order**") and as extended by subsequent orders made in this proceeding, is no longer of any force or effect in accordance with its terms as against TCP, and as a result, TCP, as a co-tenant of the Applicants in a number of commercial shopping centres and

other commercial properties (a “**Co-Tenant**”), is entitled to exercise any rights *nunc pro tunc* that it may have against its landlords arising from the failure of any of the Applicants to operate in such commercial shopping centres or other commercial properties (the “**Co-Tenant Rights**”);

2. In the alternative to the above, an Order permanently vacating and/or lifting the Co-Tenancy Stay as against TCP;

3. A declaration that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of Co-Tenant Rights;

4. The costs of this motion, if opposed; and

5. Such further and other relief as counsel may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. Pursuant to the Initial Order at paragraph 15, this Honourable Court imposed the Co-Tenancy Stay on the following terms:

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

2. In support of the Initial Order, the Applicants submitted that the Co-Tenancy Stay was required to stay the exercise of contractual rights of the Co-Tenants for a finite period because any prejudice to the Co-Tenants was significantly outweighed by the benefits of the Co-Tenancy Stay to all stakeholders of the Applicants.

3. The Applicants did not ask the court to affect any substantive rights of the Co-Tenants.

4. The Co-Tenancy Stay has been extended by subsequent court orders in this proceeding.

5. The terms of the Co-Tenancy Stay preclude Co-Tenants of the Applicants such as TCP from exercising their rights only if certain conditions exist. In particular, the Co-Tenancy Stay only stays Co-Tenant Rights in a commercial shopping centre or other commercial property “in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities”. Accordingly, pursuant to the literal wording of the Initial Order, the Co-Tenancy Stay ceases to have any effect on a Co-Tenant as soon as the Applicants cease to own or operate a store, office or warehouse in a given commercial shopping centre or other commercial property.

6. In order to avoid any allegation that TCP is breaching the Co-Tenancy Stay, TCP seeks a declaration that the Co-Tenancy Stay is no longer in effect in accordance with its terms as against TCP.

7. Alternatively, if the Co-Tenancy Stay is still in effect in accordance with its terms, it is appropriate that the Co-Tenancy Stay be permanently vacated and/or lifted as against TCP.

8. The circumstances which led to the imposition of the Co-Tenancy Stay at the time the Initial Order was granted no longer exist. In particular:

- a. The liquidation of assets at the Applicants' retail locations is complete;
  - b. All of the Applicants' retail locations are closed;
  - c. All leases in respect of the Applicants' retail locations have been disclaimed or surrendered back to the landlord;
  - d. Any premises previously owned by the Applicants in locations where TCP is a Co-Tenant have been sold;
  - e. The Co-Tenancy Stay no longer provides any justifiable benefit to any of the stakeholders of the Applicants; and
  - f. The continuation of the Co-Tenancy Stay significantly prejudices TCP as Co-Tenants because of the continuing postponement of its ability to enforce its respective contractual rights.
9. To date, the financial impact of the Co-Tenancy Stay on TCP has been calculated to be approximately C\$193,483.00 per month, exclusive of the value of any termination rights that may be part of TCP's Co-Tenant Rights.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

1. The Affidavit of Ketul Patel, sworn September 6, 2018, and the Exhibits attached thereto; and

2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: September 6, 2018

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Lawyers for The Children's Place  
(Canada), LP

TO: **SERVICE LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
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PROCEEDING COMMENCED AT TORONTO

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**NOTICE OF MOTION**  
**(Motion Returnable October 16, 2018)**

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# Tab 2

**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

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Applicants

**AFFIDAVIT OF KETUL PATEL**

I, **KETUL PATEL**, of the Town of Secaucus, in the State of New Jersey, United States of America, **MAKE OATH AND SAY:**

1. I am a Director of Real Estate at The Children's Place Services Company, LLC, the affiliate company of The Children's Place (Canada), LP ("TCP"). As such, I have personal knowledge of the matters to which I hereinafter depose, unless stated to be based upon information and belief, in which case I state the source of my information and believe it to be true.

2. This affidavit is in support of a motion by TCP for a declaration that the stay of proceedings (the "**Co-Tenancy Stay**") provided in paragraph 15 of the Initial Order of the Honourable Mr. Justice Hainey dated June 22, 2017, as amended and restated on July 13, 2017 (the "**Initial Order**"), and as extended by subsequent orders made in this proceeding, is no

longer of any force or effect in accordance with its terms as against TCP, and as a result, TCP, as a co-tenant of the Applicants in a number of commercial shopping centres and other commercial properties (a “**Co-Tenant**”), is entitled to exercise any rights *nunc pro tunc* that it may have against its landlords arising from the failure of any of the Applicants to operate in such commercial shopping centres or other commercial properties (the “**Co-Tenant Rights**”).

3. In the alternative, this motion is for an Order permanently vacating and/or lifting the Co-Tenancy Stay as against TCP.

4. TCP also seeks a declaration that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of Co-Tenant Rights.

5. In accordance with the practice in these *Companies’ Creditors Arrangement Act* (“**CCAA**”) proceedings, any capitalized terms used and not defined herein shall have the meanings ascribed in the Initial Order, Amended and Restated Initial Order, Monitor’s Reports, and other orders or documents referenced in this affidavit.

#### **TCP is Affected by Paragraph 15 of the Initial Order**

6. In Canada, TCP operates 126 retail locations. Its stores are most commonly found in commercial shopping centres.

7. TCP is not a creditor of the Applicants. However, TCP has been affected by the Co-Tenancy Stay.

8. Pursuant to the Initial Order at paragraph 15, the Court imposed the Co-Tenancy Stay on the following terms:

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

Attached hereto and marked as **Exhibit "A"** is a copy of the Initial Order dated June 22, 2017.

Attached hereto and marked as **Exhibit "B"** is a copy of the Amended and Restated Initial Order dated July 13, 2017.

9. The terms of TCP's leases with its landlords typically grant TCP certain rights, including, without limitation, the right to a reduction or the restructuring of rent in the event that specifically-named or unnamed anchor tenants such as the Applicants cease to operate within the retail complex, or if the amount of occupied retail space in the complex falls below a specified percentage of total available space.

10. Typically, in the event such circumstances occur, TCP's leases allow TCP, as Co-Tenant, to reduce or withhold certain monthly fees payable to the landlord or pay a percentage of gross sales for the month in lieu of rent. In certain leases, TCP also has the right to terminate its lease without penalty in those circumstances.

11. Some of the Co-Tenant Rights are subject to waiting periods before TCP can exercise its rights (collectively, “**Waiting Periods**”). There is often a Waiting Period (for example, 6 months) during which the retail complex is not occupied by an anchor tenant like the Applicants before any adjustment can be made to TCP’s rent. Similarly, there is often a longer Waiting Period, such as 24 months, before TCP is entitled to exercise its right to terminate its lease.

12. Co-Tenant Rights are exceedingly important to TCP and it is typical for TCP to negotiate to have Co-Tenant Rights in most of its leases. However, the specific nature of the Co-Tenant Rights and the Waiting Periods varies from location to location and lease to lease and result from extensive negotiations and compromise between TCP and its landlords.

13. To TCP’s current knowledge, a total of 18 TCP locations are currently affected by the Co-Tenancy Stay because TCP has been unable to fully exercise its Co-Tenant Rights in respect of those stores.

14. Attached hereto and marked as **Exhibit “C”** is a chart disclosing each TCP location where the Applicants’ cessation of retail operations has given rise to Co-Tenant Rights. Attached hereto and marked as **Exhibit “D”** are redacted copies of the relevant clauses in the leases relating to the TCP locations listed in Exhibit “C”.

15. By on or about January 28, 2018, the Applicants ceased to operate in all of the commercial shopping centres and other commercial properties where TCP is a Co-Tenant. However, to the extent that the Co-Tenancy Stay remains in effect in accordance with its terms, TCP is prohibited from taking any proceedings or exercising Co-Tenant Rights.

### **The Co-Tenancy Stay is Likely No Longer of any Force or Effect**

16. TCP has always intended to assert all available Co-Tenant Rights against its landlords, as same are an important negotiated business provision in its leases. In good faith, TCP has respected the Co-Tenancy Stay since it came into effect.

17. Paragraph 15 of the Initial Order states that the Co-Tenancy Stay applies to persons having agreements with landlords of, “commercial shopping centres...in which there is located a store, office, or warehouse owned or operated by the Sears Canada Entities.” [emphasis added] Accordingly, the Initial Order appears to state on its face that the Co-Tenancy Stay ceases to stay a Co-Tenant like TCP as soon as the Applicants cease to own or operate in a given retail complex.

18. As stated in the Twelfth Report of the Monitor dated February 13, 2018, the liquidation of assets at the Applicants’ retail locations is complete and all of the Applicants’ retail locations are now closed. Attached hereto and marked as **Exhibit “E”** is a copy of the Twelfth Report of the Monitor dated February 13, 2018, without exhibits.

19. As mentioned in the Fourteenth Report of the Monitor dated March 1, 2018, as of the date of that report, all retail store lease had been disclaimed by the Applicants and the Applicants no longer occupied any such retail store locations. Attached hereto and marked as **Exhibit “F”** is a copy of the Fourteenth Report of the Monitor dated March 1, 2018, without exhibits.

20. In order to avoid any allegation that TCP is in breach of the Co-Tenancy Stay, TCP seeks a declaration confirming that the Co-Tenancy Stay is no longer of any force or effect in accordance with its terms as against TCP. It is the position of TCP that the terms of the Co-Tenancy Stay no longer apply to TCP and the court should thus provide a declaration to that effect in order to ensure that TCP and its landlords understand their rights and obligations.

**The Co-Tenancy Stay did not Suspend and Waiting Period**

21. Although TCP does not believe that the Co-Tenancy Stay could in any way have delayed or otherwise affected Waiting Periods, TCP also seeks a declaration that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of Co-Tenant Rights. If the Co-Tenancy Stay prevented the Waiting Period from running during the stay period, it would mean that Waiting Periods would run only after the date on which the Co-Tenancy Stay no longer applied, thereby further delaying the date on which TCP can enforce its rights against landlords.

22. From reviewing the material filed by the Applicants in respect of the Initial Order, it appears that when the Applicants brought their Application, they did not ask the court to affect any substantive rights of the Co-Tenants or to delay the running of any Waiting Period.

23. The Initial Order and Co-Tenancy Stay in particular make no reference to the staying or delaying of any Waiting Period, nor do any subsequent Orders in these proceedings appear to affect Waiting Periods.

24. TCP therefore asks the court to confirm and declare that the Co-Tenancy Stay did not delay or otherwise affect the running of any Waiting Period and, as a result, that any applicable Waiting Period ran during the period of the Co-Tenancy Stay.

**The Co-Tenancy Stay Should be Permanently Vacated in Respect of TCP**

25. If the court determines that the Co-Tenancy Stay is still in effect in accordance with its terms, TCP seeks an order permanently vacating and lifting the Co-Tenancy Stay as against TCP, because the underlying purpose for such stay no longer exists.

26. From reviewing the material filed by the Applicants in respect of the Initial Order it appears that the Applicants made submissions to the court arguing that the Co-Tenancy Stay was necessary to ensure the orderly wind-down of the Applicants' operations in Canada and to postpone the Co-Tenant Right of the Co-Tenants for a finite period.

27. The circumstances which led to the imposition of the Co-Tenancy Stay at the time of the Initial Order no longer exist. The orderly wind-down of the Applicants' business is complete. In fact, no Sears retail store has operated in Canada since on or about January 28, 2018.

28. I can confirm that TCP was not served with and did not receive the material filed by the Applicants in respect of the Initial Order and that Co-Tenancy Stay was granted without notice to TCP.

29. I do not believe that the Co-Tenancy Stay provides any further benefits to the stakeholders of the Applicants. Should the Co-Tenancy Stay be lifted and TCP be able to exercise its rights against its landlords, I do not believe that it would have any negative effect on the Applicants' CCAA proceedings. The Co-Tenancy Stay merely delays the inevitable date on which TCP may exercise its Co-Tenant Rights.

30. The Co-Tenant Rights are purely a matter of contract between TCP and its landlords. The landlords agreed to grant the Co-Tenancy Rights to TCP as a commercial term of the leases and voluntarily assumed the risk that the Applicants might cease operations at some point during the term of the leases. To the extent that the landlords have suffered any loss as a result of the insolvency of the Applicants, none results from any act or omission of TCP.

31. To TCP's current knowledge through July 2018, the direct financial impact of the Co-Tenancy Stay on TCP has been calculated to be approximately C\$193,483.00 per month, exclusive of the value of any termination rights that may be part of TCP's Co-Tenant Rights.

32. TCP wishes to exercise its Co-Tenant Rights, free from the restrictions of the Co-Tenancy Stay, retroactive to the date that such rights initially arose. This will mean that TCP will be at liberty to seek from its' landlords rent relief and other contractual benefits, retroactive to the date that TCP became entitled to the Co-Tenant Rights.

33. I make this affidavit in support of the within motion and for no other or improper purpose.

**SUBSCRIBED AND SWORN** to before me, a notary public, by Ketul Patel

On this this 6<sup>th</sup> day of September 2018.

Eva Salo

Notary Public

Ketul Patel

**KETUL PATEL**

My commission expires:

November 29, 2021

**EVA SALO  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Nov. 29, 2021**

# Tab A

This is Exhibit "A" referred to in  
the Affidavit of Ketul Patel  
sworn this 6th day of September, 2018



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Notary Public

**EVA SALO**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires Nov. 29, 2021**

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

|                    |   |                                |
|--------------------|---|--------------------------------|
| THE HONOURABLE MR. | ) | THURSDAY, THE 22 <sup>ND</sup> |
|                    | ) |                                |
| JUSTICE HAINEY     | ) | DAY OF JUNE, 2017              |



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

**INITIAL ORDER**

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

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

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

### **SERVICE**

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

### **APPLICATION**

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

### **PLAN OF ARRANGEMENT**

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

### **POSSESSION OF PROPERTY AND OPERATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

## **RESTRUCTURING**

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

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

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

#### **REAL PROPERTY LEASES**

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

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

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

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

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

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

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

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

such capacities, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (a) empower the Sears Canada Entities to carry on any business that the Sears Canada Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

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

#### **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Sears Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Sears Canada Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other intellectual property as may be required by the Sears Canada Entities, and that the Sears Canada Entities shall be entitled to the continued use of the trademarks and other intellectual property currently licensed to, used or owned by the Sears Canada Entities, premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by

the Sears Canada Entities in accordance with normal payment practices of the Sears Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Sears Canada Entities and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

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

#### **KEY EMPLOYEE RETENTION PLAN**

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

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$4.6 million (the “**KERP Priority Charge**”) to secure the first \$4.6 million payable to the Key Employees under the KERP; and (b) an aggregate amount of \$4.6 million (the “**KERP Subordinated Charge**”) to secure any other payments to the Key Employees under the KERP. The KERP Priority Charge and the KERP Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

#### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

23. **THIS COURT ORDERS** that the agreement dated May 15, 2017 engaging BMO Nesbitt Burns Inc. (the “**Financial Advisor**”) as financial advisor to SCI and attached as Confidential Appendix C to the Pre-Filing Report (the “**Financial Advisor Agreement**”), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved

and SCI is authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

24. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “**FA Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$3.3 million, as security for the fees and disbursements payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

26. **THIS COURT ORDERS** that the Sears Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Sears Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Sears Canada Entities shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$44 million (the “**Directors’**

**Priority Charge**”); and (b) an aggregate amount of \$19.5 million (the “**Directors’ Subordinated Charge**”), respectively, and in each case, as security for the indemnity provided in paragraph 26 of this Order. The Directors’ Priority Charge and the Directors’ Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

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

#### **APPOINTMENT OF MONITOR**

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

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

- (a) monitor the Sears Canada Entities’ receipts and disbursements;
- (b) liaise with the Sears Canada Entities and the Assistants and, if determined by the Monitor to be necessary, the Hometown Dealers and Corbeil Franchisees, with respect to all matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;

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

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

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

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

33. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders with information provided by the Sears Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor

shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Sears Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Sears Canada Entities may agree.

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

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

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

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both

before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

## **DIP FINANCING**

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

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

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

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

41. **THIS COURT ORDERS** that the DIP ABL Agent and the DIP ABL Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP ABL Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in the DIP ABL Credit Agreement) other than the Prepetition Obligations (as defined in the DIP ABL Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP ABL Obligations**”), which DIP ABL Lenders’ Charge shall be in the aggregate amount of the DIP ABL Obligations outstanding at any given time under the DIP ABL Credit Agreement. The DIP ABL Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP ABL Lenders’ Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

42. **THIS COURT ORDERS** that the DIP Term Agent and the DIP Term Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Term Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in DIP Term Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP Term Obligations**”), which DIP Term Lenders’ Charge shall

be in the aggregate amount of the DIP Term Obligations outstanding at any given time under the DIP Term Credit Agreement. The DIP Term Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP Term Lenders' Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

43. **THIS COURT ORDERS** that SCI's reimbursement obligation with respect to the letters of credit outstanding under the Wells Fargo Credit Agreement (as defined in the Wong Affidavit) prior to the date of this Order and which are drawn upon on or after the date of this Order shall be deemed to form part of the DIP ABL Credit Facility and shall be included as DIP ABL Obligations for the purposes of determining the amount of the DIP ABL Lenders' Charge.

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

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

against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP ABL Agent and the DIP ABL Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP ABL Agent and the DIP ABL Lenders under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities;

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

in bankruptcy, interim receiver, receiver or receiver and manager of the Sears Canada Entities or the Property.

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

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

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

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

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

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

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

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

#### **CORPORATE MATTERS**

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

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

#### **SERVICE AND NOTICE**

56. **THIS COURT ORDERS** that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Sears Canada Entities of more than \$1,000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), and (iii) prepare a list showing the

names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

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

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

59. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [cfcanada.fticonsulting.com/searscanada](http://cfcanada.fticonsulting.com/searscanada) (the “**Monitor’s Website**”).

60. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sears Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Sears Canada Entities’ creditors or other

interested parties at their respective addresses as last shown on the records of the Sears Canada Entities and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

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

#### **COMEBACK MOTION**

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

#### **GENERAL**

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

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

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

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

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

67. **THIS COURT ORDERS** that any interested party (including the Sears Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Motion on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

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

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

JUN 22 2017

PER / PAR: 

  
C. Irwin  
Registrar

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE  
CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC.,  
INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP.,  
SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580  
ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886  
CANADA INC., AND 3339611 CANADA INC. (collectively, the "Applicants")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**INITIAL ORDER**

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Lawyers for the Applicants

**Tab B**

This is Exhibit "B" referred to in  
the Affidavit of Ketul Patel  
sworn this 6th day of September, 2018



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Notary Public

**EVA SALO**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires Nov. 29, 2021**

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**



THE HONOURABLE MR. )

THURSDAY, THE 22<sup>ND</sup>

JUSTICE HAINEY )

DAY OF JUNE, 2017 )

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., CORBEIL  
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA  
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

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

**AMENDED AND RESTATED INITIAL ORDER**

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

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

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

### **SERVICE**

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

### **APPLICATION**

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

### **PLAN OF ARRANGEMENT**

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

### **POSSESSION OF PROPERTY AND OPERATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

#### **RESTRUCTURING**

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

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

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

#### **REAL PROPERTY LEASES**

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

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

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

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

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

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

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

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

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

#### **NO INTERFERENCE WITH RIGHTS**

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

#### **CONTINUATION OF SERVICES**

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

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

#### **NON-DEROGATION OF RIGHTS**

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

#### **KEY EMPLOYEE RETENTION PLAN**

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

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

### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

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

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

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

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

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

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

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

#### **APPOINTMENT OF MONITOR**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **DIP FINANCING**

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

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

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

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

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

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

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

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

43. [Intentionally deleted.]

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

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

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

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

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

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

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 24 -

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

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

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

#### **CORPORATE MATTERS**

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

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

#### **SERVICE AND NOTICE**

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

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

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

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

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

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

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

#### **COMEBACK MOTION**

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

**GENERAL**

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

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

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

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

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

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

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

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

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

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

JUL 13 2017

PER / PAR:

Handwritten initials "pl" in cursive script.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC. (collectively, the "Applicants")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**  
Box 50, 1 First Canadian Place  
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)  
Tel: 416.862.4908

Jeremy Dacks (LSUC #: 41851R)  
Tel: 416.862.4923

Michael De Lellis (LSUC #: 48038U)  
Tel: 416.862.5997

Lawyers for the Applicants

# Tab C

This is Exhibit "C" referred to in  
the Affidavit of Ketul Patel  
sworn this 6th day of September, 2018



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Notary Public

**EVA SALO**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires Nov. 29, 2021**

| <u>TCP STORE #</u> | <u>TCP LOCATION</u>         | <u>ADDRESS</u>                              | <u>LANDLORD</u>                                       | <u>STATUS OF APPLICANTS' LEASE AT LOCATION</u> |
|--------------------|-----------------------------|---|---|--|
| 3001               | Pickering Town Centre       | 1355 Kingston Road,<br>Pickering            | OPB Realty Inc.                                       | Disclaimed effective<br>January 28, 2018       |
| 3015               | Mall Champlain              | 2151 Lapiniere Boulevard,<br>Brossard       | Cominar Real Estate<br>Investment Trust               | Disclaimed effective<br>January 22, 2018       |
| 3102               | Carlingwood Shopping Centre | 2165 Charling Avenue,<br>Ottawa             | OPB Realty Inc.                                       | Disclaimed effective<br>January 22, 2018       |
| 3103               | Halifax Shopping Center     | 7001 Mumford Road,<br>Halifax               | OPB Realty Inc.                                       | Disclaimed effective<br>January 22, 2018       |
| 3105               | St. Vital Centre            | 1225 St. Mary's Road,<br>Suite 29, Winnipeg | OPB Realty Inc.                                       | Disclaimed effective<br>January 22, 2018       |
| 3108               | Quinte Mall                 | 390 North Front Street,<br>Belleville       | Hoopp Realty Inc.                                     | Disclaimed effective<br>January 28, 2018       |
| 3208               | Cornwall Centre             | 1720 Hamilton Street,<br>Regina             | Cornwall Centre Inc.                                  | Disclaimed effective<br>November 16, 2017      |
| 3209               | Midtown Plaza               | 1st Avenue & 20th Street,<br>Saskatoon      | Midtown Plaza Inc.                                    | Disclaimed effective<br>January 22, 2018       |
| 3218               | Willowbrook Shopping Centre | 19705 Frazer Highway,<br>Langley            | BCIMC Realty Corp -<br>Willowbrook Shopping<br>Centre | Disclaimed effective<br>January 22, 2018       |
| 3226               | The Pen Centre              | 221 Glendale Ave, St.<br>Catharines         | OPB Realty Inc.                                       | Disclaimed effective<br>January 28, 2018.      |

|      |                 |  |   |   |
|------|-----------------|--|---|---|
| 3260 | Lansdowne Place | 637 Lansdowne Street<br>West, Peterborough                             | Lansdowne Place Inc.  | Ceased operations January 28, 2018. Property sale approved as per Approval and Vesting Order dated August 20, 2018.     |
| 3261 | Park Place      | 401 - 1st Avenue South,<br>Lethbridge                                  | Park Place Mall Holdings<br>- Park Place Mall   | Disclaimed effective<br>January 22, 2018  |
| 3275 | Aberdeen        | W. Trans Canada Hwy.<br>(Trans Canada 1 & Merritt<br>Hwy. 5), Kamloops | Aberdeen Kamloops Mall<br>Limited   | Disclaimed effective<br>November 16, 2017   |
| 3281 | Cornwall Square | 1 Water Street East,<br>Cornwall                                       | Charter Acquisitions<br>Group, By Partners REIT                                       | Disclaimed effective<br>January 14, 2018  |
| 3290 | Les Rivières    | 2231 Des Récollets Blvd.,<br>Trois-Rivières, Québec                    | Cominar Real Estate<br>Investment Trust / Fonds<br>De Placement Immobilier<br>Cominar | Ceased operations end of<br>January 2018. Location<br>sold on June 20, 2018   |
| 3291 | Place Vertu     | 3075 Thimens Blvd Saint-<br>Laurent                                    | Place Vertu Holdings Inc.   | Ceased operations end of<br>January 2018. Location<br>sold on July 11, 2018   |
| 3294 | Oakville Place  | 240 Leighland Ave,<br>Oakville   | Ivanhoe Cambridge II Inc.   | Lease Surrender<br>Transaction Approved By<br>The Monitor On October<br>2, 2017.  |
| 3299 | Avalon Mall     | 48 Kenmount Road, St.<br>John's  | Crombie Developments<br>Limited   | Lease Surrender<br>Transaction Entered Into<br>On September 21, 2017.<br>Approved By The Monitor<br>On October 2, 2017. |

# Tab D

This is Exhibit "D" referred to in  
the Affidavit of Ketul Patel  
sworn this 6th day of September, 2018

A handwritten signature in cursive script, appearing to read "Eva Salo", written in black ink.

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Notary Public

**EVA SALO**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires Nov. 29, 2021**

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3001  
PICKERING  
TOWN CENTRE

"CO-TENANCY PROVISIONS

12.18

.1 If the Co-Tenancy Threshold has not been satisfied for a period of [redacted] consecutive months (excluding any period on account of Force Majeure, damage and destruction or renovation or remodelling work), then immediately after such consecutive [redacted] month period, the Basic Rent shall abate and shall not be payable by the Tenant and in lieu thereof the Tenant shall pay Percentage Rent at the rate of [redacted] of Gross Revenue [redacted] and Additional Rent. Such abatement of Basic Rent and modification to the rate of Percentage Rent shall immediately cease to be of any further force or effect once the Co-Tenancy Threshold is again satisfied and thereafter the Tenant shall resume payment of full Basic Rent, Percentage Rent and Additional Rent in accordance with all applicable provisions of this Lease.

.2 If the Co-Tenancy Threshold has not been satisfied for a period of [redacted] consecutive months (excluding any period on account of Force Majeure, damage and destruction or renovation or remodelling work), then at any time thereafter and before the Co-Tenancy Threshold is again satisfied, Tenant may terminate this Lease upon at least 30 days written notice to the Landlord in which event this Lease shall automatically terminate and be of no further force or effect on such specified termination date, and the Tenant shall deliver vacant possession of the Store to the Landlord in accordance with all applicable provisions of this Lease and rent and all amounts payable under this Lease shall be adjusted to such termination date and paid by the Tenant on that date.

.3 If the Co-Tenancy Threshold has not been satisfied for a period of [redacted] consecutive months (excluding any period on account of Force Majeure, damage and destruction or renovation or remodelling work) and the Tenant has not elected to terminate this Lease as provided in section 12.18.2 above, and is continuing to pay the reduced rent specified in section 12.18.1 above, then at any time thereafter Landlord upon at least 30 days prior written notice, may terminate this Lease and in such event (though subject to the right of the Tenant to reinstate this Lease as hereinafter provided), this Lease shall automatically terminate and be of no further force and effect on such specified termination date and the Tenant shall deliver vacant possession of the Store to the Landlord in accordance with all applicable provisions in this Lease, and rent and all other amounts payable under this Lease shall be adjusted to such termination date and paid by the Tenant on that date.

Notwithstanding the foregoing, the Tenant may within 15 days after receipt of the Landlord's termination notice elect in writing to the Landlord to immediately cease paying the reduced rent pursuant to section 12.18.1 and shall resume immediate payment of full Basic Rent, Percentage Rent and Additional Rent under this Lease, in which event the Landlord's termination notice shall be cancelled and be of no further force or effect. If the Co-Tenancy Threshold is not being achieved on the date Tenant elects to resume payment of full Basic Rent, Percentage Rent and Additional Rent under this section 12.18.3, then a new and separate failure of the Co-Tenancy Threshold shall be deemed to have first occurred on such date for the purpose of determining if and when the rights of each of the Tenant and the Landlord under this section 12.18 will subsequently arise."

[redacted]

3015  
MALL  
CHAMPLAIN



Requirements, to pay [REDACTED] Gross Revenue in lieu of Rent (the "Reduced Rent") until such time as [REDACTED] of the Total Rentable CRU Area is occupied and open for business.

In the event that the Tenant elects to pay the Reduced Rent as provided for in this clause, the Landlord and the Tenant will have the right at any time after a one (1) year period following commencement of the payment of Reduced Rent and the failure of Landlord to meet the Operating Requirements to terminate this Lease on sixty (60) days prior written notice to the other, and this Lease will terminate unless, however, the Tenant elects to pay the Rent payable under this Lease, at which time Landlord's right to terminate as herein set forth will be waived.

For the purposes of this clause "Total Rentable CRU Area" means the total rentable area of the Shopping Centre less the area of the following :

- a) any premises not fronting on an interior mall of the Building; and
- b) any Free-Standing premises; and
- c) any Non-Retail Areas being those areas of the Building designated by the Landlord for non-retail use, including, without limiting the generality of the foregoing, those areas.
  - i. leased or designated by Landlord for lease for use or operation as offices or as hotel facilities (which may include such retail areas as are customarily part or as hotel facilities) or as residences or any combination thereof;
  - ii. used or designated by Landlord for use as recreational or community service facilities (including, without limiting the generality of the foregoing, child care facilities, senior citizen drop-in center, auditorium, post office, public library, theatre of cinema; and
  - iii. Used or designated by Landlord for use as storage facilities.

| Initials                       |        |
|--------------------------------|--------|
| Landlord                       | Tenant |
| <i>[Handwritten Signature]</i> | MC     |

3102  
CARLINGWOOD  
SHOPPING  
CENTRE

"CO-TENANCY PROVISIONS

12.18

.1 If the Co-Tenancy Threshold has not been satisfied for a period of [redacted] consecutive months (excluding any period on account of Force Majeure, damage and destruction or renovation or remodelling work), then immediately after such consecutive [redacted] month period, the Basic Rent shall abate and shall not be payable by the Tenant and in lieu thereof the Tenant shall pay Percentage Rent at the rate of [redacted] of Gross Revenue [redacted] and Additional Rent. Such abatement of Basic Rent and modification to the rate of Percentage Rent shall immediately cease to be of any further force or effect once the Co-Tenancy Threshold is again satisfied and thereafter the Tenant shall resume payment of full Basic Rent, Percentage Rent and Additional Rent in accordance with all applicable provisions of this Lease.

.2 If the Co-Tenancy Threshold has not been satisfied for a period of [redacted] consecutive months (excluding any period on account of Force Majeure, damage and destruction or renovation or remodelling work), then at any time thereafter and before the Co-Tenancy Threshold is again satisfied, Tenant may terminate this Lease upon at least 30 days written notice to the Landlord in which event this Lease shall automatically terminate and be of no further force or effect on such specified termination date, and the Tenant shall deliver vacant possession of the Store to the Landlord in accordance with all applicable provisions of this Lease and rent and all amounts payable under this Lease shall be adjusted to such termination date and paid by the Tenant on that date.

.3 If the Co-Tenancy Threshold has not been satisfied for a period of [redacted] consecutive months (excluding any period on account of Force Majeure, damage and destruction or renovation or remodelling work) and the Tenant has not elected to terminate this Lease as provided in section 12.18.2 above, and is continuing to pay the reduced rent specified in section 12.18.1 above, then at any time thereafter Landlord upon at least 30 days prior written notice, may terminate this Lease and in such event (though subject to the right of the Tenant to reinstate this Lease as hereinafter provided), this Lease shall automatically terminate and be of no further force and effect on such specified termination date and the Tenant shall deliver vacant possession of the Store to the Landlord in accordance with all applicable provisions in this Lease, and rent and all other amounts payable under this Lease shall be adjusted to such termination date and paid by the Tenant on that date.

Notwithstanding the foregoing, the Tenant may within 15 days after receipt of the Landlord's termination notice elect in writing to the Landlord to immediately cease paying the reduced rent pursuant to section 12.18.1 and shall resume immediate payment of full Basic Rent, Percentage Rent and Additional Rent under this Lease, in which event the Landlord's termination notice shall be cancelled and be of no further force or effect. If the Co-Tenancy Threshold is not being achieved on the date Tenant elects to resume payment of full Basic Rent, Percentage Rent and Additional Rent under this section 12.18.3, then a new and separate failure of the Co-Tenancy Threshold shall be deemed to have first occurred on such date for the purpose of determining if and when the rights of each of the Tenant and the Landlord under this section 12.18 will subsequently arise."

[redacted]

3103  
HALIFAX  
SHOPPING  
CENTRE

**Section 12.18**

Section 12.18 is added, after Section 12.17, as follows:

**"CO-TENANCY PROVISIONS**

**12.18**

.1 If the Co-Tenancy Threshold has not been satisfied for a period of [redacted] consecutive months (excluding any period on account of Force Majeure, damage and destruction or renovation or remodelling work), then immediately after such consecutive [redacted] month period, the Basic Rent shall abate and shall not be payable by the Tenant and in lieu thereof the Tenant shall pay Percentage Rent at the rate of [redacted] of Gross Revenue [redacted] and Additional Rent. Such abatement of Basic Rent and modification to the rate of Percentage Rent shall immediately cease to be of any further force or effect once the Co-Tenancy Threshold is again satisfied and thereafter the Tenant shall resume payment of full Basic Rent, Percentage Rent and Additional Rent in accordance with all applicable provisions of this Lease.

.2 If the Co-Tenancy Threshold has not been satisfied for a period of [redacted] consecutive months (excluding any period on account of Force Majeure, damage and destruction or renovation or remodelling work), then at any time thereafter and before the Co-Tenancy Threshold is again satisfied, Tenant may terminate this Lease upon at least 30 days written notice to the Landlord in which event this Lease shall automatically terminate and be of no further force or effect on such specified termination date, and the Tenant shall deliver vacant possession of the Store to the Landlord in accordance with all applicable provisions of this Lease and rent and all amounts payable under this Lease shall be adjusted to such termination date and paid by the Tenant on that date.

.3 If the Co-Tenancy Threshold has not been satisfied for a period of [redacted] consecutive months (excluding any period on account of Force Majeure, damage and destruction or renovation or remodelling work) and the Tenant has not elected to terminate this Lease as provided in section 12.18.2 above, and is continuing to pay the reduced rent specified in section 12.18.1 above, then at any time thereafter Landlord upon at least 30 days prior written notice, may terminate this Lease and in such event (though subject to the right of the Tenant to reinstate this Lease as hereinafter provided), this Lease shall automatically terminate and be of no further force and effect on such specified termination date and the Tenant shall deliver vacant possession of the Store to the Landlord in accordance with all applicable provisions in this Lease, and rent and all other amounts payable under this Lease shall be adjusted to such termination date and paid by the Tenant on that date.

Notwithstanding the foregoing, the Tenant may within 15 days after receipt of the Landlord's termination notice elect in writing to the Landlord to immediately cease paying the reduced rent pursuant to section 12.18.1 and shall resume immediate payment of full Basic Rent, Percentage Rent and Additional Rent under this Lease, in which event the Landlord's termination notice shall be cancelled and be of no further force or effect. If the Co-Tenancy Threshold is not being achieved on the date Tenant elects to resume payment of full Basic Rent, Percentage Rent and Additional Rent under this section 12.18.3, then a new and separate failure of the Co-Tenancy Threshold shall be deemed to have first occurred on such date for the purpose of determining if and when the rights of each of the Tenant and the Landlord under this section 12.18 will subsequently arise."

[Large redacted area containing multiple lines of blacked-out text]

3105  
ST. VITAL  
CENTRE



3108

QUINTE MALL

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**21.18 Co-Tenancy** Notwithstanding anything to the contrary contained in this Lease, so long as the Tenant is The Children's Place (Canada), LP, or a Related Entity of Tenant, and has not otherwise assigned this Lease or sublet all or any part of the Premises and is not in default of this Lease beyond the applicable notice and cure period, then during the initial term of this Lease, if at [REDACTED] (as

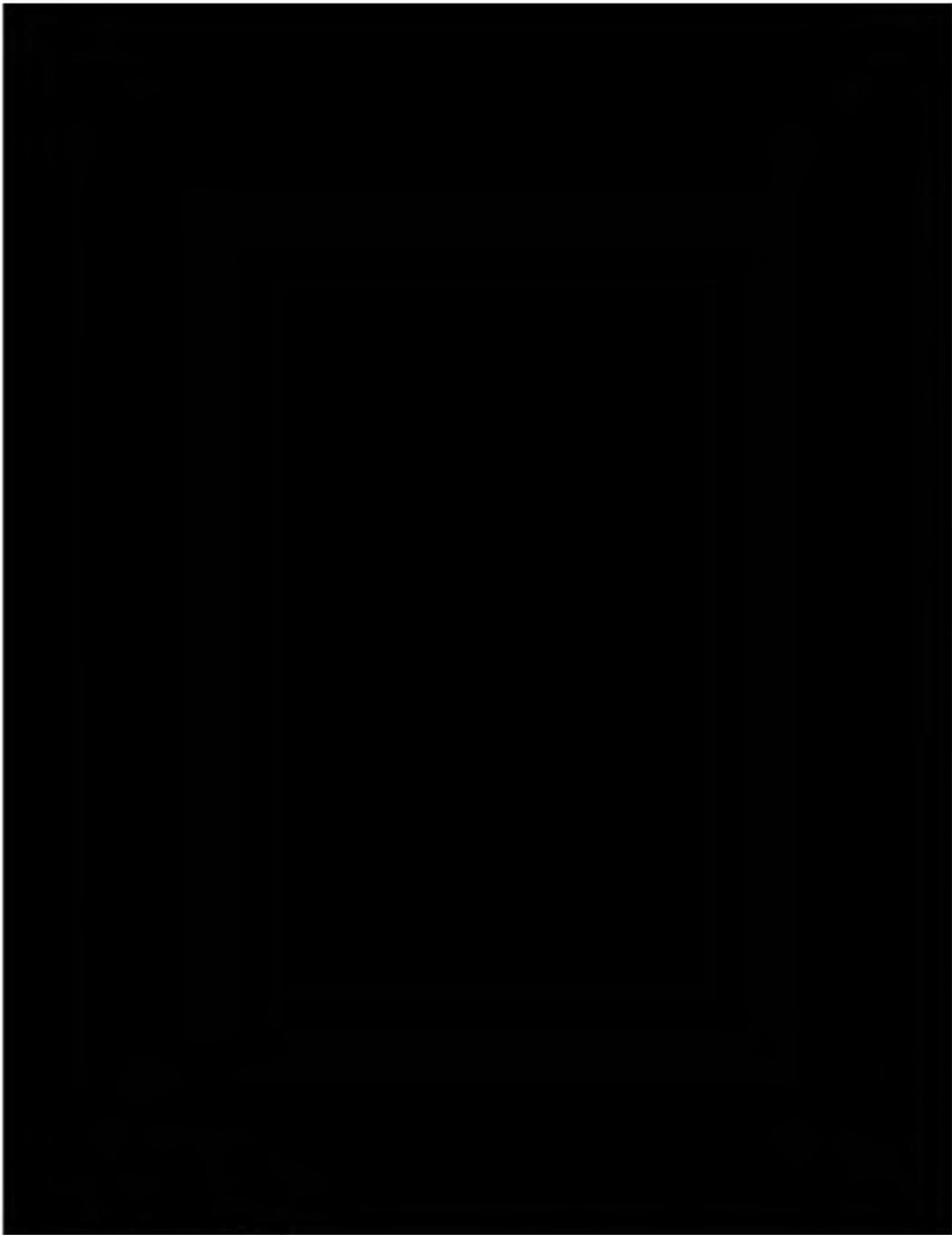
hereinafter defined) in the Shopping Centre is not occupied and open for business (the "Operating Requirements"), then the Tenant shall have the option, commencing on the first day of the month following the date that Landlord has failed to meet the Operating Requirements, to pay [REDACTED] of Gross Revenue in lieu of Rent (the "Reduced Rent") until such time as at least [REDACTED] of the Total Rentable CRU Area is occupied and open for business.

In the event that the Tenant elects to pay the Reduced Rent as provided for in this clause, the Landlord and the Tenant will have the right at any time after a one (1) year period following commencement of the payment of Reduced Rent and the failure of Landlord to meet the Operating Requirements to terminate this lease on sixty (60) days prior written notice to the other, and this Lease will terminate unless, however, the Tenant elects to pay the Rent payable under this Lease at which time Landlord's right to terminate as herein set forth will be waived.

For the purposes of this clause, "Total Rentable CRU Area" means the total rentable area of the Shopping Centre less the area of the following:

- (a) any premises not fronting on an interior mall of the Building; and
- (b) any Free Standing Premises; and
- (c) any Non-Retail Areas being those areas of the Building designated by the Landlord for non-retail use, including without limiting the generality of the foregoing, those areas:
  - (i) leased or designated by Landlord for lease for use or operation as offices or as hotel facilities (which may include such retail areas as are customarily part or as hotel facilities) or as residences or any combination thereof;

3208  
CORNWALL  
CENTRE



Section 17.14 Co-Tenancy

Provided that:

- (a) the Tenant is THE CHILDREN'S PLACE (CANADA), LP, and is itself in occupation of, and conducting business in the whole of the Premises; and
- (b) the Tenant is not in material default under this Lease beyond applicable cure periods;

then, if at any time during the Term, less than [REDACTED] of the GLA of the other tenants of CRU Space in the Shopping Centre [REDACTED] (the "Co-Tenancy Condition"), then the Tenant shall be entitled, for the duration of such Co-Tenancy Condition, to a maximum of [REDACTED] of the Gross Revenue generated from the Premises, calculated and payable monthly.

Notwithstanding the above, if the Co-Tenancy Condition persists for [REDACTED] or more, either the Landlord or the Tenant shall have the right to terminate this Lease, upon giving the other party at least thirty (30) days prior written notice, which option may be exercised by either

Landlord

Handwritten initials: JR



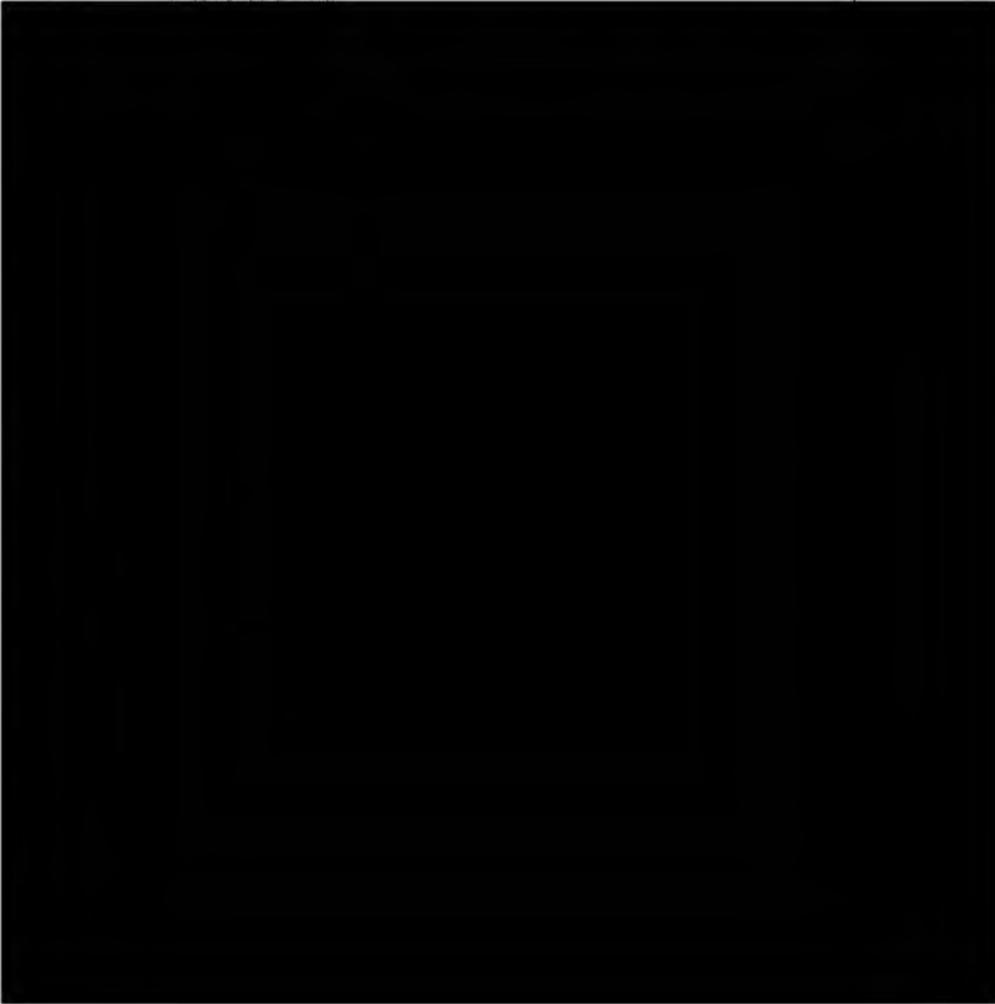
The Tenant

AB

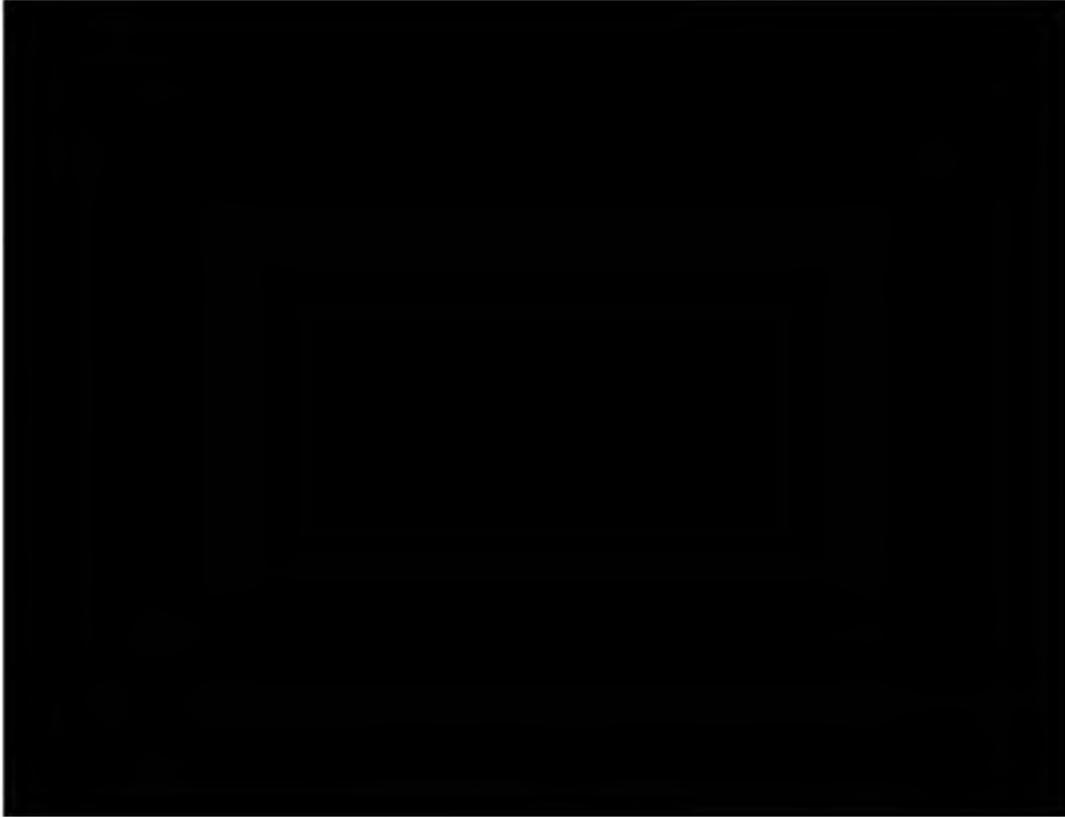
party within ten (10) days of the end of the twelve [redacted] Co-Tenancy Condition failing which, the termination right will be null and void. If neither party exercises its right to terminate the Lease as aforesaid, then all Rent as set out in this Lease will again become payable by the tenant as of the day after the expiry of the [redacted] Co-Tenancy Condition.

the Tenant does not

For the purposes of this Section, the expression "CRU Space" shall exclude all categories of space which are excluded from the Weighted GLA of the Shopping Centre and any anchor tenant space of seventy-five thousand (75,000) square feet or more. A certificate of an officer of the Landlord shall be prima facie evidence as to whether a Co-Tenancy Condition exists or not. The Co-Tenancy Condition will not apply to any CRU Space which is being fixtured, renovated or remerchandised and will not apply in the event of damage or destruction of any CRU Space as set out in Article XII of this Lease.



3209  
MIDTOWN  
PLAZA



#### 21.02 Co-tenancy

Provided that:

- (a) Tenant is The Children's Place (Canada), LP, and is itself in occupation of and conducting business in the whole of the Premises; and
- (b) Tenant is not in material default under this Lease beyond applicable cure periods,

then, if at any time during the Term, less than [REDACTED] of the GLA of the other tenants of CRU Space in the Project is open for business (the "Co-Tenancy Condition"), then Tenant shall be entitled for the duration of the Co-Tenancy Condition [REDACTED], to pay in lieu of all Rent, [REDACTED] of Gross Revenue generated from the Premises, calculated and payable monthly.

Notwithstanding the above, if the Co-Tenancy Condition persists for [REDACTED] or more, Tenant shall have the right to terminate this Lease, upon giving Landlord at least thirty (30) days prior written notice, which option must be exercised by Tenant within ten (10) days of the end of the [REDACTED] Co-Tenancy Condition failing which, the termination right will be null and void. If Tenant does not exercise its right to terminate the Lease as aforesaid, then all Rent as set out in this Lease will again become payable by Tenant as of the day after the expiry of the [REDACTED] Co-Tenancy Condition.

For the purposes of this Article 21.02, the expression "CRU Space" shall exclude all categories of space which are excluded from the definition of Excluded Premises and any anchor tenant space of seventy-five thousand (75,000) square feet or more. A certificate of an officer of Landlord shall be prima facie evidence as to whether a Co-Tenancy Condition exists or not. The Co-Tenancy Condition will not apply to any CRU Space which is being fixtured, renovated or remerchandised and will not apply in the event of damage from fire or other casualty of any CRU Space as set out in Article 16.00 of this Lease.

3218  
WILLOWBROOK  
SHOPPING  
CENTRE



4. CO-TENANCY

*If any two (2) of Sears, The Bay, Toys R Us or Sport Check (or replacements thereof) are not open and operating, [REDACTED] the leaseable area of the Shopping Centre (excluding tenants with a leaseable area greater than [REDACTED] square feet) is not open and operating (the "Co-Tenancy Violation"), the Tenant to pay [REDACTED] of gross sales only until such time as the Co-Tenancy Violation has been cured. If the co-tenancy violation has not been cured for a period of [REDACTED], the Tenant shall have the right to terminate the Lease by giving thirty (30) days prior notice, such notice to be given within thirty (30) days of the end of the [REDACTED] month period.*

*[Handwritten signature]* NG

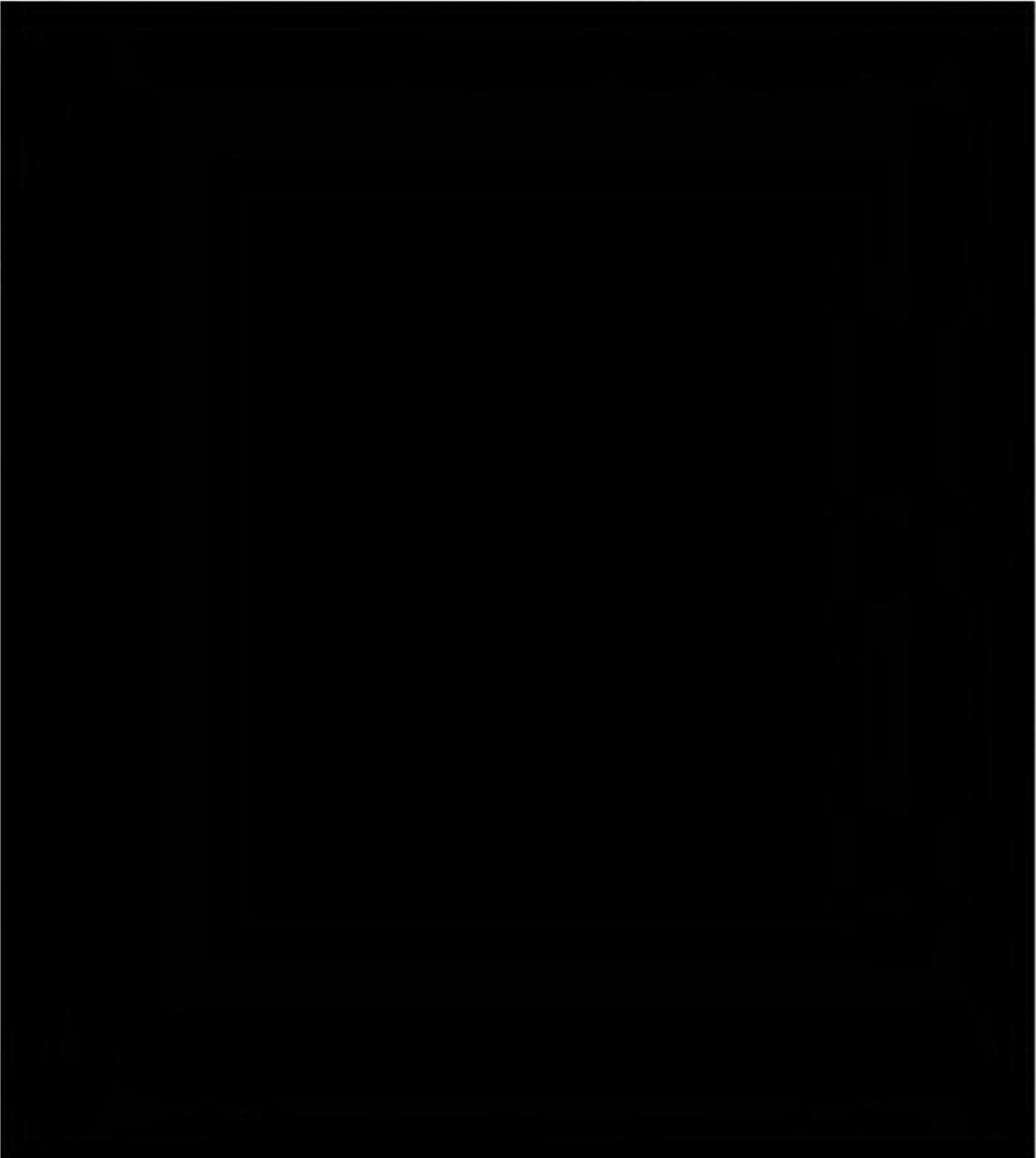
3226  
THE PEN  
CENTRE



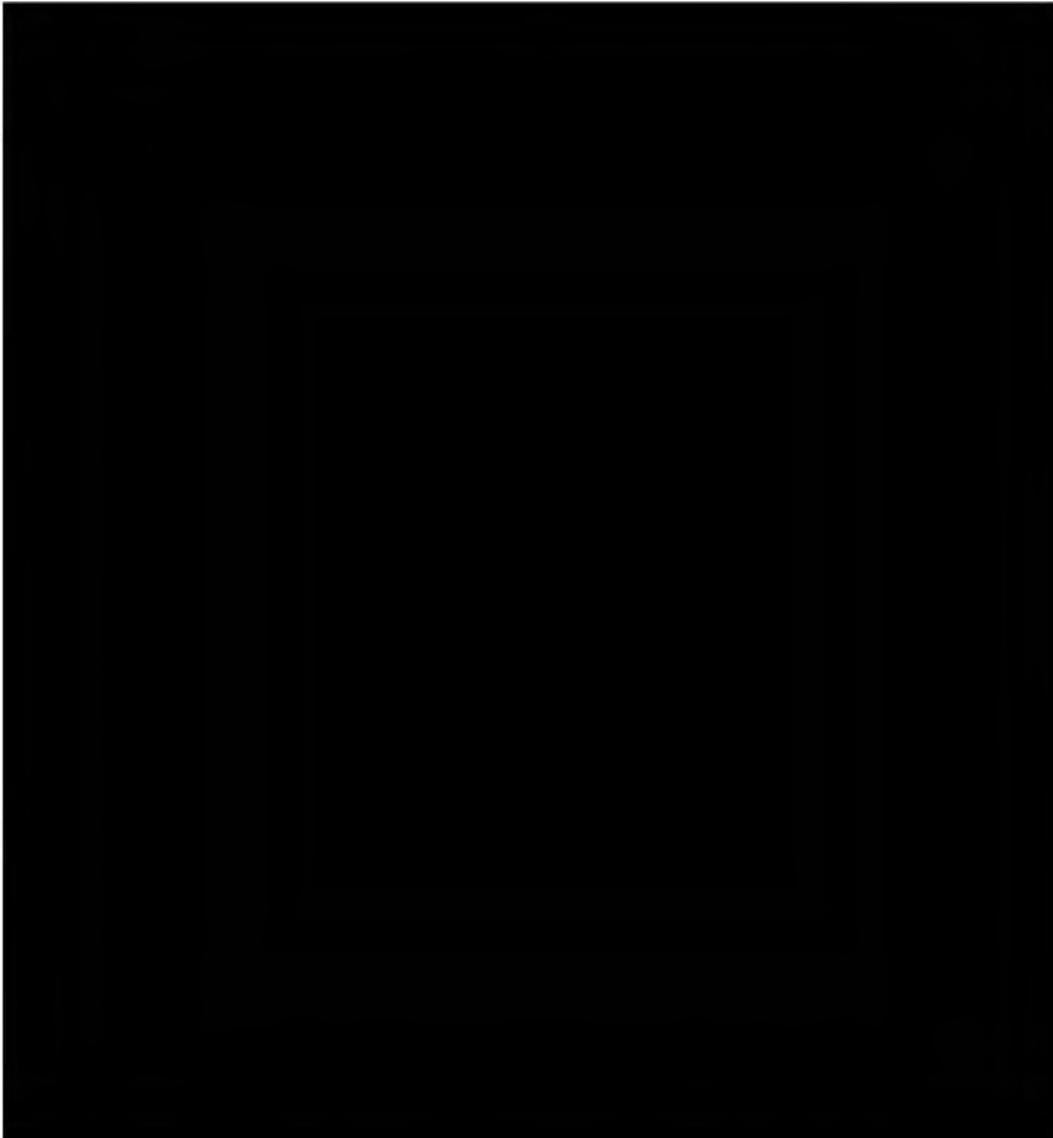
3260  
LANDSDOWNE  
PLACE



on the date Tenant elects to resume payment of full Basic Rent, Percentage Rent and Additional Rent under this Section 12.22.3, then a new and separate failure of the Co-Tenancy Threshold shall be deemed to have first occurred on such date for the purpose of determining if and when the rights of each of Tenant and Landlord under this Section 12.22 will subsequently arise."

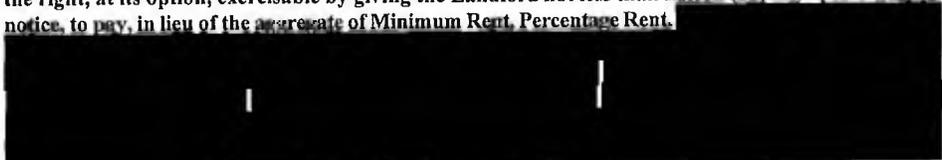


3261  
PARK PLACE



Section 18.3 Co-Tenancy

Provided that the Tenant is THE CHILDREN'S PLACE (CANADA), LP, or a Permitted Assignee and is itself in actual, physical occupation of and conducting business in the whole of the Leased Premises and the Tenant is not in material default under this Lease beyond applicable cure periods then if, at any time during the initial [redacted] year Term of the Lease, less than [redacted] of the Gross Leasable Area of the other tenants of CRU Space in the Shopping Centre are open for business, in each case, subject to Article 12 or force majeure, (the "Co-Tenancy Condition"), then, the Tenant shall have the right, at its option, exercisable by giving the Landlord not less than fifteen (15) days prior written notice, to pay, in lieu of the aggregate of Minimum Rent, Percentage Rent,



for and during the Abatement Period.

In addition, if the Co-Tenancy Condition persists for [redacted] consecutive months (the "Closure Period"), then the Tenant shall have the right to terminate this Lease upon giving the Landlord at least thirty (30) days prior written notice, which option may be exercised by the Tenant within ten (10) days of the end of the Closure Period. If the Tenant does not exercise its right to terminate the Lease as aforesaid, then the Tenant's option to terminate shall be null and void, and effective as of the day immediately following the expiry of the Closure Period all Rent as set out in this Lease will again become payable by the Tenant.

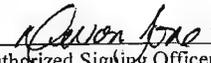
For the purposes of this Section only "CRU Space" shall exclude all categories of space which are excluded from the definition of Weighted GLA in Section 1.01 of this Lease and any tenant space of fifty thousand (50,000) square feet or more. The Co-Tenancy condition will not apply to any CRU Space which is being fixtured, renovated or re-merchandised and will not apply in the event of damage or destruction of any CRU Space as set out in Article 12 of this Lease. A certificate of an officer of the Landlord shall be prima facie evidence as to whether the conditions set out in this Section 18.3 exist or not.

IN WITNESS WHEREOF, the Landlord and the Tenant have signed and sealed this Lease.

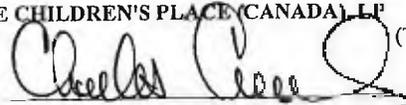
**PARK PLACE MALL HOLDINGS INC,**  
by its manager, without personal liability,  
**OPGI Management GP Inc,**  
as general partner of the  
**OPGI Management Limited Partnership**

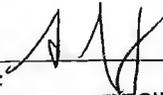
(Landlord)

Per:   
Authorized Signing Officer

Per:   
Authorized Signing Officer

**THE CHILDREN'S PLACE (CANADA) LP** (Tenant)

Per:   
Name: **Charles Crofts**  
Title: **Interim Chief Executive Officer**

Per:   
Name: **SUSAN RILEY**  
Title: **EXECUTIVE VICE PRESIDENT**

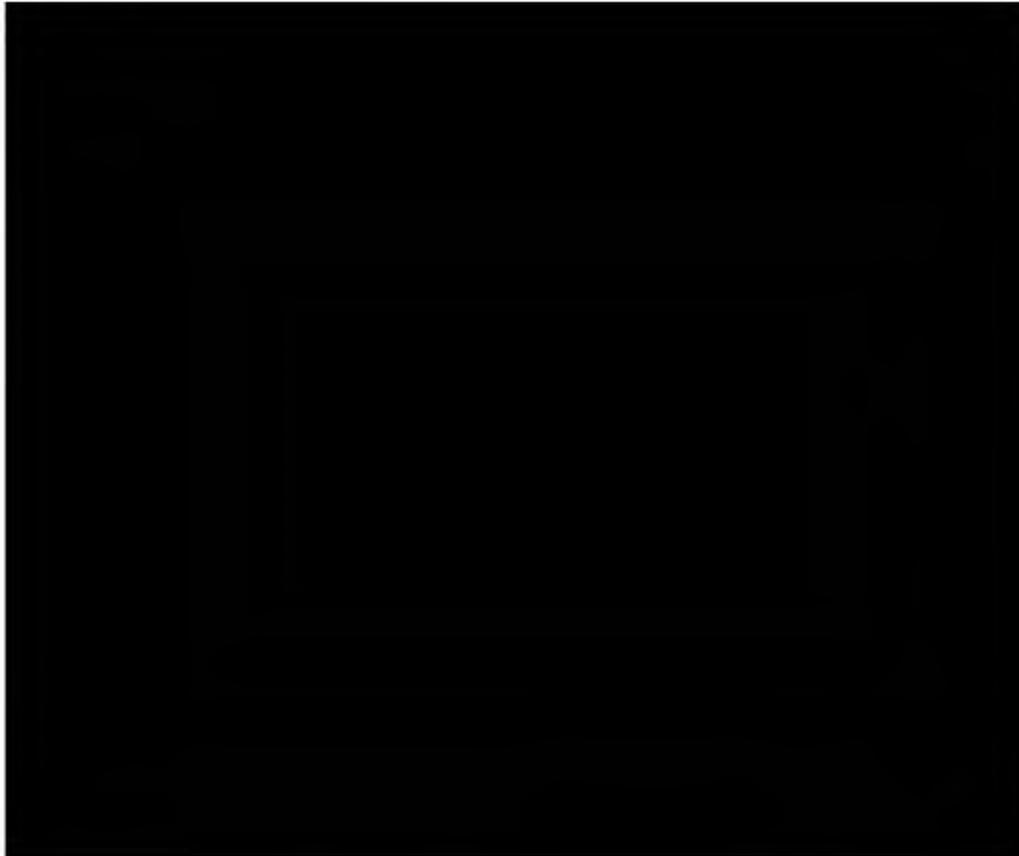
I/We have the authority to bind the company.

3275

ABERDEEN



**Section 18.2 Tenant Termination Right**



**Section 18.3 Co-Tenancy**

Provided that the Tenant is The Children's Place (Canada), LP, or a Permitted Assignee and is itself in actual, physical occupation of and conducting business in the whole of the Premises and the Tenant is not in material default under this Lease beyond applicable cure periods then if, at any time during the initial [redacted] year Term of the Lease, less than [redacted] of the GLA of the other tenants of CRU Space in the Shopping Centre are open for business, subject to Article 12 or force majeure, (the "Co-Tenancy Condition"), then, the Tenant shall have the right, at its option, exercisable by giving the Landlord not less than fifteen (15) days prior written notice, to pay, in lieu of the aggregate of Minimum Rent, Percentage Rent, [redacted]

[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted] or and during the Abatement Period.

In addition, if the Co-Tenancy Condition persists for [redacted] consecutive months (the "Closure Period"), then the Tenant shall have the right to terminate this Lease upon giving the Landlord at least

thirty (30) days prior written notice, which option may be exercised by the Tenant within ten (10) days of the end of the Closure Period. If the Tenant does not exercise its right to terminate the Lease as aforesaid, then the Tenant's option to terminate shall be null and void, and effective as of the day immediately following the expiry of the Closure Period all Rent as set out in this Lease will again become payable by the Tenant.

For the purposes of this Section only "CRU Space" shall exclude all categories of space which are excluded from the definition of Weighted GLA in Section 1.01 of this Lease and any tenant space of fifty thousand (50,000) square feet or more. The Co-Tenancy condition will not apply to any CRU Space which is being fixtured, renovated or re-merchandised and will not apply in the event of damage or destruction of any CRU Space as set out in Article 12 of this Lease. A certificate of an officer of the Landlord shall be prima facie evidence as to whether the conditions set out in this Section 18.3 exist or not.



ABERDEEN KAMLOOPS MALL LIMITED  
by its manager, without personal liability,  
PRIMARIS MANAGEMENT INC.

Per: [Signature] (Landlord)  
Authorized Signing Officer

Per: [Signature]  
Authorized Signing Officer

THE CHILDREN'S PLACE (CANADA), LP (Tenant)

Per: [Signature]  
Name: JANE ELFERS  
Title: PRESIDENT & CHIEF EXECUTIVE OFFICER

Per: [Signature]  
Name: SUSAN RILEY  
Title: EXECUTIVE VICE PRESIDENT

I/We have the authority to bind the company.

3281  
CORNWALL  
SQUARE

3. Co-Tenancy

The parties agree that, notwithstanding anything to the contrary in this Lease, so long as the Tenant is The Children's Place (Canada) LP, is itself in physical occupation of the whole of the Premises carrying on continuously, actively and diligently therein the business permitted by this Lease, and an Event of Default has not occurred, the Tenant shall have the "co-tenancy" rights set forth below.

For the purposes of this Section:

"Anchor Stores" means the Rentable Premises currently operated as "Sears" and "No Frills" or in the future operated by Suitable Replacements, as such Anchor Stores may be altered from time to time in connection with an expansion, remerchandising or redevelopment of the Shopping Centre, the parties acknowledging that from time to time as Anchor Stores are replaced by Suitable Replacements, this definition will be interpreted in the context of those replacement tenants, in the manner described in paragraph (a) below;

"Base Year" means the year that expires on the day preceding the date on which the Operating Levels were first not met;

"Central Retail Units" means Rentable Premises other than Anchor Stores;

"Operating Levels" mean: (A) at least [REDACTED] of the Central Retail Units by area and number are operating business and fully operational; or (B) at least [REDACTED] of the Anchor Stores are open for business and fully operational.

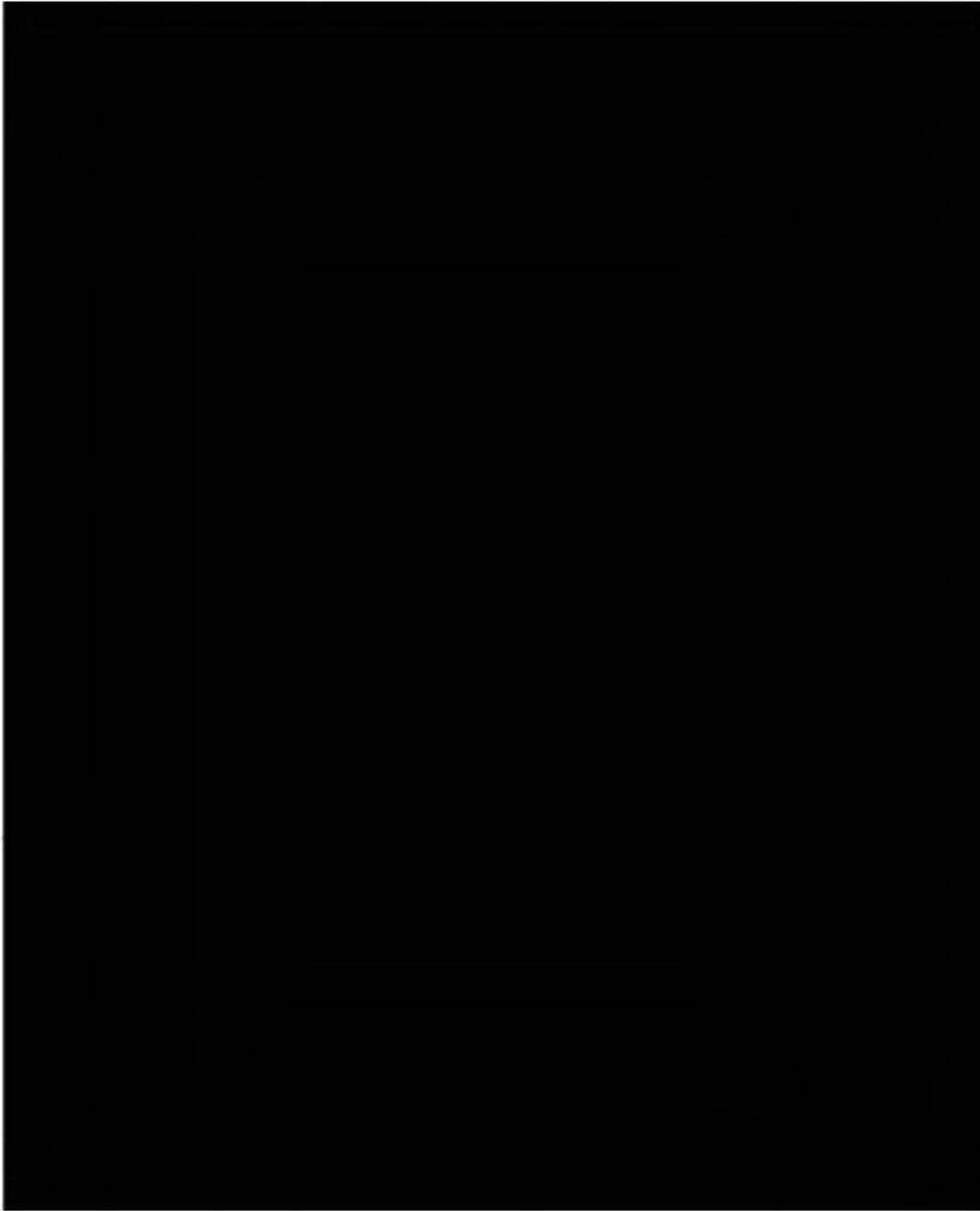
"Suitable Replacements" shall mean a tenant or combination of tenants that is or are: (i) part of a recognized high quality chain of retail stores; (ii) reasonably suited to the merchandise mix of the Shopping Centre having regard to the positioning of the Shopping Centre in its marketplace and to the demographic that it serves; and (iv) occupying substantially all of the GLA of the Anchor Store that it is replacing (except for Common Elements that are created from former GLA as a result of any redevelopment). By way of example only and, without limiting the generality of the foregoing, a Suitable Replacement for an Anchor Store as of the date of this Lease would include tenants such as "Chapters/Indigo", "H&M", "Toys 'R Us", "Target", "Canadian Tire".

The Tenant's Right to Pay Alternative Rent: If Operating Level (A) is not met at any time during the Term, or if Operating Level (B) is not met at any time during the Term for a period of at least [REDACTED], then in either case, the Tenant may thereafter, during any ensuing period that the Operating Levels continue to not be met, pay monthly as alternative rent (the "Alternative Rent"), in lieu of Minimum Rent and the amounts payable under Sections 5.03, 6.02 and 8.01, [REDACTED] of the Tenant's monthly Gross Revenue, as evidenced in the Monthly Statement submitted to the Landlord in accordance with Section 4.04(a).

Landlord agrees to provide written notice to the Tenant, in a manner prescribed in this Lease, forthwith upon becoming aware of the Operating Levels not being met at any time during the Term. Such notice shall specifically identify the nature of the Operating Levels not being met and shall reference, by way of reminder to the Tenant, the Tenant's rights in respect of such event (although the Tenant's rights with respect to co-tenancy shall not be adversely affected by Landlord's failure or refusal to give such written notice). Upon the date that the Operating Levels are once again met, the Tenant shall cease the payment of the Alternative Rent and resume (where the same had been otherwise suspended) the payment of Minimum Rent, the amounts payable under Sections 5.03, 6.02, 8.01 and 8.02, and any other additional rents and charges due under this Lease accruing from and after the date that the Operating Levels were once again met. If the Operating Levels are subsequently not met as set out in this Section 3 of Schedule "H", then all of the co-tenancy provisions of this Section will again be operative anew with the Suitable Replacements standing in lieu of the Anchor Stores for the purposes of assessing any future determination of whether the Operating Levels are met.

3290

LES RIVIERES



21.20 CRU Co-Tenancy

Notwithstanding anything to the contrary contained in this Lease, so long as the Tenant is The Children's Place (Canada), LP, or a Related Entity of Tenant, and has not otherwise assigned this Lease or sublet all or any part of the Premises and is not in default of this Lease beyond the applicable notice and cure period, then during the initial term of this Lease, if at least [REDACTED] of the Total Rentable CRU Area (as hereinafter defined) in the shopping centre is not occupied and open for business (the "Operating Requirements"), then the Tenant shall have the option, commencing on the first day of the month following the date that Landlord has failed to meet the Operating Requirements, to pay [REDACTED] of Gross Revenue in lieu of Rent (the "Reduced Rent") until such time as at least [REDACTED] of the Total Rentable CRU Area is occupied and open for business.

In the event that the Tenant elects to pay the Reduced Rent as provided for in this Article, the Landlord and the Tenant will have the right at any time after [REDACTED] period following commencement of the payment of Reduced Rent and the failure of Landlord to meet the Operating Requirements to terminate this lease on sixty (60) days prior written notice to the

other, and this Lease will terminate unless, however, the Tenant elects to pay the Rent payable under this Lease at which time Landlord's right to terminate as herein set forth will be waived.

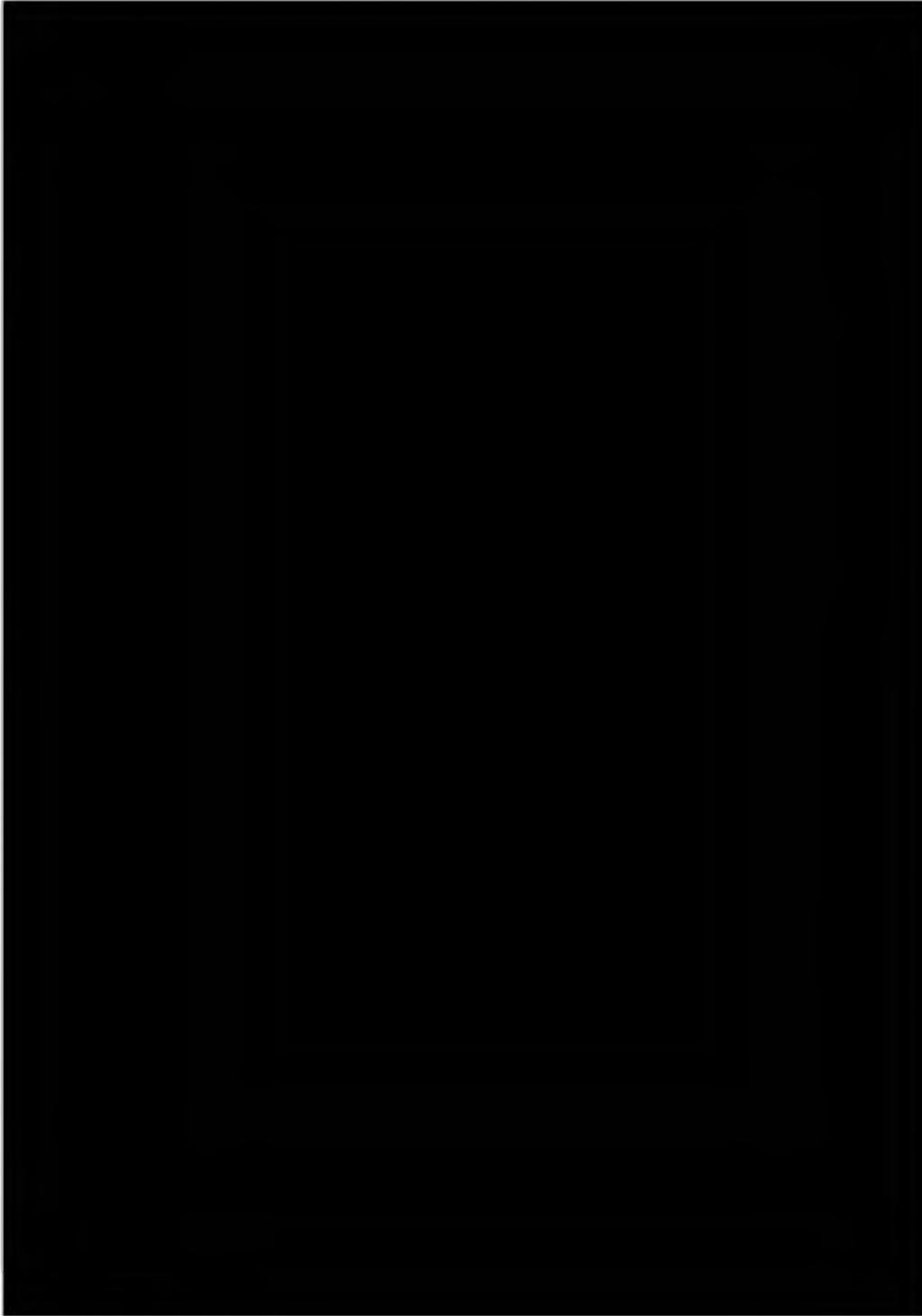
For the purposes of this Article, "Total Rentable CRU Area" means the total rentable area of the Project (including Major Tenant(s)) less the area of the following:

- (a) any premises not fronting on an interior mall of the Building; and
- (b) any Free Standing Premises; and
- (c) any Non-Retail Areas being those areas of the Building designated by the Landlord for non-retail use, including without limiting the generality of the foregoing, those areas:
  - (i) leased or designated by Landlord for lease for use or operation as offices or as hotel facilities (which may include such retail areas as are customarily part or as hotel facilities) or as residences or any combination thereof;
  - (ii) used or designated by Landlord for use as recreational or community service facilities (including, without limiting the generality of the foregoing, child care facilities, senior citizen drop-in center, auditorium, post office, public library, theater or cinema; and
  - (ii) used or designated by Landlord for use as storage facilities

This section is site specific to this Lease.

3291

PLACE VERTU



**21.21 CRU Co-Tenancy**

Notwithstanding anything to the contrary contained in this Lease, so long as the Tenant is The Children's Place (Canada), LP, or a Related Entity of Tenant, and has not otherwise assigned this Lease or sublet all or any part of the Premises and is not in default of this Lease beyond the applicable notice and cure period, then during the initial term of this Lease, if at least [REDACTED] of the Total Rentable CRU Area (as hereinafter defined) in the shopping centre is not occupied and open for business (the "Operating Requirements"), then the Tenant

shall have the option, commencing on the first day of the month following the date that Landlord has failed to meet the Operating Requirements, to pay [REDACTED] of Gross Revenue in lieu of Rent (the "Reduced Rent") until such time as at least [REDACTED] of the Total Rentable CRU Area is occupied and open for business.

In the event that the Tenant elects to pay the Reduced Rent as provided for in this Article, the Landlord and the Tenant will have the right at any time after a one (1) year period following commencement of the payment of Reduced Rent and the failure of Landlord to meet the Operating Requirements to terminate this lease on sixty (60) days prior written notice to the other, and this Lease will terminate unless, however, the Tenant elects to pay the Rent payable under this Lease at which time Landlord's right to terminate as herein set forth will be waived.

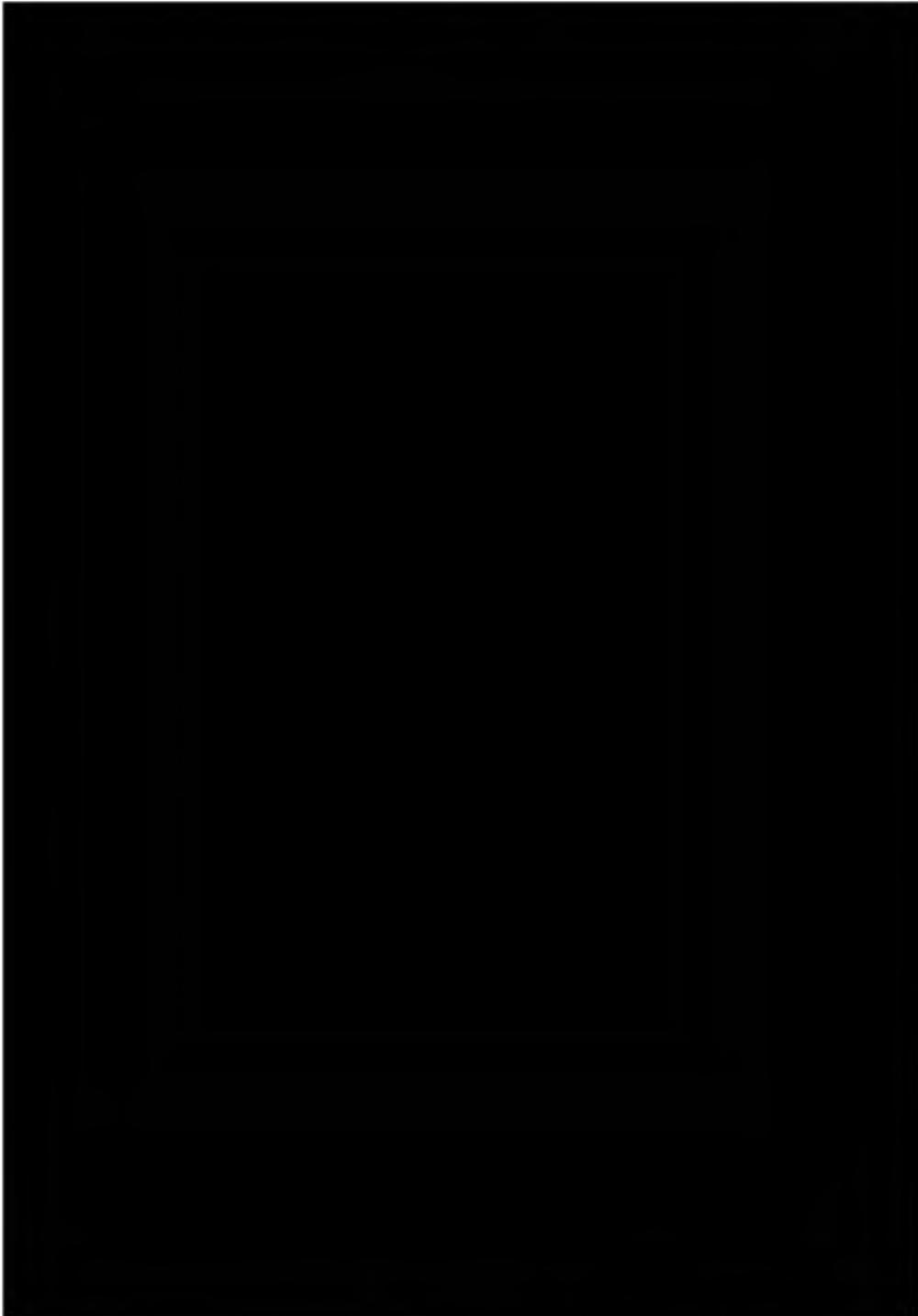
For the purposes of this Article, "Total Rentable CRU Area" means the total rentable area of the Project (including Major Tenant(s)) less the area of the following:

- (a) any premises not fronting on an interior mall of the Building; and
- (b) any Free Standing Premises; and
- (c) any Non-Retail Areas being those areas of the Building designated by the Landlord for non-retail use, including without limiting the generality of the foregoing, those areas:
  - (i) leased or designated by Landlord for lease for use or operation as offices or as hotel facilities (which may include such retail areas as are customarily part or as hotel facilities) or as residences or any combination thereof;
  - (ii) used or designated by Landlord for use as recreational or community service facilities (including, without limiting the generality of the foregoing, child care facilities, senior citizen drop-in center, auditorium, post office, public library, theater or cinema; and
  - (iii) used or designated by Landlord for use as storage facilities.
- (d) Sears Premises.

(This section is site specific to this Lease.)

3294

OAKVILLE PLACE



21.16 CRU Co-Tenancy Notwithstanding anything to the contrary contained in this Lease, so long as the Tenant is The Children's Place (Canada), LP. or a Related Entity of Tenant, and has not otherwise assigned this Lease or sublet all or any part of the Premises and is not in default of this Lease beyond the applicable notice and cure period, then during the initial term of this Lease, if at least [redacted] of the Total Rentable CRU Area (as hereinafter defined) in the Project is not occupied and open for business (the "Operating Requirements"), then the Tenant shall have the option, commencing on the first day of the month following the date that Landlord has failed to meet the Operating Requirements, to pay [redacted] of Gross Revenue in lieu of Rent (the "Reduced Rent") until such time as at least [redacted] of the Total Rentable CRU Area in the Project is occupied and open for business.



In the event that Tenant elects to pay the Reduced Rent as provided for in this Article, Landlord and Tenant will have the right at any time after [REDACTED] period following commencement of the payment of Reduced Rent and the failure of Landlord to meet the Operating Requirements to terminate this lease on sixty (60) days prior written notice to the other, and this Lease will terminate unless, however, Tenant elects to pay the Rent payable under this Lease at which time Landlord's right to terminate as herein set forth will be waived.

For the purposes of this Article, "Total Rentable CRU Area" means the total rentable area of the Project less the area of the following:

- (a) any premises not fronting on an interior mall of the Building of the Project; and
- (b) any Free Standing Premises; and
- (c) any Non-Retail Areas being those areas of the Building of the Project designated by the Landlord for non-retail use, including without limiting the generality of the foregoing, those areas:
  - (i) leased or designated by Landlord for lease for use or operation as offices or as hotel facilities (which may include such retail areas as are customarily part or as hotel facilities) or as residences or any combination thereof;
  - (ii) used or designated by Landlord for use as recreational or community service facilities (including, without limiting the generality of the foregoing, child care facilities, senior citizen drop-in center, auditorium, post office, public library, theater or cinema; and
  - (iii) used or designated by Landlord for use as storage facilities.



3299

AVALON MALL

FIXTURING PERIOD



KIOSK



EXCESSIVE VACANCY

46.01 "Excessive Vacancy" shall be defined as follows: (i) the gross leaseable area of the Centre is less than [REDACTED] actively occupied by other retail tenants, who are open to the public during normal business hours; or (ii) an Anchor Tenant does not occupy its premises and be open to the public during normal business hours for a period greater than [REDACTED]. If an Excessive Vacancy occurs, the tenant shall have the one-time only right to terminate this Lease and all rights and obligations of both parties upon sixty (60) days prior notice to the Landlord.

RIGHT TO TERMINATE



SIGNAGE





REGISTRATION



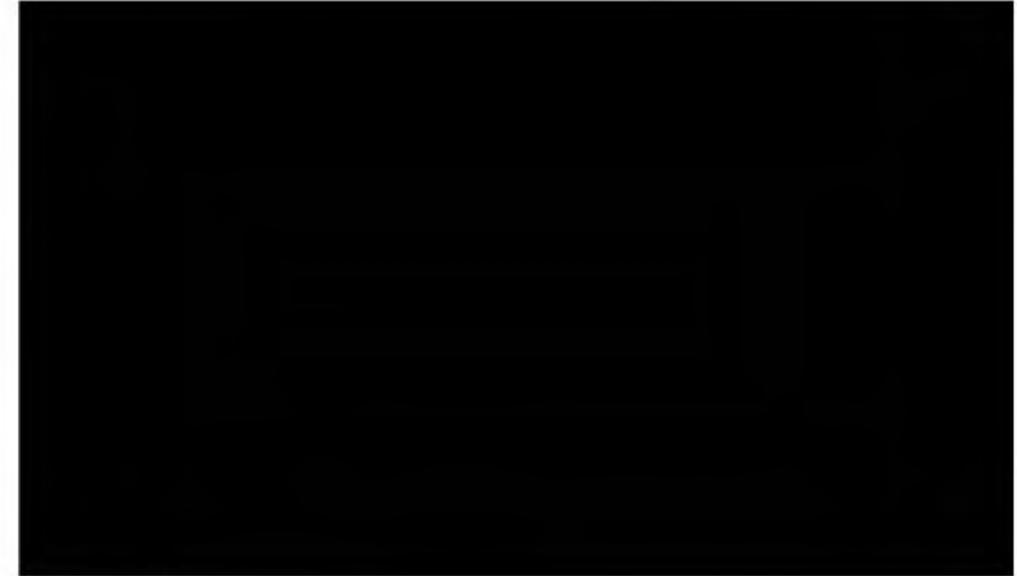
LIMITATION OF  
LANDLORD'S  
LIABILITY



LIMITATION ON  
LENGTH OF  
TERM



ENVIRONMENT



# Tab E

This is Exhibit "E" referred to in  
the Affidavit of Ketul Patel  
sworn this 6th day of September, 2018



---

Notary Public

**EVA SALO**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires Nov. 29, 2021**

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

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

**TWELFTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**February 13, 2018**

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| D. LITIGATION TRUSTEE MOTION..... | 6           |

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 QUÉBEC INC., 191020 CANADA INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM  
COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741  
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041  
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND  
3339611 CANADA INC.

APPLICANTS

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

**A. INTRODUCTION**

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

2. The Initial Order, among other things:
  - (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
  - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017; and
  - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the stay of proceedings to October 4, 2017. In addition, the following orders were issued:
  - (a) the amended and restated Initial Order;
  - (b) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities (“**Employee Representative Counsel**”); and
  - (c) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters (“**Pension Representative Counsel**”).
4. Since the date of the Comeback Motion, the stay period has been extended a number of times, most recently to April 27, 2018.
5. On December 8, 2017, the Court issued: (i) an Order (the “**Claims Procedure Order**”) approving a claims process (the “**Claims Process**”) for the identification, determination and adjudication of claims of creditors against the Sears Canada Entities and their current and former officers and directors.
6. The liquidation of assets at Sears Canada’s retail locations is now complete and all of Sears Canada’s retail locations are now closed.

7. In connection with the CCAA Proceedings, the Monitor has provided eleven reports and five supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at [cfcanada.fticonsulting.com/searscanada/](http://cfcanada.fticonsulting.com/searscanada/) (the “**Monitor’s Website**”).

## **B. PURPOSE**

8. The purpose of this twelfth report of the Monitor (the “**Twelfth Report**”) is to provide the Court with information regarding a Motion by Pension Representative Counsel for the appointment of the Honourable Frank Newbould, Q.C. as Litigation Trustee for the benefit of the creditors of the Sears Canada Entities (the “**Litigation Trustee Motion**”) and the Monitor’s comments and recommendations in connection with this motion.

## **C. TERMS OF REFERENCE**

9. In preparing this Twelfth Report, the Monitor has relied upon the Sears Canada Entities’ books and records, certain financial information prepared by the Sears Canada Entities and discussions and correspondence with, among others, the senior management (“**Management**”) of, and advisors to, the Sears Canada Entities (collectively, the “**Information**”).
10. Except as otherwise described in this Twelfth Report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
11. The Monitor has prepared this Twelfth Report in connection with the Litigation Trustee Motion. The Twelfth Report should not be relied on for any other purpose.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

13. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the affidavits of Mr. Billy Wong, the Chief Financial Officer of Sears Canada, sworn on June 22, 2017, and William Turner, sworn February 12, 2018, and the Prior Reports of the Monitor in these proceedings.

#### **D. PRELIMINARY DISCUSSIONS REGARDING STAKEHOLDER LITIGATION**

14. Certain stakeholder groups in these proceedings have had discussions about possible recovery from various litigation options. The Monitor has attended a number of meetings and conference calls to discuss these matters with Employee Representative Counsel, Counsel to the Superintendent of Financial Institutions (the “**Superintendent**”), counsel to Morneau Shepell, as administrator of the Sears Canada Pension Plan (the “**Plan Administrator**”), Pension Representative Counsel and various landlord counsel (collectively, the “**Participating Creditors**”).
15. The Monitor is also aware that, in addition to the Participating Creditors, the general unsecured creditors of the Sears Canada Entities’ (the “**Other Unsecured Creditors**”) have an interest in potential litigation. The amount due to these unsecured may exceed \$500 million.
16. It is expected that there will be significant overlap between the claims that various creditor groups have commenced, or intend to commence, as well as any claims that may be available to the Sears Canada Entities themselves or to the Monitor. The quantum of these potential claims may be significant.
17. The need to coordinate various streams of potential litigation was initially identified by certain Participating Creditors earlier in these proceedings. There was initial support from Participating Creditors for a ‘litigation inspector’ or a ‘litigation trustee’.
18. The Monitor is supportive of efforts toward efficient coordination of future potential litigation in this case, provided that such coordination is effected in a manner that is acceptable to the Participating Creditors, protects the interests of the Other Unsecured

Creditors and is properly coordinated with both the Claims Process and the Employee and Retiree Claims Process that is currently being developed.

19. A litigation inspector/trustee can perform a constructive role in that coordination process. However, the Monitor believes the effectiveness of a litigation inspector/trustee role is directly related to the level of support the litigation inspector/trustee has from stakeholders. In particular, the Monitor believes it is essential to build consensus among stakeholders who may have material litigation claims regarding: (i) the candidate who is appointed; and (ii) the scope of the litigation inspector/trustee's mandate.
20. At this time, there is no consensus on the selection of a litigation inspector/trustee and that lack of consensus has impeded discussions about the appropriate scope of the mandate and other procedural issues inherent in the appointment of any litigation inspector/trustee.
21. In the period leading up to the Litigation Trustee Motion, the Monitor has repeatedly advised the Participating Creditors that, in the Monitor's view, a consensus as to the person appointed and role of the litigation trustee/inspector is most likely to lead to the efficient management of litigation and has on a number of occasions requested that stakeholders work toward agreement on this matter. Most recently on February 6th, the Monitor suggested that a meeting of Participating Creditors be held on February 8th to try to come to agreement on this matter and avoid a disputed hearing. However, certain key parties refused to attend a meeting and at this time the Monitor understands the Litigation Trustee Motion remains a contested matter.

#### **E. LITIGATION TRUSTEE MOTION**

22. The Litigation Trustee Motion seeks to appoint the Honourable Frank Newbould, Q.C. as Litigation Trustee for the benefit of the creditors of the Sears Canada Entities.
23. The proposed Litigation Trustee role would be a court officer role that would involve:

- (a) investigating, considering and reporting to the Court and a committee of creditor representatives (the “**Committee**”) regarding the rights and claims that the Sears Canada Entities, or the Litigation Trustee acting on behalf of creditors of the Sears Canada Entities, may have (the “**Litigation Claims**”) as against any parties, including, but not limited to, the current and former directors, officers, shareholders and advisors of any of the Sears Canada Entities (the “**Mandate**”); and
  - (b) if so authorized by further order of the court, acting on behalf of creditors to prosecute any of the foregoing claims.
- 24. The Litigation Trustee Motion would require the Monitor to provide certain assistance to the Litigation Trustee and disclosure of information from the Monitor’s investigations to the Litigation Trustee and the Committee.
- 25. The primary preliminary work product of the Litigation Trustee under the Mandate would be a report to be provided by the Litigation Trustee to the Court and to the Committee setting out the Litigation Trustee’s recommendations regarding a proposed litigation plan that includes: (i) the rights and claims of the Sears Canada Entities and potentially creditors who may have claims against third parties that should be pursued; (ii) the proposed steps in pursuing those claims, including coordination of the prosecution of such claims and other similar or related claims that may be asserted by different parties, and a proposed governance structure for an instructing committee for the purposes of providing instructions to the Litigation Trustee in any prosecution of those rights and claims; and (iii) options available for funding of those claims.
- 26. The Committee with which the Litigation Trustee is to consult would be appointed by or on behalf of Employee Representative Counsel, Pension Representative Counsel, landlords, class action plaintiffs and such other unsecured creditors as the Sears Canada Entities, the Litigation Trustee and the Committee may agree. The Litigation Trustee Motion proposed that a representative of the Monitor would be on the Committee as well.

27. The Litigation Trustee Motion seeks to exclude the Litigation Claims from the Claims Process.
28. The Litigation Trustee would not have a role in determining, advising on, opposing, supporting or articulating any claim of any creditor or stakeholder filed in the Claims Process or for distribution purposes from the estates of the Sears Canada Entities.
29. The Litigation Trustee's reasonable fees and disbursements, including legal counsel fees, would be paid by the Sears Canada Entities subject to a budget to be approved by the Committee prior to commencement of the Mandate. These fees and disbursements would be secured by the Administration Charge under the Initial Order.

#### **F. MONITOR'S OBSERVATIONS AND RECOMMENDATIONS ON THE LITIGATION TRUSTEE MOTION**

##### *Identification of Litigation Inspector / Trustee*

30. The appointee to the role of litigation inspector/trustee remains the subject of disagreement among stakeholders.
31. The Superintendent and the Plan Administrator have stated they believe that appointing the proposed nominee would create a conflict of interest. In particular, the current nominee is counsel at a law firm that currently represents a potentially significant landlord who is a Participating Creditor. The Superintendent and Plan Administrator note that their interests diverge from those of the landlord group. In these circumstances, the Superintendent and Plan Administrator oppose the appointment of the proposed nominee. Accordingly, the Plan Administrator has suggested a number of alternate nominees for the litigation inspector/trustee role. However, to date no agreement has been reached regarding a candidate.
32. The Monitor has no reason to believe the proposed litigation inspector/trustee would perform the role other than in an impartial manner. The proposed form of order appointing the litigation inspector/trustee does mitigate conflict concerns by ensuring the litigation inspector/trustee's role would not extend to any matters related to any claim of any creditor or stakeholder filed in the Claims Process or any distribution

related matters. However, the Monitor does acknowledge that the potential for a perceived conflict in the circumstances remains. The Monitor itself identified this as a potential issue when the nominee for the litigation inspector/trustee role was first raised.

33. In the Monitor's view, the coordinating role of the litigation inspector/trustee will function most efficiently if all parties holding potential claims and the Monitor are in agreement on the candidate put forward to act in that role. Once an agreement on the candidate is achieved, the specific terms of an appointment order can be considered. It is unclear whether the Litigation Trustee Motion seeks to force any and all potential third party litigation claims to proceed through the litigation inspector/trustee review. Stakeholders wishing to assert claims against third parties are far more likely to work constructively within the litigation inspector/trustee process if they are in full agreement with the appointment of the litigation inspector/trustee. The Monitor is concerned about the workability of an arrangement that affects the rights of non-applicant parties to pursue their claims if that process is not voluntary.
34. The Monitor is supportive of continued efforts to arrive at a consensus.

*Mandate of the Litigation Inspector/Trustee*

35. The proposed draft order appointing the Litigation Trustee describes a coordination, investigation and reporting role that the Monitor believes would be of assistance to the overall litigation process in this case. The Monitor notes that the Mandate includes the possibility that the Litigation Trustee may report on, provide recommendations on, and investigate claims held by creditors (in addition to any claims of the Sears Canada Entities themselves) against third parties and may, following further court order, take steps to prosecute claims.
36. The Litigation Trustee is contemplated to have a very influential role in connection with creditors' claims and the claims of the Sears Canada Entities. In the Monitor's view, the scope of this Mandate further reinforces the need for consensus among stakeholders regarding the terms of appointment of the litigation inspector/trustee.

Any other option would most likely lead to continued disputes regarding the proper scope of the litigation inspector/trustee's Mandate and any steps taken under that Mandate. The Monitor believes it is reasonable for a holder of a potential material claim against a non-Applicant, whose claim may be the subject of the litigation inspector/trustee process, to require that such process be reasonably acceptable to the claim holder.

#### *The Committee*

37. The Committee with which the Litigation Trustee is to consult does not include any parties appointed by or on behalf of the Superintendent or the Plan Administrator. As noted above, these parties have asserted that they have material claims against various parties related to the Sears Canada Pension Plan. The Monitor believes that there would be challenges in developing a properly representative consultation Committee that excludes these parties given the nature and quantum of their respective potential claims.
38. The proposed form of Order provides the Committee with certain approval powers and consultation rights, but does not identify the manner in which decisions on approvals would be made by the Committee. Should the Litigation Trustee Motion be granted, the Monitor believes this decision making process should be clarified.
39. The Monitor believes it should have a consultation role in connection with the Committee based upon the Monitor's position in these proceedings and the potentially overlapping litigation claims the Monitor may have. However, the Monitor would propose that it not be a member of the Committee, as the Monitor has no direct interest in the claims that may be asserted by members of the Committee.

#### *Monitor Claims*

40. The Monitor notes that the proposed draft order suggests the Litigation Trustee may pursue "Monitor Claims", defined in the Claims Procedure Order as: "a Claim, including a D&O Claim and any claim pursued in accordance with Section 36.1 of the CCAA, that may be asserted by the Monitor."

41. The Monitor does not believe the Monitor Claims should be the subject of a litigation inspector/trustee mandate, other than insofar as it is important that the steps the Monitor may take in connection with any Monitor Claims should be coordinated with the steps that are taken in claims that are covered by the litigation inspector/trustee's mandate.
42. In the event the Monitor determines not to pursue any Monitor Claims that other creditors believe should be pursued, stakeholders wishing to pursue such claims would have rights under Section 38 of the Bankruptcy and Insolvency Act (Canada) and Section 36.1 of the CCAA.

#### *Information Sharing*

43. The Monitor would in all circumstances cooperate with the litigation inspector/trustee in performing his mandate. However, the Monitor cannot consent at this time to an Order, as proposed by Pension Representative Counsel, that would require the Monitor to disclose and deliver to the Litigation Trustee or the Committee all of the results of the Monitor's investigations and research on the 'Transactions of Interest'. These investigations and this research were undertaken by the Monitor for very specific purposes in fulfilling the Monitor's statutory mandate, and information was shared by the Sears Canada Entities and others with the Monitor for those specific purposes and on specific understandings regarding the uses of such information. The Monitor does not believe it is appropriate at this time to require the Monitor to share all such information, much of which may be subject to confidentiality and privilege concerns, with third parties.
44. The Monitor also notes that the proposed Order requires the cooperation of the Sears Canada Entities and "all persons acting on behalf of the Sears Canada Entities", which could include parties that may have reasonable concerns about the extent of such required cooperation to the extent they may be defendants in future litigation pursued by the litigation inspector/trustee.

*Monitor's Recommendation*

45. The Monitor believes that, prior to advancing the Litigation Trustee Motion, further efforts should be made among stakeholders to arrive at a consensus on the above issues, specifically:
- (a) the selected litigation inspector/trustee;
  - (b) the scope of the Mandate, and in particular the types of claims that will be investigated, reported upon and potentially pursued, including whether this will extend to claims that individual creditors or creditor groups may have and how the litigation inspector/trustee claims interact with the Claims Process and the Employee and Retiree Claims Process. At the initial stage, the Monitor believes consensus could more likely be achieved by establishing a more limited investigation role that could be expanded if appropriate at a later date;
  - (c) the composition of the Committee and the exact process by which the Committee will grant approvals and make recommendations; and
  - (d) appropriate funding mechanisms for the litigation inspector/trustee and its counsel.
46. Once these matters are resolved, the Monitor can then work with the litigation inspector/trustee, the Committee, the Sears Canada Entities and other interested parties to establish a protocol for cooperation and sharing of information regarding litigation matters.
47. The Monitor believes there are benefits to the creation of a structure to coordinate litigation in this case and has no objection to the concept of a litigation inspector/trustee. However, the Monitor does not believe that this is a process that will function optimally if it is forced upon stakeholders without their agreement. The Monitor notes that while the parties who are supportive of the Litigation Trustee Motion are a substantial creditor group, there are other large creditor groups who at this time either appear to be non-supportive of, or not actively involved in, this motion.

48. The Monitor understands that discussions on the proposed form of order are ongoing among certain Participating Creditors. The Monitor notes that there are several issues that the parties would need to work through before an agreed form of Order could be presented to the Court for consideration.

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

Dated this 13th day of February, 2018.

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

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style with a large initial "P".

Paul Bishop  
Senior Managing Director

A handwritten signature in blue ink that reads "Greg Watson". The signature is written in a cursive style with a large initial "G".

Greg Watson  
Senior Managing Director

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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

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

# Tab F

This is Exhibit "F" referred to in  
the Affidavit of Ketul Patel  
sworn this 6th day of September, 2018



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Notary Public

**EVA SALO**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires Nov. 29, 2021**

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

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

**FOURTEENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**March 1, 2018**

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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 QUÉBEC INC., 191020 CANADA INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM  
COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741  
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041  
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND  
3339611 CANADA INC.

APPLICANTS

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

**A. INTRODUCTION**

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

2. The Initial Order, among other things:
  - (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
  - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017; and
  - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the stay of proceedings to October 4, 2017. In addition, the following orders, among others, were issued:
  - (a) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities (“**Employee Representative Counsel**”);
  - (b) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters (“**Pension Representative Counsel**”); and
  - (c) an order approving a sale and investor solicitation process (the “**SISP**”) to solicit interest in potential transactions involving the business, property and assets and/or leases of the Applicants.
4. Since the date of the Comeback Motion, the stay period has been extended a number of times, most recently to April 27, 2018.
5. On December 8, 2017, the Court issued an Order (the “**Claims Procedure Order**”) approving a claims process for the identification, determination and adjudication of claims of creditors against the Sears Canada Entities and their current and former officers and directors. The Claims Procedure Order also directed the Monitor to assess in detail, with reasonably sufficient particulars and analysis, the validity and

quantum of all intercompany claims, and to serve on the Service List and file with the Court a report detailing the work performed (the “**Intercompany Claims Report**”) by the General Creditor Claims Bar Date.

6. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the “**E&R Claims Procedure Order**”) approving a process for the identification, determination and adjudication of claims of employees and retirees of the Sears Canada Entities.
7. The liquidation of assets at Sears Canada’s retail locations is now complete and all of Sears Canada’s retail locations are now closed.
8. In connection with the CCAA Proceedings, the Monitor has provided thirteen reports and five supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at [cfcanada.fticonsulting.com/searscanada/](http://cfcanada.fticonsulting.com/searscanada/) (the “**Monitor's Website**”).

## **B. PURPOSE**

9. The purpose of this Fourteenth Report is to provide the Court with information and the Monitor’s recommendations on the proposed order to be sought in connection with the Litigation Trustee Motion (as defined below) that was the subject of the Monitor’s Twelfth Report dated February 13, 2018 and on the Monitor’s motion to extend the date for delivery of the Monitor’s Intercompany Claims Report pursuant to the Claims Procedure Order, and to provide an update on other developments in the CCAA Proceedings.

## **C. LITIGATION TRUSTEE MOTION**

10. On February 13, 2018, FTI Consulting Canada Inc., as Court-appointed Monitor, filed its Twelfth Report to the Court in these CCAA Proceedings (the “**Twelfth Report**”) in

connection with a motion by Pension Representative Counsel for the appointment of a Litigation Trustee (the “**Litigation Trustee Motion**”).

11. Capitalized terms used in this section of the Fourteenth Report and not otherwise defined have the meanings given to them in the Twelfth Report.

Background

12. As described in the Twelfth Report, earlier in these proceedings, various stakeholders began to have discussions about possible recoveries from various potential claims against parties connected with the Applicants. Those stakeholders were: Employee Representative Counsel, counsel to the Superintendent of Financial Institutions (the “**Superintendent**”), counsel to Morneau Shepell, as administrator of the Sears Canada Pension Plan (the “**Plan Administrator**”), Pension Representative Counsel, various landlord counsel, and counsel to the Sears Hometown Dealers (collectively, the “**Participating Stakeholders**”).
13. The need to coordinate various streams of potentially overlapping litigation was initially identified by certain Participating Stakeholders earlier in these proceedings. There was initial support from Participating Stakeholders for a ‘litigation inspector’ or a ‘litigation trustee’.
14. The Litigation Trustee Motion, originally returnable on February 15, 2018, was brought forward by Pension Representative Counsel for the purpose of appointing a Litigation Trustee.
15. As of February 15, 2018, the Participating Stakeholders were not in agreement on the identity of the Litigation Trustee or the proposed mandate of the Litigation Trustee.
16. The Monitor recommended that, prior to advancing the Litigation Trustee Motion, further efforts should be made among stakeholders to arrive at a consensus on:
  - (a) the selected litigation inspector/trustee;

- (b) the scope of the litigation inspector/trustee’s mandate, and in particular the types of claims to be investigated, reported upon and potentially pursued, including the terms of any appointment order;
- (c) the composition of the consultative committee that would work with the litigation inspector/trustee and the exact process by which the committee would grant approvals and make recommendations; and
- (d) appropriate funding mechanisms for the litigation inspector/trustee and its counsel

(the “**Preliminary Outstanding Matters**”).

17. The Court did not hear the Litigation Trustee Motion and directed the Participating Stakeholders and the Monitor to work toward consensus on the Preliminary Outstanding Matters.

Status Update

18. Following the Court’s direction, the Monitor worked with the Participating Stakeholders to attempt to resolve the Preliminary Outstanding Matters. The Monitor can report that significant progress has been made:
  - (a) Parties acceptable to the Participating Stakeholders have been identified to undertake the role of “Litigation Investigator”; and
  - (b) A form of order has been substantially negotiated and agreed among the Participating Stakeholders setting out the scope of the proposed mandate of the Litigation Investigator and other relevant terms including a funding mechanism for the Litigation Investigator.

A copy of the proposed form of order is attached hereto as **Appendix “A”**.

19. The Material terms of the proposed form of order are as follows:

- (a) Litigation Investigator: Lax O'Sullivan Lissus Gottlieb LLP (represented by Jonathan Lissus and Matthew Gottlieb) are proposed to be appointed to the role of Litigation Investigator.
- (b) Mandate: The Litigation Investigator is proposed to be an officer of the Court appointed for the purpose of investigation, consideration of, and reporting to the Creditors' Committee (defined below), regarding any rights or claims, whether legal, equitable, statutory or otherwise, that the Sears Canada Entities and/or any creditors of any of the Sears Canada Entities may have as against any parties, including but not limited to current and former directors, officers, shareholders and advisors of any of the Sears Canada Entities. The mandate does not include determining, advising on, opposing or articulating any claim filed in the claims process established under the Claims Procedure Order or the E&R Claims Procedure Order. The Litigation Investigator will have no role in the distribution or allocation of estate funds.
- (c) Reporting: The Litigation Investigator will report to the Creditors' Committee. The report will include, among other things, recommendations regarding a proposed litigation plan.
- (d) Creditors' Committee: A committee of creditors will be established to consult with the Litigation Investigator (the "**Creditors' Committee**"). The Creditors' Committee will be comprised of members appointed by, or on behalf of various creditor groups.
- (e) Monitor Briefing: The Monitor shall provide to the Litigation Investigator (and, upon execution of appropriate confidentiality agreements, the Creditors' Committee) a confidential briefing regarding the "Transactions of Interest" as identified in the Monitor's Eleventh Report to the Court. The Monitor may not be in a position to share all information in its possession regarding the Transactions of Interest due to privilege or confidentiality concerns. The proposed form of order includes a mechanism to deal with any such confidentiality or privilege concerns that may arise. The Monitor notes that the

information received by the Monitor and the research and analysis undertaken by the Monitor in connection with the Transactions of Interest were in some cases received and undertaken for very specific purposes in fulfilling the Monitor's statutory mandate, and information was shared by the Sears Canada Entities and others with the Monitor for those specific purposes and on specific understandings regarding the uses of such information.

- (f) Claims Procedure Issues: Rights, claims or causes of action identified by the Litigation Investigator as capable of being advanced and that are advanced with approval of the Court, whether by the Litigation Investigator or otherwise, are removed from the claims process established under the Claims Procedure Order or the E&R Claims Procedure Order and, if so removed, would not be subject to the bar dates and procedures contained therein.
- (g) Costs: The Litigation Investigator shall be paid from the funds of the Applicants its reasonable fees and disbursements, the amount of which is not to exceed a budget approved by the Creditors' Committee in consultation with the Monitor. The Litigation Investigator shall be entitled to the benefit of the Administrative Charge, as defined in the Initial Order for the Litigation Investigator's costs, as security for its professional fees, taxes, and disbursements reasonably incurred.

20. A copy of the proposed form of order was shared with counsel to the Applicants, counsel to the directors, counsel to Sears Holdings Corporation and counsel to Edward Lampert and ESL Investments Inc.

← →

Monitor's Comments and Recommendation

21. The Monitor is pleased to report that consensus has been achieved among the Participating Stakeholders on the Litigation Investigator's appointment and the matters described in the draft form of Order.
22. The Monitor is supportive of the form of order appointing a Litigation Investigator that has been circulated and the Monitor believes this form of order is the product of

constructive negotiation and compromise among the Participating Stakeholders as directed by the Court.

23. Certain other parties, including the directors of Sears Canada, ESL Investments Inc. and its affiliates and Sears Holdings Corporation have raised issues regarding the proposed form of Order appointing the Litigation Investigator. These issues include: (i) the Litigation Investigator's role as a 'court officer'; and (ii) the Litigation Investigator's role with respect to claims beyond any claims of the Sears Canada Entities or any claims that are derivative of the estates of the Sears Canada Entities. The Monitor has not had the opportunity to fully discuss these issues with the aforementioned parties, the Applicants, or the Participating Stakeholders, and accordingly takes no position at this time. However, these issues may be the subject of submissions at the March 2<sup>nd</sup> hearing if they cannot be resolved in advance of that hearing.

**D. EXTENSION OF PERIOD TO FILE INTERCOMPANY CLAIMS REPORT**

24. The Claims Procedure Order provided that the Monitor would prepare a report to be served on the Service List and filed with the Court for its consideration, that would detail the Monitor's review of all Intercompany Claims (as defined in the Claims Procedure Order) and assess the validity and quantum of such Claims (the "**Intercompany Claims Report**"), with any Intercompany Claim identified thereby to be deemed to have been properly submitted via a proof of claim.
25. The Claims Procedure Order required that the Intercompany Claims Report be served on or before March 2, 2018, unless otherwise ordered by this Court on application by the Monitor.
26. Although progress has been made by the Monitor with the support of the Applicants towards completion of this task, the Monitor requires additional time to complete its review of all Intercompany Claims, analyze and assess the validity and quantum of all intercompany claims, and document its findings in the Intercompany Claims Report.

27. The Monitor requires a substantial amount of assistance from the Applicants and their employees in order to complete the Intercompany Claims Report. There have been significant demands on the Applicants' limited remaining employees, including in connection with negotiating and preparing for the employee and retiree claims process ordered in the E&R Claims Procedure Order, which the Monitor was also heavily involved in. As a result, additional time is required for completion of the Intercompany Claims Report.
28. The Monitor is proposing to extend the deadline for completion of the Intercompany Claims Report by one month to April 2, 2018 (the "**Proposed Intercompany Claims Report Extension**"). This date is subsequent to the General Creditor Claims Bar Date of March 2, 2018; however, the Monitor will require time to review and adjudicate proofs of claim received by the General Creditor Claims Bar Date and the Proposed Intercompany Claims Report Extension aligns with this timeline. The claims bar date for other potential unsecured claimants, such as Litigation Claims (as such term is defined in the Endorsement (as defined below)) and certain landlord claims, are also on or subsequent to the Proposed Intercompany Claims Report Extension.
29. In conclusion, the Monitor believes that there is no prejudice to stakeholders should the Court agree to the Proposed Intercompany Claims Report Extension, and grant the Intercompany Claims Report Extension Order.

## **E. UPDATES ON THE CCAA PROCEEDINGS**

### *Claims Process*

30. As of the date of this Report, the Monitor has received proofs of claim in amounts totalling not less than \$162 million.
31. The Monitor is continuing to receive proofs of claim at this time. The Claims Procedure Order set a General Creditor Claims Bar Date of March 2, 2018. The Claims Procedure Order establishes later bar dates for certain claims, such as certain claims by landlords. Pursuant to the endorsement (the "**Endorsement**") of Justice Haaney made on February 22, 2018, the claims bar date for certain Litigation Claims

(as such term is defined in the Endorsement) has been extended to April 2, 2018. A copy of the Endorsement is attached as **Appendix “B”** to this Fourteenth Report.

32. In accordance with the E&R Claims Procedure Order, the Monitor is currently taking steps required to cause the Notice to Claimants to be published in The Globe and Mail (National Edition) and in the electronic edition of La Presse and to deliver Proof of Claim Packages to Claimants to the extent required by the E&R Claims Procedure Order. The Monitor has also caused the Notice to Claimants and blank copies of the Claims Packages (excluding any blank Termination Claim Statement or Retiree Benefit Claim Statement) to be posted on the Monitor’s website.

*Disclaimer of Contracts / Craftsman License*

33. The Applicants, with the assistance of the Monitor, continue to review their remaining contractual arrangements to determine if, in the circumstances, disclaimers of such contractual arrangements would be appropriate.
34. As of the date of this Fourteenth Report, all retail store leases have been disclaimed by the Applicants and the Applicants no longer occupy any such retail store locations.
35. In the Eleventh Report, dated January 15, 2018, the Monitor described its review of various Transactions of Interest, including the surrender by Sears Canada of its exclusive right to use the Craftsman trademark in Canada in connection with the sale by Sears Holdings Corporation of the Craftsman business to Stanley Black & Decker Inc. in March 2017.
36. In connection with the surrender of its exclusive license, Sears Canada received a non-exclusive royalty free license to use the Craftsman trademark in Canada (the “**Replacement License**”).
37. Stanley Black & Decker Inc. has proposed the consensual termination of the Replacement License in view of the termination of Sears Canada’s operations.

38. Sears Canada, in consultation with the Monitor, has determined that it no longer has a need to use the Craftsman trademark and, subject to agreeing upon acceptable terms, neither Sears Canada nor the Monitor have any opposition to the consensual termination of the Replacement License. The Monitor does not believe that termination of the Replacement License would affect any claim that the Monitor may have in connection with the Transactions of Interest and the results of the sale and investment solicitation process indicate that no opportunities to monetize the Replacement License are available. Sears Canada, with the assistance of the Monitor, intends to negotiate the requested consensual termination with Stanley Black & Decker Inc.

#### *Tax Losses*

39. The Monitor was recently contacted by a party potentially interested in completing a transaction that would, among other things, utilize some of Sears Canada's remaining tax losses. That transaction, if successfully completed, could potentially result in proceeds in the range of \$3 million to \$4.5 million.
40. The Applicants, the Monitor, and counsel reviewed the terms of the proposed transaction including:
- (a) the level of risk and uncertainty as to closing involved;
  - (b) the near certainty that such a proposed sale would result in Canada Revenue Agency audits of net operating losses and other tax accounts, and likely result in delays in distributions and completion of the winding-up of the estate; and
  - (c) the time and costs required to implement a transaction of this type.
41. The Applicants, in consultation with the Monitor, determined that they do not support the pursuit of the proposed transaction in the circumstances. The Board of Directors and the Monitor agree with this decision and the Monitor intends to advise the proposed counterparty accordingly.

*Second Liquidation Process*

42. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process (the “**Second Liquidation Process**”) for the liquidation of inventory and furniture, fixtures and equipment at all remaining Sears Canada locations.
43. The Second Liquidation Process is now complete at all locations.
44. Sears Canada, the Monitor and the agent under the Second Liquidation Process are now undertaking a final reconciliation process to determine any additional amounts payable by or to the agent or Sears Canada under the Second Liquidation Process.
45. The Monitor understands that upon completion of the Second Liquidation Process and the disclaimer of Sears Canada’s remaining retail leases, as described above, certain landlords raised concerns that furniture, fixtures and equipment remained on the leased premises and should have been removed by Sears Canada or the agent in the Second Liquidation Process. Sears Canada’s counsel advised that to the extent any furniture, fixtures and equipment remained on the premises, Sears Canada believed this was done only in circumstances where the applicable lease did not require Sears Canada to remove such furniture, fixtures and equipment.
46. The obligation, if any, of Sears Canada to remove such furniture, fixtures and equipment, or to reimburse landlords for the cost of such removal, pursuant to the applicable leases and the sale guidelines approved by the Court in connection with the Second Liquidation Process remains an unresolved issue. In the Monitor’s view, this matter can be resolved in connection with the Claims Process.

*Real Estate Sale Process*

47. As part of the SISP, Sears Canada, with the assistance of BMO Nesbitt Burns Inc., as financial advisor, (“**BMO**”) sought offers for the purchase of Sears Canada’s remaining owned real property.

48. Expressions of interest were received for Sears Canada's owned real property by the August 31<sup>st</sup> bid deadline under the SISP.
49. Subsequent to the bid deadline, two transactions for real estate owned by Sears Canada were approved by the Court and completed. These transactions were for the sale of the Winnipeg Garden City location and the Upper Canada Home Store location.
50. While expressions of interest were received for certain of Sears Canada's remaining real estate assets, Sears Canada determined, in consultation with BMO and the Monitor, that the best opportunities to monetize the remaining real estate assets would be available only after additional due diligence materials, including environmental studies, were completed and were made available to potential purchasers.
51. Sears Canada continues to own the following real estate assets:
  - (a) Upper Canada Mall full-line store (Newmarket, ON)
  - (b) Distribution center (Belleville, ON)
  - (c) Fleur de Lys full-line store (Quebec City, QC)
  - (d) Windsor full-line store (Windsor, ON)
  - (e) Peterborough full-line store (Peterborough, ON)
  - (f) Barrie full-line store (Barrie, ON)
  - (g) Trois-Rivières full-line store (Trois-Rivières, QC)
  - (h) Place Vertu liquidation store (Montréal, QC)
  - (i) Lévis full-line store (Lévis, QC);
  - (j) Charlottetown store (Charlottetown, PEI)

- (k) Chicoutimi residual land (Chicoutimi, QC); and
- (l) Edmonton residual land (Edmonton, AB)

(collectively, the “**Remaining Real Estate Assets**”).

52. As of February 7, 2018, the additional required due diligence information had been obtained and Sears Canada, in consultation with BMO and the Monitor, determined that the sale process for the Remaining Real Estate Assets should continue.
53. On February 7, 2018, BMO delivered an updated sale process letter (the “**Updated Sale Process Letter**”) to those parties who previously expressed an interest in the Remaining Real Estate Assets under the SISP. BMO also delivered the Updated Sale Process Letter to potentially interested parties identified by the real estate advisor to the Superintendent. The Updated Sale Process Letter solicits bids for all of the Remaining Real Estate Assets other than the assets located in Charlottetown, Edmonton and Chicoutimi. The Updated Sale Process Letter provides a bid deadline of March 7, 2018 at 5:00 p.m. (Eastern).
54. A separate sale process has been commenced for the assets located at Charlottetown, Edmonton and Chicoutimi. The assets at these locations will be marketed under an Exclusive Sales Listing Agreement with CBRE Limited pursuant to which CBRE Limited would act as sale advisor. This alternative structure was selected for the Charlottetown, Edmonton and Chicoutimi assets as Sears Canada determined, in consultation with BMO, the Monitor, Pension Representative Counsel, Employee Representative Counsel, the Superintendent and the Plan Administrator, and their respective financial and/or real estate advisors, that these assets could be sold separately and likely in a more expedited manner without affecting bids for the other Remaining Real Estate Assets. CBRE Limited was selected as the appropriate agent following a competitive bid process.
55. As noted above, Employee Representative Counsel, Pension Representative Counsel, the Superintendent, the Plan Administrator and their respective advisors have been consulted extensively in the development of the updated process to market

the Remaining Real Estate Assets. These parties were identified as appropriate consultation parties by Sears Canada and the Monitor as they represent a large and coordinated portion of the unsecured creditor class and would not have conflicting interests as they would have no interest in acquiring any of the Remaining Real Estate Assets for their own benefit. All of these consultation parties have entered into non-disclosure agreements with Sears Canada.

#### *Residual Asset Sales*

56. The Applicants have now completed sales of a substantial portion of the residual assets located at their premises, including transactions approved pursuant to the Omnibus Approval and Vesting Order granted on December 8, 2017. However, in many cases purchasers must still collect their purchased assets from Sears Canada's locations.

#### *Employee Matters*

57. Following the completion of the Second Liquidation Process, the remaining number of employees of Sears Canada was significantly reduced. As of the date of this Fourteenth Report, the Applicants have 82 remaining employees. The Monitor expects that the number of employees will continue to decrease in the near future.
58. Payments have been made under the amended Key Employee Retention Plan ("KERP") approved by the Court on October 18, 2017 to the extent applicable and where performance and other approved thresholds were achieved.
59. In addition to payments under the amended KERP, on or about January 19, 2018, Sears Canada identified five additional employees whose services were necessary for the completion of data retention, archiving, server migration and certain human resources and other aspects of the wind down of the Sears Canada business. Sears Canada offered those employees retention and incentive payments in an aggregate amount of \$80,000. The Monitor reviewed the proposed payments and the contributions and circumstances of the proposed recipients of those payments. The Monitor supported the payment of these incentive and retention amounts. The

Monitor notes that the Applicants did not seek to include these individuals in the key employee retention program previously approved by the Court and did not seek to have the obligations to these employees secured by the Court-ordered charge established in connection with the KERP.

*Pension Wind-Up*

60. The Monitor has previously reported that on November 10, 2017, the Superintendent issued a Notice of Intended Decision advising that it intended to make an order for the wind up of the Sears Canada Pension Plan, effective October 1, 2017 unless a request for hearing with the Financial Services Tribunal (the “FST”) was submitted within 30 days of the Notice of Intended Decision.
  61. On December 7, 2017, counsel to 1291079 Ontario Limited (“129”), a creditor of Sears Canada Inc., delivered a letter to the Service List identifying a concern that the proposed wind-up of the Sears Canada Pension Plan may have the effect of altering priorities among creditors. The Monitor understands 129 delivered a Request for Hearing Form to the FST requesting a hearing to challenge the intended decision to wind up the Sears Canada Pension Plan. On or about February 6, 2018, 129 delivered its pre-hearing conference brief in the FST proceeding. A copy of the brief, without attachments, is attached as **Appendix “C”**.
  62. Both Sears Canada and the Monitor have applied for party status in connection with the proposed hearing on the Notice of Intended Decision.
  63. A pre-hearing conference has been scheduled by the FST for March 21, 2018 in connection with 129’s request for hearing.
- F. RECEIPTS AND DISBURSEMENTS FOR THE SIX WEEK PERIOD ENDING FEBRUARY 17, 2018**
64. The Sears Canada Group’s actual net cash inflow on a consolidated basis for the six-week period ended February 17, 2018 was approximately \$29.1 million, compared to a forecast net cash outflow of \$60.3 million resulting in a positive variance of approximately \$89.4 million as indicated in the table below:

| VARIANCE REPORT                                | Actual  | Forecast      | Variance    |
|--|---|---------------|-------------|
| (CAD in Millions)                              | <b>For the 6 Week Period Ending<br/>February 17, 2018</b> |               |             |
| <b>Receipts</b>                                | <b>67.7</b>   | <b>5.4</b>    | <b>62.3</b> |
| <b>Operating Disbursements</b>                 |   |               |             |
| Payroll and Employee Related Costs             | (14.5)  | (15.9)        | 1.4         |
| Merchandise Vendors                            | 7.2   | -             | 7.2         |
| Non-Merchandise Vendors                        | (6.2)   | (13.9)        | 7.7         |
| Rent and Property Taxes                        | (2.6)   | (4.7)         | 2.1         |
| Sales Taxes                                    | (17.9)  | (17.9)        | -           |
| IT Costs                                       | (7.5)   | (8.1)         | 0.6         |
| Recovery of Expenses from Agent                | 9.7   | 3.8           | 5.9         |
| <b>Total Operating Disbursements</b>           | <b>(31.8)</b>   | <b>(56.7)</b> | <b>24.9</b> |
| <b>Net Operating Cash Inflows / (Outflows)</b> | <b>35.9</b>   | <b>(51.3)</b> | <b>87.2</b> |
| Professional Fees                              | (6.8)   | (9.0)         | 2.2         |
| <b>Net Cash Inflows / (Outflows)</b>           | <b>29.1</b>   | <b>(60.3)</b> | <b>89.4</b> |
| <b>Cash</b>                                    |   |               |             |
| Beginning Balance                              | 84.2  | 84.2          | -           |
| Net Cash Inflows / (Outflows)                  | 29.1  | (60.3)        | 89.4        |
| <b>Ending Balance</b>                          | <b>113.3</b>  | <b>23.9</b>   | <b>89.4</b> |

65. Explanations for the key variances are as follows:

- (a) the positive variance of \$62.3 million in receipts consists of: (i) a positive timing difference of \$45.3 million primarily due to earlier-than-forecast receipt of the undisputed portion of the remaining guaranteed amount from the third-party liquidator agent and certain working capital adjustments relating to asset sales pending final reconciliation; and (ii) a positive permanent difference of \$17.0 million primarily due to the final reconciliation of liquidation sales receipts, miscellaneous asset sales, and FF&E sales not contemplated in the forecast;
- (b) the positive variance in Payroll and Employee Related Costs of \$1.4 million consists primarily of a timing difference that is expected to reverse in a future period;

- (c) the positive variance in Merchandise Vendor disbursements of \$7.2 million consists of a permanent difference due to refunds received from vendor deposits and partial recovery of cash collateral held by the lenders relating to LCs which was not contemplated in the forecast;
  - (d) the positive variance in Non-Merchandise Vendor disbursements of \$7.7 million consists of a timing difference of \$5.4 million that is expected to reverse in a future period, and a permanent difference of \$2.3 million primarily due to lower-than-forecast vendor payments and refunds received from vendor deposits;
  - (e) the positive variance in Rent and Property Taxes of \$2.1 million consists of a timing difference of \$1.8 million that is expected to reverse in a future period and a permanent difference of \$0.3 million due to lower-than-forecast rent and property tax payments;
  - (f) the positive variance in IT Costs of \$0.6 million is primarily a timing difference that is expected to reverse in a future period;
  - (g) the positive variance in Recovery of Expenses from Agent of approximately \$5.9 million consists of a permanent difference primarily due to higher-than-forecast reimbursements from the Agent after the final reconciliation of expenses in respect of the Second Liquidation Process; and
  - (h) the positive variance in Professional Fees of \$2.2 million is primarily a timing variance that is expected to reverse in a future period.
66. The Sears Canada Group's cumulative receipts and disbursements since the commencement of CCAA proceedings until the week ended February 17, 2018 are reflected in the table below:

| <b>CUMULATIVE RECEIPTS AND DISBURSEMENTS</b>               |                |
|--|----------------|
| (CAD in Millions)  |                |
| <b>For the 35 Week Period Ending<br/>February 17, 2018</b> |                |
| <b>Receipts</b>  | <b>1,207.4</b> |
| <b>Operating Disbursements</b>                             |                |
| Payroll and Employee Related Costs                         | (255.1)        |
| Merchandise Vendors  | (295.4)        |
| Non-Merchandise Vendors                                    | (170.3)        |
| Rent and Property Taxes                                    | (82.1)         |
| Sales Taxes  | (68.3)         |
| Pension  | (14.7)         |
| IT Costs   | (24.4)         |
| Recovery of Expenses from Agent                            | 83.6           |
| Capital Expenditures                                       | (0.8)          |
| <b>Total Operating Disbursements</b>                       | <b>(827.5)</b> |
| <b>Net Operating Cash Inflows / (Outflows)</b>             | <b>379.9</b>   |
| Professional Fees  | (55.2)         |
| Repayments of Existing Credit Facilities                   | (283.3)        |
| DIP Fees and Interest Paid                                 | (19.7)         |
| <b>Net Cash Inflows / (Outflows)</b>                       | <b>21.7</b>    |
| <b>Cash</b>  |                |
| Beginning Balance  | 126.5          |
| Net Cash Inflows / (Outflows)                              | 21.7           |
| DIP Draws / (Repayments)                                   | (32.0)         |
| Others incl. FX Valuation                                  | (2.9)          |
| <b>Ending Balance</b>                                      | <b>113.3</b>   |

67. The Initial Order allowed the Sears Canada Group to continue to utilize their existing Cash Management System as described in the First Wong Affidavit and the pre-filing report of the Monitor. After the commencement of the CCAA Proceedings, the Sears Canada Group has continued to utilize its Cash Management System in a manner consistent with past practice.

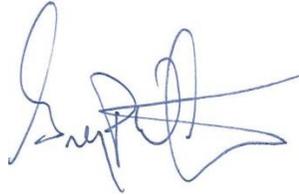
The Monitor respectfully submits to the Court this, its Fourteenth Report.

Dated this 1st day of March, 2018.

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

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style with a large initial "P".

Paul Bishop  
Senior Managing Director

A handwritten signature in blue ink that reads "Greg Watson". The signature is written in a cursive style with a large initial "G".

Greg Watson  
Senior Managing Director

**Appendix “A”**

**Draft Form Of Litigation Investigator Order**

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

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

|                    |   |                             |
|--------------------|---|-----------------------------|
| THE HONOURABLE MR. | ) | FRIDAY, THE 2 <sup>nd</sup> |
|                    | ) |                             |
| JUSTICE HAINEY     | ) | DAY OF MARCH, 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  
QUÉBEC INC., 191020 CANADA INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA  
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

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

**LITIGATION INVESTIGATOR ORDER**

**THIS MOTION**, made by Representative Counsel to the court-appointed Representatives of employees and retirees with respect to pension and post-retirement benefits of the Applicants (“**Retiree Representative Counsel**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, (the “**CCAA**”) for an order appointing a Litigation Investigator to identify and report on certain rights and claims of the Applicants and SearsConnect (collectively, the “**Sears Canada Entities**”) and/or any creditors of the Sears Canada Entities, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of William Turner sworn on February 12, 2018 including the exhibits thereto, the Affidavit of William Turner sworn on August 11, 2017, including the exhibits thereto, the Monitor's Fourteenth Report to the Court dated March 1, 2018, and on hearing the submissions of Retiree Representative Counsel, Representative Counsel for the employees of the Sears Canada Entities ("**Employee Representative Counsel**"), counsel for the Applicants, counsel for the Monitor, and such other counsel for various creditors and stakeholders as were present, no one else appearing although duly served as appears from the Affidavit of Service of Veronica de Leoz, sworn February 12, 2018:

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 Lax O'Sullivan Lisus Gottlieb LLP is hereby appointed as Litigation Investigator (the "**Litigation Investigator**") in these CCAA proceedings for the benefit of the estates of the Sears Canada Entities and its creditors. The Litigation Investigator shall be an officer of this Court, and is appointed for the purpose of investigating, considering, and reporting to the Creditors' Committee (defined below), regarding any rights or claims, whether legal, equitable, statutory or otherwise, that the Sears Canada Entities and/or any creditors of any of the Sears Canada Entities may have as against any parties, including but not limited to current and former directors, officers, shareholders and advisors of any of the Sears Canada Entities (the "**Mandate**"). For greater certainty, the Litigation Investigator may investigate any and all claims regardless of whether such claims have been included by creditors' proofs of claims filed pursuant to the Claims Procedure Order and E&R Claims Procedure Order (defined below), however, the Litigation Investigator shall have no role in determining, advising

on, opposing, supporting, or articulating any claim of any creditor or stakeholder in the Claims Process, as defined in the Order of this Court dated December 8, 2017 as amended by Order dated February 22, 2018 or as further amended by Order of the Court (as amended, the “**Claims Procedure Order**”) or any Claim as defined in the Employee and Retiree Claims Procedure Order dated February 22, 2018 (the “**E&R Claims Procedure Order**”) and shall have no role in the distribution or allocation of estate funds.

**Litigation Investigator Reporting**

3. **THIS COURT ORDERS** that the Litigation Investigator’s Mandate shall include reporting to the Creditors’ Committee with such details as the Litigation Investigator considers advisable (all such reporting being collectively defined herein as the “**Report**”), taking into account any concerns of privilege and confidentiality. All Reports by the Litigation Investigator and all communications among the Creditors’ Committee members and the Litigation Investigator shall be subject to common interest privilege. A Report by the Litigation Investigator will include recommendations regarding a proposed litigation plan that includes, but is not limited to:

- (a) those potential rights or claims of the Sears Canada Entities or any creditors of the Sears Canada Entities that should be pursued (if any); and
- (b) describing how and by whom such rights or claims (if any) can best be pursued or continued, including, but not limited to:

- (i) the coordination of the prosecution of such rights or claims with similar or related facts, rights or other claims that may be asserted by different parties;
- (ii) if necessary or desirable, a proposed governance structure for the Creditors' Committee created pursuant to this Order (or as same may be amended, expanded or reconstituted in future, in accordance with the terms of this Order) for the purpose of providing input to the Litigation Investigator in the prosecution of such rights, claims or causes of action; and
- (iii) consideration as to the various options available for funding the prosecution of such rights, claims or causes of action.

A confidential briefing ("**Investigator Briefing**") regarding all Reports prepared by the Litigation Investigator shall be given to the Monitor; provided that such Investigator Briefing shall be kept confidential by the Monitor and shall remain subject to privilege.

4. **THIS COURT ORDERS** that following delivery of a Report to the Creditors' Committee in accordance with its Mandate, the Litigation Investigator shall not take any further steps without a further Order of the Court. For greater certainty, nothing herein shall prevent the Litigation Investigator from seeking an Order of the Court authorizing it to pursue any claims identified pursuant to the Mandate.

**The Committee**

5. **THIS COURT ORDERS** that the Litigation Investigator shall fulfil his Mandate in consultation with a creditors' committee (the "**Creditors' Committee**") comprised of no more than seven (7) members at any one time appointed by, or on behalf of the following creditor groups of the Sears Canada Entities: (i) Retiree Representative Counsel; (ii) Employee Representative Counsel; (iii) landlords; (iv) Hometown Dealers Class Action plaintiff counsel; (v) Morneau Shepell Ltd. in its capacity as Administrator for the Sears Canada Inc. Registered Retirement Plan; (vi) the Ontario Superintendent of Financial Services as Administrator of the Pension Benefits Guarantee Fund; and (vii) such other unsecured creditors of the Sears Canada Entities not represented in (i) through (vi) above as the majority of the Creditors' Committee may agree be included, in consultation with the Monitor, or as may be directed by the Court. The Creditors' Committee and the Litigation Investigator shall cooperate with the Monitor, and the Monitor shall cooperate with the Litigation Investigator and the Creditors' Committee in connection with the Mandate. The Creditors' Committee shall consult with and provide input to the Litigation Investigator with respect to the Mandate.

6. **THIS COURT ORDERS** that each member of the Creditors' Committee (including any alternates or replacements from the same stakeholder group as may be appointed by an existing member) may be a creditor itself or counsel/advisor representing that stakeholder interest, but in either case each member shall execute a Confidentiality Agreement in a form acceptable to the Litigation Investigator, the Sears Canada Entities and the Monitor prior to being entitled to participate in any discussions or meetings of the Creditors' Committee, receive any information from the Monitor, the Litigation Investigator or any other member of the Creditors' Committee, or to receive the Report. The Litigation Investigator will meet with the Creditors' Committee at least monthly, or such other times as may be agreed by the Litigation Investigator and the

Creditors' Committee. Meetings will only be conducted in person, to ensure the confidentiality of all discussions.

7. **THIS COURT ORDERS** that the Monitor shall provide to the Litigation Investigator (and, upon execution of appropriate Confidentiality Agreements, for delivery by the Litigation Investigator to the Creditors' Committee) a confidential briefing regarding the "Transactions of Interest" as identified in the Monitor's 11<sup>th</sup> Report to the Court (the "**Monitor Briefing**"). The Monitor's delivery of the Monitor Briefing pursuant to the terms of this Order shall be subject to common interest privilege and strict confidentiality, and the Monitor is protected for so doing pursuant to section 142 of the *Courts of Justice Act* (Ontario). In the event of any concerns being raised regarding the delivery by the Monitor of any particular aspect of the Monitor Briefing that cannot be resolved without breaching the underlying basis for the concern, such concerns shall be resolved following a review by an independent party appointed by the Monitor and the Litigation Investigator (or, absent agreement on the identity of such party, by the Court).

8. **THIS COURT ORDERS** that, for greater certainty, any right, claim or cause of action identified by the Litigation Investigator as capable of being advanced and that is advanced with approval of the Court, whether by the Litigation Investigator or otherwise, may be removed from the claims process established under the Claims Procedure Order or the E&R Claims Procedure Order.

9. **THIS COURT ORDERS** that the Claims Procedure Order is hereby amended as follows:

- (i) subparagraph (vii) in the definition of "Excluded Claim" is hereby amended to read as follows: "Claim that may be asserted by any of the Sears Canada Entities or that

are advanced by the Litigation Investigator or any creditors, in each case, as may be permitted or directed by further Order of the Court, against the Sears Canada Entities or any Directors and/or Officers, which for greater certainty shall include any Claim that may be identified, reviewed or investigated as part of the Litigation Investigator's Mandate (as defined in an Order of the Court dated March 2, 2018)".

10. **THIS COURT ORDERS** that the E&R Claims Procedure Order is hereby amended as follows:

- (i) the definition of "Excluded Claim" is hereby amended to add a new subparagraph (vi) that shall read as follows: "Claim that is advanced by the Litigation Investigator or any creditors, in each case, as may be permitted or directed by further Order of the Court, against the Sears Canada Entities or any Directors and/or Officers, which for greater certainty shall include any Claim that may be identified, reviewed or investigated as part of the Litigation Investigator's Mandate (as defined in an Order of the Court dated March 2, 2018)".

**Litigation Investigator Costs**

11. **THIS COURT ORDERS** that the Litigation Investigator shall be paid from the funds of the Applicants its reasonable fees and disbursements, including the fees of any counsel retained by the Litigation Investigator in respect of the Mandate, the amount of which is not to exceed a budget approved by the Creditors' Committee in consultation with the Monitor prior to the Litigation Investigator commencing work in respect of fulfilling its Mandate in accordance with this Order. The Litigation Investigator and any counsel it retains shall be paid forthwith upon rendering fully-redacted versions of their accounts to the Applicants and the Monitor. Un-

redacted versions of accounts rendered by the Litigation Investigator shall be made available to the Creditors' Committee and, upon request of the Court and subject to a sealing order to protect privilege and confidentiality, to the Court. In the event of any disagreement with respect to a proposed budget, any requested increased to such budget, or any accounts rendered by the Litigation Investigator, such disagreement may be remitted to this Court for determination.

12. **THIS COURT ORDERS** that the Litigation Investigator shall be entitled to the benefit of the Administrative Charge, as defined in the Initial Order issued by the Court dated June 22, 2017 as amended, for the Litigation Investigator's costs, as security for its professional fees, taxes, and disbursements reasonably incurred.

13. **THIS COURT ORDERS** that the Litigation Investigator is hereby authorized to take all appropriate steps and do all appropriate acts necessary or desirable to carry out its Mandate in accordance with the terms of this Order.

14. **THIS COURT ORDERS** that the Litigation Investigator shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its Mandate or any variation or expansion of the powers and duties of the Litigation Investigator, which shall be brought on at least seven (7) business days' notice to the Service List in these CCAA proceedings, unless this Court orders otherwise.

15. **THIS COURT ORDERS** that the Litigation Investigator shall have no personal liability or obligations as a result of the performance of its duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct. The Creditors' Committee members shall have no liability or obligations as a result of their

participation on the Creditors' Committee or in providing input to the Litigation Investigator, save and except for liability arising out of gross negligence or wilful misconduct.

16. **THIS COURT ORDERS** that no action or proceeding may be commenced against the Litigation Investigator or any Creditors' Committee member in respect of the performance of its or their duties under this Order without leave of this Court on seven (7) business days' notice to the Litigation Investigator and the Creditors' Committee.

17. **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) (the "**BIA**") in respect of any of the Applicants and any bankruptcy order issued pursuant to such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the provisions of this Order shall be binding on any Investigator in bankruptcy or receiver that may be appointed in respect of any of the Applicants and any payments of fees and disbursements made to the Litigation Investigator in accordance with this Order shall not be void or voidable by creditors of any of the Applicants, nor shall any such payments constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or any reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. **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 Litigation Investigator 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 Litigation Investigator as may be necessary or desirable to give effect to this Order, or to assist the Litigation Investigator in carrying out the terms of this Order.

---

**HAINY, J.**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041, ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an "Applicant", and collectively, the "Applicants")

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

Proceeding commenced at Toronto

**LITIGATION INVESTIGATOR ORDER**

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Representative Counsel for the Non-Unionized Retirees  
and Non-Unionized Active and Former Employees of the  
Sears Canada Entities

**Appendix “B”**  
**Endorsement**

# Endorsement

**THIS COURT ORDERS** that the Claims Procedure Order issued by this Court on December 8, 2017 shall be and is hereby amended by adding the following after paragraph 47:

47A. Notwithstanding anything else in this Order, the claims bar date in respect of any litigation claims against any of the Sears Canada Entities and/or the Directors or Officers, save and except and expressly excluding any claim in respect of which a statement of claim or similar originating process has been issued prior to the Filing Date other than the two claims issued by Sotos LLP bearing court file numbers 3769/13 CP and 4114/15 (collectively, the "**Litigation Claims**") that may be asserted by a Claimant or by any litigation officer appointed by this Court for the benefit of any creditors of the Sears Canada Entities ("**Litigation Officer**"), shall be April 2, 2018.

3H

OR  
TRUSTEE

*Hainley J*

*February 27, 2018*

**Appendix “C”**

**Pre-hearing Conference Brief**

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., 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 LIMTIED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. and 3339611 CANADA INC.**

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

**PRE-HEARING CONFERENCE BRIEF  
OF 1291079 ONTARIO LIMITED  
(Scheduled for March 21, 2018)**

February 6, 2018

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Lawyers for 1291079 Ontario Limited

## INTRODUCTION

1. The applicant, 1291079 Ontario Limited (“**129**”), is filing this pre-hearing conference brief in response to a notice of pre-hearing conference dated January 16, 2018.

2. 129 is a representative of a class comprised of Sears Home Dealers in a claim brought under the provisions of the *Class Proceedings Act*, S.O. 1992, c. 6. This class was certified by Order of the Honourable Mr. Justice Gray dated September 8, 2014. The class claims \$100 million in damages against Sears Canada Inc. (“**Sears**”).

3. The hearing requested in this proceeding relates to a Notice of Intended Decision dated November 10, 2017 (“**Notice**”) issued by the Superintendent of Financial Services (“**Superintendent**”). The Superintendent intended to make an order in respect of the Sears Canada Inc. Registered Retirement Plan Registration No. 0360065 (the “**Plan**”) under Section 69 of the Pension Benefits Act (the “**PBA**”), and in particular, sought to make an order:

- (a) Winding up the Plan effective October 1, 2017, which would include all members of the Plan whose employment was terminated on or after June 13, 2017, pursuant to Section 69(1)(b) of the PBA; and
- (b) Requiring the contributions towards the defined contribution component of the Plan to continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind-up of the Plan.

### **Notice of Intended Decision - Tab 1**

4. On June 22, 2017, Sears was granted protection under the *Companies’ Creditors’ Arrangement Act* (the “**CCAA**”) pursuant to the Order of the Honourable Mr. Justice Hainey

(“**Initial Order**”). The Initial Order contains the usual provisions staying any actions, claims or proceedings as against Sears and its related entities (“**Applicants**”).

**Initial Order dated June 22, 2017 - Tab 2**

5. The stay of proceedings in the Initial Order was extended by further Order of the CCAA Court from time to time. Most recently, Justice Hailey extended the stay period to and including April 27, 2018.

6. Representative counsel to the court-appointed representatives of employees and retirees with respect to pensions and post-retirement benefits of the Applicants brought a motion to the CCAA Court, initially returnable on August 18, 2017. This motion sought an order directing Sears to wind-up the Plan either in its entirety or with respect to the defined benefit component effective as of October 1, 2017, and to take all necessary steps for the orderly wind-up of the Plan, including the continuation of payment of pension benefits without interruptions during the wind-up process.

**Notice of Motion re Wind-up returnable August 18, 2017 - Tab 3**

7. On September 12, 2017, the CCAA Judge, Mr. Justice Hailey, adjourned the retirees’ pension plan wind-up motion, *sine die*, returnable by any party on two days’ notice, to be heard not earlier than November 30, 2017, but otherwise to proceed as expeditiously as possible.

**Endorsement of Mr. Justice Hailey dated September 12, 2017 - Tab 4**

8. On December 7, 2017, 129 requested a hearing before the Financial Services Tribunal.

**Request for Hearing dated December 7, 2017 - Tab 5**

## MATTERS IN ISSUE

(A) Does the CCAA Court have exclusive jurisdiction to deal with the pension wind-up? Yes. The “single proceeding” principle dictates that all issues relating to a debtor company should be resolved in a single forum under the supervision of the CCAA Court.

(B) Are the proceedings headed to be instituted by the Superintendent before the Financial Services Tribunal stayed by the Initial Order in the CCAA process? Yes. The Notice issued by the Superintendent is a proceeding that is caught and stayed by the CCAA process.

### Single Proceeding is Preferred

9. A central and essential feature of insolvency proceedings is the single proceeding model, which is premised on the “public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse.”<sup>1</sup>

10. The “single proceeding” principle provides that all issues relating to a debtor’s insolvency should be decided in a single forum by the presiding CCAA judge. This principle has been endorsed by the Supreme Court of Canada on more than one occasion.

11. In *Eagle River International Ltd., Re*, the issue before the Supreme Court was whether a claim by a bankruptcy trustee for recovery of assets under a contract governed by British Columbia law should be transferred to British Columbia, or be dealt with by the Quebec bankruptcy court.

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<sup>1</sup> *Eagle River International Ltd., Re*, 2001 SCC 92 (“**Eagle River**”), para. 27 - **Tab 6**.

12. In finding that the Quebec bankruptcy court had jurisdiction over the matter, the Supreme Court stated:

In the present case, we are confronted with a federal statute that *prima facie* establishes one command centre or “single control”...for all proceedings related to the bankruptcy (s. 183(1)). Single control is not necessarily inconsistent with transferring particular disputes elsewhere, but a creditor (or debtor) who wishes to fragment the proceedings, and who cannot claim to be a “stranger to the bankruptcy” has the burden of demonstrating “sufficient cause” to send the trustee scurrying to multiple jurisdictions...The [BIA] is concerned with the economy of winding up the bankrupt estate, even at the price of inflicting additional cost on its creditors and debtors.<sup>2</sup>

13. In *Century Services*, the Supreme Court of Canada reiterated the importance of resolving all issues before a single proceeding in the CCAA context:

While insolvency proceedings may be governed by different statutory schemes, they share some commonalities. The most prominent of these is the single proceeding model. The nature and purpose of the single proceeding model are described by Professor Wood in *Bankruptcy and Insolvency Law*:

They all provide a collective proceeding that supersedes the usual civil process available to creditors to enforce their claims. The creditors’ remedies are collectivized in order to prevent the free-for-all that would otherwise prevail if creditors were permitted to exercise their remedies. In the absence of a collective process, each creditor is armed with the knowledge that if they do not strike hard and swift to seize the debtor’s assets, they will be beat out by other creditors.

The single proceeding model avoids the inefficiency and chaos that would attend insolvency if each creditor initiated proceedings to recover its debt. Grouping all possible actions against the debtor into a single proceeding controlled in a single forum facilitates negotiation with creditors because it places them all on equal footing, rather than exposing them to the risk that a more aggressive creditor will realize its claims against the debtor’s limited assets while the other creditors attempt a compromise. With a view to achieving that purpose, both the CCAA and the BIA allow a court to order all actions against a debtor be stayed while a compromise is sought.<sup>3</sup>

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<sup>2</sup> Eagle River, *ibid.*, para. 77.

<sup>3</sup> *Ted Leroy Trucking Ltd.*, 2010 SCC 60, para. 22 - **Tab 7**.

14. Representative counsel for the pensioners has already brought a motion before the CCAA Court seeking an Order effectuating the orderly wind-up of the Plan, which is still pending before the Court. Justice Hainey has already asserted jurisdiction over issues relating to the Plan, and the single proceeding model favours an approach that would see these issues being determined before the supervising judge.

### **Superintendent's actions are stayed**

15. Additionally, the CCAA stay of proceedings has been described as “the engine that drives a broad and flexible statutory scheme.”<sup>4</sup>

16. In *Nortel Networks Corp., Re*, the Court considered whether the pensions regulator under the Pensions Act 2004 (U.K.) violated the stay of proceeding by issuing a warning notice to the debtor companies. The notice had the effect of initiating a process that would result in a financial support direction (“**FSD**”) from the regulator, which requires a party to put financial supports in place for an underfunded pension scheme. In finding that the warning notice breached the stay of proceedings under the Initial Order, Justice Morawetz emphasized that the CCAA Court retains “...the ability to control its own process including litigation against CCAA debtors and claims procedures within a CCAA process.”<sup>5</sup>

17. The Court in *Nortel* held that the actions taken by the pension regulator were null and void because it did not comply with the Initial Order by obtaining the consent of the parties or leave of the Court to issue the warning notice.

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<sup>4</sup> *Nortel Networks Corp. Re*, 2010 ONSC 1304, para. 34, quoting *Stelco Inc., Re*, 2005 CarswellOnt 1188, para. 36 – **Tab 8**.

<sup>5</sup> *Ibid.*, para. 36 – **Tab 8**.

18. Justice Morawetz made the following comments with respect to the regulator's actions, which are equally applicable to the present circumstances:

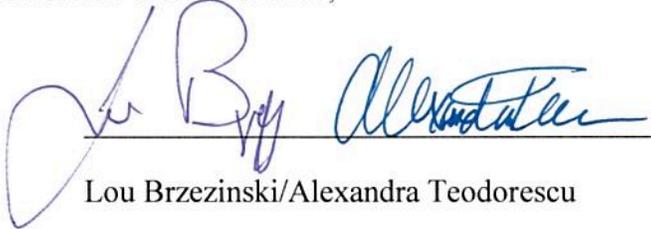
It seems to be that, even though the Notice may be described as a warning shot across the bow, the effect of the Notice in this case is something far more significant. It clearly puts the Applicants and the Monitor on notice that there is a substantial claim that is being considered in the CCAA proceedings.

...

The issuance of an FSD is a remedy by a statute of the United Kingdom...[T]he Notice, naming the Applicants...as "target companies" affects these entities which are clearly within the jurisdiction of this Court...In my view, the Pensions Regulator took steps in Canada in respect of a proceeding. In this context, the Pensions Regulator is, in my view, a person affected by the Initial Order, with which it must comply when it takes any proceedings in Canada.

19. The Superintendent's Notice will impact all creditors in the Applicants' estate and is, therefore, a proceeding that is stayed by the Initial Order. The Superintendent has not obtained the consent of the Applicants or the Monitor, nor has it been granted leave of the Court to issue the Notice. Consequently, the proceedings under the Financial Services Tribunal are stayed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED,**



Lou Brzezinski/Alexandra Teodorescu

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

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**AFFIDAVIT OF KETUL PATEL**

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Lawyers for The Children's Place (Canada), LP

# Tab 3

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

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

|                    |   |                     |
|--------------------|---|---------------------|
| THE HONOURABLE MR. | ) | TUESDAY, THE 16th   |
|                    | ) |                     |
| JUSTICE HAINEY     | ) | DAY OF OCTOBER 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 QUÉBEC INC., 191020 CANADA INC.,  
THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING  
AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC.,  
173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC.,  
10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA  
LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

Applicants

**ORDER**

**THIS MOTION** made by The Children's Place (Canada), LP ("**TCP**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for a declaration that the stay of proceedings (the "**Co-Tenancy Stay**") provided in paragraph 15 of the Initial Order of the Honourable Mr. Justice Hainey dated June 22, 2017, as amended and restated on July 13, 2017 (the "**Initial Order**") and as extended by subsequent orders made in this proceeding, is no longer of any force or effect in accordance with its terms as against TCP, or alternatively, for an order permanently vacating and/or lifting the Co-Tenancy Stay as against TCP, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Ketul Patel, sworn September 6, 2018, and the exhibits attached thereto, and on hearing the submissions of respective counsel for TCP, the Applicants, the Monitor, and such other counsel as were present, and on being advised that the Service List was served with the Motion Record of TCP:

**THIS COURT ORDERS** that, effective from and after October 16, 2018, the Co-Tenancy Stay is hereby no longer of any force or effect in accordance with its terms as against TCP, and as a result, TCP is entitled to exercise any rights *nunc pro tunc* that it may have against its landlords arising from the failure of any of the Applicants to operate in commercial shopping centres or other commercial properties (the “**Co-Tenant Rights**”), in relation to the TCP leases appended hereto as Schedule “A”.

**THIS COURT FURTHER ORDERS** that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of the Co-Tenant Rights by TCP.

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Schedule "A"

| <u>TCP STORE #</u> | <u>TCP LOCATION</u>         | <u>ADDRESS</u>                              | <u>LANDLORD</u>                                       | <u>STATUS OF APPLICANTS' LEASE AT LOCATION</u> |
|--------------------|-----------------------------|---|---|--|
| 3001               | Pickering Town Centre       | 1355 Kingston Road,<br>Pickering            | OPB Realty Inc.                                       | Disclaimed effective<br>January 28, 2018       |
| 3015               | Mall Champlain              | 2151 Lapiniere Boulevard,<br>Brossard       | Cominar Real Estate<br>Investment Trust               | Disclaimed effective<br>January 22, 2018       |
| 3102               | Carlingwood Shopping Centre | 2165 Charling Avenue,<br>Ottawa             | OPB Realty Inc.                                       | Disclaimed effective<br>January 22, 2018       |
| 3103               | Halifax Shopping Center     | 7001 Mumford Road,<br>Halifax               | OPB Realty Inc.                                       | Disclaimed effective<br>January 22, 2018       |
| 3105               | St. Vital Centre            | 1225 St. Mary's Road,<br>Suite 29, Winnipeg | OPB Realty Inc.                                       | Disclaimed effective<br>January 22, 2018       |
| 3108               | Quinte Mall                 | 390 North Front Street,<br>Belleville       | Hoopp Realty Inc.                                     | Disclaimed effective<br>January 28, 2018       |
| 3208               | Cornwall Centre             | 1720 Hamilton Street,<br>Regina             | Cornwall Centre Inc.                                  | Disclaimed effective<br>November 16, 2017      |
| 3209               | Midtown Plaza               | 1st Avenue & 20th Street,<br>Saskatoon      | Midtown Plaza Inc.                                    | Disclaimed effective<br>January 22, 2018       |
| 3218               | Willowbrook Shopping Centre | 19705 Frazer Highway,<br>Langley            | BCIMC Realty Corp -<br>Willowbrook Shopping<br>Centre | Disclaimed effective<br>January 22, 2018       |
| 3226               | The Pen Centre              | 221 Glendale Ave, St.<br>Catharines         | OPB Realty Inc.                                       | Disclaimed effective<br>January 28, 2018.      |

Schedule "A"

|      |                 |  |   |   |
|------|-----------------|--|---|---|
| 3260 | Lansdowne Place | 637 Lansdowne Street<br>West, Peterborough                             | Lansdowne Place Inc.  | Ceased operations January 28, 2018. Property sale approved as per Approval and Vesting Order dated August 20, 2018.     |
| 3261 | Park Place      | 401 - 1st Avenue South,<br>Lethbridge                                  | Park Place Mall Holdings<br>- Park Place Mall   | Disclaimed effective<br>January 22, 2018  |
| 3275 | Aberdeen        | W. Trans Canada Hwy.<br>(Trans Canada 1 & Merritt<br>Hwy. 5), Kamloops | Aberdeen Kamloops Mall<br>Limited   | Disclaimed effective<br>November 16, 2017   |
| 3281 | Cornwall Square | 1 Water Street East,<br>Cornwall                                       | Charter Acquisitions<br>Group, By Partners REIT                                       | Disclaimed effective<br>January 14, 2018  |
| 3290 | Les Rivières    | 2231 Des Récollets Blvd.,<br>Trois-Rivières, Québec                    | Cominar Real Estate<br>Investment Trust / Fonds<br>De Placement Immobilier<br>Cominar | Ceased operations end of<br>January 2018. Location<br>sold on June 20, 2018   |
| 3291 | Place Vertu     | 3075 Thimens Blvd Saint-<br>Laurent                                    | Place Vertu Holdings Inc.   | Ceased operations end of<br>January 2018. Location<br>sold on July 11, 2018   |
| 3294 | Oakville Place  | 240 Leighland Ave,<br>Oakville   | Ivanhoe Cambridge II Inc.   | Lease Surrender<br>Transaction Approved By<br>The Monitor On October<br>2, 2017.  |
| 3299 | Avalon Mall     | 48 Kenmount Road, St.<br>John's  | Crombie Developments<br>Limited   | Lease Surrender<br>Transaction Entered Into<br>On September 21, 2017.<br>Approved By The Monitor<br>On October 2, 2017. |

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

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**ORDER**

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Lawyers for The Children's Place (Canada), LP

# Tab 4

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

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

|                    |   |                     |
|--------------------|---|---------------------|
| THE HONOURABLE MR. | ) | TUESDAY, THE 16th   |
|                    | ) |                     |
| JUSTICE HAINEY     | ) | DAY OF OCTOBER 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 QUÉBEC INC., 191020 CANADA INC.,  
THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING  
AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC.,  
173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC.,  
10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA  
LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

Applicants

**ORDER**

**THIS MOTION** made by The Children's Place (Canada), LP ("**TCP**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for a declaration that the stay of proceedings (the "**Co-Tenancy Stay**") provided in paragraph 15 of the Initial Order of the Honourable Mr. Justice Hainey dated June 22, 2017, as amended and restated on July 13, 2017 (the "**Initial Order**") and as extended by subsequent orders made in this proceeding, is no longer of any force or effect in accordance with its terms as against TCP, or alternatively, for an order permanently vacating and/or lifting the Co-Tenancy Stay as against TCP, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Ketul Patel, sworn September 6, 2018, and the exhibits attached thereto, and on hearing the submissions of respective counsel for TCP, the Applicants, the Monitor, and such other counsel as were present, and on being advised that the Service List was served with the Motion Record of TCP:

**THIS COURT ORDERS** that, effective from and after October 16, 2018, the Co-Tenancy Stay is hereby permanently lifted as against TCP, and as a result, TCP is entitled to exercise any rights *nunc pro tunc* that it may have against its landlords arising from the failure of any of the Applicants to operate in commercial shopping centres or other commercial properties (the “**Co-Tenant Rights**”) in relation to the TCP leases appended hereto as Schedule “A”.

**THIS COURT FURTHER ORDERS** that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of the Co-Tenant Rights by TCP.

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Schedule "A"

| <u>TCP STORE #</u> | <u>TCP LOCATION</u>         | <u>ADDRESS</u>                              | <u>LANDLORD</u>                                       | <u>STATUS OF APPLICANTS' LEASE AT LOCATION</u> |
|--------------------|-----------------------------|---|---|--|
| 3001               | Pickering Town Centre       | 1355 Kingston Road,<br>Pickering            | OPB Realty Inc.                                       | Disclaimed effective<br>January 28, 2018       |
| 3015               | Mall Champlain              | 2151 Lapiniere Boulevard,<br>Brossard       | Cominar Real Estate<br>Investment Trust               | Disclaimed effective<br>January 22, 2018       |
| 3102               | Carlingwood Shopping Centre | 2165 Charling Avenue,<br>Ottawa             | OPB Realty Inc.                                       | Disclaimed effective<br>January 22, 2018       |
| 3103               | Halifax Shopping Center     | 7001 Mumford Road,<br>Halifax               | OPB Realty Inc.                                       | Disclaimed effective<br>January 22, 2018       |
| 3105               | St. Vital Centre            | 1225 St. Mary's Road,<br>Suite 29, Winnipeg | OPB Realty Inc.                                       | Disclaimed effective<br>January 22, 2018       |
| 3108               | Quinte Mall                 | 390 North Front Street,<br>Belleville       | Hoopp Realty Inc.                                     | Disclaimed effective<br>January 28, 2018       |
| 3208               | Cornwall Centre             | 1720 Hamilton Street,<br>Regina             | Cornwall Centre Inc.                                  | Disclaimed effective<br>November 16, 2017      |
| 3209               | Midtown Plaza               | 1st Avenue & 20th Street,<br>Saskatoon      | Midtown Plaza Inc.                                    | Disclaimed effective<br>January 22, 2018       |
| 3218               | Willowbrook Shopping Centre | 19705 Frazer Highway,<br>Langley            | BCIMC Realty Corp -<br>Willowbrook Shopping<br>Centre | Disclaimed effective<br>January 22, 2018       |
| 3226               | The Pen Centre              | 221 Glendale Ave, St.<br>Catharines         | OPB Realty Inc.                                       | Disclaimed effective<br>January 28, 2018.      |

Schedule "A"

|      |                 |  |   |   |
|------|-----------------|--|---|---|
| 3260 | Lansdowne Place | 637 Lansdowne Street<br>West, Peterborough                             | Lansdowne Place Inc.  | Ceased operations January 28, 2018. Property sale approved as per Approval and Vesting Order dated August 20, 2018.     |
| 3261 | Park Place      | 401 - 1st Avenue South,<br>Lethbridge                                  | Park Place Mall Holdings<br>- Park Place Mall   | Disclaimed effective<br>January 22, 2018  |
| 3275 | Aberdeen        | W. Trans Canada Hwy.<br>(Trans Canada 1 & Merritt<br>Hwy. 5), Kamloops | Aberdeen Kamloops Mall<br>Limited   | Disclaimed effective<br>November 16, 2017   |
| 3281 | Cornwall Square | 1 Water Street East,<br>Cornwall                                       | Charter Acquisitions<br>Group, By Partners REIT                                       | Disclaimed effective<br>January 14, 2018  |
| 3290 | Les Rivières    | 2231 Des Récollets Blvd.,<br>Trois-Rivières, Québec                    | Cominar Real Estate<br>Investment Trust / Fonds<br>De Placement Immobilier<br>Cominar | Ceased operations end of<br>January 2018. Location<br>sold on June 20, 2018   |
| 3291 | Place Vertu     | 3075 Thimens Blvd Saint-<br>Laurent                                    | Place Vertu Holdings Inc.   | Ceased operations end of<br>January 2018. Location<br>sold on July 11, 2018   |
| 3294 | Oakville Place  | 240 Leighland Ave,<br>Oakville   | Ivanhoe Cambridge II Inc.   | Lease Surrender<br>Transaction Approved By<br>The Monitor On October<br>2, 2017.  |
| 3299 | Avalon Mall     | 48 Kenmount Road, St.<br>John's  | Crombie Developments<br>Limited   | Lease Surrender<br>Transaction Entered Into<br>On September 21, 2017.<br>Approved By The Monitor<br>On October 2, 2017. |

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

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

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**ORDER**

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*ONTARIO*  
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MOTION RECORD  
(Motion Returnable October 16, 2018)

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