

**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.

**MOTION RECORD OF THE MONITOR
(returnable May 7, 2019)**

May 2, 2019

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3800, P.O. Box 84
Toronto, Ontario M5J 2Z4

Orestes Pasparakis, LSO#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSO#: 41097D

Tel: +1 416.216.4853

Alan Merskey, LSO#: 41377I

Tel: +1 416.216.4805

Evan Cobb, LSO#: 55787N

Tel: +1 416.216.1929

Fax: +1 416.216.3930

orestes.pasparakis@nortonrosefulbright.com

virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

Lawyers to the Monitor, FTI Consulting
Canada Inc.

TO: THE SERVICE LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 9370-2751
QUÉBEC INC., 191020 CANADA INC., THE CUT INC., SEARS
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES
INC., 9845488 CANADA 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

**NOTICE OF MOTION
(Returnable April 5, 2019)**

FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**") in the proceedings of the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List), on April 5, 2019, at 9:30 am or as soon after that time as the motion can be heard, at the courthouse located at 330 University Avenue.

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

THE MOTION IS FOR:

1 A declaration enforcing the terms of settlement outlined in the Settlement Agreement (as defined below);

2 An order for the payment of \$10,000 by Primaris Management Inc. (“**Primaris**”) to Sears Canada Inc. (“**Sears Canada**”);

3 An order abridging the time for service of this Notice of Motion;

4 The costs of this motion on a substantial indemnity basis; and

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

THE GROUNDS FOR THE MOTION ARE:

Introduction

1 The Applicants and SearsConnect (together, the “**Sears Canada Entities**”) were granted protection from their creditors under the CCAA pursuant to the Initial Order of this Court dated June 22, 2017 (as amended and restated, the “**Initial Order**”);

2 FTI Consulting Canada Inc. was appointed in the Initial Order to act as the Monitor in these proceedings;

3 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 Officers and Directors;

Settlement Agreement

4 As a result of mediation and negotiations with various Landlords (as defined in the Claims Procedure Order), settlement has been finalized in respect of all Landlord Claims (as defined in the Claims Procedure Order) filed except with respect to certain landlords represented by Blaney McMurtry LLP (the “**Disputing Landlords**”);

5 The Monitor and the Disputing Landlords resolved 22 Landlord Claims advanced by the Disputing Landlords;

6 The final settlement agreement executed by Blaney McMurtry and the Monitor was served by the Monitor on Blaney McMurtry on December 3, 2018 (the “**Settlement Agreement**”);

7 The Settlement Agreement:

- (a) sets out the agreed formula (“**Formula**”) for the resolution of Disputing Landlord’s Landlord Claims (as defined in the Settlement Agreement); and
- (b) provides that Rent (as defined in the Settlement Agreement) would be calculated:
 - (i) as detailed in the Proofs of Claims filed by the Disputing Landlords; or
 - (ii) if no Rent was detailed in the Disputing Landlords’ Proofs of Claims, as evidenced by the books and records of Sears Canada;

8 Rent was not detailed in the Proofs of Claims filed by the Disputing Landlords;

9 The Settlement Agreement sets out amounts to be paid in resolution of the Landlord Claims advanced by the Disputing Landlords based on the Formula as evidenced by the books and records of Sears Canada;

10 The Disputing Landlords have failed to honour the terms of the Settlement Agreement on the basis that Rent is not to be calculated using the books and records of Sears Canada;

Deduction of Legal Fees

11 Primaris was to return monies advanced to it erroneously by Sears Canada;

12 Primaris deducted \$10,000 from the amount returned to Sears Canada on the basis that it was entitled to legal fees;

13 The Monitor did not agree to a deduction on the basis of legal fees;

14 The Monitor did not authorize similar reductions for other landlords in respect of other erroneous payments;

15 The provisions of the CCAA;

16 Rules 1.04, 2.01, 2.03, 16.06, 37 and 49.09 of the Ontario *Rules of Civil Procedure*,
R.R.O. 1990, Reg. 194, as amended; and

17 Such further and other grounds as counsel may advise.

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

1 The Thirtieth Report of the Monitor dated March 22, 2019; and

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

March 22, 2019

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Orestes Pasparakis, LSO#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSO#: 41097D

Tel: +1 416.216.4853

Alan Merskey, LSO#: 41377I

Tel: +1 416.216.4805

Evan Cobb, LSO#: 55787N

Tel: +1 416.216.1929

orestes.pasparakis@nortonrosefulbright.com

virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

Lawyers for FTI Consulting Canada Inc., as Monitor

TO: **THE SERVICE LIST**

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

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

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

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable April 5, 2019)**

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3800, P.O. Box 84
Toronto, Ontario M5J 2Z4



Orestes Pasparakis, LSO#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSO#: 41097D

Tel: +1 416.216.4853

Alan Merskey, LSO#: 41377I

Tel: +1 416.216.4805

Evan Cobb, LSO#: 55787N

Tel: +1 416.216.1929

Fax: +1 416.216.3930

orestes.pasparakis@nortonrosefulbright.com

virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

Lawyers to the Monitor, FTI Consulting Canada Inc.

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

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

THIRTIETH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

MARCH 25, 2019

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

APPLICANTS

THIRTIETH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

A. OVERVIEW

1. This thirtieth report of the Monitor is provided in connection with a motion brought by the Monitor concerning a settlement agreement executed by the Monitor and the Disputing Landlords (as defined below). The settlement agreement establishes the value of a landlord's claim for distribution purposes and for the purposes of voting on any plan. Substantially all landlords have entered into similar agreements.
2. Two disputes have arisen with respect to the settlement agreement with the Disputing Landlords.
3. First, the agreement provides for the valuation of the Disputing Landlords' rent claims "as detailed in the Proofs of Claims filed by the Landlords, or if no Rent was detailed in the Proofs of Claims, as evidenced by the books and records of [Sears]".

4. The Proofs of Claims filed by the Disputing Landlords did not detail the rent amounts claimed and, therefore, the settlement agreement requires that these rent claims be valued in accordance with the books and records of Sears Canada. The Disputing Landlords are asserting that they are not required to accept the method of calculation set out in the settlement agreement.
5. Second, the Monitor is seeking direction with respect to the withholding by a Disputing Landlord of \$10,000 from a payment made to return to Sears Canada funds unintentionally paid out by Sears Canada through an administrative error in October 2017.
6. The Disputing Landlord deducted \$10,000 in legal costs from the amount it returned. The Monitor asserts that no amount should have been deducted on account of legal costs.

B. INTRODUCTION

7. 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**”.
8. 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 (the “**Stay Period**”); and
 - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).

9. Following the Comeback Motion, the Court extended the Stay Period. In addition, the Court issued an Order approving a sale and investor solicitation process to solicit interest in potential transactions, including investment and liquidation proposals, involving the business, property, assets and/or leases of the Applicants.
10. 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 Officers and Directors.
11. On May 9, 2018, the Court issued an Order approving a process for a mediation among stakeholders with the goal of achieving a resolution of significant claim and distribution matters (the “**Mediation**”) as a preliminary step toward a global resolution of material estate matters. The Mediation commenced on June 13, 2018 with Regional Senior Justice Morawetz as mediator, and by July 26, 2018 resulted in settlements with the majority of landlords other than the Disputing Landlords.
12. By Notice of Motion dated July 23, 2018, Morneau Shepell Ltd. commenced a motion to determine whether (i) Sears Canada is deemed to hold all assets and proceeds therefrom up to the amount due by it in respect of the wind-up of the Sears Canada Registered Retirement Pension Plan (the “**Pension Plan**”), as determined in the actuarial wind up report, in trust for the beneficiaries of the Pension Plan; and (ii) Morneau Shepell has a lien and charge attached to the proceeds of realization of the assets of Sears Canada and certain affiliates as a security for the amounts due to the Pension Plan by Sears Canada (the “**Deemed Trust Motion**”).
13. The Deemed Trust Motion, as varied and expanded by Amended Notice of Motion dated August 24, 2018, was scheduled for November 1 and 2, 2018 but did not proceed due to settlement.
14. The liquidation of assets at Sears Canada’s retail locations is now completed, all retail locations are closed, and leases in respect of such locations have been disclaimed or surrendered back to the landlord. The major assets of the Sears Canada Entities that

remain to be realized upon are the Applicants' remaining owned real estate assets and certain litigation assets.

C. PURPOSE

15. The purpose of this thirtieth report of the Monitor (the "**Report**") is to provide the Court with information regarding a motion (the "**Motion**") by the Monitor in respect of the Final Executed Agreement (as defined below) between the Monitor and the Disputing Landlords, including:
- (a) The application of a provision in the Final Executed Agreement providing that the books and records of Sears Canada would be used for the valuation of Rent (as defined in the Final Executed Agreement) if no Rent was detailed in the Disputing Landlords' Proofs of Claims; and
 - (b) The withholding by a Disputing Landlord of \$10,000 on account of legal costs from a payment returning funds unintentionally paid out by Sears Canada.
16. Subject to the resolution of these issues, there are no outstanding unresolved or disputed Landlord Claims (as defined below) in these proceedings.

D. THE TERM SHEET

17. As a result of the Mediation and negotiations with various Landlords including the Disputing Landlords, settlement has been reached in respect of all Landlord Claims filed.
18. All Landlords with Landlord Claims have agreed to (i) a Landlord Claim Formula Term Sheet dated July 26, 2018 (the "**Term Sheet**"), (ii) a joinder agreement attached to the Term Sheet (the "**Joinder Agreement**"), and (iii) in the case of the Disputing Landlords, a settlement agreement dated November 30, 2018, which incorporates and refers to the Term Sheet and Joinder Agreement and addresses certain other issues.
19. The Term Sheet outlines an agreed valuation formula for certain types of landlord claims.
20. Schedule "A" to the Term Sheet is a list of defined terms. It defines the terms "Agreed Claim Amount", "Company", "Landlord Claim", and "Rent" as follows:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

21. The Term Sheet outlines the following rent formula:

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

(the “**Landlord Claim Formula**” and the amount arrived at pursuant to such formula the “**Agreed Claim Amount**”).

22. As such, the “Rent” to be used in calculating the value of Landlord Claims under the Landlord Claim Formula set out in the Term Sheet is the [REDACTED]:

- (a) “as detailed in the Proofs of Claims filed by the Landlords”; or
- (b) “if no Rent was detailed in the Proofs of Claims, as evidenced by the books and records of” Sears Canada.

23. Schedule “B” to the Term Sheet is the Joinder Agreement to be executed by individual Landlords settling their Landlord Claims (as those terms are defined in the Term Sheet).

24. Among other things, the Joinder Agreement:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. The Term Sheet, Schedule “A” (defined terms), and Schedule “B” (the Joinder Agreement) are attached as **Appendix “A”**.

E. THE DISPUTED SETTLEMENTS

26. Blaney McMurtry LLP (“**Blaney McMurtry**”) represents Bentall Kennedy (Canada) LP, QuadReal Property Group, Primaris Management Inc., Westcliff Management Ltd., Tanurb (Festival Marketplace) Inc., and Cogir Real Estate (collectively, the “**Disputing Landlords**”) in respect of properties formerly occupied by Sears Canada, or otherwise affected by these CCAA proceedings.

27. The Disputing Landlords filed Proofs of Claims in respect of these properties for which the Monitor issued notices of revision and disallowance (“**NORDs**”), and the Disputing Landlords in turn filed notices of dispute (“**NODs**”).

28. The relevant Proofs of Claims, NORDs, and NODs of the Disputing Landlords are included within the two volume “CLAIMS OFFICER ADJUDICATION RECORD (Blaney McMurtry LLP Claims)” dated August 17, 2018, which accompanies this Report.

29. During October and November 2018, Blaney McMurtry and counsel for the Monitor engaged in numerous discussions in an attempt to resolve 22 Landlord Claims advanced by the Disputing Landlords (the “**Blaney Claims**”). The attempts to resolve the Blaney

Claims proceeded with the substantial assistance of Justice Morawetz as mediator, and included a number of attendances by the Monitor and Blaney McMurtry before His Honour.

30. On October 23, 2018, counsel for the Monitor wrote to Blaney McMurtry, noting that the Monitor proposed that the Blaney Claims should be settled in accordance with the Term Sheet as agreed by other landlords. This communication is attached as **Appendix “B”**.
31. On October 24, 2018, Blaney McMurtry responded to the Monitor’s October 23, 2018 communication by requesting the monetary value of each of the 22 Blaney Claims under the Landlord Claim Formula in the Term Sheet. Blaney McMurtry’s October 24, 2018 communication with the Monitor is attached as attached as **Appendix “B”**.
32. Counsel for the Monitor responded to Blaney McMurtry later on October 24, 2018 by attaching a spreadsheet (the “**Spreadsheet**”) which listed for each of the 22 Blaney Claims (i) the amount claimed in the corresponding Proof of Claim, and (ii) the amount recoverable for the claim under the Landlord Claim Formula in the Term Sheet using Sears Canada’s books and records. The Monitor’s October 24, 2018 communication with Blaney McMurtry and the Spreadsheet are attached as **Appendix “B”**.
33. The Spreadsheet listed a total value for all 22 of the Blaney Claims under the Landlord Claim Formula calculated using Sears Canada’s books and records as [REDACTED].
34. By way of email dated November 8, 2018, Blaney McMurtry wrote to counsel for the Monitor stating, among other things, that “[w]e are confident that the aggregate amount recovered to our clients from the adjudication will be at least double the [REDACTED] currently offered”. Blaney McMurtry’s November 8, 2018 communication to the Monitor is attached as **Appendix “C”**.
35. Over the following weeks, counsel for the Monitor and Blaney McMurtry exchanged draft settlement agreements in respect of the Blaney Claims and met with Justice Morawetz in respect of the same.

36. On November 15, 2018, Blaney McMurtry communicated with counsel for the Monitor by email. The email attached (i) the Term Sheet, (ii) Schedule “A” to the Term Sheet (defined terms), (iii) Schedule “B” to the Term Sheet (the Joinder Agreement), and (iv) Blaney McMurtry’s revisions to a proposed settlement agreement in respect of the 22 Blaney Claims (the “**Settlement Agreement**”).
37. Among other things, the Settlement Agreement attached to the November 15, 2018 Blaney McMurtry communication:
- (a) Incorporated the Term Sheet and Joinder Agreement as schedules;
 - (b) Stated that all capitalized but undefined terms in the Settlement Agreement have the meaning ascribed to them in the Term Sheet;
 - (c) Stated that the Disputing Landlords:
 - (i) agree to the valuation of their Landlord Claims “in accordance with the Landlord Claim Formula set out in the Joinder Agreements”;
 - (ii) agree to “deliver executed Joinder Agreements to the Monitor”; and
 - (d) Provided that the Landlord Claim Formula in the Term Sheet would be deemed by the Monitor and the Disputing Landlords to be modified by increasing the amounts explicitly listed therein by [REDACTED] each (the “**Revision**”).
38. Blaney McMurtry’s November 15, 2018 communication to the Monitor and the attached Settlement Agreement are attached as **Appendix “D”**.
39. On November 30, 2018, at 4:21 p.m., Blaney McMurtry sent to the Monitor an amended Settlement Agreement (the “**Amended Settlement Agreement**”) with certain modifications in “track changes”. None of the changes made in the Amended Settlement Agreement modified the terms described in paragraph 37 of this Report. Blaney McMurtry’s 4:21 p.m. communication of November 30, 2018 is attached as **Appendix “E”**.

40. At 6:08 PM on November 30, 2018, Blaney McMurtry sent the Monitor an executed copy of the Amended Settlement Agreement (the “**Blaney Executed Agreement**”). The Blaney Executed Agreement did not modify the terms described in paragraph 37 of this Report. The Blaney Executed Agreement was executed by “John C. Wolf” as “BLANEY MCMURTRY LLP, ON BEHALF OF THE MOVING LANDLORDS”. The initials “JCW” appear on every page of the Blaney Executed Agreement. Blaney McMurtry’s 6:08 p.m. communication of November 30, 2018 and the Blaney Executed Agreement attached thereto are attached as **Appendix “F”**.
41. On December 3, 2018, counsel for the Monitor provided Blaney McMurtry with:
- (a) a copy of the Blaney Executed Agreement countersigned by the Monitor (the “**Final Executed Agreement**”); and
 - (b) Joinder Agreements for each of the 22 Blaney Claims (the “**Final Joinder Agreements**”) listing the agreed settlement amounts calculated using:
 - (i) the Landlord Claim Formula in the Term Sheet;
 - (ii) Sears Canada’s books and records; and
 - (iii) the agreed Revision of [REDACTED] (collectively, the “**Final Amounts**”).
42. The Final Amounts listed in the Final Joinder Agreements totalled [REDACTED] which is [REDACTED] greater than the total amount set out in respect of the Blaney Claims in the Spread Sheet provided to Blaney McMurtry on October 24, 2018, reflecting the agreed Revision of [REDACTED] per Blaney Claim.
43. The Monitor’s December 3, 2018 communication, including the attached Final Executed Agreement and Final Joinder Agreements, is attached as **Appendix “G”**.
44. Later on December 3, 2018, the Monitor wrote to Justice Morawetz, who had been mediating the discussions between the Monitor and Blaney McMurtry in respect of the Blaney Claims, to inform His Honour that settlements were reached with the Disputing Landlords, and that Justice Hainey had been advised of the same. Blaney McMurtry was

copied on this communication. The Monitor's December 3, 2018 communication to Justice Morawetz is attached as **Appendix "H"**.

45. Subsequently on December 3, 2018, Blaney McMurtry responded to the delivery of the Final Executed Agreement and Final Joinder Agreements (which included the Final Amounts) stating that it was confirming that "the matter is settled as per the executed agreement". This Blaney McMurtry email is attached as **Appendix "I"**.
46. On December 10, 2018, Blaney McMurtry wrote to counsel for the Monitor purporting to attach "executed joinder agreements and covering letters of today's date". The December 10, 2018 email attached modified Joinder Agreements for all 22 Blaney Claims (the "**Modified Joinder Agreements**"). In the covering letters accompanying the Modified Joinder Agreements, Blaney McMurtry stated that it had reviewed the Final Amounts in the Final Joinder Agreements that had earlier been delivered by the Monitor and had determined to revise the same.
47. The amounts listed in the Modified Joinder Agreements by Blaney McMurtry were higher than then the total value of the Final Amounts set out in the Final Joinder Agreements by approximately \$18,479,807.
48. Blaney McMurtry's December 10, 2018 communication and the Modified Joinder Agreements are attached as **Appendix "J"**.
49. On December 14, 2018, counsel for the Monitor wrote to Blaney McMurtry with respect to the Modified Joinder Agreements. Among other things, the Monitor stated that:
 - (a) The Final Amounts in the Final Joinder Agreements were agreed in the Final Executed Agreement and had been the basis of negotiations over the past 9 months;
 - (b) Blaney McMurtry had impermissibly altered the agreed upon Final Amounts in the Final Joinder Agreements; and

- (c) Blaney McMurtry’s proposed amendments were directly contradictory to the terms of the Final Executed Agreement, which was binding on the Disputing Landlords.
50. The Monitor’s December 14, 2018 letter is attached as **Appendix “K”**.
51. On December 18, 2018, Blaney McMurtry wrote to counsel for the Monitor that (i) “[w]e disagree completely that there was ever a discussion, never mind an agreement, as to the precise value of our client claims under the formula”, (ii) “[t]here is nothing in the settlement which requires us to accept the Monitor’s calculation”, and (iii) “[t]he settlement agreement is an agreement to accept that the formula will determine our clients claims”. Blaney McMurtry’s December 18, 2018 email is attached as **Appendix “L”**.
52. Counsel for the Monitor wrote to Blaney McMurtry on January 9, 2019 stating, among other things, that the Term Sheet appended to the Final Executed Agreement described the formula for calculating Landlord Claims for Rent, including for those claims where no Rent details were provided in the Proof of Claim, as was the case for the Disputing Landlords. The Monitor’s January 9, 2019 letter is attached as **Appendix “M”**.
53. On March 8, 2019, counsel for the Monitor wrote to Blaney McMurtry stating that the Monitor intended to bring a motion to specifically enforce the Final Executed Agreement. The Monitor’s March 8, 2019 letter is attached as **Appendix “N”**.

F. DEDUCTION OF LEGAL FEES

54. The second point in issue on the Motion concerns the withholding of \$10,000 by a Disputing Landlord on account of legal fees.
55. In October 2017, Sears Canada made a payment in error in the amount of \$418,698.50 to a Disputing Landlord which was to be returned to Sears Canada (the “**Mistaken Payment**”). The Mistaken Payment was not tied to any amount owing to the Disputing Landlord.

56. On May 9, May 22 and October 24, 2018, the Monitor wrote to Blaney McMurtry in respect of the return of the Mistaken Payment, which was to be reconciled against amounts owing to the Disputing Landlord. This correspondence is attached as **Appendix “O”**.
57. The Final Executed Agreement attached as **Appendix “I”** provides that the Disputing Landlord and the Monitor would work together in good faith and with due diligence to reconcile, by no later than December 10, 2018, the Mistaken Payment amount which Sears Canada asserted to be owing to it.
58. On December 10, 2018, Blaney McMurtry wrote to counsel for the Monitor stating that the amount owing to Sears Canada in respect of the Mistaken Payment should be reduced by “our reasonable substantial indemnity costs of addressing these matters”, valued at “\$8,850 plus hst for costs”. Blaney McMurtry’s December 10, 2018 communication is attached as **Appendix “P”**.
59. On December 17, 2018, counsel for the Monitor communicated to Blaney McMurtry that \$10,000 for legal fees should not be deducted from the amount owing in respect of the Mistaken Payment because the Monitor had not agreed to pay the legal fees of any other landlord for similar work in connection with other mistaken payments. The Monitor requested payment of \$291,116.12, which represented the reconciliation of the Mistaken Payment with amounts to be paid to the Disputing Landlord without a deduction for legal fees, by no later than December 21, 2018. The Monitor’s December 17, 2018 letter is attached as **Appendix “Q”**.
60. On January 7, 2019, Blaney McMurtry wrote to counsel for the Monitor, stating that “[i]n general, the Monitor/Sears accounting has not exhibited the kind of consistency our clients require in order to settle the matter just on the basis of” the Monitor’s letter of December 17, 2018. Blaney McMurtry’s January 7, 2019 communication is attached as **Appendix “R”**.
61. On January 11, 2019, counsel for the Monitor wrote to Blaney McMurtry confirming that the amount outstanding in respect of the Mistaken Payment was as stated in the Monitor’s

letter of December 17, 2018, and requested payment by no later than January 18, 2019. The Monitor’s January 11, 2019 letter is attached as **Appendix “S”**.

- 62. On February 19, 2019, Blaney McMurtry wrote to counsel for the Monitor enclosing a cheque in the amount of \$281,116.12. Blaney McMurtry stated that (i) the amount of the cheque was the amount requested by the Monitor “minus \$10,000” and (ii) if the Monitor deposited the cheque, Blaney McMurtry would “take this to represent a definitive determination by the Monitor that there are no further amounts owing”. Blaney McMurtry’s February 19, 2019 letter is attached as **Appendix “T”**.
- 63. On March 8, 2019, counsel for the Monitor wrote to Blaney McMurtry stating that the Monitor had (i) cashed the cheque provided and (ii) was considering bringing a motion to obtain the Court’s direction with respect to the unilateral deduction of \$10,000 on account of legal fees. The Monitor’s March 8, 2019 letter is attached as **Appendix “U”**.
- 64. On March 11, 2019, Blaney McMurtry wrote to counsel for the Monitor stating that “cashing the cheque and continuing the dispute was not an option we provided”. Blaney McMurtry’s March 11, 2019 communication is attached as **Appendix “V”**.
- 65. The return of the \$291,116.12 owed in respect of the Mistaken Payment was a straightforward accounting matter for which no negotiation or legal analysis was required.

The Monitor respectfully submits to the Court this Report.

Dated this 25th day of March, 2019.

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



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

APPENDIX "A"
(see attached)

From: Gauthier, Virginie
Sent: October-22-18 10:35 AM
To: David T. Ullmann; Merskey, Alan
Cc: Pasparakis, Orestes; John C. Wolf; Mr. Paul Bishop; Mr. Greg Watson
Subject: RE: Meeting?
Attachments: CAN_DMS_123567263_v1_Joinder Agreement Form.PDF

Confidential and Without Prejudice

David:

You will find attached to this email the form of term sheet and joinder agreement that other landlords have signed.

Please let us know if you have any questions on the document.

Virginie Gauthier
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930
virginie.gauthier@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David T. Ullmann [mailto:DULLmann@blaney.com]
Sent: October-21-18 1:51 PM
To: Merskey, Alan
Cc: Pasparakis, Orestes; Gauthier, Virginie; John C. Wolf; Mr. Paul Bishop; Mr. Greg Watson
Subject: RE: Meeting?

Alan,

I would like to see the landlord settlement/formula agreement in the form executed with the 4 major landlords prior to our meeting on Tuesday. Can you please provide it? We will hold it confidential of course.

Thanks.

David

David T. Ullmann
Partner

dullmann@blaney.com
416-596-4289 | 416-594-2437

From: David T. Ullmann
Sent: October 19, 2018 11:52 AM
To: 'Merskey, Alan'

Cc: Pasparakis, Orestes; Gauthier, Virginie; John C. Wolf; Mr. Paul Bishop; Mr. Greg Watson
Subject: RE: Meeting?

Ok Alan, we will be at your office at 9:30 on Tuesday. Sorry it did not work out for today.

David

David T. Ullmann

Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

From: Merskey, Alan [mailto:alan.merskey@nortonrosefulbright.com]

Sent: October 19, 2018 10:58 AM

To: David T. Ullmann

Cc: Pasparakis, Orestes; Gauthier, Virginie; John C. Wolf; Mr. Paul Bishop; Mr. Greg Watson

Subject: RE: Meeting?

We can meet at 9:30 on Tuesday at my office. While I appreciate your offer to host I have the Newmarket arbitration taking place here that day as well, and need to get back.

Best regards

Alan Merskey

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.4805 | F: +1 416.216.3930
alan.merskey@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David T. Ullmann [mailto:DULLmann@blaney.com]

Sent: October-18-18 5:28 PM

To: Merskey, Alan

Cc: Pasparakis, Orestes; Gauthier, Virginie; John C. Wolf; Mr. Paul Bishop; Mr. Greg Watson

Subject: RE: Meeting?

Alan,

It seems we are not available at 10:30 tomorrow so we are looking at Tuesday. We are happy to host you at 9:30 Am on Tuesday at our offices (as you have hosted us often enough!). Monday is out as both John and I have all day mediations on different matters and tomorrow afternoon is also now unavailable.

David

David T. Ullmann

Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

From: Merskey, Alan [mailto:alan.merskey@nortonrosefulbright.com]
Sent: October 18, 2018 11:59 AM
To: David T. Ullmann
Cc: Pasparakis, Orestes; Gauthier, Virginie; John C. Wolf; Mr. Paul Bishop; Mr. Greg Watson
Subject: RE: Meeting?

David

We can meet at my office tomorrow at 10:30. The deemed trust discussions are ongoing since the meeting on Tuesday. Can you please let me know attendees, so I can book a suitable boardroom.

Best regards

Alan Merskey
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.4805 | F: +1 416.216.3930
alan.merskey@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David T. Ullmann [mailto:DUllmann@blaney.com]
Sent: October-18-18 9:20 AM
To: Merskey, Alan
Cc: Pasparakis, Orestes; Gauthier, Virginie; John C. Wolf
Subject: Meeting?

Alan,

Having processed the events from Tuesday with my clients I have instructions to propose a meeting to see if we can reach a resolution before Hainey J releases his decision. As such, we renew our request for a meeting. We are available tomorrow or Tuesday next week. Please let us know when you might be available.

We would also ask you to provide us with an update on the outcome of the deemed trust mediation.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com
416-596-4289 | 416-594-2437
Blaney.com

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nortonrosefulbright.com

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**APPENDIX “B”
(see attached)**

From: Gauthier, Virginie <virginie.gauthier@nortonrosefulbright.com>
Sent: Wednesday, October 24, 2018 3:35 PM
To: David T. Ullmann <DULLmann@blaney.com>
Cc: Merskey, Alan <alan.merskey@nortonrosefulbright.com>; John C. Wolf <jwolf@blaney.com>; Bishop, Paul <Paul.Bishop@fticonsulting.com>; Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>; Watson, Greg <greg.watson@fticonsulting.com>; Pasparakis, Orestes <orestes.pasparakis@nortonrosefulbright.com>
Subject: RE: Sears Canada Inc. et. al. - CV-17-11846-00CL - ENDORSEMENT (adjourned sine die) - FINAL - October 22, 2018

Without Prejudice and for Settlement Purposes

Hello David,

You will find attached, a spread sheet (the “**Spread Sheet**”) that illustrates how each of your clients’ Landlord Claims (as defined in the Landlord Claim Formula Term Sheet (the “**TS**”)) would be calculated pursuant to the Landlord Claim Formula (as defined in the TS). Given that the claims filed your clients did not contain precise information on Rent (as defined in the TS) owing, the Monitor has relied on the books and records of the Company to determine your clients’ Rent claims; that manner of proceeding is specifically contemplated in the definition of Rent in the TS. For the purpose of a global settlement of all of your clients’ Landlord Claims, and for no other purposes, the Monitor is prepared to accept the Rent amounts, and the damage allocations, illustrated in the Spread Sheet.

Regards,

Virginie Gauthier
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930
virginie.gauthier@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David T. Ullmann [<mailto:DULLmann@blaney.com>]
Sent: October-24-18 12:51 PM
To: Gauthier, Virginie
Cc: Merskey, Alan; John C. Wolf; Mr. Paul Bishop; Kamran Hamidi; Mr. Greg Watson; Pasparakis, Orestes

Subject: RE: Sears Canada Inc. et. al. - CV-17-11846-00CL - ENDORSEMENT (adjourned sine die) - FINAL - October 22, 2018

Virginie,

Thank you for this email. We will provide the settlement details to our clients. I would ask for one additional piece of information, which I believe you should have at hand. In the questions we asked on our motion, we asked the Monitor to apply the formula to our clients various claims and advise the value the Monitor thought would be payable to our clients under the formula. Here is the question and response:

Please confirm the difference between the dividend payable to the moving landlords in each of the foregoing events versus the amount which would be payable to the Moving Landlords if the formula used for the other landlords was applied in each case.

Answer: Based on the Recovery Analysis, but assuming that the Moving Landlords' claims were valued in accordance with the Settlement Agreements, the recovery rate to unsecured creditors would approximate 8.4% and the resulting dividend amount to the Moving Landlords would be

I assume from the above that the Monitor must have a spreadsheet under which it applied the formula to each of our properties in order to provide this answer of [REDACTED]. Can you please provide us with the claim by claim breakdown of how this amount was reached? It would be very helpful to have that analysis to provide to the clients as they consider next steps. I recognize that the dividend amount has changed as a result of the Deemed Trust settlement, but the value of the claims which would be allowed under the formula should remain the same, which your spreadsheet would presumably have.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: Gauthier, Virginie [<mailto:virginie.gauthier@nortonrosefulbright.com>]

Sent: October 23, 2018 6:04 PM

To: David T. Ullmann

Cc: Merskey, Alan; John C. Wolf; Mr. Paul Bishop; Kamran Hamidi; Mr. Greg Watson; Pasparakis, Orestes

Subject: RE: Sears Canada Inc. et. al. - CV-17-11846-00CL - ENDORSEMENT (adjourned sine die) - FINAL - October 22, 2018

David:

Further to our call of this morning, we attach the final version of the pension support agreement together with an illustration of creditors' recoveries as a result of the support agreement. We reiterate our view that this is a good outcome for the stakeholders in the circumstances.

In light of the above, we need to expeditiously resolve the claims that you have filed on behalf of your clients. In summary, our position on your claims remains that:

1. the Landlord Formula Term Sheet, as agreed to by the other landlords, treats landlord claims fairly and avoids significant additional expenditure by the estate and the affected landlords;
2. your clients have no remaining claims in respect of the Place Vertu and Galeries Chagnon locations as all claims relating to these locations were settled at the time that the asset purchase agreements were signed;
3. your clients' claim for cure costs for the Vaughan location is grossly inflated as demonstrated by the initial amounts claimed in the correspondence exchanged between John and I at the time of closing that transaction. The books and records of the Company show that [REDACTED] is owing in respect of that location.

4. various of your clients owe Sears money. Commencing in May of this year, the Monitor has contacted you on a number of occasion, providing details of post filing amounts due by your clients and providing supporting details of the amounts due. To date the monitor has not received a response to the request for paymen. The amounts owing are as follows and we require that they be paid immediately:

- (i) Orchard Park (Units 1400 and 1405): [REDACTED]
- (ii) Kildonan Place: [REDACTED]
- (iii) Tanurb (Festival Marketplace) Inc.: [REDACTED]
- (iv) Montez (Corner Brook) Inc.: [REDACTED]
- (v) McAllister Place: [REDACTED]

5. your environmental claim in respect of North Hill is under consideration.

Given the conversation that we had this morning, we do not understand why you felt it was appropriate for Justice Hainey to delay releasing his reasons on your motion. We will write to his Honour and copy you, confirming our view that there does not appear to have been any prospect of settling the valuation of your claims and would appreciate His Honour releasing his decision on your motion at his earliest convenience.

We will also advise Justice Morawetz of the outcome of our conversation this morning.

Virginie Gauthier
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930
virginie.gauthier@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David T. Ullmann [<mailto:DUllmann@blaney.com>]
Sent: October-22-18 9:50 PM
To: Gauthier, Virginie
Cc: Merskey, Alan; John C. Wolf; Mr. Paul Bishop; Kamran Hamidi; Mr. Greg Watson; Pasparakis, Orestes
Subject: Re: Sears Canada Inc. et. al. - CV-17-11846-00CL - ENDORSEMENT (adjourned sine die) - FINAL - October 22, 2018

Virginie,

As you know our motion sought a 20 day period after a decision or settlement so that we could canvass the impact of the decision and seek instructions. Given that that is where we now appear to be, I think a meeting is premature until we have the settlement details and we take them to our clients for instructions.

I think it would be worthwhile to have a short call tomorrow to find our from you about the settlement and also what you would like to advise the court on our motion which remains under reserve.

I will call you at 930 and we can discuss next steps.

Regards,

David

David Ullmann
Partner, Commercial Litigation

On Mon, Oct 22, 2018 at 8:44 PM -0400, "Gauthier, Virginie" <virginie.gauthier@nortonrosefulbright.com> wrote:

David, John:

Would you please confirm whether our in person meeting is still taking place tomorrow at 930? Since we have to make arrangements for the meeting, I would appreciate your confirmation this evening.

Virginie Gauthier
Partner
W 416-216-4853
M 416-844-5391

On Oct 22, 2018, at 17:32, Gauthier, Virginie <virginie.gauthier@nortonrosefulbright.com> wrote:

Hello David,

You are correct that there has been a settlement with all 3 pension parties. We can provide you with the effect of the settlement on your clients' claims had they been settled pursuant to the formula.

We believe that we should proceed with our meeting tomorrow your clients' claims need to be resolved ASAP.

Let us know if you will be available.

Virginie Gauthier
Partner
W 416-216-4853
M 416-844-5391

On Oct 22, 2018, at 17:01, David T. Ullmann <DUllmann@blaney.com> wrote:

Alan and Virginie,

It seems, based on the attached endorsement, like there has been a settlement which presumably impacts our remaining dispute on the claims process. Can you please a) confirm there has been a settlement, and b) provide us with the impact of the settlement on our client's outstanding claims were they to be valued under the formula? Once we have that information and have processed it with our clients we can either have a meeting or a call as makes sense, but it does not appear to make sense for our meeting to proceed tomorrow in light of this development.

Please advise.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com
☎ 416-596-4289 | 📠 416-594-2437

From: Albert, Beverly (JUD) [<mailto:Beverly.Albert@ontario.ca>]

Sent: October 22, 2018 2:56 PM

To: jdacks@osler.com; sirving@osler.com; virginie.gauthier@nortonrosefulbright.com; alan.merskey@nortonrosefulbright.com; David T. Ullmann; sursel@upfhlaw.ca; korourke@upfhlaw.ca; djmiller@tgf.ca; pguy@tgf.ca; lily.harmer@paliareroland.com; nlevine@casselsbrock.com; slockhart@polleyfaith.com; gcamelino@cglegal.ca; ahatnay@kmlaw.ca; atang@kmlaw.ca; pamela.huff@blakes.com

Cc: Anissimova, Alsou (MAG)

Subject: Sears Canada Inc. et. al. - CV-17-11846-00CL - ENDORSEMENT (adjourned sine die) - FINAL - October 22, 2018

Counsel,

Please see the attached Endorsement issued today by Justice Hainey with respect to the above-mentioned matter.

Kind regards,

Bev Albert

Judicial Secretary

Ministry of the Attorney General

Superior Court of Justice

361 University Avenue

Toronto, ON M5G 1T3

Email: Beverly.Albert@ontario.ca

Tel.: (416) 327-5124

Fax: (416) 327-5417

<Sears Canada Inc. et al. - CV-17-11846-00CL - ENDORSEMENT (adjourned sine die) - Final - Oct 22, 2018.pdf>

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**APPENDIX “C”
(see attached)**

From: David T. Ullmann <DULLmann@blaney.com>

Sent: Thursday, November 08, 2018 11:47 AM

To: Gauthier, Virginie <virginie.gauthier@nortonrosefulbright.com>; Pasparakis, Orestes <orestes.pasparakis@nortonrosefulbright.com>

Cc: Bishop, Paul <Paul.Bishop@fticonsulting.com>; Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>; John C. Wolf <jwolf@blaney.com>

Subject: Counter Proposal regarding Sears Landlord Dispute

Importance: High

Without Prejudice

Orestes and Virginie,

Further to our meeting and as requested, attached are various co-tenancy clause summaries in respect of tenants at various Blaney Landlord locations to demonstrate the bona fides of how these claims would be proven.

Also, attached are two approved claims issued by the Monitor in Target which approved co-tenancy claims for Blaney clients in that proceeding, which we thought might also be helpful for the Monitor to consider. As you can see, in each case the claims allowed were in the range of \$500,000, [REDACTED].

We look forward to seeing you at our office at 1:30. 2 Queen St E, 15th floor. I assume you have passed on the location to His Honour.

Counter Offer

Our without prejudice counter offer to your suggested proposal at the end of the mediation yesterday is as follows:

1) We support your suggestion that the formula applicable to all landlord claims shall be amended to explicitly include that co-tenancy claims whereby a tenant is conditionally entitled to additional rights and remedies against its landlord by reason of factors including Sears closure, are accepted and valid claims against Sears. The Monitor's report which reports on this settlement or the plan in Sears will highlight this fact for the Court.

2) The formula amount shall be increased by [REDACTED] for those landlords who have claimed a co-tenancy claim in their proofs of claim as already filed (i.e. no landlord may add this to their claim now if not already claimed). Where no such claim was made, the amount awarded will be zero. We confirm that we made that claim in 21 locations (not 22 as suggested by Virginie). As such, the cost of this accommodation to our clients would be allowed additional claims of only [REDACTED] and receive [REDACTED] of dividend for just our clients. We currently estimate our client's co-tenancy claims for one year to be [REDACTED]. We estimate a court would award 3 years of damage if the claims is tried as that is the likely demolition and rebuild/release horizon. The total co-tenancy claim for our clients is estimated at [REDACTED].

We note that you have advised that there are 55 properties where co-tenancy claims have been filed in Sears (including the above 21). At [REDACTED] per property, the cost of this addition to the settlement formula would be only [REDACTED] in claims and [REDACTED] in dividends.

3) Subject to any contrary order of the court made prior to this settlement in respect of the October 16th co-tenancy motion, the co-tenancy stay shall remain in place against all other parties not subject to any such order until 30 days after the first dividend is issued under the Sears plan and the Monitor will oppose any further motion by any party to lift the stay prior to that date on the basis that the continuation of the stay is a component of a settlement which is important to the restructuring.

4) All of the Blaney landlords will accept the formula for their claims and there will be no further adjudication of those claims. It is the position of the Blaney landlords that the average damages claims would be in excess of the formula amount. In Carrefour De Nord/St. Jerome, for example, the provable damages would be [REDACTED] (as opposed to the formula amount of [REDACTED] for that zero lease property). The re-demising costs (for which the formula gives no value) would be [REDACTED]. At Eastgate the lost value related to Sears' closing according to appraisals is [REDACTED].

5) A contribution to the professional fees incurred by Blaney for the period of July 23rd to November 8, 2018 related to the matters disputed on October 16th before the court and related settlement discussions will be paid in the sum of \$100,000 plus HST. We are confident our fees for that period are in excess of that amount as our docketed time for the period July 23 to October 31st is in excess of \$114,000, and November has been a very busy Sears' month. We are also confident that the court will award costs to us for the claims bar motion (if that needs to be determined), to the extent that consideration makes it any easier for you to explain your acceptance of this component of this offer. Blaney will withdraw its claims for costs in those motions as part of this settlement.

To answer a comment made at the mediation yesterday, we confirm that in the event this mediation fails to provide a resolution, our instructions are to proceed with the adjudication of claims. By our calculation, we would expect to spend at least 2 days per claim, and those claims would not start until late January. We expect we will be in trial for up to 50 to 60 court days. We do not agree that the Monitor would be able to recover those costs from our clients, and certainly would not be able to recover the claims officer costs. Avoiding this process is of material value to the resolution of the Sears matter generally. We are confident that the aggregate amount recovered to our clients from the adjudication will be at least double the [REDACTED] currently offered.

We look forward to your response and to continuing our productive discussions.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: Gauthier, Virginie [<mailto:virginie.gauthier@nortonrosefulbright.com>]

Sent: November 7, 2018 5:15 PM

To: Pasparakis, Orestes; David T. Ullmann

Cc: Mr. Paul Bishop; kamran.hamidi@fticonsulting.com; John C. Wolf

Subject: RE: Available times

In response to your question below, 46 landlords (22 of those being your clients) have filed co-tenancy damage claims in respect of a total of 55 locations (assuming all of your clients' locations have co-tenancy claims, which may not be the case).

Virginie Gauthier

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.

Royal Bank Plaza, South Tower, Suite 3800

200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930

virginie.gauthier@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: Pasparakis, Orestes

Sent: November-07-18 3:54 PM

To: David T. Ullmann

Cc: Mr. Paul Bishop; kamran.hamidi@fticonsulting.com; Gauthier, Virginie; John C. Wolf

Subject: RE: Available times

We would be delighted to attend at your offices with the expectation that you will be far more reasonable on your own home turf. Kindly send us whatever information and instructions you have in advance to make this useful.

See you then.

Orestes Pasparakis

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.

Royal Bank Plaza, South Tower, Suite 3800

200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.4815 | F: +1 416.216.3930

orestes.pasparakis@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David T. Ullmann [<mailto:DUllmann@blaney.com>]

Sent: November-07-18 3:31 PM

To: Pasparakis, Orestes

Cc: Mr. Paul Bishop; kamran.hamidi@fticonsulting.com; Gauthier, Virginie; John C. Wolf

Subject: RE: Available times

Orestes,

We prefer tomorrow afternoon as well 1:40 to 3:40. Please advise His Honour. Can we possibly host this one at our offices? Might be easier for His Honour as well.

We will provide you our counter proposal and co-tenancy clauses before noon tomorrow. Can you possibly provide us today with the number of landlords who have claimed co-tenancy damages in their claims in time for us to consider that in our response?

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: Pasparakis, Orestes [<mailto:orestes.pasparakis@nortonrosefulbright.com>]

Sent: November 7, 2018 2:58 PM

To: David T. Ullmann

Cc: Mr. Paul Bishop; kamran.hamidi@fticonsulting.com; Gauthier, Virginie

Subject: Fwd: Available times

Please let us know. My strong preference is not Friday....

Begin forwarded message:

From: "Morawetz, Mr. Justice Geoffrey (SCJ)" <Geoffrey.Morawetz@scj-csj.ca>

Date: November 7, 2018 at 2:54:36 PM EST

To: Alan' 'Merskey <Alan.Merskey@nortonrosefulbright.com>, Orestes Pasparakis <Orestes.Pasparakis@nortonrosefulbright.com>

Subject: Available times

Thursday

Either 1:40 - 3:40 or

10:10 - 11:55

Friday

1:00 - 6:00

Let me know preference

Sent from my iPhone

Law around the world
nortonrosefulbright.com

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**APPENDIX “D”
(see attached)**

From: David T. Ullmann <DULLmann@blaney.com>
Sent: November-15-18 2:28 PM
To: Gauthier, Virginie; John C. Wolf
Cc: Pasparakis, Orestes; Mr. Paul Bishop; Mr. Greg Watson
Subject: RE: Sears Canada: Settlement Agreement
Attachments: CAN_DMS_123567263_v1_Joinder Agreement Form.pdf; CAN_DMS_123984892_v2_Settlement Agreement Moving Landlords final.pdf; CAN_DMS_123984892_v2_Settlement Agreement Moving Landlords finalclean.DOCX

Virginie,

Attached is the revised settlement agreement. We attach a clean copy and a track changes copy.

As per our brief call just now, we believe that all of our changes, except the ones related to the reconciliation, are in the nature of clarification language and not meant to change what was agreed to. With respect to the reconciliation, you will see we are asking for some practical relief which I hope you will agree is appropriate.

As commented, you did not attach the term sheet to your draft. We attach here the term sheet you sent me on Oct 22 for reference. It has not been altered to reflect the changes to the formula from our settlement.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com

T: 416-596-4289 | F: 416-594-2437

-----Original Message-----

From: Gauthier, Virginie [<mailto:virginie.gauthier@nortonrosefulbright.com>]

Sent: November 15, 2018 12:39 PM

To: David T. Ullmann; John C. Wolf

Cc: Pasparakis, Orestes; Mr. Paul Bishop; Mr. Greg Watson

Subject: RE: Sears Canada: Settlement Agreement

Would appreciate a response to this please.

Virginie Gauthier
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
M5J 2Z4 Canada

+1 416.216.4853 F: +1 416.216.3930

M: +1 416.844.5391

virginie.gauthier@nortonrosefulbright.com

-----Original Message-----

From: Gauthier, Virginie

Sent: November-15-18 8:56 AM

To: Mr. David T. Ullmann; 'John C. Wolf'

Cc: Pasparakis, Orestes; Mr. Paul Bishop; Mr. Greg Watson
Subject: Sears Canada: Settlement Agreement

David,

We have not received any comments on the settlement agreement that we sent Tuesday evening. You left me a message at lunch time yesterday saying that you had minor comments and that we would see the agreement after lunch. What is happening?

Virginie Gauthier
Partner
W 416-216-4853
M 416-844-5391

Law around the world
nortonrosefulbright.com

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NRFC DRAFT: NOVEMBER 13, 2018

SETTLEMENT AGREEMENT

WHEREAS Sears Canada Inc. ("**SCI**") and certain of its affiliates (collectively, the "**Sears Canada Entities**") are currently the subject of a proceeding under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**"), and in connection with such proceeding, FTI Consulting Canada Inc. has been appointed by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") as monitor (the "**Monitor**") of the Sears Canada Entities;

AND WHEREAS pursuant to an order of the Court made December 8, 2017, the Sears Canada Entities and the Monitor have implemented a process for the identification, quantification and determination of claims against the Sears Canada Entities (the "**Claims Process**");

AND WHEREAS the entities identified as signatories in the joinder agreements (collectively, the "**Joinder Agreements**") to the term sheet (the "**Term Sheet**") attached as **Schedules A** through ● hereto (collectively with the other entities represented by Blaney (defined below), the "**Moving Landlords**") have made claims against the Sears Canada Entities pursuant to the Claims Process (the "**Claims**");

NOW THEREFORE the Monitor and Blaney McMurtry LLP ("**Blaney**") as counsel to, and on behalf of, the Moving Landlords, agree to settle the Claims on the following terms:

Defined Terms

1 All capitalized terms not defined in this Agreement shall have the meaning ascribed to them in the Term Sheet.

Resolution of Landlord Claims

2 The Moving Landlords agree to the valuation of their Landlord Claims in accordance with [the Landlord Claim Formula set out in](#) the Joinder Agreements and to deliver executed Joinder Agreements to the Monitor no later than **November 23, 2018**.

Resolution of Disputed Claims other than Landlord Claims

3 The Monitor and the applicable Moving Landlords agree that, subject to the schedule of The Honourable Justice Farley, hearings in respect of the operating agreement claims filed in relation to Les Galeries Chagnon and Place Vertu shall take place before The Honourable Justice Farley prior to **December 31, 2018**, or as soon thereafter as reasonably possible.

4 The applicable Moving Landlords will work with the Monitor in good faith and with due diligence to reconcile, by no later than **November 23, 2018**, amounts which SCI claims the Moving Landlords owe, on a post-filing basis, in respect of the following locations:

(a) Orchard Park Shopping Centre (\$406,944.34);

~~(b) Kildonan Place Mall (\$736);~~

~~(c) Festival Marketplace Mall (\$6,148);~~

~~(d) Capilano Mall (\$2,809); [ntd: we have deleted these items as we would like the Monitor to concede that the costs of analysis outweighs the items in dispute.]~~

~~(e)(b) McAllister Place Mall (\$33,214); and~~

~~(f) Hillside Centre (\$117,908.42). [ntd: we have not reviewed this claim and were unaware of it prior to you sending this draft. As such, we cannot commit to a schedule. It was not raised in the mediation. We acknowledge that this claim is not released or waived by the fact it is not included in this list and will pursue our~~

client for information and respond. On the other hand, we would like the Monitor to confirm that there are no further amounts outstanding of this nature. We are trying to bring this to a conclusion. We are not aware of any other amounts.

5 The Monitor will accept Sun Life's cure cost (post-filing) claim in respect of Vaughan Mills in the amount of \$44,000 plus HST-

Amendment to the July 26 Term Sheet

6 The basket amount referred in sub-paragraph A)(ii) of the "Formula" section of the Landlord Claim Formula Term Sheet dated July 26, 2018 (the "Original Landlord Term Sheet") will be increased from [REDACTED]

[REDACTED] (the "**Basket Increase**"). The parties acknowledge that the Term Sheet attached to this Agreement already reflects the Basket Increase. Pursuant to a "most favoured nation" agreement amongst the Monitor and counsel to certain landlords (not including the Moving Landlords), all Landlords with Landlord Claims who have already entered into joinder agreements in connection with the Original Landlord Term Sheet will receive the Basket Increase.

67 The Moving Landlords will have the benefit of equivalent "most favoured nation" treatment as provided to any other creditors.

Co-Tenancy Claims and Stay

78 The Monitor will issue NORs revising the quantum of the Moving Landlords' Landlord Claims to reflect the Agreed Claim Amount. The NORs will include specific references to ~~the~~co-tenancy claims whereby a tenant is conditionally entitled to additional rights and remedies against its landlord by reason of factors including Sears closureco-tenancy claims (the "**Co-Tenancy Claims**") filed by the Moving Landlords. Such language shall note that Co-tenancy

claims were ~~contemplated~~ accepted as valid claims against the Sears Canada Entities and a value for those claims was included in arriving at the Agreed Claim Amount. The Monitor will also refer to the inclusion of Co-Tenancy Claims in the Agreed Claim Amount as noted above in one of its reports to be filed with the Court. This Co-Tenancy Claim language shall be acceptable to the parties, acting reasonably.

89 To the extent that the stay (the “**Co-Tenancy Stay**”) of the exercise of co-tenancy rights by tenants of the Moving Landlords is not generally lifted for the benefit of all co-tenants pursuant to an Order of Mr. Justice Hainey in respect of the Co-Tenancy Stay motions brought by The Gap and The Children’s Place (collectively with any other tenants who take steps to bring similar motions, the “**Moving Tenants**”) heard October 16, 2018 (currently under reserve), the Monitor will thereafter oppose any motion by any other party to lift the co-tenancy stay which seeks to lift the stay prior to the Sears Plan implementation, currently scheduled to occur no later than April 30, 2019.

~~(a) — the Moving Landlords agree to consensually lift the Co-Tenancy Stay in favour of the Moving Tenants only; and~~

~~(b) — the Monitor agrees to otherwise support the extension of the Co-Tenancy Stay until April 30, 2019.~~

Costs

910 The parties agree that Mr. Justice Hainey will decide the issue of ~~whether the Sears Canada Entities shall pay what~~ costs are payable to the Moving Landlords in respect of their claims bar amendment motion. The Monitor and the Sears Canada Entities will not be seeking costs on that motion.

Formatted: No bullets or numbering

~~40~~11 The Sears Canada Entities will pay the Moving Landlords \$50,000 plus HST in costs in connection with the mediation that took place between the Moving Landlords and the Monitor in November 2018.

Representation by Blaney

~~41~~12 Blaney represents and warrants in favour of the Monitor and the Sears Canada Entities that it has authority to enter into this Agreement for and on behalf of the Moving Landlords, and to bind such Moving Landlords with its signature to this Agreement.

~~42~~13 This Agreement may be executed in several counterparts, by original, facsimile, or by email in PDF format, with all copies thereof being deemed one original document and the same agreement with full force and effect, notwithstanding that all parties are not signatories to the same counterpart.

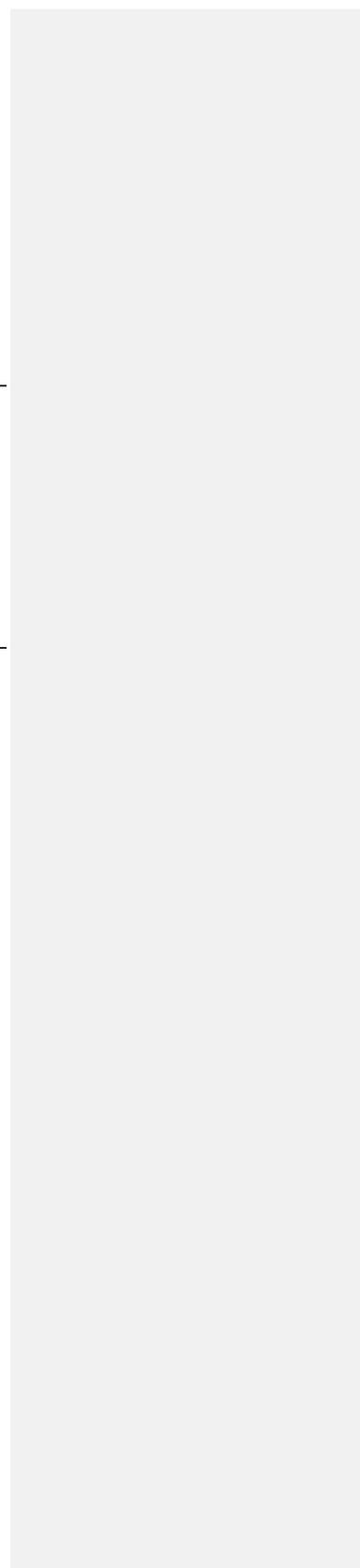
IN WITNESS WHEREOF the Parties have executed this Offer to Settle on the date set out above.

BLANEY MCMURTRY LLP, ON BEHALF OF THE MOVING LANDLORDS

Per: _____
Name:
Title:

FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

Per: _____
Name:
Title:



SETTLEMENT AGREEMENT

WHEREAS Sears Canada Inc. (“**SCI**”) and certain of its affiliates (collectively, the “**Sears Canada Entities**”) are currently the subject of a proceeding under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”), and in connection with such proceeding, FTI Consulting Canada Inc. has been appointed by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) as monitor (the “**Monitor**”) of the Sears Canada Entities;

AND WHEREAS pursuant to an order of the Court made December 8, 2017, the Sears Canada Entities and the Monitor have implemented a process for the identification, quantification and determination of claims against the Sears Canada Entities (the “**Claims Process**”);

AND WHEREAS the entities identified as signatories in the joinder agreements (collectively, the “**Joinder Agreements**”) to the term sheet (the “**Term Sheet**”) attached as **Schedules A** through ● hereto (collectively with the other entities represented by Blaney (defined below), the “**Moving Landlords**”) have made claims against the Sears Canada Entities pursuant to the Claims Process (the “**Claims**”);

NOW THEREFORE the Monitor and Blaney McMurtry LLP (“**Blaney**”) as counsel to, and on behalf of, the Moving Landlords, agree to settle the Claims on the following terms:

Defined Terms

1 All capitalized terms not defined in this Agreement shall have the meaning ascribed to them in the Term Sheet.

Resolution of Landlord Claims

2 The Moving Landlords agree to the valuation of their Landlord Claims in accordance with the Landlord Claim Formula set out in the Joinder Agreements and to deliver executed Joinder Agreements to the Monitor no later than **November 23, 2018**.

Resolution of Disputed Claims other than Landlord Claims

3 The Monitor and the applicable Moving Landlords agree that, subject to the schedule of The Honourable Justice Farley, hearings in respect of the operating agreement claims filed in relation to Les Galeries Chagnon and Place Vertu shall take place before The Honourable Justice Farley prior to **December 21, 2018**, or as soon thereafter as reasonably possible.

4 The applicable Moving Landlords will work with the Monitor in good faith and with due diligence to reconcile, by no later than **November 23, 2018**, amounts which SCI claims the Moving Landlords owe, on a post-filing basis, in respect of the following locations:

- (a) Orchard Park Shopping Centre (\$406,944.34);
- (b) McAllister Place Mall (\$33,214); and

5 The Monitor will accept Sun Life’s cure cost (post-filing) claim in respect of Vaughan Mills in the amount of \$44,000 plus HST

Amendment to the July 26 Term Sheet

6 The basket amount referred in sub-paragraph A)(ii) of the “**Formula**” section of the Landlord Claim Formula Term Sheet dated July 26, 2018 (the “**Original Landlord Term Sheet**”) will be increased from [REDACTED]

[REDACTED]

[REDACTED] (the “**Basket Increase**”). The parties acknowledge that the Term Sheet attached to this Agreement already reflects the Basket Increase. Pursuant to a “most favoured nation”

agreement amongst the Monitor and counsel to certain landlords (not including the Moving Landlords), all Landlords with Landlord Claims who have already entered into joinder agreements in connection with the Original Landlord Term Sheet will receive the Basket Increase.

7 The Moving Landlords will have the benefit of equivalent “most favoured nation” treatment as provided to any other creditors.

Co-Tenancy Claims and Stay

8 The Monitor will issue NORs revising the quantum of the Moving Landlords’ Landlord Claims to reflect the Agreed Claim Amount. The NORs will include specific references to co-tenancy claims whereby a tenant is conditionally entitled to additional rights and remedies against its landlord by reason of factors including Sears closure(the “**Co-Tenancy Claims**”) filed by the Moving Landlords. Such language shall note that Co-tenancy claims were accepted as valid claims against the Sears Canada Entities and a value for those claims was included in arriving at the Agreed Claim Amount. The Monitor will also refer to the inclusion of Co-Tenancy Claims in the Agreed Claim Amount as noted above in one of its reports to be filed with the Court. This Co-Tenancy Claim language shall be acceptable to the parties, acting reasonably.

9 To the extent that the stay (the “**Co-Tenancy Stay**”) of the exercise of co-tenancy rights by tenants of the Moving Landlords is not generally lifted for the benefit of all co-tenants pursuant to an Order of Mr. Justice Hailey in respect of the Co-Tenancy Stay motions brought by The Gap and The Children’s Place (collectively with any other tenants who take steps to bring similar motions, the “**Moving Tenants**”) heard October 16, 2018 (currently under reserve), the Monitor will thereafter oppose any motion by any other party to lift the co-tenancy stay which seeks to lift the stay prior to the Sears Plan implementation, currently scheduled to occur no later than April 30, 2019.

Costs

10 The parties agree that Mr. Justice Hainey will decide the issue of what costs are payable to the Moving Landlords in respect of their claims bar amendment motion. The Monitor and the Sears Canada Entities will not be seeking costs on that motion.

11 The Sears Canada Entities will pay the Moving Landlords \$50,000 plus HST in costs in connection with the mediation that took place between the Moving Landlords and the Monitor in November 2018.

Representation by Blaney

12 Blaney represents and warrants in favour of the Monitor and the Sears Canada Entities that it has authority to enter into this Agreement for and on behalf of the Moving Landlords, and to bind such Moving Landlords with its signature to this Agreement.

13 This Agreement may be executed in several counterparts, by original, facsimile, or by email in PDF format, with all copies thereof being deemed one original document and the same agreement with full force and effect, notwithstanding that all parties are not signatories to the same counterpart.

IN WITNESS WHEREOF the Parties have executed this Offer to Settle on the date set out above.

**BLANEY MCMURTRY LLP, ON BEHALF OF THE
MOVING LANDLORDS**

Per: _____
Name:
Title:

**FTI CONSULTING CANADA INC., IN ITS
CAPACITY AS MONITOR AND NOT IN ITS
PERSONAL OR CORPORATE CAPACITY**

Per: _____
Name:
Title:

**APPENDIX “E”
(see attached)**

From: David T. Ullmann
Sent: November-30-18 4:21:46 PM
To: Gauthier, Virginie
Cc: John C. Wolf
Subject: RE: Without Prejudice Settlement Offer
Attachments: Monitor versionNov 30 - Monitor versionNov 30 blaneyword.docx

Here it is.

David

David T. Ullmann
Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: Gauthier, Virginie [mailto:virginie.gauthier@nortonrosefulbright.com]
Sent: November 30, 2018 2:41 PM
To: David T. Ullmann
Cc: John C. Wolf
Subject: RE: Without Prejudice Settlement Offer

Please send blacklined version in word with track changes.

Virginie Gauthier
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930

virginie.gauthier@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David T. Ullmann [mailto:DULLmann@blaney.com]
Sent: November-30-18 1:55 PM
To: Gauthier, Virginie
Cc: John C. Wolf
Subject: Without Prejudice Settlement Offer

Without Prejudice.

Virginie,

Further to our brief chat just now, I confirm that I have had a very good conversation with John and he has agreed on behalf our clients that I can make this offer to the Monitor to resolve the moving landlord issue.

Without waiving our rights to argue that there is already a settlement in place, attached is a revised version of what you sent earlier today and a blackline.

Although it does not say so in the attached (as there was nowhere to put it), the Moving Landlords, who will receive \$50k of mediation costs, are prepared to accept the payment of \$2272 per location to the other landlords (to be clear, not Blaney - hence "other" landlords) who have signed joinder agreements and have MFNs. We will agree that the Monitor doing so will not offend the most favoured nations clause in our settlement. In exchange for this concession, however, we believe it is appropriate that the Monitor allow for our costs of the motion in the claims bar proceeding in the amount of \$50,000 plus HST. We have always believed that the costs of that motion do not offend the MFN clause as that motion is outside the landlord negotiations, and we got the sense from the mediation yesterday that there was some buy in to that concept yesterday as not being offensive by both the other landlords and the Monitor. Our costs for that motion are in excess of \$70k.

The other changes we have asked for in the attached are as follows, with the following explanations (using the paragraph number where it appears in the attached)

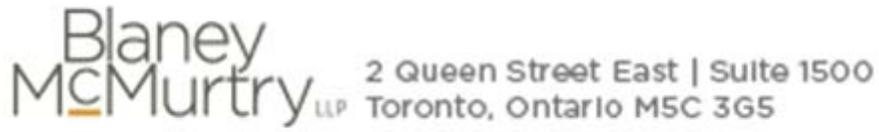
- 2) we added 5 days to return execution.
- 4) I will be attending to that reconciliation personally and I have a 3 day trial next week so am asking for the weekend next weekend to get it finished.
- 4) we have deleted the smaller reconciliations to avoid costs out-pacing recovery to all
- 5) we have added HST, which we see as a flow through to you in any event
- 8) we have reinserted our definition of co-tenancy claims. we wanted that term understood and don't think our language is controversial
- 8) we made a small change which I think expresses the "allowed" point more clearly without changing it
- 9) as explained above
- 11) we are trying to get these funds through the door for our year end and would appreciate payment now rather than April

This is an agreement our clients will accept, as it recovers some of their costs thrown at this matter while still preserving a result that all should be able to live with.

I hope the Monitor will take this opportunity to resolve this issue. Please do not let this offer die on the fact that the Monitor thinks the cost recovery on our motion will be less than the \$50k we have required above. It could be more or less but in either case that delta is certainly not enough money to your side of the equation to let the deal die, given the consequences. The cost settlement will be a private settlement and will not require an order of the court.

Regards,

David



David T. Ullmann
Partner

dullmann@blaney.com

 416-596-4289 |  416-594-2437

 Blaney.com



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Law around the world

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SETTLEMENT AGREEMENT

WHEREAS Sears Canada Inc. (“**SCI**”) and certain of its affiliates (collectively, the “**Sears Canada Entities**”) are currently the subject of a proceeding under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCA**”), and in connection with such proceeding, FTI Consulting Canada Inc. has been appointed by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) as monitor (the “**Monitor**”) of the Sears Canada Entities;

AND WHEREAS pursuant to an order of the Court made December 8, 2017, the Sears Canada Entities and the Monitor have implemented a process for the identification, quantification and determination of claims against the Sears Canada Entities (the “**Claims Process**”);

AND WHEREAS the entities identified as signatories in the joinder agreements (collectively, the “**Joinder Agreements**”) to the term sheet (the “**Term Sheet**”) attached as **Schedules A** through ● hereto (collectively with the other entities represented by Blaney (defined below), the “**Moving Landlords**”) have made claims against the Sears Canada Entities pursuant to the Claims Process (the “**Claims**”);

NOW THEREFORE the Monitor and Blaney McMurtry LLP (“**Blaney**”) as counsel to, and on behalf of, the Moving Landlords, agree to settle the Claims on the following terms:

Defined Terms

1 All capitalized terms not defined in this Agreement shall have the meaning ascribed to them in the Term Sheet.

Resolution of Landlord Claims

2 The Moving Landlords agree to the valuation of their Landlord Claims in accordance with the Landlord Claim Formula set out in the Joinder Agreements and to deliver executed Joinder Agreements to the Monitor no later than the later of December 7, 2018-2018 or five business days after delivery of the Joinder Agreements by the Monitor.

Resolution of Disputed Claims other than Landlord Claims

3 The Monitor and the applicable Moving Landlords agree that, subject to the schedule of The Honourable Justice Farley, hearings in respect of the operating agreement claims filed in relation to Les Galeries Chagnon and Place Vertu shall take place before The Honourable Justice Farley prior to **December 21, 2018**, or as soon thereafter as reasonably possible.

4 The applicable Moving Landlords will work with the Monitor in good faith and with due diligence to reconcile, by no later than **December 7, 10th, 2018**, amounts which SCI claims the Moving Landlords owe, on a post-filing basis, in respect ~~of the following locations:~~

~~(a) — Orchard Park Shopping Centre (\$406,944.34);~~

~~(b) — Kildonan Place Mall (\$736);~~

~~(c) — Festival Marketplace Mall (\$6,148);~~

~~(d) — Capilano Mall (\$2,809); and~~

~~(e) — McAllister Place Mall (\$33,214).~~

5 The Monitor will accept Sun Life's cure cost (post-filing) claim in respect of Vaughan Mills in the amount of \$44,000-44,000 plus HST.

Amendment to the July 26 Term Sheet

6 The basket amount referred in sub-paragraph A)(ii) of the “**Formula**” section of the Landlord Claim Formula Term Sheet dated July 26, 2018 (the “**Original Landlord Term Sheet**”) will be increased from [REDACTED]

[REDACTED] (the “**Basket Increase**”). The parties acknowledge that the Term Sheet attached to this Agreement already reflects the Basket Increase. Pursuant to a “most favoured nation” agreement amongst the Monitor and counsel to certain landlords (not including the Moving Landlords), all Landlords with Landlord Claims who have already entered into joinder agreements in connection with the Original Landlord Term Sheet will receive the Basket Increase.

7 The Moving Landlords will have the benefit of the “most favoured nation” agreement amongst the Monitor and Landlords who have previously entered joinder agreements.

Co-Tenancy Claims and Stay

8 The Monitor will issue NORs revising the quantum of the Moving Landlords’ Landlord Claims to reflect the Agreed Claim Amount. The NORs will include specific references to the co-tenancy claims whereby a tenant is conditionally entitled to additional rights and remedies against its landlord by reason of factors including the Sears closure (the “**Co-Tenancy Claims**”) filed by the Moving Landlords. Such language shall note that Co-tenancy claims were included in the Landlord Claims that were allowed and given value pursuant to the Landlord Claim Formula and ~~allowed~~ in accordance with the Joinder Agreements. The Monitor will also include similar language in one of its reports to be filed with the Court. This Co-Tenancy Claim language shall be acceptable to the parties, acting reasonably. The foregoing is without prejudice to any argument to the contrary that the Monitor and the Sears Canada Entities may make in connection with the Operating Agreement Claims.

9 To the extent that the stay (the “**Co-Tenancy Stay**”) of the exercise of co-tenancy rights by tenants of the Moving Landlords is not generally lifted for the benefit of all co-tenants pursuant to an Order of Mr. Justice Hainey in respect of the Co-Tenancy Stay motions brought by The Gap and The Children’s Place (collectively with any other tenants who take steps to bring similar motions, the “**Moving Tenants**”) heard October 16, 2018 (currently under reserve), the Monitor will thereafter support the Moving Landlords in any motion by any other party to lift the co-tenancy stay which seeks to lift the stay prior to Plan Implementation, which is currently scheduled to occur no later than April 30, 2019.

Costs

10 The parties agree that ~~Mr. Justice Hainey will decide the issue of whether~~ the Sears Canada Entities shall pay costs to the Moving Landlords in respect of their claims bar amendment motion in the amount of \$50,000 plus HST. The Monitor and the Sears Canada Entities will not be seeking costs on that motion.

11 The Sears Canada Entities will pay the Moving Landlords, ~~on Plan Implementation,~~ \$50,000 in costs in connection with the mediation that took place between the Moving Landlords and the Monitor in November 2018.

Representation by Blaney

12 Blaney represents and warrants in favour of the Monitor and the Sears Canada Entities that it has authority to enter into this Agreement for and on behalf of the Moving Landlords, and to bind such Moving Landlords with its signature to this Agreement.

13 This Agreement may be executed in several counterparts, by original, facsimile, or by email in PDF format, with all copies thereof being deemed one original document and the same agreement with full force and effect, notwithstanding that all parties are not signatories to the same counterpart.

IN WITNESS WHEREOF the Parties have executed this Offer to Settle on the date set out above.

**BLANEY MCMURTRY LLP, ON BEHALF OF THE
MOVING LANDLORDS**

Per: _____
Name:
Title:

**FTI CONSULTING CANADA INC., IN ITS
CAPACITY AS MONITOR AND NOT IN ITS
PERSONAL OR CORPORATE CAPACITY**

Per: _____
Name:
Title:

**APPENDIX “F”
(see attached)**

From: David T. Ullmann <DUllmann@blaney.com>
Sent: November-30-18 6:08 PM
To: Gauthier, Virginie
Cc: John C. Wolf
Subject: Executed Settlement from Blaney - Minus McAllister Place
Attachments: Scan from HP.pdf

Virginie,

Attached is the settlement agreement, executed by Blaney. It continues to reflect our position that the McAllister Place reconciliation be deleted from the transaction and released, as well as the other three smaller amounts we previously discussed. **I confirm you have not accepted this offer and have specifically rejected the deletion/release of the McAllister Place.** We have both confirmed to the other that neither of us knows with certainty that any amount is actually owing from McAllister Place. The records of Sears are notoriously poor, as has been admitted many times before.

We confirm that this offer is open for acceptance until Noon on Monday. Our instructing client at Primaris is unavailable until Sunday due to religious reasons, as I have told you. This agreement is in keeping with our existing instructions and is open for acceptance.

The presentation of this offer is without prejudice to our position that there already exists a valid and enforceable deal. Execution of this deal by the Monitor would of course render that deal moot.

Thank you for your efforts today in moving this matter forward and I hope your clients will elect to settle on this basis.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: HPMFP_Scanner [<mailto:HPMFP@blaney.com>]

Sent: November 30, 2018 5:59 PM

To: David T. Ullmann

Subject: Scan from HP

SETTLEMENT AGREEMENT

WHEREAS Sears Canada Inc. ("**SCI**") and certain of its affiliates (collectively, the "**Sears Canada Entities**") are currently the subject of a proceeding under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**"), and in connection with such proceeding, FTI Consulting Canada Inc. has been appointed by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") as monitor (the "**Monitor**") of the Sears Canada Entities;

AND WHEREAS pursuant to an order of the Court made December 8, 2017, the Sears Canada Entities and the Monitor have implemented a process for the identification, quantification and determination of claims against the Sears Canada Entities (the "**Claims Process**");

AND WHEREAS the entities identified as signatories in the joinder agreements (collectively, the "**Joinder Agreements**") to the term sheet (the "**Term Sheet**") attached as **Schedules A** through ● hereto (collectively with the other entities represented by Blaney (defined below), the "**Moving Landlords**") have made claims against the Sears Canada Entities pursuant to the Claims Process (the "**Claims**");

NOW THEREFORE the Monitor and Blaney McMurtry LLP ("**Blaney**") as counsel to, and on behalf of, the Moving Landlords, agree to settle the Claims on the following terms:

Defined Terms

1 All capitalized terms not defined in this Agreement shall have the meaning ascribed to them in the Term Sheet.

Resolution of Landlord Claims

2 The Moving Landlords agree to the valuation of their Landlord Claims in accordance with the Landlord Claim Formula set out in the Joinder Agreements and to deliver executed Joinder Agreements to the Monitor no later than the later of **December 7, 2018** or five business days after delivery of the Joinder Agreements by the Monitor.

Resolution of Disputed Claims other than Landlord Claims

3 The Monitor and the applicable Moving Landlords agree that, subject to the schedule of The Honourable Justice Farley, hearings in respect of the operating agreement claims filed in relation to Les Galeries Chagnon and Place Vertu shall take place before The Honourable Justice Farley prior to **December 21, 2018**, or as soon thereafter as reasonably possible.

4 The applicable Moving Landlords will work with the Monitor in good faith and with due diligence to reconcile, by no later than **December 10th, 2018**, amounts which SCI claims the Moving Landlords owe, on a post-filing basis, in respect of the following locations:

- (a) Orchard Park Shopping Centre (\$406,944.34).

5 The Monitor will accept Sun Life's cure cost (post-filing) claim in respect of Vaughan Mills in the amount of \$44,000 plus HST.

Amendment to the July 26 Term Sheet

6 The basket amount referred in sub-paragraph A)(ii) of the "**Formula**" section of the Landlord Claim Formula Term Sheet dated July 26, 2018 (the "**Original Landlord Term Sheet**")

[REDACTED]

[REDACTED] (the "**Basket Increase**"). The parties acknowledge that the Term Sheet attached to this Agreement already reflects the Basket Increase. Pursuant to a "most favoured nation"

slw

agreement amongst the Monitor and counsel to certain landlords (not including the Moving Landlords), all Landlords with Landlord Claims who have already entered into joinder agreements in connection with the Original Landlord Term Sheet will receive the Basket Increase.

7 The Moving Landlords will have the benefit of the “most favoured nation” agreement amongst the Monitor and Landlords who have previously entered joinder agreements.

Co-Tenancy Claims and Stay

8 The Monitor will issue NORDs revising the quantum of the Moving Landlords’ Landlord Claims to reflect the Agreed Claim Amount. The NORDs will include specific references to the co-tenancy claims (the “**Co-Tenancy Claims**”) filed by the Moving Landlords. Such language shall note that Co-tenancy claims were included in the Landlord Claims that were given value pursuant to the Landlord Claim Formula and allowed in accordance with the Joinder Agreements. The Monitor will also include similar language in one of its reports to be filed with the Court. This Co-Tenancy Claim language shall be acceptable to the parties, acting reasonably. The foregoing is without prejudice to any argument to the contrary that the Monitor and the Sears Canada Entities may make in connection with the Operating Agreement Claims.

9 To the extent that the stay (the “**Co-Tenancy Stay**”) of the exercise of co-tenancy rights by tenants of the Moving Landlords is not generally lifted for the benefit of all co-tenants pursuant to an Order of Mr. Justice Hainey in respect of the Co-Tenancy Stay motions brought by The Gap and The Children’s Place (collectively with any other tenants who take steps to bring similar motions, the “**Moving Tenants**”) heard October 16, 2018 (currently under reserve), the Monitor will thereafter support the Moving Landlords in any motion by any other party to lift the co-tenancy stay which seeks to lift the stay prior to Plan Implementation, which is currently scheduled to occur no later than April 30, 2019.

Costs

10 The parties agree that Mr. Justice Hainey will decide the issue of whether the Sears Canada Entities shall pay costs to the Moving Landlords in respect of their claims bar amendment motion. The Monitor and the Sears Canada Entities will not be seeking costs on that motion.

11 The Sears Canada Entities will pay the Moving Landlords, on Plan Implementation, \$50,000, which represents an amount of \$2,272.72 per location formerly leased by the Sears Canada Entities from the Moving Landlords, on account of legal costs in this matter.

Representation by Blaney

12 Blaney represents and warrants in favour of the Monitor and the Sears Canada Entities that it has authority to enter into this Agreement for and on behalf of the Moving Landlords, and to bind such Moving Landlords with its signature to this Agreement.

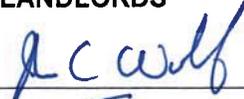
13 This Agreement may be executed in several counterparts, by original, facsimile, or by email in PDF format, with all copies thereof being deemed one original document and the same agreement with full force and effect, notwithstanding that all parties are not signatories to the same counterpart.



IN WITNESS WHEREOF the Parties have executed this Offer to Settle on the date set out above.

BLANEY MCMURTRY LLP, ON BEHALF OF THE MOVING LANDLORDS

Per:



Name: John C Wolf

Title:

FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

Per:

Name:

Title:

**APPENDIX “G”
(see attached)**

From: Gauthier, Virginie
Sent: December-03-18 11:31 AM
To: 'David T. Ullmann'
Cc: John C. Wolf; 'Bishop, Paul'; Greg Watson (greg.watson@fticonsulting.com); Hamidi, Kamran (Kamran.Hamidi@fticonsulting.com); Pasparakis, Orestes; Merskey, Alan
Subject: RE: Executed Settlement from Blaney - Minus McAllister Place

David:

Please find attached Greg's signature to the settlement agreement that you sent on Friday at 6:08pm. We also attach the Joinder Agreements that are the schedules to the settlement agreement.

In accepting this settlement agreement, we continue to rely on your previously provided confirmation that the Moving Landlords are prepared to accept the payment of \$2272 per location to the other landlords (to be clear, not Blaney - hence "other" landlords) who have signed joinder agreements and have MFNs and that you agree that the Monitor in doing so will not offend the most favoured nations clause in the settlement agreement.

With respect to the amount owing (or due) in respect of the McAllistair premises, we agree to remove its reconciliation from the settlement agreement and to deal with it separately.

Someone from our offices will be in touch with you to schedule the operating agreement hearings.

I will also advise Justice Morawetz that a settlement was reached and copy you on the correspondence.

Regards,

Virginie Gauthier
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930
virginie.gauthier@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

SETTLEMENT AGREEMENT

WHEREAS Sears Canada Inc. ("**SCI**") and certain of its affiliates (collectively, the "**Sears Canada Entities**") are currently the subject of a proceeding under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**"), and in connection with such proceeding, FTI Consulting Canada Inc. has been appointed by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") as monitor (the "**Monitor**") of the Sears Canada Entities;

AND WHEREAS pursuant to an order of the Court made December 8, 2017, the Sears Canada Entities and the Monitor have implemented a process for the identification, quantification and determination of claims against the Sears Canada Entities (the "**Claims Process**");

AND WHEREAS the entities identified as signatories in the joinder agreements (collectively, the "**Joinder Agreements**") to the term sheet (the "**Term Sheet**") attached as **Schedules A** through ● hereto (collectively with the other entities represented by Blaney (defined below), the "**Moving Landlords**") have made claims against the Sears Canada Entities pursuant to the Claims Process (the "**Claims**");

NOW THEREFORE the Monitor and Blaney McMurtry LLP ("**Blaney**") as counsel to, and on behalf of, the Moving Landlords, agree to settle the Claims on the following terms:

Defined Terms

1 All capitalized terms not defined in this Agreement shall have the meaning ascribed to them in the Term Sheet.

Resolution of Landlord Claims

2 The Moving Landlords agree to the valuation of their Landlord Claims in accordance with the Landlord Claim Formula set out in the Joinder Agreements and to deliver executed Joinder Agreements to the Monitor no later than the later of **December 7, 2018** or five business days after delivery of the Joinder Agreements by the Monitor.

Resolution of Disputed Claims other than Landlord Claims

3 The Monitor and the applicable Moving Landlords agree that, subject to the schedule of The Honourable Justice Farley, hearings in respect of the operating agreement claims filed in relation to Les Galeries Chagnon and Place Vertu shall take place before The Honourable Justice Farley prior to **December 21, 2018**, or as soon thereafter as reasonably possible.

4 The applicable Moving Landlords will work with the Monitor in good faith and with due diligence to reconcile, by no later than **December 10th, 2018**, amounts which SCI claims the Moving Landlords owe, on a post-filing basis, in respect of the following locations:

- (a) Orchard Park Shopping Centre (\$406,944.34).

5 The Monitor will accept Sun Life's cure cost (post-filing) claim in respect of Vaughan Mills in the amount of \$44,000 plus HST.

Amendment to the July 26 Term Sheet

6 The basket amount referred in sub-paragraph A)(ii) of the "**Formula**" section of the Landlord Claim Formula Term Sheet dated July 26, 2018 (the "**Original Landlord Term Sheet**")



 (the "**Basket Increase**"). The parties acknowledge that the Term Sheet attached to this Agreement already reflects the Basket Increase. Pursuant to a "most favoured nation"

slw

agreement amongst the Monitor and counsel to certain landlords (not including the Moving Landlords), all Landlords with Landlord Claims who have already entered into joinder agreements in connection with the Original Landlord Term Sheet will receive the Basket Increase.

7 The Moving Landlords will have the benefit of the “most favoured nation” agreement amongst the Monitor and Landlords who have previously entered joinder agreements.

Co-Tenancy Claims and Stay

8 The Monitor will issue NORDs revising the quantum of the Moving Landlords’ Landlord Claims to reflect the Agreed Claim Amount. The NORDs will include specific references to the co-tenancy claims (the “**Co-Tenancy Claims**”) filed by the Moving Landlords. Such language shall note that Co-tenancy claims were included in the Landlord Claims that were given value pursuant to the Landlord Claim Formula and allowed in accordance with the Joinder Agreements. The Monitor will also include similar language in one of its reports to be filed with the Court. This Co-Tenancy Claim language shall be acceptable to the parties, acting reasonably. The foregoing is without prejudice to any argument to the contrary that the Monitor and the Sears Canada Entities may make in connection with the Operating Agreement Claims.

9 To the extent that the stay (the “**Co-Tenancy Stay**”) of the exercise of co-tenancy rights by tenants of the Moving Landlords is not generally lifted for the benefit of all co-tenants pursuant to an Order of Mr. Justice Hainey in respect of the Co-Tenancy Stay motions brought by The Gap and The Children’s Place (collectively with any other tenants who take steps to bring similar motions, the “**Moving Tenants**”) heard October 16, 2018 (currently under reserve), the Monitor will thereafter support the Moving Landlords in any motion by any other party to lift the co-tenancy stay which seeks to lift the stay prior to Plan Implementation, which is currently scheduled to occur no later than April 30, 2019.

Costs

10 The parties agree that Mr. Justice Hainey will decide the issue of whether the Sears Canada Entities shall pay costs to the Moving Landlords in respect of their claims bar amendment motion. The Monitor and the Sears Canada Entities will not be seeking costs on that motion.

11 The Sears Canada Entities will pay the Moving Landlords, on Plan Implementation, \$50,000, which represents an amount of \$2,272.72 per location formerly leased by the Sears Canada Entities from the Moving Landlords, on account of legal costs in this matter.

Representation by Blaney

12 Blaney represents and warrants in favour of the Monitor and the Sears Canada Entities that it has authority to enter into this Agreement for and on behalf of the Moving Landlords, and to bind such Moving Landlords with its signature to this Agreement.

13 This Agreement may be executed in several counterparts, by original, facsimile, or by email in PDF format, with all copies thereof being deemed one original document and the same agreement with full force and effect, notwithstanding that all parties are not signatories to the same counterpart.

IN WITNESS WHEREOF the Parties have executed this Offer to Settle on the date set out above.

BLANEY MCMURTRY LLP, ON BEHALF OF THE MOVING LANDLORDS

Per: _____

Name: John C Wolf

Title:

FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

Per: _____

Name:

Title:

**APPENDIX “H”
(see attached)**

From: Morawetz, Mr. Justice Geoffrey (SCJ)
Sent: December-03-18 6:17:16 PM
To: Gauthier, Virginie
Subject: RE: Sears

Thank you for the report.
GBM

Geoffrey B. Morawetz

From: Gauthier, Virginie [mailto:virginie.gauthier@nortonrosefulbright.com]
Sent: Monday, December 03, 2018 4:55 PM
To: Morawetz, Mr. Justice Geoffrey (SCJ) <Geoffrey.Morawetz@scj-csj.ca>
Cc: Merskey, Alan <alan.merskey@nortonrosefulbright.com>; John C. Wolf <jwolf@blaney.com>; Bishop, Paul <Paul.Bishop@fticonsulting.com>; Pasparakis, Orestes <orestes.pasparakis@nortonrosefulbright.com>; Greg Watson (greg.watson@fticonsulting.com) <greg.watson@fticonsulting.com>; Hamidi, Kamran (Kamran.Hamidi@fticonsulting.com) <Kamran.Hamidi@fticonsulting.com>; Mr. David T. Ullmann <dullmann@blaney.com>
Subject: Re: Sears

Your Honour,

We are pleased to advise you that a settlement was reached earlier today with the Moving Landlords. As we had a hearing this afternoon with Justice Hainey, we advised His Honour of the settlement.

Thank you again for your assistance in getting this matter resolved.

Virginie Gauthier
Partner
W 416-216-4853
M 416-844-5391

On Nov 30, 2018, at 18:15, David T. Ullmann <DULLmann@blaney.com> wrote:

Your Honour,

Ms. Gauthier's email is correct. I would just add that we have now made (without prejudice to our litigation position) a binding offer at the end of the day which reflects that the distance between the last bid and ask is incredibly small economically, possibly hypothetical, but unfortunately binary. We have provided a signed settlement agreement to the Monitor, in the Monitor's form (but for the remaining disputed point) which is open until Noon on Monday for acceptance by the Monitor should they choose to change their position on that one remaining issue, which we hope they will do. It is not an issue which requires buy in from any other party but the Monitor to accept.

Respectfully,

David Ullmann

David T. Ullmann

Partner

dullmann@blaney.com

<image001.png> 416-596-4289 | <image002.png> 416-594-2437

From: Gauthier, Virginie [<mailto:virginie.gauthier@nortonrosefulbright.com>]
Sent: November 30, 2018 5:53 PM
To: Morawetz, Mr. Justice Geoffrey (SCJ)
Cc: Merskey, Alan; John C. Wolf; Bishop, Paul; Pasparakis, Orestes; David T. Ullmann; Greg Watson (greg.watson@fticonsulting.com); Hamidi, Kamran (Kamran.Hamidi@fticonsulting.com)
Subject: RE: Sears

Your Honour,

Parties engaged in discussions throughout the course of the day however a settlement was not reached.

Virginie Gauthier

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930

virginie.gauthier@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: Morawetz, Mr. Justice Geoffrey (SCJ) [<mailto:Geoffrey.Morawetz@scj-csj.ca>]
Sent: November-29-18 5:38 PM
To: David T. Ullmann
Cc: Merskey, Alan; John C. Wolf; Gauthier, Virginie
Subject: RE: Sears

No report will be provided to Justice Hainey prior to 5:00 p.m. tomorrow.
It would appreciated if parties would advise of their positions at that time.
Thank you.

Geoffrey B. Morawetz

Regional Senior Justice

From: David T. Ullmann [<mailto:DULLmann@blaney.com>]
Sent: November 29, 2018 5:36 PM
To: Morawetz, Mr. Justice Geoffrey (SCJ) <Geoffrey.Morawetz@scj-csj.ca>

Cc: Merskey, Alan <alan.merskey@nortonrosefulbright.com>; John C. Wolf <jwolf@blaney.com>; Gauthier, Virginie <virginie.gauthier@nortonrosefulbright.com>
Subject: Sears

Justice Morawetz,

Thank you, as always, for your dedicated help in trying to get this matter resolved. We are sorry the day did not end with a resolution.

We would ask that you hold off on providing any information to Hainey J until 5pm tomorrow so that we can process today's events with our clients and determine if they will instruct us to provide a final position in writing to the Monitor within that time frame.

Please advise if this is acceptable.

Respectfully,

David

David T. Ullmann

Partner

dullmann@blaney.com

<image001.png> 416-596-4289 | <image002.png> 416-594-2437

Law around the world

nortonrosefulbright.com

CONFIDENTIALITY NOTICE: This email is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately and delete it.

APPENDIX "I"
(see attached)

From: David T. Ullmann <DUllmann@blaney.com>
Sent: December-06-18 9:44 AM
To: Gauthier, Virginie
Cc: John C. Wolf; Bishop, Paul; Greg Watson (greg.watson@fticonsulting.com); Hamidi, Kamran (Kamran.Hamidi@fticonsulting.com); Pasparakis, Orestes; Merskey, Alan
Subject: RE: Executed Settlement from Blaney - Minus McAllister Place

Good Morning Virginie,

You have already correctly informed his Honour, but in the interest of completing your records and mine, I am sending you this email to confirm that the matter is settled as per the executed agreement. In particular, without limitation, I confirm our understanding with respect to the \$2272 per location as set out below.

We confirm that we are in the process of providing our response to the Orchard Park possible payment, which we will deliver on or before Monday. We are also reviewing and attending to the execution and delivery of the various Joinder Agreements, which again you will have on or before Monday.

You have seen my email from yesterday with respect to the Operating Agreements, and I, at least, remain hopeful there can be a resolution without the need for a hearing once we provide our additional materials. We will see.

We should also set a date for our costs submissions with respect to the Claims Bar variance motion. We are, of course, also open to discussing a resolution to that question, at your convenience.

However, to be clear, it is our position that by removing the McAllister reconciliation from the settlement the Monitor has confirmed, as it did with the other amounts it removed from paragraph 4 of the settlement, that it will no longer pursue those amounts from our clients. We did not suggest or agree it would be dealt with on another day. Had that been the case or the intention, there would have been no need for our final back and forth on that issue. Indeed, to be clear we are expecting payment of the approximately [REDACTED] owing on that project to our offices at your earliest convenience. We are also operating on the understanding that there are no further reconciliations to be delivered by the Monitor in respect of any other properties.

We look forward to attending to these remaining steps and focusing hereafter on other aspects of this matter.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: Gauthier, Virginie [mailto:virginie.gauthier@nortonrosefulbright.com]
Sent: December 3, 2018 2:14 PM
To: David T. Ullmann
Cc: John C. Wolf; Bishop, Paul; Greg Watson (greg.watson@fticonsulting.com); Hamidi, Kamran (Kamran.Hamidi@fticonsulting.com); Pasparakis, Orestes; Merskey, Alan
Subject: RE: Executed Settlement from Blaney - Minus McAllister Place

David: Please confirm receipt so I can advise His Honour.

Virginie Gauthier

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930
virginie.gauthier@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: Gauthier, Virginie
Sent: December-03-18 11:31 AM
To: 'David T. Ullmann'
Cc: John C. Wolf; 'Bishop, Paul'; Greg Watson (greg.watson@fticonsulting.com); Hamidi, Kamran (Kamran.Hamidi@fticonsulting.com); Pasparakis, Orestes; Merskey, Alan
Subject: RE: Executed Settlement from Blaney - Minus McAllister Place

David:

Please find attached Greg's signature to the settlement agreement that you sent on Friday at 6:08pm. We also attach the Joinder Agreements that are the schedules to the settlement agreement.

In accepting this settlement agreement, we continue to rely on your previously provided confirmation that the Moving Landlords are prepared to accept the payment of \$2272 per location to the other landlords (to be clear, not Blaney - hence "other" landlords) who have signed joinder agreements and have MFNs and that you agree that the Monitor in doing so will not offend the most favoured nations clause in the settlement agreement.

With respect to the amount owing (or due) in respect of the McAllistair premises, we agree to remove its reconciliation from the settlement agreement and to deal with it separately.

Someone from our offices will be in touch with you to schedule the operating agreement hearings.

I will also advise Justice Morawetz that a settlement was reached and copy you on the correspondence.

Regards,

Virginie Gauthier
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930
virginie.gauthier@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

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**APPENDIX “J”
(see attached)**

From: Jessica Wuthmann <JWuthmann@blaney.com>
Sent: December-10-18 10:20 PM
To: Gauthier, Virginie
Cc: John C. Wolf; David T. Ullmann
Subject: Sears - Executed Joinder Agreements for Blaneys' Landlords
Attachments: 2018-12-10 - LT Gauthier re Tanurb.pdf; 2018-12-10 - LT Gauthier re Bentall Kennedy.pdf; 2018-12-10 - LT Gauthier re Primaris.pdf; 2018-12-10 - LT Gauthier re Quadreal.pdf; 2018-12-10 - LT Gauthier re Westcliff.pdf; 2018-12-10 - LT Gauthier re Montez.pdf

Dear Virginie,

Please see the attached executed joinder agreements and covering letters of today's date.

Thank you,
Jessica



Jessica Wuthmann
Associate

jwuthmann@blaney.com

📞 416-593-3924 | 📞 416-594-3595

🌐 Blaney.com



This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

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

December 10, 2018

VIA E-MAIL

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

Dear Virginie:

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

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

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

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

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

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

Yours very truly,

Blaney McMurtry LLP



David T Ullmann

DTU/JW
Encl.

[REDACTED]

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

December 10, 2018

VIA E-MAIL

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

Dear Virginie:

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

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

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

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

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

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

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

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

Yours very truly,

Blaney McMurtry LLP



David T Ullmann

DTU/JW

Encl.

[REDACTED]

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

December 10, 2018

VIA E-MAIL

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

Dear Virginie:

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

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

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

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

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

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

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

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

Yours very truly,

Blaney McMurtry LLP



David T Ullmann

DTU/JW

Encl.

[REDACTED]

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

December 10, 2018

VIA E-MAIL

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

Dear Virginie:

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

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

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

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

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

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

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

Yours very truly,

Blaney McMurtry LLP



David T Ullmann

DTU/JW
Encl.

[REDACTED]

December 10, 2018

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

VIA E-MAIL

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

Dear Virginie:

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

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

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

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

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

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

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

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

Yours very truly,

Blaney McMurtry LLP



David T Ullmann

DTU/JW

[REDACTED]

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

December 10, 2018

VIA E-MAIL

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

Dear Virginie:

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

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

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

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

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

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

D	Lease Excerpts for the lease with Montez (Sorel) Inc.
---	---

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

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

Yours very truly,

Blaney McMurtry LLP



David T Ullmann

DTU/JW
Encl.

[REDACTED]

**APPENDIX “K”
(see attached)**

December 14, 2018

Sent By Email

Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Attention: Mr. David T. Ullmann

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Virginie Gauthier
+1 416.216.4853
Virginie.Gauthier@nortonrosefulbright.com

Our reference
1000299972

David:

Sears Canada Inc. Joinder Agreements

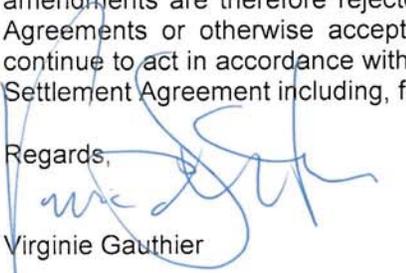
We are in receipt of your letters dated December 10, 2018, in which you attempt to unilaterally amend the terms of the settlement agreement that you executed on behalf of your clients on November 30, 2018, and that our client FTI Consulting Canada Inc., in its capacity as Monitor, accepted on December 3, 2018 (the **Settlement Agreement**).

The Settlement Agreement includes a series of Joinder Agreements that were expressly referenced and incorporated into the Settlement Agreement. The amounts referenced in these Joinder Agreements and agreed to pursuant to the Settlement Agreement were not only the basis of the parties' settlement but had been the basis of their negotiation for the past months. Your clients' claim value pursuant to the Joinder Agreements were provided to you well in advance of your execution of the Settlement Agreement.

By your letters of December 10, 2018 you have purported to (i) alter the agreed upon amounts set out in the Joinder Agreements; and (ii) amend the Settlement Agreement to have the Monitor agree that it "has no further claim for any post-filing sums" against your clients.

Your proposed amendments are directly contrary to the terms of the Settlement Agreement. That Settlement Agreement has been executed and is binding upon your clients. The Monitor relies specifically upon the representation provided by your firm that it has the authority to enter into the Settlement Agreement on behalf of the Moving Landlords. The Monitor is unwilling to re-open the Settlement Agreement. Your proposed amendments are therefore rejected, and the Monitor will not be signing back the proposed amended Joinder Agreements or otherwise accept the amended terms set out in your December 10, 2018 letters. We will continue to act in accordance with the terms of settlement as already agreed upon by the parties pursuant to the Settlement Agreement including, for the purposes of distribution pursuant to the Plan.

Regards,



Virginie Gauthier

Copy to: Paul Bishop / Greg Watson, FTI Consulting Canada Inc.
Orestes Pasparakis / Alan Merskey, Norton Rose Fulbright Canada LLP

CAN_DMS: \124565752\2

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**APPENDIX “L”
(see attached)**

From: David T. Ullmann <DUllmann@blaney.com>
Sent: December-18-18 3:23 PM
To: Symchych, Lillian
Cc: Paul.Bishop@fticonsulting.com; greg.watson@fticonsulting.com; Pasparakis, Orestes; Merskey, Alan; Gauthier, Virginie; John C. Wolf
Subject: RE: Sears Canada Inc.

Virginie,

Thank you for your letter. We disagree completely that there was ever a discussion, never mind an agreement, as to the precise value of our client claims under the formula at any point during the mediation under which the settlement was reached. There is nothing in the settlement which requires us to accept the Monitor's calculation of our client's claims under the formula. The settlement agreement is an agreement to accept that the formula will determine our clients claims, which has presumably been the case with all parties who have executed it. Our response to the joinder agreements (which you provided after the settlement was agreed to) is our calculation of those claims. If you have a dispute about how that is calculated, we are of course prepared to enter into a reasoned discussion of same, but we will not accept that the Monitor is entitled to merely dismiss our calculation out of hand, as it seems to have done. If the Monitor intended to limit our claims to some calculation, you were obliged to raise that in the negotiations. Indeed you will recall that we added 5 days in the settlement agreement to review and execute the joinder which we inserted into the agreement specifically because we knew we would require that time to review the Monitor's calculations with our clients (as we diligently did following their receipt). We could never have agreed to a settlement that left the calculation of our clients claims up to the Monitor's sole discretion.

As you can see, our claim amounts in the joinder agreements we signed and presented to you are carefully assembled, accurate, and supported by the relevant lease documents and client records.

Please reconsider your approach to this issue.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: Symchych, Lillian [<mailto:lillian.symchych@nortonrosefulbright.com>]
Sent: December 14, 2018 4:20 PM
To: David T. Ullmann
Cc: Paul.Bishop@fticonsulting.com; greg.watson@fticonsulting.com; Pasparakis, Orestes; Merskey, Alan; Gauthier, Virginie
Subject: Sears Canada Inc.

(This is being sent on behalf of Virginie Gauthier of our office).

Please see attached.

Thank you.

Lillian

Lillian Symchych

Legal Assistant

Assistant to Virginie Gauthier and Evan Cobb

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.

Royal Bank Plaza, South Tower, Suite 3800

200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.2974 | F: +1 416.216.3930

NORTON ROSE FULBRIGHT

Law around the world

nortonrosefulbright.com

CONFIDENTIALITY NOTICE: This email is confidential and may be privileged. If you are not the intended recipient please notify the sender immediately and delete it.

**APPENDIX “M”
(see attached)**

January 9, 2019

Sent By E-mail

Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Attention: David Ullmann

Virginie Gauthier
+1 416.216.4853
Virginie.Gauthier@nortonrosefulbright.com

Your reference

Our reference
1000299972

David:

Sears Canada Inc.: Settlement Agreement with the Moving Landlords

We write further to our letter of December 14, 2018 and your email of December 18, 2019, copies of each are attached hereto.

Our December 14 Letter states our position on this matter clearly and your December 18 email confirms our position that the "settlement agreement is an agreement to accept that the formula will determine [y]our clients claims". The Term Sheet appended to the Settlement Agreement describes the formula for calculating Landlord Claims for Rent, including those instances where no Rent details were provided in the Landlord's Proof of Claim as was the case for your clients. That is the basis upon which the Monitor calculated your clients' Landlord Claims and those calculations, which you had seen well in advance of signing the Settlement Agreement, were included in the Joinder Agreements provided to you.

As previously indicated, the Monitor will make distributions to your clients in accordance with the claim amounts it previously provided.

Regards,


Virginie Gauthier

Copies to: Paul Bishop/Steve Bissell/Lizzy Pearson, FTI Consulting Canada Inc.
Orestes Pasparakis/Alan Merskey, Norton Rose Fulbright Canada LLP.

Encl.

CAN_DMS: \124862089\1

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NORTON ROSE FULBRIGHT

Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Fulbright Canada LLP
 Royal Bank Plaza, South Tower, Suite 3800
 200 Bay Street, P.O. Box 84
 Toronto, Ontario M5J 2Z4 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Virginie Gauthier
 +1 416.216.4853
Virginie.Gauthier@nortonrosefulbright.com

Our reference
 1000299972

December 14, 2018

Sent By Email

Blaney McMurtry LLP
 2 Queen Street East, Suite 1500
 Toronto, ON M5C 3G5

Attention: Mr. David T. Ullmann

David:

Sears Canada Inc. Joinder Agreements

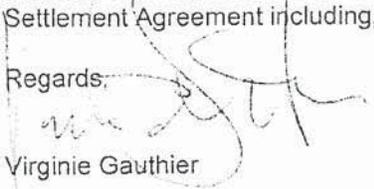
We are in receipt of your letters dated December 10, 2018, in which you attempt to unilaterally amend the terms of the settlement agreement that you executed on behalf of your clients on November 30, 2018, and that our client FTI Consulting Canada Inc., in its capacity as Monitor, accepted on December 3, 2018 (the **Settlement Agreement**).

The Settlement Agreement includes a series of Joinder Agreements that were expressly referenced and incorporated into the Settlement Agreement. The amounts referenced in these Joinder Agreements and agreed to pursuant to the Settlement Agreement were not only the basis of the parties' settlement but had been the basis of their negotiation for the past months. Your clients' claim value pursuant to the Joinder Agreements were provided to you well in advance of your execution of the Settlement Agreement.

By your letters of December 10, 2018 you have purported to (i) alter the agreed upon amounts set out in the Joinder Agreements; and (ii) amend the Settlement Agreement to have the Monitor agree that it "has no further claim for any post-filing sums" against your clients.

Your proposed amendments are directly contrary to the terms of the Settlement Agreement. That Settlement Agreement has been executed and is binding upon your clients. The Monitor relies specifically upon the representation provided by your firm that it has the authority to enter into the Settlement Agreement on behalf of the Moving Landlords. The Monitor is unwilling to re-open the Settlement Agreement. Your proposed amendments are therefore rejected, and the Monitor will not be signing back the proposed amended Joinder Agreements or otherwise accept the amended terms set out in your December 10, 2018 letters. We will continue to act in accordance with the terms of settlement as already agreed upon by the parties pursuant to the Settlement Agreement including, for the purposes of distribution pursuant to the Plan.

Regards,


 Virginie Gauthier

Copy to: Paul Bishop / Greg Watson, FTI Consulting Canada Inc.
 Orestes Pasparakis / Alan Merskey, Norton Rose Fulbright Canada LLP

CAN_DMS: \124565752\2

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Gauthier, Virginie

From: David T. Ullmann <DUllmann@blaney.com>
Sent: December-18-18 3:23 PM
To: Symchych, Lillian
Cc: Paul.Bishop@fticonsulting.com; greg.watson@fticonsulting.com; Pasparakis, Orestes; Merskey, Alan; Gauthier, Virginie; John C. Wolf
Subject: RE: Sears Canada Inc.

Virginie,

Thank you for your letter. We disagree completely that there was ever a discussion, never mind an agreement, as to the precise value of our client claims under the formula at any point during the mediation under which the settlement was reached. There is nothing in the settlement which requires us to accept the Monitor's calculation of our client's claims under the formula. The settlement agreement is an agreement to accept that the formula will determine our clients claims, which has presumably been the case with all parties who have executed it. Our response to the joinder agreements (which you provided after the settlement was agreed to) is our calculation of those claims. If you have a dispute about how that is calculated, we are of course prepared to enter into a reasoned discussion of same, but we will not accept that the Monitor is entitled to merely dismiss our calculation out of hand, as it seems to have done. If the Monitor intended to limit our claims to some calculation, you were obliged to raise that in the negotiations. Indeed you will recall that we added 5 days in the settlement agreement to review and execute the joinder which we inserted into the agreement specifically because we knew we would require that time to review the Monitor's calculations with our clients (as we diligently did following their receipt). We could never have agreed to a settlement that left the calculation of our clients claims up to the Monitor's sole discretion.

As you can see, our claim amounts in the joinder agreements we signed and presented to you are carefully assembled, accurate, and supported by the relevant lease documents and client records.

Please reconsider your approach to this issue.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

**APPENDIX “N”
(see attached)**

March 8, 2019

Sent By E-mail

David T. Ullmann
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Virginie Gauthier
+1 416.216.4853
Virginie.Gauthier@nortonrosefulbright.com

Your reference

Our reference
1000299972

David:

Sears Canada Inc. and Moving Landlords

We write to advise that FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the "**Monitor**") of Sears Canada Inc. ("**SCI**") and certain of its affiliates (collectively, the "**Sears Canada Entities**") intends to bring a motion to the Court to specifically enforce the settlement agreement that Blaney McMurtry LLP executed on behalf of its clients on November 30, 2018 and that the Monitor accepted on December 3, 2018. We will be reaching out to the Commercial List Office to enquire about Justice Hainey's availabilities over the next few weeks. Please advise of any week when you are not available in the month of March.

Please note that the Monitor's motion may also seek the Court's advice and directions on your correspondence of February 19, 2019 regarding the Cataraqui/Orchard Park locations where you unilaterally deducted an amount of \$10,000 from the post-filing amount owing by your client and attempted to bind the Monitor to this position if it deposited the cheque you provided. The Monitor has cashed the cheque you provided and does not agree that this settles the amount owed in respect of those locations.

Regards,



Virginie Gauthier

Cop(y/ies) to: Greg Watson, Paul Bishop, Steve Bissell and Kamran Hamidi, FTI Consulting Canada Inc.
Orestes Pasparakis, Alan Merskey and Evan Cobb, Norton Rose Fulbright LLP
John Wolf, Blaney McMurtry LLP

CAN_DMS: \125875751\1

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**APPENDIX “O”
(see attached)**

From: [Pearson, Lizzy](#)
To: [dullmann@blaney.com](#); [jwolf@blaney.com](#); [jwuthmann@blaney.com](#)
Cc: [Bissell, Steven](#); [Gauthier, Virginie](#)
Subject: Fwd: Reconciliation of your clients' post-filing claims
Attachments: [Blaney McMurtry Post-Filing Claims Reconciliation 5.9.18.xlsx](#)
[ATT00001.htm](#)

Hi all,

Just wanted to follow up on the below to see if you had any questions or if your clients had made progress with the reconciliations provided. Of course, pursuant to the Initial Order, we want to ensure that any legitimate post-filing amounts are paid out as quickly and efficiently as possible.

Available on my cell if you'd like to discuss.

Regards,
Lizzy

Begin forwarded message:

From: "Pearson, Lizzy" <Lizzy.Pearson@fticonsulting.com>
Date: May 9, 2018 at 5:36:06 PM GMT-5
To: "David T. Ullmann" <DUllmann@blaney.com>, "John C. Wolf" <jwolf@blaney.com>, Jessica Wuthmann <JWuthmann@blaney.com>
Cc: "Cobb, Evan" <evan.cobb@nortonrosefulbright.com>, "alan.merskey@nortonrosefulbright.com" <alan.merskey@nortonrosefulbright.com>, "Bissell, Steven" <Steven.Bissell@fticonsulting.com>
Subject: Reconciliation of your clients' post-filing claims

David, John & Jessica,

Pursuant to our conversation the other day, the Sears team has worked diligently to reconcile all of your clients' post-filing claims. Attached is a schedule showing all post-filing claims submitted by your clients and their reconciled amounts. The first tab is a summary and the second shows reconciliations for all sites where Sears disagrees to the claim amount.

A few things to note:

<!--[if !supportLists]-->a. <!--[endif]-->Sears treats the two Orchard Park sites as one single vendor. As such, the claims are analysed on a collective basis. This will not be news to the landlord.

<!--[if !supportLists]-->b. <!--[endif]-->Two reconciled claim amounts (Park Place Mall & Westcliff re Granby) are based on the assumption that the landlord will provide invoices for amounts included in the claim and that there will be no

issues with these invoices. If this is not the case, these amounts will change. Sears has attempted to contact the landlords for both properties to obtain these invoices, to no avail. If you could please work with your clients to provide these as soon as possible, such that we can confirm the amounts owing, that would be greatly appreciated.

<!--[if !supportLists]-->c. <!--[endif]-->Re the settlement at Hillside and corresponding offset at Westmount – if you could please work with your clients to establish whether the transfer will be made directly between themselves, or whether the Monitor will be required to request further funds from Hillside to distribute to Westmount, that would be appreciated.

<!--[if !supportLists]-->d. <!--[endif]-->From the information provided for Sorel, Sears was not able to form a reconciliation between the landlord’s number and their books. Sears’ records have been reflected in the summary attached, but if there are questions surrounding this number, the landlord will need to provide a full statement of account for any reconciliation to be completed. The statement sent by Jessica on Monday was unfortunately not sufficient. Of course, if the landlord agrees to the number in the attached, no such statement need be provided.

<!--[if !supportLists]-->e. <!--[endif]-->Due to the lease held by Sunlife being with Corbeil Electrique, the Corbeil Newco needs to provide sufficient information for Sears to complete its reconciliation. This has not yet been provided. An updated schedule will be provided to you when this reconciliation is complete.

Of course, feel free to reach out with any questions or comments from yourselves or your clients. I am always available on my cell, below.

Regards,
Lizzy

Lizzy Pearson
Consultant
Corporate Finance & Restructuring

FTI Consulting
1.416.649.8085 T | 1.647.278.4253 M
lizzy.pearson@fticonsulting.com

From: Gauthier, Virginie [mailto:virginie.gauthier@nortonrosefulbright.com]
Sent: Wednesday, October 24, 2018 5:05 PM
To: David T. Ullmann (Dullmann@blaney.com)
Cc: Bishop, Paul; Pasparakis, Orestes
Subject: Sears Canada: Orchard Park

David,

Further to your telephone call of earlier this afternoon, the Monitor understands that the Company made a payment in error on October 31, 2017 in the amount of \$418,698.50 as part of an EFT with reference # 4061141.

Attached is an excel document previously provided to you, which shows the Company's reconciliation of the amounts your clients (including Orchard Park) have claimed versus the amounts that the Company believes were owing (to and from Sears). If you open the "Reconciliations" tab, you will see how the Company arrived at the amount of \$406,944.34.

As previously mentioned, the Monitor has not received any responses to its enquiries with respect to this payment.

Regards,

Virginie Gauthier
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930
virginie.gauthier@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

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**APPENDIX “P”
(see attached)**

From: [David T. Ullmann](#)
To: [Gauthier, Virginie](#)
Cc: [John C. Wolf](#)
Subject: FW: Cataraqui/Orchard Park reconciliation
Date: December-10-18 10:24:29 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image006.png](#)
[image008.png](#)
[image010.png](#)
[image012.png](#)
[Sears - Pay as Due Invoice.pdf](#)
[Proof of Claim - Cataraqui.pdf](#)
[Notice of Revision or Disallowance - Cataraqui.pdf](#)
Importance: High

Virginie,

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

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

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

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

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

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

Regards,

David

cid:image001.png@01D48FF1.6C0DEFD0



David T. Ullmann
Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

Blaney.com



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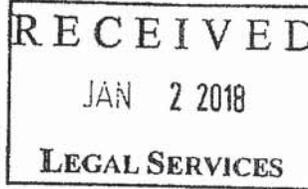
Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1B8
 416.362.2111 MAIN
 416.862.6666 FACSIMILE

OSLER

Toronto

December 23, 2017

Montréal



Michael S. Shakra
 Direct Dial: 416.862-6643
 mshakra@osler.com
 Our Matter Number: 1175649

Calgary

Sent By Courier

Ottawa

Primaris Management Inc.
 1 Adelaide St. East, Suite 900
 Toronto, ON M5C 2V9

Re: *Cataragui Centre*

Vancouver

New York

Attention: Leasing / Legal Department

Dear Sir/Madam:

Re: CCAA Proceedings of Sears Canada Inc. et al (Court File No. CV-17-11846-00CL)

As you may be aware, Sears Canada Inc. and certain of its subsidiaries and affiliates (collectively, the "**Sears Canada Group**") filed for and were granted protection from creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") pursuant to an Initial Order issued by the Ontario Superior Court of Justice (Commercial List) on June 22, 2017. We act for the Sears Canada Group in connection with these CCAA proceedings (the "**CCAA Proceedings**").

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,

Michael S. Shakra

Enclosure

- c. Steven Bissell, *FTI Consulting Canada Inc.*
 Virginie Gauthier, *Norton Rose Fulbright Canada LLP*

FORM 4
NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN
AGREEMENT

To: **Cataraqui Town Centre Inc. / Primaris Management**

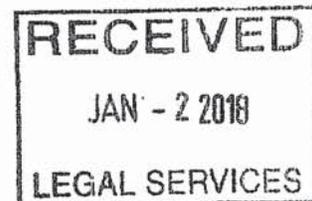
And to: **FTI Consulting Canada Inc.**, in its capacity as court-appointed Monitor

Take notice that

1. Proceedings under the *Companies' Creditors Arrangement Act* (the "Act") in respect of **Sears Canada Inc.** ("SCI") and related entities (collectively, the "Applicants") were commenced on the 22nd day of June, 2017.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement:

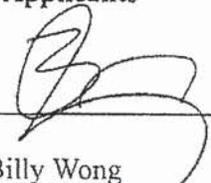
Lease dated as of December 2, 2003, but effective as of February 24, 1997 between Cataraqui Town Centre Inc. (as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between SCI (including any of its affiliates or subsidiaries) and Cataraqui Town Centre Inc. or Primaris Management (or any predecessor or successor in interest), arising out of or relating to the premises leased by SCI at Cataraqui Town Centre Inc., Kingston, Ontario, in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement")

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the monitor, apply to court for an order that the agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 22nd day of January 2018, being 30 days after the day on which this notice has been given.



Dated at Toronto, Ontario, on December 23, 2017.

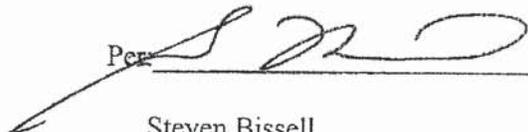
The Applicants

Per: 
Billy Wong
Chief Financial Officer

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on December 23, 2017.

FTI Consulting Canada Inc.
Solely in its capacity as Court-Appointed Monitor
of the Applicants and not in its personal or corporate capacity

Per: 
Steven Bissell
Managing Director

**APPENDIX “Q”
(see attached)**

December 17, 2018

Without Prejudice**Sent By E-mail**

Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Attention: David Ullmann

Virginie Gauthier
+1 416.216.4853
Virginie.Gauthier@nortonrosefulbright.com

Your reference

Our reference
1000299972

David:

Sears Canada Inc.: Reconciliation of Amount Owing by Cataraqi/Orchard Park

FTI Consulting Canada Inc., in its capacity as Monitor (the "**Monitor**"), has reviewed with representatives of Sears Canada Inc. ("**SCI**") the information you provided under cover of your email of December 10, 2018 titled "Cataraqi/Orchard Park reconciliation".

The table below provides a comparison of the reconciliation you provided on December 10 against SCI's.

Post Filing Reconciliation - Cataraqi Town Centre

Tax Reconciliation	Blaney McMurtry	Sears
Full Year Tax Expense	410,933.14	410,933.14
<i>Payments Made in Error:</i>		
31-Oct-17	410,933.14	410,933.14
11-Dec-17	-	193,645.21 [1]
Total Payments	a 410,933.14	604,578.35
Post-Filing Tax Expense	b (217,287.93)	(217,287.93)
Excess Payment to Be Returned	c = a+b 193,645.21	387,290.42
Less: Post-Filing Claim Accepted by Monitor	d (96,174.30)	(96,174.30)
Less: Legal Fees	e (10,000.00)	- [2]
Net Refund to Sears	c+d+e 87,470.91	291,116.12

Notes:

[1] A payment of \$193,645.21 was made on Dec. 11, 2017, which was applied against the post-filing tax balance owing of \$217,287.93.

[2] The settlement agreement between the Moving Landlords and Sears does not reflect any payment of legal fees as part of the post-filing reconciliation.

CAN_DMS: \124581289\3

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David Ullmann
December 17, 2018



While the Monitor agrees with certain of the amounts contained in your email, the above table highlights two discrepancies¹:

1. An amount of \$193,645.21 that was paid in error on December 11, 2017 to Cataraqui in respect of pre-filing taxes should be set-off against the payment of post-filing taxes in respect of that location consistent with the position that the Remington decision governs these matters and that these amounts should either be repaid or set off against true post-filing amounts.

2. An amount of \$10,000 for legal fees should not be deducted from the amount owing. The Monitor has not agreed to pay legal fees of any other landlord for work done on account of post-filing reconciliation and sees no basis to treat Cataraqui/Orchard Park differently. Further, any legal issue involved in this reconciliation have already been addressed in the context of the resolution of the Monitor's motions on pre-filing taxes earlier this year.

As such, the final balance owing by Primaris in respect of Cataraqui/Orchard Park is **\$291,116.12**. Please make arrangements for the refund of this amount to SCI **no later than December 21, 2018**.

Regards,

A handwritten signature in blue ink, appearing to read 'Virginie Gauthier', written over a faint blue line.

Virginie Gauthier

Cop(y/ies) to: Paul Bishop/Steve Bissell/Lizzy Pearson, FTI Consulting Canada Inc.

¹ For the purpose of this reconciliation, the Monitor has assumed that, as you stated, the October 31, 2017 is being notionally treated as received by Cataraqui.

**APPENDIX “R”
(see attached)**

From: [David T. Ullmann](#)
To: [Gauthier, Virginie](#)
Cc: [Bissell, Steven \(Steven.Bissell@fticonsulting.com\)](#); [John C. Wolf](#)
Subject: FW: Cataraqui/Orchard Park reconciliation
Date: January-07-19 5:30:57 PM
Attachments: [image002.png](#)
[image003.png](#)
[image009.png](#)
[image010.png](#)
[image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[Letter to Blaney McMurtry.pdf](#)
[Pre-filing Tax Payments.msg](#)
[CAN DMS 124597394 v1 Letter to D. Ullman re Cataraqui Orchard Park, date....pdf](#)

Virginie,

I hope you had a good holiday break.

Thank you for your email of December 17th. We understand the position you have explained in your email, but we require some clarification before our client can consider it resolved on that basis.

As you know, pursuant to the attached emails and its letter of Jan 29th, the Monitor reviewed its accounts and advised that although there had been a payment to Cataraqui, that payment was fully accounted for and set off. Indeed, when we settled the various Primaris over payments with the payment by our client of \$50,000 (as described in my email exchange with Evan Cobb attached which involved various set offs etc), it was our understanding that the question of any overpayments to Primaris was settled and released. As such, we were surprised to see the Monitor applying the \$193,000 payment again in its calculation on this issue.

Can you please review this matter further and determine what set offs the Monitor was referring to in the various correspondence which is attached, as we need to explain to our client how this same amount is being applied twice by the Monitor. If the answer is that that Monitor had applied that amount to Sears' obligation to pay post filing taxes, why did Sears not pay the balance of \$20,000 owing for those taxes at that time or claim that nothing was owing?

In general, the Monitor/Sears accounting has not exhibited the kind of consistency our clients require in order to settle the matter just on the basis of your email below.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

From: Gauthier, Virginie [mailto:virginie.gauthier@nortonrosefulbright.com]
Sent: Monday, December 17, 2018 11:34 AM
To: David T. Ullmann
Cc: John C. Wolf; Steven Bissell (steven.bissell@fticonsulting.com); Bishop, Paul; Pearson, Lizzy (Lizzy.Pearson@fticonsulting.com); Pasparakis, Orestes; Merskey, Alan
Subject: RE: Cataraqui/Orchard Park reconciliation

David,

Please see attached letter.

Virginie Gauthier
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.4853 | M: +1 416.844.5391 | F: +1 416.216.3930
virginie.gauthier@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David T. Ullmann [mailto:DUllmann@blaney.com]
Sent: December-10-18 10:24 PM
To: Gauthier, Virginie
Cc: John C. Wolf
Subject: FW: Cataraqui/Orchard Park reconciliation
Importance: High

Virginie,

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

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

We have reviewed with our client the decision re Remington and advised our client that it is not entitled to retain the pre filing portion of this payment. Primaris has agreed to pay to the Monitor

an amount equal to the pre-filing taxes owing on Cataraqui which for the period of January 1 to June 21st 2017 should be \$193,645.21, less our reasonable substantial indemnity costs of addressing these matters, and subject to the following setoff for post filing amounts due.

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

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

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

Regards,

David

cid:image001.png@01D48FF1.6C0DEFD0



David T. Ullmann
Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

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January 29, 2018

Sent By Email

Blaney McMurtry LLP

2 Queen Street East
Suite 1500
Toronto, Ontario
M5C3G5

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

F: +1 416.216.3930
nortonrosefulbright.com

Attn: David Ullmann

Dear Mr. Ullmann:

Re: Sears Canada Inc. (“Sears Canada”), Leases between Sears Canada and various landlords represented by Blaney McMurtry LLP (the “Leases”)

We write to you as counsel to the court-appointed Monitor of Sears Canada in connection with the proceedings of Sears Canada and its affiliates under the *Companies’ Creditors Arrangement Act* (the “CCAA”) and further to the Monitor’s correspondence to your clients dated January 5, 2018 (the “**January 5 Letter**”).

As set out in the January 5 Letter, on or about December 11, 2017, Sears Canada’s records show it mistakenly paid your clients (listed on Schedule “A” hereto) an amount of \$908,344.88 (the “**Pre-filing Tax Payments**”) on account of obligations under the Leases. Sears Canada has provided the Monitor with copies of facsimile correspondence delivered to your clients at the time of the Pre-filing Tax Payments identifying these payments as “PREFILINGPROPTAX”, being payments of tax arrears that accrued during the period prior to the commencement of the CCAA proceedings of Sears Canada. The amounts of the Pre-filing Tax Payments also match Sears Canada’s records of the realty tax amounts accrued but unpaid up to June 22, 2017 under the Leases. The details as to how this mistake arose are set out in the Supplement to the Eleventh Report of the Monitor, at paragraphs 3 and 4. A summary of such payments received by your clients are set out on Schedule “A” hereto.

The Monitor viewed the Pre-filing Tax Payments as preferential payments to your clients on account of obligations that accrued in the pre-filing period that were stayed and were paid in error and in violation of Paragraph 9 of the Initial Order granted in the CCAA proceedings of Sears Canada.

The Monitor previously wrote to your clients requesting that the Pre-filing Tax Payments be returned or proposing, in the alternative, in order to reverse the payment error, Sears Canada would offset the Pre-filing Tax Payments against other amounts that had become, or would become, payable in accordance with the Initial Order under the Leases. In practical terms, the Pre-filing Tax Payments would be treated as pre-payments of rent under the Leases and applied accordingly.

Since the date of the January 5 Letter, the Monitor was advised of two issues raised by counsel to various landlords:

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1. certain landlords believed that the proposed offset of the Pre-filing Tax Payments was invalid and that the amounts to which Sears Canada purported to apply the offset remain outstanding in breach of the applicable lease (the "**Pre-filing Tax Issue**"); and
2. certain landlords believed that, even leaving aside the offset amount, additional amounts payable pursuant to paragraph 11 of the Initial Order remained due and owing but were unpaid under the applicable lease (the "**Ordinary Course Payments Issue**").

As you know, an interim resolution to this issue was presented to the Court at a hearing on January 22, 2018. Under the interim resolution, the Monitor would hold in escrow an amount of \$4.3 million, which was an amount sufficient to cover the disputed offset amounts described above and an additional amount to satisfy the other remaining outstanding rent reconciliation issues.

Resolution of the Pre-filing Taxes Issue

Since the January 22, 2018 hearing, the Ontario court has provided its decision on the Motion by Remington Properties Inc. The pre-filing tax accruals in that case were found not to be post-filing obligations for which payment was required to be made pursuant to paragraph 11 of the Initial Order. The Monitor does not believe there is any meaningful distinction between the position of Remington Properties Inc. and any other landlord with respect to the Pre-filing Tax Payments.

Based upon the decision in the Remington Properties Inc. matter, the Monitor does not believe there is any circumstance in which a landlord would be permitted to retain the Pre-filing Tax Payment and also be entitled to an additional payment for the post-filing rent against which the Pre-filing Tax Payment was previously offset. Therefore, two options appear to be available to fully and finally resolve the Pre-filing Tax Issue: (i) your clients return the Pre-filing Tax Payments and receive payment in full from the escrowed funds held by the Monitor for the amount of post-filing rent that was previously offset against the Pre-filing Tax Payments by Sears Canada Inc.; or (ii) your clients retain the Pre-filing Tax Payments to the extent of the amounts previously offset by Sears Canada Inc. and return any residual portion of the Pre-filing Tax Payments. Any other alternative would result in an unacceptable windfall to your clients at this time.

At this time, the Monitor's records show that the amounts set out on Schedule "B" hereto have not been recovered from your clients through offsets.

The Monitor requests a response from you on or before February 2, 2018 setting out your preferred method to resolve the Pre-filing Tax Issue. If you believe there are any grounds on which other options beyond the Monitor's suggested resolutions should be considered, please advise.

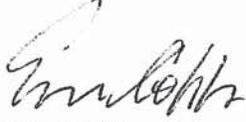
In its role as the court-officer in these CCAA proceedings, the Monitor must ensure that creditors are treated fairly and that known transactions that provide a creditor with preferential recoveries ahead of other creditors are remedied. Accordingly, if your clients do not agree to resolve the Pre-filing Tax Issue as described above at this time or provide a satisfactory explanation for the failure to do so, the Monitor will be required to forthwith seek a court order to resolve this issue.

Resolution of the Ordinary Course Payments Issue

The Monitor has commenced the process of reconciling rent amounts claimed by landlords against amounts shown in Sears Canada's records. However, to date the Monitor has received no detailed information from your clients regarding the rent amounts your clients claim are unpaid.

The Monitor will not be taking any further steps with respect to the reconciliation of rent amounts at your clients' locations until this information is received as, absent any conflicting information, it appears from Sears Canada's records that your clients do not have any amounts outstanding for the post-filing period and, in fact, are overpaid for the post-filing period based upon the Pre-filing Tax Payments issue that must be resolved as described above.

Yours truly,

A handwritten signature in black ink, appearing to read "Evan Cobb".

Evan Cobb

Schedule "A"
Pre-Filing Tax Payments

Location	Landlord	Payment
VICTORIA	Hillside Centre Holdings Inc.	\$166,913.39
HAMILTON	Eastgate Square GP Inc.	\$102,380.65
LEVIS	Gerances Westcliff	\$74,536.99
VANCOUVER – CAPILANO	BCIM Realty Corporation	\$89,479.64
LETHBRIDGE	Park Place Mall Holdings Inc.	\$46,670.98
GUELPH	Stone Road Mall Holdings Inc.	\$160,479.01
ST. JEAN	Westcliff Investment Ltd.	\$540.34
GRANBY	Westcliff Investment Ltd.	\$14,310.39
LANGLEY	BCIM Realty Corporation	\$59,388.28
KINGSTON	Cataraqui Town Centre	\$193,645.21

Schedule "B"
Pre-Filing Tax Payments Not Recovered

Location	Landlord	Payment
VICTORIA	Hillside Centre Holdings Inc.	\$66,596.69
HAMILTON	Eastgate Square GP Inc.	\$1,223.21
VANCOUVER – CAPILANO	BCIM Realty Corporation	\$4,142.15
GUELPH	Stone Road Mall Holdings Inc.	\$52,452.06
LANGLEY	BCIM Realty Corporation	\$436.58

December 17, 2018

Without Prejudice**Sent By E-mail**

Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Attention: David Ullmann

Virginie Gauthier
+1 416.216.4853
Virginie.Gauthier@nortonrosefulbright.com

Your reference

Our reference
1000299972

David:

Sears Canada Inc.: Reconciliation of Amount Owing by Cataraqui/Orchard Park

FTI Consulting Canada Inc., in its capacity as Monitor (the "**Monitor**"), has reviewed with representatives of Sears Canada Inc. ("**SCI**") the information you provided under cover of your email of December 10, 2018 titled "Cataraqui/Orchard Park reconciliation".

The table below provides a comparison of the reconciliation you provided on December 10 against SCI's.

Post Filing Reconciliation - Cataraqui Town Centre

Tax Reconciliation	Blaney McMurtry	Sears
Full Year Tax Expense	410,933.14	410,933.14
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Excess Payment to Be Returned	c = a+b 193,645.21	387,290.42
Less: Post-Filing Claim Accepted by Monitor	d (96,174.30)	(96,174.30)
Less: Legal Fees	e (10,000.00)	- [2]
Net Refund to Sears	c+d+e 87,470.91	291,116.12

Notes:

[1] A payment of \$193,645.21 was made on Dec. 11, 2017, which was applied against the post-filing tax balance owing of \$217,287.93.

[2] The settlement agreement between the Moving Landlords and Sears does not reflect any payment of legal fees as part of the post-filing reconciliation.

CAN_DMS: \124581289\3

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David Ullmann
December 17, 2018

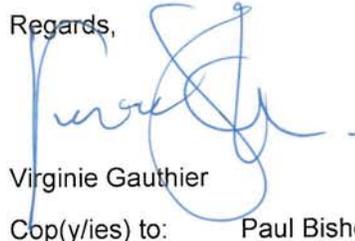
While the Monitor agrees with certain of the amounts contained in your email, the above table highlights two discrepancies¹:

1. An amount of \$193,645.21 that was paid in error on December 11, 2017 to Cataraqui in respect of pre-filing taxes should be set-off against the payment of post-filing taxes in respect of that location consistent with the position that the Remington decision governs these matters and that these amounts should either be repaid or set off against true post-filing amounts.

2. An amount of \$10,000 for legal fees should not be deducted from the amount owing. The Monitor has not agreed to pay legal fees of any other landlord for work done on account of post-filing reconciliation and sees no basis to treat Cataraqui/Orchard Park differently. Further, any legal issue involved in this reconciliation have already been addressed in the context of the resolution of the Monitor's motions on pre-filing taxes earlier this year.

As such, the final balance owing by Primaris in respect of Cataraqui/Orchard Park is **\$291,116.12**. Please make arrangements for the refund of this amount to SCI **no later than December 21, 2018**.

Regards,

A handwritten signature in blue ink, appearing to read 'Virginie Gauthier', written over a light blue circular stamp or watermark.

Virginie Gauthier

Cop(y/ies) to: Paul Bishop/Steve Bissell/Lizzy Pearson, FTI Consulting Canada Inc.

¹ For the purpose of this reconciliation, the Monitor has assumed that, as you stated, the October 31, 2017 is being notionally treated as received by Cataraqui.

From: [Cobb, Evan](#)
To: [David T. Ullmann](#)
Cc: [John C. Wolf](#); [Bissell, Steven \(Steven.Bissell@fticonsulting.com\)](#)
Subject: Pre-filing Tax Payments
Date: April-25-18 8:49:39 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)

David,

As discussed yesterday, there are additional properties that we believe you represent and that received pre-filing tax payments on or around December 11th.

The Monitor did not seek to recover any amounts for these properties as part of the April 18th motion because the pre-filing tax payments that were made at these locations were fully offset against post-filing rent amounts that became due at these locations or at affiliated properties.

While the Monitor is not claiming any additional amounts in respect of these properties, the reconciliations of post-filing claim amounts for these properties will need to reflect these offsets.

The relevant properties are:

001816-VANCOUVER - CAPILANO	BCIM Realty Corporation	BLANEY MCMURTRY LLP John C. Wolf - jwolf@blaney.com David T. Ullmann - dullmann@blaney.com
001422-LETHBRIDGE	Park Place Mall Holdings Inc.	BLANEY MCMURTRY LLP John C. Wolf - jwolf@blaney.com David T. Ullmann - dullmann@blaney.com
001037-ST. JEAN	Westcliff Investment Ltd.	BLANEY MCMURTRY LLP John C. Wolf - jwolf@blaney.com David T. Ullmann - dullmann@blaney.com
001041-GRANBY	Westcliff Investment Ltd.	BLANEY MCMURTRY LLP John C. Wolf - jwolf@blaney.com David T. Ullmann - dullmann@blaney.com
001811-LANGLEY, BRITISH COLUMB	BCIM Realty Corporation	BLANEY MCMURTRY LLP John C. Wolf - jwolf@blaney.com David T. Ullmann - dullmann@blaney.com
001085-LEVIS	Gerances Westcliff	BLANEY MCMURTRY LLP John C. Wolf - jwolf@blaney.com David T. Ullmann - dullmann@blaney.com
001040-KINGSTON 2	Cataraqui Town Centre	BLANEY MCMURTRY LLP John C. Wolf - jwolf@blaney.com David T. Ullmann - dullmann@blaney.com

FTI can contact the landlords at these locations directly to reconcile these amounts if you provide the contact information for the appropriate person at each location.

Thanks.

Evan Cobb
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.1929 | F: +1 416.216.3930
evan.cobb@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: Cobb, Evan
Sent: April-24-18 10:06 AM
To: 'David T. Ullmann'
Cc: John C. Wolf; Bissell, Steven (Steven.Bissell@fticonsulting.com)
Subject: RE: Stone Road

David,

The Monitor would agree to the resolution described below provided that your clients confirm that they do not object to the offset in the amount of \$21,722.48 as described in the Supplement to the Fifteenth Report at paragraph 28.

In substance, Sears applied \$21,722.48 from the December 11 pre-filing tax payment for the Stone Road location to post-filing rent at other affiliated locations.

This offset was applied to post-filing rent at the following properties:

- \$11,620.66 against Medicine Hat. Store #1428. Landlord: Primaris Management
- \$10,101.82 against Lethbridge. Store #1422. Landlord: Park Place Mall

Can you confirm that you represent the landlords at these stores (it appears these stores were included in your letter to me) and that the landlords at these stores will agree to this offset, and the corresponding reduction to their post-filing rent claim?

Thanks.

Evan Cobb
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada
T: +1 416.216.1929 | F: +1 416.216.3930
evan.cobb@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David T. Ullmann [mailto:DUllmann@blaney.com]
Sent: April-23-18 10:50 AM
To: Cobb, Evan
Cc: John C. Wolf
Subject: Stone Road

Evan,

I am still seeking instructions on the other two properties, but on Stone Road, my client is prepared to settle the issue provided the Monitor agrees to a slightly smaller amount. We would resolve this for a payment of \$50,000 (as against the \$54,000 sought in your report), which essentially allows for our client to pay our fees out of the difference.

Please let us know if this is an acceptable resolution to the Stone Road matter.

I will report to you later this week as to what our clients on the other two properties intend.

Regards,

David



David T. Ullmann
Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

Blaney.com



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Law around the world
nortonrosefulbright.com

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**APPENDIX “S”
(see attached)**

January 11, 2019

Sent By E-mail

David T. Ullmann
Partner
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Virginie Gauthier
+1 416.216.4853
Virginie.Gauthier@nortonrosefulbright.com

David:

Sears Canada Inc.: Amounts owing by Primaris in respect of Orchard Park/Cataraqui

We write in response to your email correspondence of January 7, 2019 regarding the above-matter.

The December 11, 2017 pre-filing tax payment amount of \$193,645.21 (the "**Cataraqui Pre-Filing Tax Amount**") referred to in Schedule "B" of Evan Cobb's letter of January 29, 2018 as being owing by Cataraqui Town Centre ("**Cataraqui**") (which amount was again referred to in Mr. Cobb's email of May 25, 2018) was in fact satisfied by setting off the Cataraqui Pre-Filing Tax Amount against amounts owing by Sears Canada Inc. ("**Sears**") to Cataraqui on a post-filing basis.

In addition, an amount of \$410,933.14 was paid in error by Sears to Orchard Park (the "**Orchard Park Overpayment**") on October 31, 2017. As you know, the lease surrender transaction between Sears Canada and the landlord of that property was completed on October 10, 2017. The Orchard Park Overpayment is separate and in addition to the Cataraqui Pre-Filing Tax Amount and was not included in the amounts that we attempted to reconcile in January 2018.

The table below shows the payments made, the amounts credited and the balances owing in respect of each of Orchard Park and Cataraqui. Taken together, the final balance owing by Primaris to Sears is **\$291,116.12**.

Tax Reconciliation		Orchard Park	Cataraqui	Total
<i>Payments Made in Error:</i>				
31-Oct-17		(410,933.14)	-	
11-Dec-17		-	(193,645.21)	
Total Payments	a	(410,933.14)	(193,645.21)	
Post-Filing/Post-Closing Tax Expense	b	-	217,287.93	
Excess Payment to Be Returned	c = a+b	(410,933.14)	23,642.72	
Less: Post-Filing Claim Accepted by Monitor	d	-	96,174.30	
Less: Legal Fees	e	-	-	
Amount Owing to Landlord	c+d+e	(410,933.14)	119,817.02	(291,116.12)

CAN_DMS: \124923053\1

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David T. Ullmann
January 11, 2019



Please make arrangements for this amount to be paid **no later than January 18, 2018.**

Regards,

Virginie Gauthier

VG/

Copies to: Greg Watson, Paul Bishop, Steve Bissell, Lizzy Pearson, FTI Consulting Canada Inc.
Orestes Pasparakis, Alan Merskey, Norton Rose Fulbright Canada LLP

**APPENDIX “T”
(see attached)**

From: [Ariyana Botejue](#)
To: [Cobb, Evan](#)
Cc: [Gauthier, Virginie](#); [John C. Wolf](#); [David T. Ullmann](#)
Subject: Primaris Management Inc.
Date: February-19-19 4:07:03 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)
[2019-02-19 - LT Cobb encls.pdf](#)

Good day Mr. Cobb,

Attached, please find a courtesy copy of Mr. Ullmann's correspondence sent by same day courier.

Thank you,



Ariyana Botejue
Legal Assistant to Stephen Gaudreau and David Ullmann

abotejue@blaney.com

416-593-1221 ext. 4777

Blaney.com



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David T Ullmann

D: 416-596-4289 F: 416-594-2437
dullmann@blaney.com

February 19, 2019

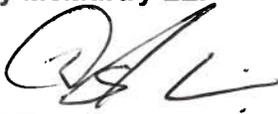
**SENT BY COURIER & COURTESY COPY BY EMAIL TO
evan.cobb@nortonrosefulbright.com**Mr. Evan Cobb
Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, ON M5J 2Z4

Dear Mr. Cobb,

RE: Primaris Management Inc. ("Primaris")

Our client has had an opportunity to review the materials provided by Sears and the Monitor with respect to the outstanding funds in its hands related Cataraqui and/or Orchard Park. Our client believes that there is still a dispute as to whether or not Sears had released its claims in respect of these funds, or with respect to how Sears and the Monitor have calculated the amount owing. That being said, in the interest of resolving this matter, we have instructions from our client to provide the Monitor with the enclosed funds in the amount of \$281,116.12. You will note that this is the amount which was determined as owing in the last letter from the Monitor, a copy which is enclosed here for your reference, minus \$10,000. If the Monitor and Sears are prepared to accept this settlement, you will indicate their acceptance by attending to the deposit of this cheque. If this is unacceptable, please return the cheque to us and we will continue with our review and negotiation of this issue. Please also be advised that upon depositing this cheque, we will take this to represent a definitive determination by the Monitor that there are no further amounts owing by any of the Primaris' entities in respect of any over payments, under payments, misapplied payments, etc. of rent by Sears to our clients.

We hope you will take this opportunity to resolve this matter.

Yours very truly,
Blaney McMurtry LLPDavid Ullmann
DU/ab
Encls.c.c.: John Wolf
Virginie Gauthier

January 11, 2019

Sent By E-mail

David T. Ullmann
Partner
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5



Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Virginie Gauthier
+1 416.216.4853
Virginie.Gauthier@nortonrosefulbright.com

David:

Sears Canada Inc.: Amounts owing by Primaris in respect of Orchard Park/Cataraqui

We write in response to your email correspondence of January 7, 2019 regarding the above-matter.

The December 11, 2017 pre-filing tax payment amount of \$193,645.21 (the "**Cataraqui Pre-Filing Tax Amount**") referred to in Schedule "B" of Evan Cobb's letter of January 29, 2018 as being owing by Cataraqui Town Centre ("**Cataraqui**") (which amount was again referred to in Mr. Cobb's email of May 25, 2018) was in fact satisfied by setting off the Cataraqui Pre-Filing Tax Amount against amounts owing by Sears Canada Inc. ("**Sears**") to Cataraqui on a post-filing basis.

In addition, an amount of \$410,933.14 was paid in error by Sears to Orchard Park (the "**Orchard Park Overpayment**") on October 31, 2017. As you know, the lease surrender transaction between Sears Canada and the landlord of that property was completed on October 10, 2017. The Orchard Park Overpayment is separate and in addition to the Cataraqui Pre-Filing Tax Amount and was not included in the amounts that we attempted to reconcile in January 2018.

The table below shows the payments made, the amounts credited and the balances owing in respect of each of Orchard Park and Cataraqui. Taken together, the final balance owing by Primaris to Sears is **\$291,116.12**.

Tax Reconciliation		Orchard Park	Cataraqui	Total
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Excess Payment to Be Returned	c = a+b	(410,933.14)	23,642.72	
Less: Post-Filing Claim Accepted by Monitor	d	-	96,174.30	
Less: Legal Fees	e	-	-	
Amount Owing to Landlord	c+d+e	(410,933.14)	119,817.02	(291,116.12)

CAN_DMS: \124923053\1

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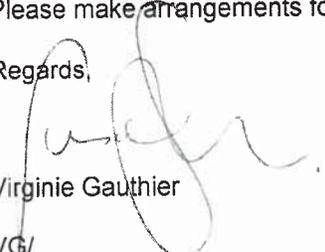
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David T. Ullmann
January 11, 2019



Please make arrangements for this amount to be paid **no later than January 18, 2018.**

Regards,


Virginie Gauthier

VG/

Copies to: Greg Watson, Paul Bishop, Steve Bissell, Lizzy Pearson, FTI Consulting Canada Inc.
Orestes Pasparakis, Alan Merskey, Norton Rose Fulbright Canada LLP

Ent	Name	Acct No	Invoice	Date	P.O. 288	Reference	Amount	Discount	Net
ZCQ00	Cataraqui JV	222-155	HU020719	2/7/2019		Prefiling pmt Sears	281,116.12	0.00	281,116.12

Payor: Primaris Management Inc. **Date:** 2/13/2019 **Check No.:** 001916 **Check Amount:** 281,116.12
Payee: Sears Canada Inc.

Retain this statement for your records



Primaris Management Inc.
re: Cataraqui Centre
1 Adelaide Street East Suite 900
Toronto ON M5C 2V9

TD Canada Trust
 55 King Street West
 Toronto ON M5K 1A2
 004 - 10202

001916

DATE 0 2 1 3 2 0 1 9
 M M D D Y Y Y Y

PAY Two Hundred Eighty One Thousand One Hundred Sixteen AND 12/100***Dollars \$ *****281,116.12**

TO THE **SEARS CANADA INC.**
 ORDER
 OF **290 Yonge Street, Suite 700**
Toronto, ON M5B 2C3

PER *D. H. Khan*
 PER *Stephen Cheng*

⑈001916⑈ ⑆09612⑈004⑆

⑈11772⑈

**APPENDIX “U”
(see attached)**

March 8, 2019

Sent By E-mail

David T. Ullmann
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Virginie Gauthier
+1 416.216.4853
Virginie.Gauthier@nortonrosefulbright.com

Your reference

Our reference
1000299972

David:

Sears Canada Inc. and Moving Landlords

We write to advise that FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the "**Monitor**") of Sears Canada Inc. ("**SCI**") and certain of its affiliates (collectively, the "**Sears Canada Entities**") intends to bring a motion to the Court to specifically enforce the settlement agreement that Blaney McMurtry LLP executed on behalf of its clients on November 30, 2018 and that the Monitor accepted on December 3, 2018. We will be reaching out to the Commercial List Office to enquire about Justice Hainey's availabilities over the next few weeks. Please advise of any week when you are not available in the month of March.

Please note that the Monitor's motion may also seek the Court's advice and directions on your correspondence of February 19, 2019 regarding the Cataraqui/Orchard Park locations where you unilaterally deducted an amount of \$10,000 from the post-filing amount owing by your client and attempted to bind the Monitor to this position if it deposited the cheque you provided. The Monitor has cashed the cheque you provided and does not agree that this settles the amount owed in respect of those locations.

Regards,



Virginie Gauthier

Cop(y/ies) to: Greg Watson, Paul Bishop, Steve Bissell and Kamran Hamidi, FTI Consulting Canada Inc.
Orestes Pasparakis, Alan Merskey and Evan Cobb, Norton Rose Fulbright LLP
John Wolf, Blaney McMurtry LLP

CAN_DMS: \125875751\1

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**APPENDIX “V”
(see attached)**

From: David T. Ullmann [<mailto:DULLmann@blaney.com>]

Sent: March-11-19 12:25 PM

To: Symchych, Lillian

Cc: greg.watson@fticonsulting.com; paul.bishop@fticonsulting.com; steven.bissell@fticonsulting.com;

kamran.hamidi@fticonsulting.com; John C. Wolf; Pasparakis, Orestes; Merskey, Alan; Cobb, Evan; Gauthier, Virginie

Subject: Re: Sears Canada Inc. and Moving Landlords

Virginie,

As per my other email just now re cotenancy, I am out of the box until next week. I have forwarded your email to John on Friday but I think he is also away this week. We will respond in detail next week. I would just just say two things in passing for you to consider pending my return.

First I am very surprised that the Monitor cashed our clients funds which were provided to you in escrow pending a settlement, which settlement you have apparently rejected. You certainly could have returned the funds if you disagreed with our position or discussed your concerns with us, but cashing the cheque and continuing the dispute was not an option we provided.

As to the claim amounts, I had mentioned to Evan (informally) earlier last week that I thought there could be an interim solution which parked that issue and allowed us to vote for the Plan until either side knew whether it was worth fighting about our remaining disputes. I had thought you were still away. I don't think this is something which requires any kind of an accelerated approach and I would ask you to reconsider your letter. I will be back online on March 18 and available to discuss it with you then.

Regards,

David

David Ullmann
Partner, Commercial Litigation

On Fri, Mar 8, 2019 at 7:28 AM -0800, "Symchych, Lillian" <lillian.symchych@nortonrosefulbright.com> wrote:

293

(This is being sent on behalf of Virginie Gauthier of our office).

Please see attached.

Thank you.

Lillian

Lillian Symchych

Legal Assistant

Assistant to Virginie Gauthier and Evan Cobb

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.

Royal Bank Plaza, South Tower, Suite 3800

200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

T: +1 416.216.2974 | F: +1 416.216.3930

NORTON ROSE FULBRIGHT

Law around the world

nortonrosefulbright.com

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., *et al.*

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

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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

NORTON ROSE FULBRIGHT CANADA LLP

Royal Bank Plaza, South Tower, Suite 3800

200 Bay Street, P.O. Box 84

Toronto, Ontario M5J 2Z4 CANADA

Orestes Pasparakis, LSO#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSO#: 41097D

Tel: +1 416.216.4853

Alan Merskey, LSO#: 41377I

Tel: +1 416.216.4805

Evan Cobb, LSO#: 55787N

Tel: +1 416.216.1929

Fax: +1 416.216.3930

orestes.pasparakis@nortonrosefulbright.com

virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

MOTION RECORD OF THE MONITOR
(returnable May 7, 2019)

NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3800, P.O. Box 84
Toronto, Ontario M5J 2Z4

Orestes Pasparakis, LSO#: 36851T

Tel: +1 416.216.4815

Virginie Gauthier, LSO#: 41097D

Tel: +1 416.216.4853

Alan Merskey, LSO#: 41377I

Tel: +1 416.216.4805

Evan Cobb, LSO#: 55787N

Tel: +1 416.216.1929

Fax: +1 416.216.3930

orestes.pasparakis@nortonrosefulbright.com

virginie.gauthier@nortonrosefulbright.com

alan.merskey@nortonrosefulbright.com

evan.cobb@nortonrosefulbright.com

Lawyers to the Monitor, FTI Consulting Canada Inc.