

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

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

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

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

**MOTION RECORD OF
GAP (CANADA) INC. and OLD NAVY (CANADA) INC.
(returnable October 16, 2018)**

Date: September 7, 2018

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TO: **SERVICE LIST**

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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**MOTION RECORD OF
GAP (CANADA) INC. and OLD NAVY (CANADA) INC.**

INDEX

TAB	DESCRIPTION
1	Notice of Motion returnable October 16, 2018
2	Affidavit of Matthew Irwin sworn September 7, 2018
A	Initial Order dated June 22, 2017
B	Amended and Restated Initial Order dated July 13, 2017
C	Chart of 22 Gap's locations
D	Redacted copies of the portions of the leases which contain the Co-Tenancy clauses for the Gap locations
E	Twelfth Report of the Monitor dated February 13, 2018
F	Fourteenth Report of the Monitor dated March 1, 2018
G	Twenty-First Report of the Monitor dated July 20, 2018
3	<ul style="list-style-type: none"> i. Draft Order lifting Co-Tenancy Stay ii. Alternative draft Order lifting Co-Tenancy Stay

TAB 1

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC.,
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ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA
INC., and 3339611 CANADA INC.**

NOTICE OF MOTION

GAP (CANADA) INC. AND OLD NAVY (CANADA), INC. ("GAP") will make a motion to
a Judge of the Ontario Superior Court of Justice (Commercial List) on October 16, 2018 at 10:00
am or as soon after that time as the motion can be heard at 330 University Avenue, Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under sub rule 37.12.1 (1) because it is on Consent;
- in writing as an opposed motion under sub rule 37.12.1 (4);
- orally.

THE MOTION IS FOR:

- (a) A Declaration that the stay of proceedings (“Co-Tenancy Stay”) provided in paragraph 15 of the Amended and Restated Initial Order of the Honourable Mr. Justice Hainey dated Thursday the 22nd day of June, 2017 (“Initial Order”), and as extended by subsequent orders made in this proceeding, is no longer of any force or effect in accordance with its terms as against Gap and, without limiting the generality of the foregoing, is no longer of any force or effect, in particular, in relation to the following Gap leases (the “Listed Leases”):

LOCATION	LANDLORD	TENANT
Halifax Shopping Centre, Halifax, Nova Scotia	OPB Realty Inc.	Gap (Canada) Inc. o/a “Banana Republic”
Erin Mills Town Centre, Mississauga, Ontario	OPB (EMTC) Inc.	Gap (Canada) Inc.
Quinte Mall, Belleville, Ontario	Quinte Mall Limited	Old Navy (Canada) Inc.
Erin Mills Town Centre, Mississauga, Ontario	OPB (EMTC) Inc.	Old Navy (Canada) Inc.
Park Place Shopping Centre, Lethbridge, Alberta	Park Place Mall Holdings Inc.	Old Navy (Canada) Inc.
Cornwall Centre,	Cornwall Centre Inc.	Gap (Canada) Inc. o/a

Regina, Saskatchewan		“Gap/Gap Kids”
Landsdowne Place, Peterborough, Ontario	Landsdowne Mall Inc.	Gap (Canada) Inc. o/a “Gap Factory Store”
Stone Road Mall, Guelph, Ontario	Stone Road Mall Holdings Inc., Limited	Old Navy (Canada) Inc.
Pen Centre, St. Catharines, Ontario	OPB Realty Inc.	Old Navy (Canada) Inc.
Landsdowne Place, Peterborough, Ontario	Landsdowne Mall Inc.	Old Navy (Canada) Inc. o/a “Old Navy”
Mapleview Shopping Centre, Burlington, Ontario	Canapen (Halton) Limited and Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a “Gap
Mapleview Shopping Centre, Burlington, Ontario	Canapen (Halton) Limited and Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a “Gap Kids/Baby”
Metropolis at Metrotown, Burnaby, British Columbia	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a “Banana Republic”

Metropolis at Metrotown, Burnaby, British Columbia	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a “Gap”
Oshawa Centre, Oshawa, Ontario	Oshawa Centre Holdings Inc.	Gap (Canada) Inc. o/a “Gap” and “Gap Kids”
Oshawa Centre, Oshawa, Ontario	Oshawa Centre Holdings Inc.	Old Navy (Canada) Inc.
Southgate Centre, Edmonton, Alberta	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a “Banana Republic”
Southgate Centre, Edmonton, Alberta	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a “Gap”
Northgate Shopping Centre, North Bay, Ontario	Hoopp Realty Inc.	Gap (Canada) Inc. o/a “Gap”
The Coquitlam Centre, Coquitlam, British Columbia	Pensionfund Realty Limited	Gap (Canada) Inc.
The Coquitlam Centre, Coquitlam, British Columbia	Pensionfund Realty Limited	Old Navy (Canada) Inc.
Sevenoaks Shopping Centre, Abbotsford,	Sevenoaks S.C. Limited Partnership	Gap (Canada) Inc. o/a “Gap”

British Columbia		
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and that, as a result, Gap is entitled to exercise any rights which it may have as against Landlords whose Leases were affected by the Co-Tenancy Stay including in particular, without limiting the generality of the foregoing, the Landlords of the Listed Leases, where such rights arose from the failure of any of the Applicants to operate in such shopping centre or retail development (the “Co-Tenancy Rights”);

- (b) In the alternative to (a), an Order permanently vacating and/or lifting the Co-Tenancy Stay as against Gap;
- (c) A Declaration that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of the Co-Tenancy Rights (a “Waiting Period”) by Gap, and that any relief granted under (a) or (b) shall operate retroactively;
- (d) The costs of the motion, if opposed; and
- (e) Such further and other relief as this Honourable Court shall deem just.

THE GROUNDS FOR THE MOTION ARE:

- a) Paragraph 15 of the Initial Order provides for the Co-Tenancy Stay on the following terms:

“15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in

which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency, by any or all of the Sears Canada Entities, or as a result of any step taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.” ;

- b) In their Factum dated June 22, 2017, the Applicants made, among others, the following submissions to the Court in support of their request for the Co-Tenancy Stay:

“100. While this process is being resolved, the Co-Tenancy Stay postpones the contractual rights of these Tenants for a finite period. Any prejudice to those Tenants is therefore significantly outweighed by the benefits of the Co-Tenancy Stay to all of the stakeholders of the Applicants.

101. The Applicants therefore submit that it is both necessary and appropriate to grant the Co-Tenancy Stay in these circumstances. This relief is necessary to mitigate the effect of Sears Canada’s insolvency on its Landlords and to maintain the status quo while the restructuring is underway”;

- c) In their Factum, the Applicants relied upon the *Target* and *Eaton's* CCAA Proceedings as precedents for the Co-Tenancy Stay;
- d) The Applicants did not ask the Court to affect any substantive rights of Co-Tenants or to delay the running of any waiting period;
- e) The Co-Tenancy Stay has been extended by subsequent Court Orders in this proceeding;
- f) The terms of the Co-Tenancy Stay preclude Co-Tenants from exercising their rights only if certain conditions exist. In particular, the Co-Tenancy Stay only stays Co-Tenant rights in a shopping centre or other retail development “in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities....” Accordingly, pursuant to the wording of the Initial Order, the Co-Tenancy Stay ceases to have any effect on a Co-Tenant as soon as the Applicants cease to own or operate in a given retail complex;
- g) Gap therefore seeks a Declaration that the Co-Tenancy Stay is no longer in effect in accordance with its terms;
- h) Alternatively, if the Co-Tenancy Stay is still in effect in accordance with its terms, Gap submits that it is appropriate that the Co-Tenancy Stay be vacated;
- i) The circumstances which led to the imposition of the Co-Tenancy Stay at the time that the Initial Order was granted no longer exist. In particular, at paragraph 11 of the 21st report to the Court submitted by FTI Consulting Canada Inc., in its capacity as Monitor, dated July 20, 2018, it reported as follows:

“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 monetization of Residual Assets is now substantially complete. The major assets of the Sears Canada Entities that remain to be realized upon are the Applicants' remaining owned real estate assets..."

- j) The most recent extension of the Stay Period contained in the Initial Order until December 18, 2018 was made for the purposes of permitting the claims and priorities issues to proceed toward resolution, and of permitting monetization of Sears remaining owned real property;
- k) Certain Landlords have taken the position that the Co-Tenancy Stay affected the substantive rights of Gap by also staying the commencement of the Waiting Periods;
- l) Accordingly, Gap seeks a Declaration that the Co-Tenancy Stay did not stay, suspend, delay, or otherwise effect the running of any Waiting Period, and thus any applicable Waiting Period ran during the period of the Co-Tenancy Stay; and
- m) Such other grounds as counsel may advise and this Honourable Court may deem just.

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

- a) The Affidavit of Matthew Irwin ; and
- b) Such Further and other material as counsel may advise and this Honourable Court permits.

Date: September 7, 2018

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TO: SERVICE LIST

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

Court File No: CV-17-11¹³846-00CL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
Toronto

NOTICE OF MOTION

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Lawyer for the Plaintiff

TAB 2

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

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

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

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

Applicants

AFFIDAVIT OF MATTHEW IRWIN

I, **MATTHEW IRWIN**, of the City of San Francisco, in the State of California, United States of America, Attorney-at-Law, **MAKE OATH AND SAY:**

1. I am Associate General Counsel/Senior Director at Gap Inc., the parent company of the Moving Parties Gap (Canada) Inc. and Old Navy (Canada), Inc. ("Gap"). As such, I have personal knowledge of the matters to which I hereinafter depose, unless stated to be based upon information and belief, in which case I state the source of my information and believe it to be true.

2. This affidavit is in support of a motion by Gap for a declaration that the stay of proceedings (“Co-Tenancy Stay”) provided in paragraph 15 of the Initial Order of the Honourable Justice Hainey dated June 22, 2017, as amended and restated on July 13, 2017 (“Initial Order”), and as extended by subsequent orders made in this proceeding, is no longer of any force or effect in accordance with its terms as against Gap, and as a result, Gap, as a co-tenant of the Applicants in a number of commercial shopping centres and other commercial properties, is entitled to exercise any rights *nunc pro tunc* that it may have against its Landlords whose Leases were affected by the Co-Tenancy Stay arising from the failure of any of the Applicants to operate in such commercial shopping centres or other commercial properties (the “Co-Tenancy Rights”).

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

4. Gap also seeks a declaration that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of Co-Tenancy Rights (a “Waiting Period”) by Gap, and that any relief granted shall operate retroactively.

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

Gap is affected by Paragraph 15 of the Initial Order

6. To the best of my knowledge, Gap operated 256 retail locations in Canada as of the end of April, 2018. Its stores are most commonly found in commercial shopping centres.

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

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

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

A copy of the Initial Order dated June 22, 2017 is attached as Exhibit “A” to this Affidavit. A copy of the Amended and Restated Initial Order dated July 13, 2017 is attached as Exhibit “B” to this Affidavit.

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

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

11. Some of the Co-Tenancy Rights are subject to Waiting Periods before Gap can exercise its rights. There is often a Waiting Period (for example, 6 months) during which the retail complex is not occupied by an anchor tenant like the Applicants before any adjustment can be made to Gap's rent. Similarly, there is often a longer Waiting Period, such as 12 and upwards to 24 months, before Gap is entitled to exercise its right to terminate its lease.

12. It is typical for Gap to have Co-Tenancy Rights in most of its leases. However, the specific nature of the Co-Tenancy Rights and the Waiting Periods varies from location to location.

13. To the best of my knowledge, a total of 22 Gap locations are currently directly affected by the Co-Tenancy Stay because Gap has been unable to exercise its Co-Tenancy Rights in respect of those stores. A chart of those locations is attached as Exhibit "C" to this Affidavit. Redacted copies of the portions of the leases which contain the Co-Tenancy clauses for the Gap locations listed in Exhibit "C" are attached as Exhibit "D" to this Affidavit.

14. To the best of my knowledge, by on or about January 28, 2018, or shortly thereafter, the Applicants ceased to operate in all of the commercial shopping centres and other commercial properties where Gap is a Co-Tenant. However, to the extent that the Co-Tenancy Stay remains in effect in accordance with its terms, Gap is prohibited from taking any proceedings or exercising Co-Tenancy Rights.

15. On February 14, 2018, Gap delivered Notices of Co-Tenancy Failure to the Landlords of the locations listed in Exhibit "C" pursuant to its leases for those locations in relation to the closure of the Applicants' stores which are stated to have occurred on January 9, 2018.

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

16. Gap has always intended to assert all available Co-Tenancy Rights against its landlords in the cases of Co-Tenancy Failures where good faith efforts to negotiate mutually satisfactory terms with one of its landlord as to the consequences of the Co-Tenancy Failure under the terms of a given lease are unsuccessful.

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

18. The Twelfth Report of the Monitor dated February 13, 2018 states that the liquidation of assets at the Applicants' retail locations is complete and all of the Applicants' retail locations are

now closed. A copy of the Twelfth Report of the Monitor dated February 13, 2018 is attached as Exhibit “E” to this Affidavit.

19. The Fourteenth Report of the Monitor dated March 1, 2018 states that, as of the date of that report, all retail store leases had been disclaimed by the Applicants and the Applicants no longer occupied any such retail store locations. A copy of the Fourteenth Report of the Monitor dated March 1, 2018 is attached as Exhibit “F” to this Affidavit.

20. The circumstances which led to the imposition of the Co-Tenancy Stay at the time that the Initial Order was granted no longer exist. In particular, at paragraph 11 of the 21st report to the Court submitted by FTI Consulting Canada Inc., in its capacity as Monitor, dated July 20, 2018, it reported as follows:

“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 monetization of Residual Assets is now substantially complete. The major assets of the Sears Canada Entities that remain to be realized upon are the Applicants’ remaining owned real estate assets...”

A copy of the Twenty-First Report of the Monitor dated July 20, 2018 is attached as Exhibit “G” to this Affidavit.

21. The most recent extension of the Stay Period contained in the Initial Order until December 18, 2018 was made for the purposes of permitting the claims and priorities issues to proceed toward resolution, and of permitting monetization of Sears remaining owned real property.

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

The Co-Tenancy Stay did not suspend any Waiting Period

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

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

25. In particular, in their Factum dated June 22, 2017, the Applicants made, among others, the following submissions to the Court in support of their request for the Co-Tenancy Stay:

“100. While this process is being resolved, the Co-Tenancy Stay postpones the contractual rights of these Tenants for a finite period. Any prejudice to those

Tenants is therefore significantly outweighed by the benefits of the Co-Tenancy Stay to all of the stakeholders of the Applicants.” [Emphasis added]

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

27. Certain Landlords have taken the position that the Co-Tenancy Stay affected the substantive rights of Gap by also staying the commencement of the Waiting Periods.

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

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

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

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

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

32. Gap was not served with, and did not receive, the material filed by the Applicants in respect of the Initial Order. The Co-Tenancy Stay was granted without notice to Gap.

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


34. The Co-Tenancy Rights are purely a matter of contract between Gap and its landlords. The landlords agreed to grant the Co-Tenancy Rights to Gap as a commercial term of the leases and voluntarily assumed the risk that the Applicants might cease operations at some point during the term of the leases. The landlords are sophisticated parties who did not negotiate for a term that the bankruptcy or insolvency of a co-tenant would operate as an exception to the timely exercise of Co-Tenancy Rights. To the extent that the landlords have suffered any loss as a result of the insolvency of the Applicants, none results from any act or omission of Gap.

35. To date, the financial impact of the Co-Tenancy Stay on Gap in relation to the locations listed in Exhibit "C" has been calculated to be approximately \$1,750,730.19, to the best of my knowledge, information and belief.

36. Gap wishes to exercise its Co-Tenancy Rights, free from the restrictions of the Co-Tenancy Stay, retroactive to the date that such rights initially arose. This will mean that Gap will be at liberty to seek from its' landlords rent relief and other contractual benefits, retroactive to the date (in most, if not all cases, in January 2018) that Gap became entitled to the Co-Tenancy Rights.

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

SWORN BEFORE ME at the City of)
San Francisco, in the State of California,)
U.S.A. this 7th day of September, 2018)
)
)



MATTHEW IRWIN

A Commissioner for Taking Affidavits, etc.

CALIFORNIA JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of San Francisco)

Subscribed and sworn to (or affirmed) before me on this 7th day

of September, 20 18, by Matthew Irwin

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(Seal)

Signature Karen Reed

Optional Information

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this jurat to an unauthorized document and may prove useful to persons relying on the attached document

Description of Attached Document

This certificate is attached to a document titled/for the purpose of

containing _____ pages, and dated _____

Additional Information	
Method of Affiant Identification	
Proved to me on the basis of satisfactory evidence	
<input type="radio"/> form(s) of identification	<input type="radio"/> credible witness(es)
Notarial event is detailed in notary journal on	
Page # _____	Entry # _____
Notary contact _____	
Other _____	
<input type="checkbox"/> Affiant(s) Thumbprint(s)	<input type="checkbox"/> Describe _____

TAB A

**THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF
MATTHEW IRWIN
SWORN SEPTEMBER 7TH, 2018**

Karen Reed

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	THURSDAY, THE 22 ND
)	
JUSTICE HAINEY)	DAY OF JUNE, 2017



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

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

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

INITIAL ORDER

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

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

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

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

- 3. -

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

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

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

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

- 5 -

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

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

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

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

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

- 6 -

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

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

RESTRUCTURING

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

- 7 -

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

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

REAL PROPERTY LEASES

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

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

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

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

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

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

NON-DEROGATION OF RIGHTS

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

KEY EMPLOYEE RETENTION PLAN

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

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

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

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

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

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE

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

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

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

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

APPOINTMENT OF MONITOR

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

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

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

- 14 -

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

- 15 -

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

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

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

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

- 16 -

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

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

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

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

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

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

DIP FINANCING

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

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

- 18 -

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

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

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

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

- 19 -

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

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

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

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

- 20 -

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

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

- 21 -

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

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

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

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

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

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

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

- 22 -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CORPORATE MATTERS

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

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

SERVICE AND NOTICE

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

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

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

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

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

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

- 26 -

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

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

COMEBACK MOTION

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

GENERAL

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

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

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

- 27 -

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

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

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

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

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

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

JUN 22 2017

PER / PAR: 



C. Irwin
Registrar

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
 (Commercial List)

Proceeding commenced at Toronto

INITIAL ORDER

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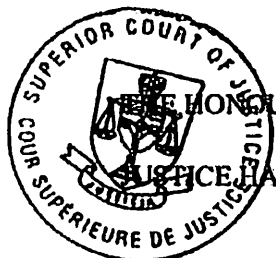
TAB B

**THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF
MATTHEW IRWIN
SWORN SEPTEMBER 7TH, 2018**

James R. ...

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST



THE HONOURABLE MR.)

THURSDAY, THE 22ND

JUSTICE HAINES)

DAY OF JUNE, 2017

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

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

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

AMENDED AND RESTATED INITIAL ORDER

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

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

- 2 -

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

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

- 3 -

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

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

- 4 -

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

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

- 5 -

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

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

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

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

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

- 6 -

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

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

RESTRUCTURING

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

- 7 -

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

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

REAL PROPERTY LEASES

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

- 8 -

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

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

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

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

- 9 -

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

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

- 10 -

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

- 11 -

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

NON-DEROGATION OF RIGHTS

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

KEY EMPLOYEE RETENTION PLAN

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

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

- 12 -

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

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

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

- 13 -

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

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

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

APPOINTMENT OF MONITOR

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

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

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

- 14 -

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

- 15 -

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

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

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

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

- 16 -

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

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

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

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

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

- 17 -

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

DIP FINANCING

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

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

- 18 -

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

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

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

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

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

- 19 -

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

43. [Intentionally deleted.]

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

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

- 20 -

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

- 21 -

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

- 22 -

- Second – KERP Priority Charge, to the maximum amount of \$4.6 million;
- Third – Directors’ Priority Charge, to the maximum amount of \$44 million;
- Fourth – DIP ABL Lenders’ Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;
- Fifth – the DIP Term Lenders’ Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;
- Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and
- Seventh – the Directors’ Subordinated Charge, to the maximum amount of \$19.5 million.

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

- First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;
- Second – KERP Priority Charge, to the maximum amount of \$4.6 million;
- Third – Directors’ Priority Charge, to the maximum amount of \$44 million;
- Fourth – DIP Term Lenders’ Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;
- Fifth – DIP ABL Lenders’ Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;
- Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and
- Seventh – the Directors’ Subordinated Charge, to the maximum amount of \$19.5 million.

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

- 23 -

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

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

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

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

- 24 -

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

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

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

CORPORATE MATTERS

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

- 25 -

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

SERVICE AND NOTICE

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

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

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

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

- 26 -

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

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

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

COMEBACK MOTION

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

- 27 -

GENERAL

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

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

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

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

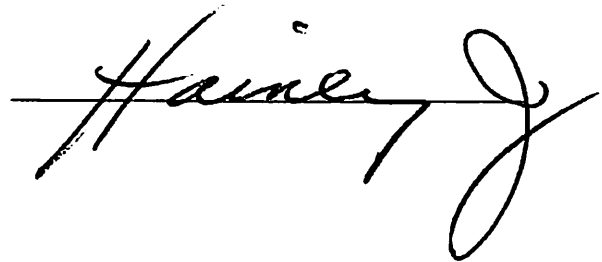
68. **THIS COURT ORDERS** that any interested party (including the Sears Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Motion

- 28 -

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

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

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

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

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

JUL 13 2017

PER / PAR:

Handwritten initials "pl" in black ink.

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

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

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

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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

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Tel: 416.862.5997

Lawyers for the Applicants

TAB C

**THIS IS EXHIBIT "C"
TO THE AFFIDAVIT OF
MATTHEW IRWIN
SWORN SEPTEMBER 7TH, 2018**

James Reed

CHART OF 22 GAP LOCATIONS

LOCATION	LANDLORD	TENANT
Halifax Shopping Centre, Halifax, Nova Scotia	OPB Realty Inc.	Gap (Canada) Inc. o/a "Banana Republic"
Erin Mills Town Centre, Mississauga, Ontario	OPB (EMTC) Inc.	Gap (Canada) Inc.
Quinte Mall, Belleville, Ontario	Quinte Mall Limited	Old Navy (Canada) Inc.
Erin Mills Town Centre, Mississauga, Ontario	OPB (EMTC) Inc.	Old Navy (Canada) Inc.
Park Place Shopping Centre, Lethbridge, Alberta	Park Place Mall Holdings Inc.	Old Navy (Canada) Inc.
Cornwall Centre, Regina, Saskatchewan	Cornwall Centre Inc.	Gap (Canada) Inc. o/a "Gap/Gap Kids"
Landsdowne Place, Peterborough, Ontario	Landsdowne Mall Inc.	Gap (Canada) Inc. o/a "Gap Factory Store"
Stone Road Mall, Guelph, Ontario	Stone Road Mall Holdings Inc., Limited	Old Navy (Canada) Inc.

CHART OF 22 GAP LOCATIONS

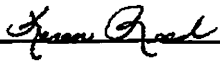
Pen Centre, St. Catharines, Ontario	OPB Realty Inc.	Old Navy (Canada) Inc.
Landsdowne Place, Peterborough, Ontario	Landsdowne Mall Inc.	Old Navy (Canada) Inc. o/a "Old Navy"
Mapleview Shopping Centre, Burlington, Ontario	Canapen (Halton) Limited and Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap"
Mapleview Shopping Centre, Burlington, Ontario	Canapen (Halton) Limited and Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap Kids/Baby"
Metropolis at Metrotown, Burnaby, British Columbia	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Banana Republic"
Metropolis at Metrotown, Burnaby, British Columbia	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap"
Oshawa Centre, Oshawa, Ontario	Oshawa Centre Holdings Inc.	Gap (Canada) Inc. o/a "Gap" and "Gap Kids"
Oshawa Centre,	Oshawa Centre Holdings	Old Navy (Canada) Inc.

CHART OF 22 GAP LOCATIONS

Oshawa, Ontario	Inc.	
Southgate Centre, Edmonton, Alberta	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Banana Republic"
Southgate Centre, Edmonton, Alberta	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap"
Northgate Shopping Centre, North Bay, Ontario	Hoopp Realty Inc.	Gap (Canada) Inc. o/a "Gap"
The Coquitlam Centre, Coquitlam, British Columbia	Pensionfund Realty Limited	Gap (Canada) Inc.
The Coquitlam Centre, Coquitlam, British Columbia	Pensionfund Realty Limited	Old Navy (Canada) Inc.
Sevenoaks Shopping Centre, Abbotsford, British Columbia	Sevenoaks S.C. Limited Partnership	Gap (Canada) Inc. o/a "Gap"

TAB D

**THIS IS EXHIBIT "D"
TO THE AFFIDAVIT OF
MATTHEW IRWIN
SWORN SEPTEMBER 7TH, 2018**



HALIFAX SHOPPING CENTRE- BANANA REPUBLIC

(C) **Future Restrictions.** Any Restriction granted after the date of this Lease (a "future Restriction") that would in any way or manner limit or restrict the Permitted Use in the Premises shall have no application whatsoever to the Premises. Landlord shall indemnify, defend and hold Tenant harmless from and against any and all Indemnified Costs relating to the enforcement by any party (including Landlord) of any future Restriction which limits or restricts the Permitted Use.

12.3 Days and Hours of Operation

(A) Expressly subject to other relevant provisions of this Lease, including, without limitation, Section 12.3(B) and Article 13, and except for closures for the purpose of alterations, renovations, repairs or inventory-taking, and closures resulting from damage or destruction, expropriation or Force Majeure, Tenant shall from and after the Commencement Date continuously remain open and operate its business at the Premises during the days and hours of the Shopping Centre designated by Landlord ("Designated Times"), or, in the absence of Designated Times, from 10:00 a.m. to 6:00 p.m., Mondays through Saturdays ("Minimum Times").

(B) Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to open or operate:

- (1) earlier than 10:00 a.m. Monday through Saturday, or earlier than 12:00 noon on Sunday (if Sundays are Designated Times);
 - (2) later than 10:00 p.m. Monday through Saturday or 8:00 p.m. on Sunday (if Sundays are Designated Times);
 - (3) at all if Tenant would thus be required to be open for business less than the Minimum Times or less than five hours on Sunday (if Sundays are Designated Times);
 - (4) during the making of repairs to or remodeling of the Premises or during periods when Tenant is taking inventory;
 - (5) on Easter Sunday, Thanksgiving Day, Christmas Day or New Years Day;
- or
- (6) when to do so would violate any Legal Requirement, criminal or civil, or subject Tenant or its employees to a fine or penalty, whether criminal or civil in nature.

(C) Tenant shall have the right, but not the obligation, to open for business on days and for hours in excess of Designated Times (or, in the absence thereof, Minimum Times), provided that if the Premises have no exterior customer access and must be accessed through a Mall then Tenant shall give reasonable advance notice of its intended extra operating hours to the manager of the Shopping Centre. In all cases when Tenant is open for business outside of Designated Times, Tenant shall comply with Landlord's reasonable security precautions, and Landlord may require Tenant to pay for any extra cleaning and security costs reasonably attributable to such extra hours of operation. Landlord's reasonable security precautions may include the closure of the interior Mall where the Premises has exterior customer access, and where the Premises has no exterior customer access such precautions may include limiting customer access to and from the Premises through the interior Mall to that portion of the Mall in the vicinity of the Premises which leads to that customer entrance to (and exit from) the Shopping Centre which is closest to the Premises.

12.4 Trade Name

Tenant agrees to operate for the first two (2) years of the Initial Term under one, or a combination, of the following trade names: "OLD NAVY", "GAP", "GAP MEN", "GAP WOMEN", "GAP KIDS", "BABY GAP", "GAP BODY", "BANANA REPUBLIC", "BANANA REPUBLIC MEN", "BANANA REPUBLIC WOMEN", or any other trade name operated by Tenant or its Affiliates (except an outlet concept, which Tenant shall not be permitted to operate under). After the first two (2) years of the Initial Term there shall be no trade name requirement and this section shall be of no further force or effect.

ARTICLE 13: CO-TENANCY REQUIREMENTS

13.1 Intentionally Deleted

13.2 Intentionally Deleted

13.3 Operating Requirements

(A) Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to open the Premises for business at all nor operate during Designated Times (or, in the absence thereof, Minimum Times) unless the Key Store is open for business during the Designated Times (or, in the absence thereof, the Minimum Times) ("Key Store Requirements") and retail stores (other than the Excluded Areas) having an aggregate of seventy-five percent (75%) or more of the total GLA of the Shopping Centre (other than the Excluded Areas) are also open for business during the Designated Times (or, in the absence thereof, Minimum Times) ("GLA Requirements"). Collectively, the GLA Requirements and the Key Store Requirements may be referred to as the "Operating Requirements". As used herein: (1) "Excluded Areas" means all of the following: the Premises; any store leased to a the Tenant or a Related Party of the Tenant and which is closed in violation of its lease; the Key Store and any other Major Stores; basement areas; remote storage space having no Mall frontage and not within a retail store; mezzanine space within a retail store but used only for non-retail purposes; office premises located on a level or wing of the Shopping Centre dedicated to office use and having no frontage onto a retail Mall (including, without limitation, office premises in the Office Building); movie theatres, and a bowling alley; and (2) "Major Store" means a single store, having a GLA of at least one hundred thousand (100,000) square feet.

(B) A store shall not be considered open for business if such store is open and operating (1) less than the Designated Times (or, in the absence thereof, Minimum Times), or (2) in less than substantially all of its space. Failure to meet either the Key Store Requirements or the GLA Requirements shall be deemed a failure of the Operating Requirements and may sometimes be referred to as a "Co-Tenancy Failure." If the Operating Requirements are not being met because a store is closed by reason of casualty, expropriation, or the making of repairs or alterations as a result of casualty or expropriation (collectively, an "Excused Closure"), such Excused Closure shall not give rise to Tenant's right to pursue Operating Requirement Remedies pursuant to Section 13.4 unless such Excused Closure continues for more than a period of one hundred eighty (180) days. Any waiting period before which Tenant may exercise the Operating Requirement Remedies shall be deemed to run concurrently with such 180-day grace period for an Excused Closure. Landlord shall promptly notify Tenant of any Co-Tenancy Failure.

(C) Key Store. The Key Store is the following retailer occupying the floor area indicated:

<u>Tradename</u>	<u>Floor Area</u>
Sears	162,974 sf

(D) If Tenant in good faith thinks that a Cotenancy Failure may have occurred, then upon Tenant's written request Landlord shall deliver to Tenant a notice certifying the then current tradename and GLA of each tenant of the Shopping Centre and any other information requested by Tenant for the purpose of verifying whether the Operating Requirements were or are being met, provided that Landlord shall not be required to provide such information more frequently than twice in each Lease Year. If such information provided by Landlord discloses a violation of the Operating Requirements and Tenant elects to pay Alternate Rent for such period of violation in accordance with Section 13.4(A), Landlord shall rebate to Tenant the overcharge or, at Tenant's election, Tenant may offset the amount of the overcharge against Rent becoming due.

(E) In the event Landlord undertakes a major remodel of the Shopping Center which shall be defined as a remodel involving more than fifty percent (50%) of the CRU space in the Shopping Center ("Major Remodel"), then the GLA Requirement shall be reduced to sixty percent (60%), until such time as Landlord has completed the Major Remodel, but in no event longer than eighteen (18) months.

13.4 Operating Requirement Remedies

(A) If the Operating Requirements are not met for a continuous period of ninety (90) days, then, effective immediately, Tenant shall have the following rights:

(1) Right to Close Remedy. Tenant may close the Premises for business and, during such period of closure, Tenant shall pay Minimum Rent and all other Rent (excluding Percentage Rent) in accordance with all applicable provisions of this Lease and shall

perform all of such other obligations as are applicable to a vacant premises. This remedy is referred to herein as the "Right to Close Remedy."

(2) **Alternate Rent Remedy.** Tenant may remain open for business and pay monthly, as "Alternate Rent" during the period that the Operating Requirements are not being met, in lieu of Minimum Rent, Percentage Rent and Other Charges, an amount equal to seventy-five percent (75%) of the Monthly Total Rent for the first three (3) months, and fifty percent (50%) of the Monthly Total Rent for each month thereafter. For the purpose of this Section 13.4(A)(2), "Monthly Total Rent" means and comprises the total monthly rent payable under this Lease on account of then applicable Minimum Rent, Taxes, the CAM Charge, the HVAC Charge and all Other Charges. Each such payment of the Alternate Rent shall be made in advance on the first day of each month. Notwithstanding the foregoing, throughout the said period Tenant shall be responsible for one hundred percent (100%) of the utilities charges payable under Section 11.1. This remedy is referred to herein as the "Alternate Rent Remedy."

(B) Tenant may elect the Right to Close Remedy or the Alternate Rent Remedy alternately, from time to time. Upon the date (the "Resumption Date") that the Operating Requirements are once again met for a continuous period of sixty (60) days with occupants under leases with terms of at least one (1) year, Tenant shall, in the case where Tenant had elected the Right to Close Remedy, reopen the Premises for business, and, in the case where Tenant had elected the Alternate Rent Remedy, cease the payment of the Alternate Rent, and in the case of either remedy resume (where the same had been otherwise suspended) the payment of regular Rent computed in the manner set forth in this Lease.

(C) **Termination Remedy.** If the Operating Requirements are not met for a continuous period of twelve (12) months from the date that the GLA Requirements are not met, or eighteen (18) months from the date the Key Store Requirements are not met, then, in addition to the Right to Close Remedy and the Alternate Rent Remedy, Tenant shall have the continuing right thereafter and while such condition continues, to terminate this Lease upon thirty (30) days' written notice to Landlord. This remedy is referred to herein as the "Termination Remedy." Once such Termination Remedy has been exercised by Tenant, Tenant's termination shall not be affected or nullified by the fact that the Operating Requirements have once again been met during the thirty (30) day termination notice period unless Tenant, in its sole discretion, elects to revoke its termination notice and reinstate this Lease. At any time after the expiry of the aforesaid twelve (12) month or eighteen (18) month period, as the case may be, if Tenant is then open for business on the Premises and paying Alternate Rent, and has not exercised the Termination Remedy, Landlord shall be entitled to terminate this Lease by written notice to Tenant to take effect on the sixtieth (60th) day following the date such notice is given. In that event Tenant shall be entitled to nullify Landlord's notice of termination by notifying Landlord in writing at least thirty (30) days prior to the scheduled termination date that, effective immediately upon the giving of Tenant's notice (the "Resumption Date"), Tenant shall cease the payment of Alternate Rent and resume the payment of regular Rent computed in the manner set forth in this Lease. If Tenant's exercise of its Alternate Rent Remedy up until the Resumption Date had resulted from a violation of the Key Store Requirements, Tenant shall not be entitled to again exercise any of its remedies for violation of the Key Store Requirements until at least twelve (12) months following the Resumption Date. If Tenant's exercise of its Alternate Rent Remedy up until the Resumption Date had resulted from a violation of the GLA Requirements, Tenant shall not be entitled to again exercise any of its remedies for violation of the GLA Requirements until at least twelve (12) months following the Resumption Date. For example and for greater certainty, if there has been a violation of the GLA Requirements for twelve (12) months or a violation of the Key Store Requirements for eighteen (18) months and Tenant is paying Alternate Rent, and if Landlord elects to terminate this Lease and Tenant elects to resume the payment of regular Rent as herein provided, then Tenant shall not be entitled to exercise any remedies for violation of the GLA Requirements or the Key Store Requirements until at least twelve (12) months following the Resumption Date.

(D) The Right to Close Remedy, the Alternate Rent Remedy and the Termination Remedy are collectively referred to herein as "Operating Requirement Remedies." For purposes of this Article 13, the Operating Requirements shall not be deemed to have been met after a Co-Tenancy Failure unless and until Landlord provides Tenant reasonable written evidence that each substitution tenant (1) has opened for business and (2) has a binding lease or operating agreement with a term of one (1) year or longer (excluding any portion of the term subject to cancellation and excluding any option term) and with requirements to open and operate during the Designated Times (or, in the absence thereof, Minimum Times).

(E) In the event Tenant elects the Right to Close Remedy pursuant to this Article 13, and the Premises have been closed for a period of more than ninety (90) consecutive days pursuant to the Right to Close Remedy, then: (i) Landlord shall have the right to terminate this

Lease by giving Tenant written notice that it intends to terminate this Lease effective as of the sixtieth (60th) day subsequent to the date of such notice and (ii) Landlord shall be entitled (upon reasonable advance notice and during reasonable hours) to enter the Premises to exhibit the same to any prospective tenant, lender or purchaser without being liable to Tenant for any trespass or breach of any covenant contained in this Lease or otherwise. Provided, however, Tenant shall be entitled to nullify Landlord's notice of termination by notifying Landlord in writing at least thirty (30) days prior to the scheduled termination date that Tenant intends to re-open and operate pursuant to the Alternate Rent Remedy, so long as Tenant does in fact re-open and operate within seventy-five (75) days following the date it gives such notice to Landlord.

(F) In the event this Lease is terminated pursuant to any provision of this Section 13.4, Landlord and Tenant shall be released and discharged from any obligations or liabilities which would otherwise arise from and after the termination date of this Lease, but not from obligations which arose or were attributable to the period prior to such termination.

13.5 Substitution

(A) If Landlord desires to substitute a department store for the Key Store for purposes of satisfying the Operating Requirements, Landlord shall submit the name of such substitute department store to Tenant for its prior written approval. The approval of Tenant shall not be unreasonably withheld if: (1) the use to be conducted by such substitute department store is substantially the same as that conducted by the Key Store it is intended to replace; (2) the merchandise sold by such substitute department store is of equal or better quality, and is offered at similar price points as the Key Store it is intended to replace; and (3) such substitute department store will operate a retail business from substantially all of the premises being vacated by the Key Store it is intended to replace. Notwithstanding the foregoing, Landlord shall not require Tenant's approval of a substitute department store which is named on the list of acceptable substitute department stores attached hereto as Exhibit F.

(B) Notwithstanding Section 13.5(A), Landlord shall be entitled to replace the Key Store with a combination of substitute retailers (each a "Box Store") provided the following conditions (together the "Box Store Substitution Test") are met: (1) each Box Store must have a GLA of at least twenty thousand (20,000) feet; (2) the Box Stores must together occupy at least eighty percent (80%) of the GLA previously occupied by the replaced Key Store, after deducting therefrom the area occupied by new Malls within the former Key Store space so long as the size of those new Malls is not excessive compared to the size of existing Malls in the Shopping Centre; and (3) each Box Store must either be one of the retailers named on the list of acceptable substitute Box Stores attached hereto as Exhibit F-1, or be approved in writing in advance by Tenant, which approval shall not be unreasonably withheld having regard to the reputation of the Box Store, the type, quality and price points of its merchandise, and any other relevant factors. Furthermore, and notwithstanding anything to the contrary in Sections 13.5(A) and (B), if a Key Store closes, and Landlord does not replace it with a substitute department store under Section 13.5(A) or with Box Stores which satisfy the Box Store Substitution Test, then Landlord may elect to modify the Key Store Requirements so as to exclude that Key Store, in which event the definition of "GLA Requirements" in Section 13.3(A) shall immediately be amended by substituting "eighty percent (80%)" for "seventy-five percent (75%)". If Landlord makes such election, then the GLA previously occupied by the Key Store, or in the event the Box Store Substitution Test is met, any part or parts of such GLA which are not replaced by Box Stores which satisfy the Box Store Substitution Test (excluding any new Mall area referred to above in this Section 13.5(B)), shall, in each of the foregoing events as applicable, be added to the GLA of the Shopping Centre for purposes of the GLA Requirements pursuant to Article 13.

(C) The aforementioned rights of approval of Tenant are solely for the purpose of determining whether such proposed replacement retailer qualifies as a Key Store or Box Store for purposes of determining Tenant's rights under this Lease and is not intended to impair or restrict the freedom of Landlord to enter into leases or operating agreements with any party with whom Landlord desires in the exercise of its sole and absolute discretion.

ARTICLE 14: MAINTENANCE

14.1 Landlord's Repairs

Subject to Articles 19 and 20, Landlord shall at all times, at its sole cost and expense (but subject to partial reimbursement under Article 10, if applicable), keep, replace and maintain in good condition, order and repair:

ERIN MILLS TOWN CENTRE- GAP

to one Tenant is a notice by or to all of the Persons who are the Tenant under this Lease. Notwithstanding the foregoing, all notices, demands, requests or consents required or permitted to be given under this Lease, other than notices of failure of performance which may give rise to an Event of Default (as well as notices of an Event of Default in itself) may also be forwarded by telex, telegram or fax.

Section 17.10 Registration

The Tenant will not register or permit the registration of this Lease or any assignment or sublease or other document evidencing an interest of the Tenant or anyone claiming through or under the Tenant in this Lease or the Premises except that, ~~subject to the Tenant paying the Landlord's reasonable costs and expenses,~~ the Tenant may register a notice of lease or caveat which describes the parties, the Term, ~~any renewal option~~ and contains the other minimum information required under the applicable legislation. ~~In the form attached hereto as Schedule "H" or such other updated form as required by the applicable Land Registry Office.~~ The Landlord may, at the Landlord's expense, require the Tenant to execute promptly whatever document the Landlord requires for registration on the title to the Shopping Centre or any part of it in connection with this Lease ~~provided that no such document will increase Tenant's obligations or reduce Tenant's rights under this Lease, nor shall any such document serve to modify or conflict with the terms of this Lease.~~ If the Shopping Centre is comprised of more than one parcel of land, the Landlord may direct the Tenant as to the parcel(s) against which registration may be effected.

Section 17.11 No Partnership

Nothing contained in this Lease or as a result of any acts of the parties hereto will be deemed to create any relationship between the parties other than that of Landlord, Tenant and, if applicable, Indemnifier.

Section 17.12 Quiet Enjoyment

If the Tenant performs its obligations under this Lease, it may hold and use the Premises without interference by the Landlord or any other Person claiming by, through or under the Landlord, subject however to the covenants, terms and conditions of this Lease.

Section 17.13 Closure of Department Store(s)

~~Notwithstanding Section 9.03 or anything else contained herein, if either the Zeller's department store ("Zeller's") or The Bay department store ("The Bay") (or a Suitable Replacement Tenant as defined below for either Zeller's or The Bay) at the Shopping Centre are not open during the designated days and hours for the Shopping Centre, subject to a closure under Article XII of this Lease for a period of time (the "Department Store Closure Period"), then the following conditions shall apply:~~

~~(I) During the first six (6) months of the Department Store Closure Period, the Tenant shall continue to operate its business and shall continue to pay Minimum Rent, Percentage Rent, and Additional Rent as provided in this Lease.~~

~~(II) If the Department Store Closure Period continues for longer than six (6) months, then starting on the first day of the seventh (7th) month of the Department Store Closure Period and continuing to the earlier of:~~

~~1) the date Zeller's and/or The Bay, as the case may be, are again open for business, or~~

~~2) the end of the fifteenth (15th) month of the Department Store Closure Period;~~

~~the Tenant shall continue to operate its business, but the total rent payable monthly by the Tenant shall be one-half (1/2) of the Minimum Rent, plus all of the Additional Rent, which would otherwise be payable under this Lease, provided that no Percentage Rent shall be payable;~~

~~(III) If the Department Store Closure Period continues for longer than twelve (12) months, then starting on the first day of the thirteenth (13th) month of the Department Store Closure Period and continuing to the earlier of:~~

~~1) the date Zeller's and/or The Bay, as the case may be, are again open for business, or~~

~~2) the last day of the fifteenth (15th) month of the Department Store Closure Period;~~

~~the Tenant may terminate this Lease upon thirty (30) days written notice to the Landlord, which termination shall be effective even if any Zeller's and/or The Bay (or the Suitable Replacement Tenant) are again open for business during the notice period as provided for herein;~~

~~(IV) If the Tenant does not exercise its option to terminate the Lease within the time period set out in the foregoing subparagraph (III), then the Tenant shall continue to operate its business and commencing on the first day of the sixteenth (16th) month of the Department Store Closure Period and thereafter, shall pay all Minimum Rent, Percentage Rent and Additional Rent payable under the Lease.~~

If, during the Term of the Lease, or any extensions thereof, there is any subsequent closure of either Zeller's or The Bay, then the foregoing provisions of this Section 17.13 shall again apply.

As used herein, a Suitable Replacement Tenant means:

1) a single department store occupying the entire space formerly occupied by the vacated department store (i.e., Zeller's or The Bay);

2) a single tenant occupying the entire space formerly occupied by the vacated department store (i.e., Zeller's or The Bay) and offering for sale a selection of merchandise which is more restricted than a department store, provided that the Tenant, acting reasonably, consents to such tenant being a Suitable Replacement Tenant; or

3) a number of box tenants occupying the entire space formerly occupied by the vacated department store (i.e., Zeller's or The Bay) provided that the Tenant, acting reasonably, consents to such tenants being a Suitable Replacement Tenant.

Section 17.14 Closure of Conventional Retail Tenants

In this Section 17.14, "conventional retail tenants" of the Shopping Centre shall include all of the retail tenants of the Shopping Centre except for tenants whose premises do not front on, or are not connected to, an interior covered mall, governmental or quasi-governmental agencies, banks, trust companies and other financial institutions, office tenants, tenants of Rentable Premises having a GLA of more than sixty thousand (60,000) square feet, bowling alleys and other recreational facilities, kiosks and restaurants.

Notwithstanding Section 9.03 or anything else contained herein, if at least ninety percent (90%) by number, of the conventional retail tenants of the Shopping Centre, exclusive of the Premises, and at least eighty percent (80%) of the gross leasable area of the Shopping Centre (excluding Zeller's, The Bay, and the Premises), are not open during the designated days and hours for the Shopping Centre, subject to a closure under Article XII of this Lease, for a time period (the "Retail Tenant Closure Period") then the following conditions shall apply:

(i) During the first three (3) months of the Retail Tenant Closure Period, the Tenant shall continue to operate its business and shall continue to pay Minimum Rent, Percentage Rent, and Additional Rent as provided in this Lease.

(ii) If the Retail Tenant Closure Period continues for longer than three (3) months, then starting on the first day of the fourth (4th) month of the Retail Tenant Closure Period and continuing to the earlier of:

1) the date on which the Retail Tenant Closure Period ceases; or

2) the last day of the fifteenth (15th) month of the Retail Tenant Closure Period;

the Tenant shall continue to operate its business, but the total rent payable monthly by the Tenant shall be one-half (1/2) of the Minimum Rent, plus all of the Additional Rent which would otherwise be payable under this Lease, provided that no Percentage Rent shall be payable.

(iii) If the Retail Tenant Closure Period continues for longer than twelve (12) months, then starting on the first day of the thirteenth (13th) month of the Retail Tenant Closure Period and continuing to the earlier of:

1) the date on which the Retail Tenant Closure Period ceases; or

2) the last day of the fifteenth (15th) month of the Retail Tenant Closure Period;

the Tenant may terminate this Lease upon thirty (30) days written notice to the Landlord, which termination shall be effective even if the Retail Tenant Closure Period ceases during the notice period as provided for herein.

(iv) If the Tenant does not exercise its option to terminate the Lease within the time period set out in the foregoing subparagraph (iii), then the Tenant shall continue to operate its business and, commencing on the first day of the sixteenth (16th) month of the Retail Tenant Closure Period and thereafter, shall pay all Minimum Rent, Percentage Rent, and Additional Rent payable under the Lease.

If, during the Term of the Lease, or any extensions thereof, the conditions set out in the second paragraph of Section 17.14 again occur giving rise to a subsequent Retail Tenant Closure Period, then the foregoing provisions of this Section 17.14 shall again apply.

Section 17.15 Environmental Liability

(a) Intentionally deleted.

QUINTE MALL – OLD NAVY

Notwithstanding anything contained herein and whether or not the requirements of the preceding paragraphs are being met, in no event may the required Project days or hours as determined by Landlord be such as to require Tenant:

- (A) (i) to open earlier than 10:00 a.m. or later than 11:00 a.m. Monday through Saturday, or
- (ii) to remain open later than 9:30 p.m. Monday through Saturday, or 6:00 p.m. on Sundays, or
- (B) To be open Easter Sunday, Thanksgiving Day, Christmas Day, or New Year's Day; or
- (C) To be open when to do so would violate any law, criminal or civil, or subject Tenant or its employees to fine or penalty, whether criminal or civil in nature.

Tenant agrees that it will remain open during those extended hours established by Landlord during the Christmas season provided the Operating Requirements are met.

5.03 **Continuous Occupancy** Tenant acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to neighbouring tenants and to Landlord in the renting of space in the Project, the renewal of other leases therein, the efficient and economic supply of services and utilities, ~~the maintenance of Percentage Rent,~~ and in the character and quality of the other tenants in the Project. Tenant therefore covenants and agrees that subject to Article 5.03(A) throughout the Initial Term it will occupy the entire Premises, comply strictly with the provisions of Article 5.02 and not vacate or abandon the Premises at any time during the Initial Term. Tenant acknowledges that Landlord is executing this Lease in reliance thereupon and that the same is a material element inducing Landlord to execute this Lease. Tenant further agrees that if it vacates or abandons the Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Premises for any purpose not specifically herein authorized and allowed, Tenant will be in breach of Tenant's obligations under this Lease, and then, without constituting a waiver of Tenant's obligations or limiting Landlord's remedies under this Lease, all Rent reserved in this Lease will immediately become due and payable to Landlord unless guaranteed to the satisfaction of Landlord. ~~Landlord will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring Tenant to comply with the provisions of this Article 5.03. The phrase "the maintenance of Percentage Rent" is deleted from line 4 of this Article 5.03 on a non-precedent basis.~~

5.03A Ongoing Co-Tenancy

- (a) Operating Requirements: For the purpose of this Article "Operating Requirements" shall mean those stores representing the following minimum co-tenancy conditions are open for business and operating during the normal business hours and days of the Project as designated by Landlord from time to time but in no event less than the minimum hours set forth in Article 5.02: (i) the Sears department store ("Department Store") (or a Suitable Replacement Tenant(s) as defined herein, for such Department Store) and (ii) the Toys "R" Us store (or a Suitable Replacement Tenant(s) as defined herein, for such Toys "R" Us store), and (iii) stores occupying at least eighty percent (80%) of the gross leaseable area of the Project (excluding Department Stores or Suitable Replacements thereof, Toys "R" Us store or Suitable Replacements thereof, and the Premises).

"Suitable Replacement" shall mean a single department store occupying the entire space formerly occupied by the Department Store(s) (or a single store occupying the entire space formerly occupied by Toys "R" Us as the case may be), or a combination of high quality "big box" retailing tenants in excess of 15,000 square feet each which are consistent with the standards to which the Project is to be maintained pursuant to the terms of this Lease, such as, but not limited to, Chapters, Business Depot, Sport Chek, Toys "R" Us, Future Shop or Winners. If a Suitable Replacement is a combination of big box retailers, the Operating Requirement for such former Department Store premises or Toys "R" Us premises shall be deemed to be satisfied if 70% of the gross leaseable area of the former Department Store premises or Toys "R" Us premises are occupied by tenants of 20,000 square feet or more, and provided that the remaining 30% (or less) of the former Department Store space or Toys "R" Us premises as the case may be, may be occupied by tenants of any size.

- (b) Tenant's Right to Alternative Rent: If such Operating Requirements are not met any time for a period of three (3) consecutive months (the "Grace Period") then upon expiry of the Grace Period, Tenant may from time to time at its option either:**
- (i) close the Premises for business and during such period of closure Tenant shall pay the Annual Rent but no other rent or additional rent or charges otherwise payable under this Lease and will not be required to perform any other obligations under this Lease except those as are applicable to vacant premises;**
or
 - (ii) remain open for business but pay monthly, as alternative rent (the "Alternative Rent") during the period that the Operating Requirements are not being met, in lieu of Annual Rent and any other rent or additional rents or charges otherwise payable under this Lease (except utilities supplied to the Premises), the lower of: (1) two and one half percent (2.5%) of Tenant's monthly Gross Revenue for the first three (3) months, and two percent (2%) of Tenant's monthly Gross Revenue thereafter, plus utilities supplied to the Premises or (2) the then applicable monthly Annual Rent payable hereunder, plus utilities supplied to the Premises.**

Upon the date that the Operating Requirements are once again met Tenant shall, in the case where Tenant had made the election under (i) above, re-open the Premises for business, and in the case where Tenant had made the election under (ii) above, cease the payment of the Alternative Rent, and in the case of either (i) or (ii) above resume (where the same had been otherwise suspended) the payment of Rent and any other additional rents and charges due under this Lease accruing from and after the date that the Operating Requirements were once again met. For the purposes of this Article, the Operating Requirements shall be deemed to have been "met", in the case of the department stores upon the execution of a lease a binding letter of intent, and in the case of the other retail stores when they have been open and operating for a continuous period of at least forty-five (45) days.

- (c) Tenant's Right to Terminate: If the Operating Requirements fail to be met for a period of nine (9) consecutive months, then Tenant shall have the continuing right thereafter and prior to the Operating Requirements once again being met, to elect, by giving thirty (30) days' notice in writing to Landlord, to cancel and terminate this Lease. Once such thirty (30) day notice is given, the validity and effectiveness of Tenant's cancellation shall not be affected nor nullified by the fact that the Operating Requirements are again met during such thirty (30) day period unless Tenant in its sole discretion elects to revoke its cancellation notice and re-open.**
- (d) Landlord's Right to Terminate: If the Premises have been closed for a period of at least nine (9) consecutive months, pursuant to Tenant's election under subclause (b) (i) above to close the Premises or if Tenant continues to pay Alternative Rent for a period of six consecutive months pursuant to Tenant's election under subclause (b) (ii) above, then Landlord shall have the continuing right thereafter, prior to the Tenant either exercising its right to terminate the Lease pursuant to clause (c) above, or re-opening the Premises for business and paying Annual Rent, Percentage Rent and any other additional rents and charges payable under the Lease, to terminate this Lease by the giving of sixty (60) days' notice in writing to Tenant.**

During the first thirty (30) days of such sixty (60) day notice period, Tenant upon written notice to Landlord given within such thirty (30) day period, may elect (herein called the "Option to Reinstate") to re-open the Premises for business and recommence paying Rent in accordance with this Lease. Should Tenant exercise the Option to Reinstate, and in fact re-open the Premises or recommence paying Rent on or before the expiry of the sixty (60) day period after Landlord's notice of termination, then Landlord's notice of termination shall be null and void. If Tenant exercises the Option to Reinstate, then Tenant's remedies set out in clauses (b) and (c) above shall not apply for a period of nine (9) months after tenant re-opens the Premises pursuant to the Option to Reinstate whether or not the Operating Requirements are met during such period.

5.04 *Restrictions on Use & Occupancy*

ERIN MILLS TOWN CENTRE-OLD NAVY

ARTICLE 58 - Other Locations

INTENTIONALLY DELETED

ARTICLE 59 - Arbitration

INTENTIONALLY DELETED

ARTICLE 60 - Governing Law

This lease shall be governed by the laws of the province in which the Shopping Center is located.

ARTICLE 61 - Conflicts

In the event of a conflict or inconsistency between the lease (other than the construction exhibits), Tenant Design Manual and the approved plans, the following order of priority shall be determinative in resolving such conflicts among the various documents:

1. lease (other than the construction exhibits)
2. approved Tenant plans
3. Exhibits E, F, G and X
4. Tenant Design Manual and Design Criteria or Handbook.

ARTICLE 62 - Ownership

INTENTIONALLY DELETED

ARTICLE 63 - Operating Co-Tenancy

The term "Mall Shop Co-Tenancy" as used in this ARTICLE 63 shall mean the requirement that mall tenants representing at least seventy five percent (75%) (the "Mall Shop Percentage") of the total gross leaseable area in the Shopping Center (excluding the gross leaseable area of the Department Stores) are open and operating for business in the Shopping Center. The term "Department Store Co-Tenancy" as used in this ARTICLE 63 shall mean the requirement that at least two (2) of the Department Stores as defined in this article in the Shopping Center are open and operating for business in the Shopping Center including the Department Store named Sears (the "Named Department Store"), or a Suitable Replacement (as defined herein) of the Named Department Store. If during the term of this lease either the Mall Shop Co-Tenancy or the Department Store Co-Tenancy is not being met, such conditions shall be referred to as the "Mall Shop Operating Failure" or the "Department Store Operating Failure".

A. A "Department Store" shall be an occupant of at least sixty-three thousand (63,000) contiguous square feet which operates under a single trade name and which conducts a business which is multi-departmented, selling primarily apparel and has at least two (2) distinct departments.

The parties agree that, as of the date of this lease, the following identifies all of the Department Stores of the Shopping Center (including the Named Department Store): Sears, The Bay and Zellers.

For purposes of this ARTICLE 63, the term "Suitable Replacement" means: (1) a Department Store occupying all or substantially all of the premises vacated by the departing Named Department Store which the Suitable Replacement is replacing or (2) any number of tenants which occupy substantially all of the premises vacated by the departing Named Department Store. Provided however that if the Landlord leases 40% or more of the premises occupied by the Named Department Store to mall shop tenants occupying less than 20,000 square feet each, the Mall Shop Percentage defined in this ARTICLE 63 shall thereafter be increased to eighty-five percent (85%).



B. (i) In the event that the Mall Shop Co-Tenancy has not been met for a period of three (3) continuous months, then commencing on the first day of the fourth (4th) month of the Mall Shop Operating Failure and continuing to the earlier of:

- (1) the date on which the Mall Shop Operating Failure ceases, and
- (2) the last day of the ninth (9th) month of the Mall Shop Operating Failure,

the Tenant shall continue to operate its business and, in lieu of the Annual Rent payable pursuant to ARTICLE 4, the Tenant may pay to the Landlord monthly an amount equal to the lesser of (a) a sum equivalent to four percent (4%) of all Net Sales (as defined in ARTICLE 5) or (b) the Minimum Rent amount set forth in ARTICLE 4(a)(1). In addition Tenant shall pay all Additional Rent coming due during such period except charges pursuant to ARTICLES 7, 17 and 37. Each payment under this provision shall be paid within thirty (30) days following the end of each calendar month and shall be accompanied by Tenant's statement of Net Sales made during the previous month.

(ii) In the event that the Mall Shop Operating Failure continues for longer than nine (9) continuous months, then commencing on the first day of the tenth (10th) month of the Mall Shop Operating Failure and continuing until the date on which the Mall Shop Operating Failure ceases, the Tenant shall continue to operate its business unless it exercises its Mall Shop Right to Close Remedy and, in lieu of the Annual Rent payable pursuant to ARTICLE 4, the Tenant may pay to the Landlord monthly an amount equal to the lesser of (a) a sum equivalent to three percent (3%) of all Net Sales (as defined in ARTICLE 5) or (b) the Minimum Rent amount set forth in ARTICLE 4(a)(1). In addition Tenant shall pay all Additional Rent coming due during such period except charges pursuant to ARTICLES 7, 17 and 37. Each payment under this provision shall be paid within thirty (30) days following the end of each calendar month and shall be accompanied by Tenant's statement of Net Sales made during the previous month. The remedy set out in this ARTICLE 63B(i) and (ii) shall be referred to as the "Mall Shop Alternative Rent Remedy".

C. In the event that the Mall Shop Operating Failure continues for a period of twelve (12) continuous months, then Tenant shall have the right to close the leased premises for business and pay to Landlord Annual Rent pursuant to ARTICLE 4 and all Additional Rent due under this lease (the "Mall Shop Right to Close Remedy"), provided that in the event Tenant exercises the Mall Shop Right to Close Remedy for ninety (90) continuous days, then Landlord shall have the right to terminate this lease upon thirty (30) days written notice to Tenant, unless Tenant notifies Landlord during such notice period that Tenant intends to reopen the leased premises for business and does reopen the leased premises for business within forty-five (45) days of receipt of Landlord's notice, then Landlord's termination right shall be null and void and of no further force and effect.

In the event that the Mall Shop Operating Failure continues for a period of over twelve (12) continuous months, then, in addition to the Mall Shop Right to Close Remedy and the Mall Shop Alternative Rent Remedy, Tenant shall have the continuing right thereafter and while such Mall Shop Operating Failure continues, to cancel and terminate this lease upon sixty (60) days prior written notice to Landlord. This remedy shall be referred to as the "Mall Shop Termination Remedy". Once the Mall Shop Termination Remedy has been exercised by Tenant, it shall not be affected or nullified by the fact that the Mall Shop Co-Tenancy has been met during the aforementioned sixty (60) day notice period unless Tenant, in its sole discretion, elects to revoke its cancellation notice and reinstate this lease.

D. (i) In the event that the Department Store Co-Tenancy has not been met for a period of three (3) continuous months, then commencing on the first day of the fourth (4th) month of the Department Store Operating Failure and continuing until the date on which the Department Store Operating Failure ceases, the Tenant shall continue to operate its business unless it exercises its Department Store Right to Close Remedy and, in lieu of the Annual Rent payable pursuant to ARTICLE 4 the Tenant may pay to the Landlord monthly an amount equal to the lesser of (a) a sum equivalent to four percent (4%) of all Net Sales (as defined in ARTICLE 5) or (b) the Minimum Rent amount set forth in ARTICLE 4(a)(1). In addition Tenant shall pay all Additional Rent coming due during such period except charges pursuant to ARTICLES 7, 17 and 37. Each payment under this provision shall be paid within thirty (30) days following the end of each calendar month and shall be accompanied by Tenant's statement of Net Sales made during the previous month. This remedy shall be referred to as the "Department Store Alternative Rent Remedy".

E. In the event that the Department Store Operating Failure continues for a period of twelve (12) continuous months, then Tenant has the right to close the leased premises for business and pay to Landlord all Annual Rent as provided in ARTICLE 4 hereof and all Additional Rent due under this lease (the "Department Store Right to Close Remedy"), provided that in the event Tenant exercises the Department Store Right to Close Remedy for ninety (90) continuous days, then Landlord shall have the right to terminate the lease upon thirty (30) days written notice to Tenant, unless Tenant notifies Landlord during such notice period that Tenant intends to reopen the leased premises for business and does reopen the leased premises for business within forty-five (45) days of receipt of Landlord's thirty (30) day notice, then Landlord's termination right shall be null and void and of no further force and effect.

F. In the event that the Department Store Operating Failure continues for a period of over eighteen (18) continuous months, then, in addition to the Department Store Right to Close Remedy and the Department Store Alternative Rent Remedy, Tenant shall have the continuing right thereafter and while such Department Store Operating Failure continues, to cancel and terminate this lease upon sixty (60) days prior written notice to Landlord. This remedy shall be referred to as the "Department Store



Termination Remedy". If, however, within the eighteen (18) month period during which the Department Store Operating Failure shall be continuing, Landlord sends Tenant notice (the "Vitiating Notice") that a department store, the name of which shall be specified in the Vitiating Notice, shall open for business in the Shopping Center prior to the expiration of the aforementioned eighteen (18) month period, and such department store does in fact open prior to the expiration of such eighteen (18) month period, then any notice to terminate sent by Tenant in connection with the Department Store Operating Failure shall be null and void and of no further force and effect and this lease shall continue upon all of its terms and conditions.

G. Tenant may elect the applicable right to close remedies or the applicable alternative rent remedies alternatively during the period the Mall Shop Operating Failure or the Department Store Operating Failure continues as set forth in this ARTICLE 63, provided Tenant may not elect either of the alternative rent remedies more than two (2) times in any such period, or either of the right to close remedies more than one (1) time in any such period. Upon the date that the operating requirement is once again met (the "Resumption Date"), Tenant shall, in the case where Tenant had elected either of the right to close remedies, reopen the leased premises for business, and in the case where Tenant had elected either of the alternative rent remedies, cease the payment of the applicable alternative rent, and in the case of either remedy, resume (where the same had been otherwise suspended) the payment of Annual Rental and Percentage Rental (set forth in ARTICLE 4) accruing from and after the Resumption Date that the operating requirement was once again met.

H. Notwithstanding anything else contained in this lease to the contrary, provided at least two (2) department stores and seventy-five percent (75%) of the gross leaseable area in the Shopping Center (excluding Department Stores) are open and operating for business in the Shopping Center, Tenant shall not be entitled to exercise the Mall Shop Right to Close, the Mall Shop Termination Right, the Department Store Right to Close nor the Department Store Termination Right for the first full eighteen (18) months of the term of this lease, provided, however, that if any Mall Store Operating Failure or Department Store Operating Failure occurs during such eighteen (18) month period, the duration of such failure within such eighteen (18) month period shall be considered to be accruing for purposes of the twelve (12) and eighteen (18) month waiting periods for Tenant's Right to Close and Right to Terminate.

ARTICLE 64 - Options to Extend

64.1 First Extension Option: Tenant shall have a five (5) year option to extend the term of this lease if Tenant is not in default and if Tenant is in possession of the leased premises. Written notice of the election of the option to extend shall be sent by Tenant to Landlord no later than one hundred twenty (120) days prior to the termination date set forth in ARTICLE 1(b) hereof (the "First Notice Date"). If said option is duly exercised, the term of this lease shall be extended for an additional five (5) year term, which shall expire on the last day of the sixtieth (60th) full calendar month following the termination date set forth in ARTICLE 1(b) (the "First Option Period"). The First Option Period shall be upon all of the same terms, provisions and conditions set forth in this lease, except (1) no inducement or allowance payable hereunder shall be payable on exercising this right to extend the term, (2) the Tenant will accept the leased premises in an "as is" condition, (3) there shall be no further right to extend the term except as set out in ARTICLE 64.2, (4) the Landlord may, at its option, require that the Tenant enter into an extension agreement, as prepared by the Landlord, to give effect to the First Option Period, and (5) the Minimum Rent payable during each consecutive twelve (12) month period of the First Option Period shall be an annual amount equal to ninety percent (90%) of the aggregate of Minimum Rent plus Percentage Rent payable by the Tenant for the last full twelve (12) calendar month period of the initial term (subject to the adjustment in accordance with the fourth last paragraph of ARTICLE 4(a) hereof if the Tenant for any reason was not open for business during any part of such twelve (12) calendar month period).

If said option is not exercised by the First Notice Date, this lease shall terminate on the termination date set forth in ARTICLE 1(b) hereof, and Tenant shall pay to Landlord prior to the expiration of the term an amount equal to fifty percent (50%) of the unamortized portion of the Inducement pursuant to ARTICLE 2.10 calculated from the date of payment by the Landlord on the basis of an assumed rate of depreciation on a straight-line basis to zero over 10 years, plus applicable Sales Taxes exigible thereon, unless a Mall Shop Operating Failure or Department Store Operating Failure pursuant to ARTICLE 63 existed on the last day on which the Tenant could have exercised this First Extension Option or the lease is terminated by the Tenant, in accordance with its terms, prior to the expiration of the initial term. If the Tenant gives such appropriate notice within the time limit set out herein for extending the term, it will forthwith execute the documentation submitted by the Landlord pursuant to ARTICLE 64.1(4).

64.2 Second Extension Option: Tenant shall have a five (5) year option to extend the term of this lease if Tenant is not in default and if Tenant is in possession of the leased premises. Written notice of the election of the option to extend shall be sent by Tenant to Landlord no later than one hundred twenty (120) days prior to the last day of the First Option Period set forth above (the "Second Notice Date"). If said option is duly exercised, the term of this lease shall be extended for an additional five (5) year term, which shall expire on the last day of the sixtieth (60th) full calendar month following the last day of the First Option Period (the "Second Option Period"). The Second Option Period shall be upon all of the same terms, provisions and conditions set forth in this lease, except that: (1) no inducement or allowance payable hereunder shall be payable on exercising this right to extend the term, (2) the Tenant will accept



PARK PLACE SHOPPING CENTRE-
OLD NAVY

therein, or uses or permits or suffers the use of the Premises for any purpose not specifically herein authorized and allowed, Tenant will be in breach of Tenant's obligations under this Lease, and then, without constituting a waiver of Tenant's obligations or limiting Landlord's remedies under this Lease, all Rent reserved in this Lease will immediately become due and payable to Landlord unless guaranteed to the satisfaction of Landlord.

5.05 *Ongoing Co-Tenancy*

- (a) **Operating Requirements:** For the purpose of this Article "Operating Requirements" shall mean those stores representing the following minimum co-tenancy conditions are open for business and operating during the normal business hours and days of the Project as designated by Landlord from time to time but in no event less than the minimum hours set forth in Article 5.03: (i) Winners plus one of: Sport Chek, Michaels or Jysk (for the purposes of this Section 5.05 the "Department Store") (or a Suitable Replacement Tenant(s) as defined herein), and (ii) stores occupying at least eighty percent (80%) of the gross leaseable area of the Project (excluding the Department Store or Suitable Replacements thereof and the Premises).

"Suitable Replacement" shall mean a single department store occupying the entire space formerly occupied by the Department Store, or a combination of high quality "big box" retailing tenants in excess of 15,000 square feet each which are consistent with the standards to which the Project is to be maintained pursuant to the terms of this Lease, such as, but not limited to, Chapters/Indigo, Pacific Linen, Business Depot, Sport Chek, Toys' "R" Us, Future Shop or Winners. If a Suitable Replacement is a combination of big box retailers, the Operating Requirement for such former Department Store premises shall be deemed to be satisfied if 70% or more of the gross leaseable area of the former Department Store premises are occupied by tenants of 20,000 square feet or more, and provided that the remaining 30% (or less) of the former Department Store space may be occupied by tenants of any size.

- (b) **Tenant's Right to Alternative Rent:** If such Operating Requirements are not met any time for a period of three (3) consecutive months (the "Grace Period") then upon expiry of the Grace Period, Tenant may from time to time at its option either:
- (i) close the Premises for business and during such period of closure Tenant shall pay the Annual Rent but no Percentage Rent or Occupancy Costs or other rent or additional rent or charges otherwise payable under this Lease and will not be required to perform any other obligations under this Lease except those as are applicable to vacant premises; or
 - (ii) remain open for business but pay monthly, as alternative rent (the "Alternative Rent") during the period that the Operating Requirements are not being met, in lieu of Annual Rent and Percentage Rent and Occupancy Costs and other rent or additional rent or charges otherwise payable under this Lease, the lesser of: (1) 2.5% of Tenant's monthly Gross Revenue for the first 3 months and 2% of Tenant's monthly Gross Revenue thereafter, or (2) the then applicable monthly Annual Rent payable hereunder.

Upon the date that the Operating Requirements are once again met Tenant shall, in the case where Tenant had made the election under (i) above, re-open the Premises for business, and in the case where Tenant had made the election under (ii) above, cease the payment of the Alternative Rent, and in the case of either (i) or (ii) above resume (where the same had been otherwise suspended) the payment of Annual Rent, Occupancy Costs, Percentage Rent (calculated in the manner set forth in this Lease), and any other rent and additional rents and charges due under this Lease accruing from and after the date that the Operating Requirements were once again met. For the purposes of this Article, the Operating Requirements

shall be deemed to have been "met", in the case of the department stores upon the execution of a lease or binding letter of intent, and in the case of the other retail stores when they have been open and operating for a continuous period of at least forty-five (45) days.

- (c) **Tenant's Right to Terminate:** If the Operating Requirements fail to be met for a period of nine (9) consecutive months, then Tenant shall have the continuing right thereafter and prior to the Operating Requirements once again being met, to elect, by giving thirty (30) days' notice in writing to Landlord, to cancel and terminate this Lease. Once such thirty (30) day notice is given, the validity and effectiveness of Tenant's cancellation shall not be affected nor nullified by the fact that the Operating Requirements are again met during such thirty (30) day period unless Tenant in its sole discretion elects to revoke its cancellation notice and re-open.
- (d) **Landlord's Right to Terminate:** If the Premises have been closed for a period of at least nine (9) consecutive months, pursuant to Tenant's election under subclause (b) (i) above to close the Premises or if Tenant continues to pay Alternative Rent for a period of six consecutive months pursuant to Tenant's election under subclause (b) (ii) above, then Landlord shall have the continuing right thereafter, prior to the Tenant either exercising its right to terminate the Lease pursuant to clause (c) above, or re-opening the Premises for business and paying Annual Rent, Occupancy Costs, Percentage Rent and any other rent and additional rents and charges payable under the Lease, to terminate this Lease by the giving of sixty (60) days' notice in writing to Tenant.

During the first thirty (30) days of such sixty (60) day notice period, Tenant upon written notice to Landlord given within such thirty (30) day period, may elect (herein called the "Option to Reinstate") to re-open the Premises for business and recommence paying Rent in accordance with this Lease. Should Tenant exercise the Option to Reinstate, and in fact re-open the Premises or recommence paying Rent on or before the expiry of the sixty (60) day period after Landlord's notice of termination, then Landlord's notice of termination shall be null and void. If Tenant exercises the Option to Reinstate, then Tenant's remedies set out in clauses (b) and (c) above shall not apply for a period of nine (9) months after tenant re-opens the Premises pursuant to the Option to Reinstate whether or not the Operating Requirements are met during such period.

5.06 *Restrictions on Use & Occupancy*

- (a) Tenant will carry on its business on the Premises in a reputable manner and in compliance with all the provisions of this Lease, and in particular Tenant will not advertise, do, omit, permit or suffer to be done or exist upon the Premises anything which will be or result in or bring about a breach of any provision of this Lease.
- (b) Tenant will not conduct or advertise on or from or pertaining to the Premises as any part of its business or the sale of bankruptcy, distress or secondhand goods, war surplus articles, insurance salvage stock, fire sale stock or merchandise damaged by fire or purported to be damaged by fire, unless such damage actually occurred on the Premises, or hold any auctions, an outlet store, flea market, dollar store or any retailer carrying on business as a Giant Tiger or Saan.
- (c) Tenant, or anyone acting through, for, or in place of Tenant, will not conduct or advertise on or from or pertaining to the Premises any auction, bankruptcy or receivership sale or any closing out wholesale business. Tenant will not divert to another location business that would normally be conducted on or from the Premises, provided that general advertising of Tenant's other stores from within the Premises shall be permitted.
- (d) Tenant will not use in the Premises any traveling or flashing lights or signs or any loudspeakers, television, phonographs, radio or other audio-visual or mechanical devices in a manner so that they can be heard outside the Premises which may



CORNWALL CENTRE- GAP/GAP KIDS

- (c) the Lease shall be amended pursuant to the amendments contained in Paragraph 3 of this Agreement.

3. The parties acknowledge and agree that as and from the Effective Date, the Lease is hereby amended to provide as follows:

- (a) Section 3.03 of the Lease is hereby amended by adding the following:

"The Term of the Lease is hereby extended for a further period of Four (4) years, commencing on September 1, 2007 and ending on August 31, 2011.";

- (b) Section 3.03A of the Lease captioned "First Extended Term" is hereby deleted in its entirety;
- (c) Section 3.03B of the Lease captioned "Second Extended Term" is hereby deleted in its entirety;
- (d) Section 9.01(a) of the Lease is hereby replaced with the following:

"(a) The Tenant will not use or permit any part of the Premises to be used for any purpose other than the following: the retail sale of apparel and directly related accessories and, at the Tenant's option, such other uses as are consistent with the majority of the Tenant's other similar stores operating under the same trade name used by the Tenant at the Premises.";

- (e) Section 9.03(a) of the Lease is hereby replaced with the following:

"(a) conduct its business in the Premises during the hours and on the days that the Landlord requires or permits from time to time and at no other time but the Tenant is not required to carry on business when prohibited by a governmental law or by-law regulating the hours of business. Notwithstanding anything contained herein, in no event may the required days or hours as determined by Landlord be such as to require Tenant:

- (1) (i) to open earlier than 9:30 a.m. or later than 11:00 a.m. Monday through Sunday, or
- (ii) to remain open later than 9:30 p.m. Monday through Saturday, or 5:00 p.m. on Sundays, or
- (2) To be open Easter Sunday, Thanksgiving Day, Christmas Day, or New Year's Day; or
- (3) To be open when to do so would violate any law, criminal or civil, or subject Tenant or its employees to fine or penalty, whether criminal or civil in nature.

Tenant agrees that it will remain open during those extended hours established by Landlord during the Christmas season provided the Operating Requirements are met.

(A) Co-Tenancy

"Operating Requirements: For the purpose of this Section 9.03(a) "Operating Requirements" shall mean those stores representing the following minimum co-tenancy conditions are open for business and operating during the normal business hours and days of the Shopping Centre as designated by Landlord from time to time: (i) The Bay ("Department Store") (or a Suitable Replacement Tenant(s) as defined herein, for such Department Store) and (ii) stores occupying at least eighty percent (80%) of the GLA of the Shopping Centre (excluding the Department Store, cinema or Suitable Replacements thereof and the Premises).

"Suitable Replacement(s)" shall mean a single department store occupying the entire space formerly occupied by the Department Store, as the case may be, or a combination of high quality "big box" retailing tenants in excess of 15,000 square feet each which are consistent with the standards to which the Shopping Centre is to be maintained pursuant to the terms of this Lease, such as, but not limited to, Chapters/Indigo, Pacific Linen, Business Depot, Sport Chek, Toys' "R" Us, Future Shop or Winners. If a Suitable Replacement is a combination of big box retailers, the

Operating Requirement for such space formerly occupied by the Department Store shall be deemed to be satisfied if seventy percent (70%) or more of the GLA of the space formerly occupied by the Department Store is occupied by tenants of 20,000 square feet or more, and provided that the remaining 30% (or less) of the space formerly occupied by the Department Store may be occupied by tenants of any size.";

(B) **Tenant's Right to Alternative Rent:** If such Operating Requirements are not met any time for a period of three (3) consecutive months (the "Grace Period") then upon expiry of the Grace Period, the Tenant may from time to time at its option either:

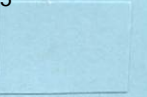
- (i) close the Premises for business and during such period of closure the Tenant shall pay to the Landlord the Rent or other rent or additional rent or charges otherwise payable under this Lease and will not be required to perform any other obligations under this Lease except those as are applicable to vacant premises; or
- (ii) remain open for business but pay monthly, to the Landlord, as alternative rent (the "Alternative Rent") during the period that the Operating Requirements are not being met, in lieu of Rent and other rent or additional rent or charges otherwise payable under this Lease, the lesser of: (1) 2.5% of the Tenant's monthly Gross Revenue for the first 3 months and 2% of the Tenant's monthly Gross Revenue thereafter, or (2) the then applicable monthly Rent payable hereunder.

Upon the date that the Operating Requirements are once again met the Tenant shall, in the case where the Tenant had made the election under (i) above, re-open the Premises for business, and in the case where the Tenant had made the election under (ii) above, cease the payment of the Alternative Rent, and in the case of either (i) or (ii) above resume (where the same had been otherwise suspended) the payment of the Rent, and any other rent and additional rents and charges due under this Lease accruing from and after the date that the Operating Requirements were once again met. For the purposes of this Section, the Operating Requirements shall be deemed to have been "met", in the case of the department stores upon the execution of a lease or binding letter of intent, and in the case of the other retail stores when they have been open and operating for a continuous period of at least forty-five (45) days.

(C) **Tenant's Right to Terminate:** If the Operating Requirements fail to be met for a period of nine (9) consecutive months, then the Tenant shall have the continuing right thereafter and prior to the Operating Requirements once again being met, to elect, by giving thirty (30) days' notice in writing to the Landlord, to cancel and terminate this Lease. Once such thirty (30) day notice is given, the validity and effectiveness of Tenant's cancellation shall not be affected nor nullified by the fact that the Operating Requirements are again met during such thirty (30) day period unless the Tenant in its sole discretion elects to revoke its cancellation notice and re-open.

(D) **Landlord's Right to Terminate:** If the Premises have been closed for a period of at least nine (9) consecutive months, pursuant to the Tenant's election under subclause (B)(i) above to close the Premises or if the Tenant continues to pay Alternative Rent for a period of six consecutive months pursuant to the Tenant's election under subclause (B)(ii) above, then the Landlord shall have the continuing right thereafter, prior to the Tenant either exercising its right to terminate the Lease pursuant to clause (C) above, or re-opening the Premises for business and paying the Rent and any other rent and additional rents and charges payable under the Lease, to terminate this Lease by the giving of sixty (60) days' notice in writing to the Tenant.

During the first thirty (30) days of such sixty (60) day notice period, the Tenant upon written notice to the Landlord given within such thirty (30) day period, may elect (herein called the "Option to Reinstate") to re-open the Premises for business and recommence paying Rent in accordance with this Lease. Should the Tenant exercise the Option to Reinstate, and in fact re-open the Premises or recommence paying the Rent on or before the expiry of the sixty (60) day period after the Landlord's notice of termination, then the Landlord's notice of termination shall be null and void. If the Tenant exercises the Option to Reinstate, then the Tenant's remedies set out in clauses (B) and (C) above shall not apply for a period of nine (9) months after tenant re-opens the Premises pursuant to the Option to Reinstate whether or not the Operating Requirements are met during such period.";



**LANDSDOWNE PLACE-
GAP FACTORY STORE**

- 18 -

- (iv) during the making of repairs to or remodeling of the Premises or during periods when Tenant is taking inventory;
 - (v) on Easter Sunday, Thanksgiving Day, Christmas Day or New Years Day; or
 - (vi) when to do so would violate any Legal Requirement, criminal or civil, or subject Tenant or its employees to a fine or penalty, whether criminal or civil in nature.
- (c) Tenant shall have the right, but not the obligation, to open for business on days and for hours in excess of Designated Times (or, in the absence thereof, Minimum Times), provided that Tenant shall give reasonable advance notice of its intended extra operating hours to the manager of the Shopping Centre. In all cases when Tenant is open for business outside of Designated Times, Tenant shall comply with Landlord's reasonable security precautions, and Landlord may require Tenant to pay for any extra cleaning and security costs reasonably attributable to such extra hours of operation. Landlord's reasonable security precautions may include the closure of the interior Mall.

12.4 Trade Name

Tenant agrees to operate for the first two (2) years of the Initial Term under the trade name "GAP OUTLET" or "GAP FACTORY STORE", or any other trade name operated by Tenant or its Affiliates. After the first two (2) years of the Initial Term there shall be no trade name requirement and this section shall be of no further force or effect.

ARTICLE 13 - CO-TENANCY REQUIREMENTS

13.1 Initial Key Store Requirements - Intentionally Deleted

13.2 Opening Requirements

- (a) Notwithstanding that the Construction Period may have expired, Tenant shall not be required to open the Premises for business, nor shall the Commencement Date occur or the obligation to pay Rent begin, until: (1) the Key Stores (as defined below), plus (2) retail stores (other than the Premises, the two named Key Stores and all other Excluded Areas) having an aggregate of eighty percent (80%) or more of the total GLA of the Shopping Centre (other than the Premises, the two named Key Stores and all other Excluded Areas) shall have opened or shall be concurrently opening for business with Tenant (the "Opening Requirements").
- (b) The Key Stores are the following retailers occupying the floor area indicated:

<u>Tradename</u>	<u>Floor Area</u>
Sport Chek	22,855 square feet
Real Canadian Superstore	103,816 square feet

- (c) If Tenant elects in its sole discretion to open for business prior to the fulfillment of the Opening Requirements, then the Commencement Date shall be deemed to have occurred on the date Tenant opens the Premises for business (provided that Landlord shall continue to be obligated to satisfy the Delivery of Possession requirements). During the period from the Commencement Date until the fulfillment of the Opening Requirements (the "Interim Period"), Tenant shall pay to Landlord as a substitute rent (the "Interim Rent") for such Interim Period, in lieu of Minimum Rent, Percentage Rent and Other Charges, an amount equal to fifty percent (50%) of the amount of Minimum Rent then applicable. Each such payment of the Interim Rent shall be made within thirty (30) days after the end of each of Tenant's fiscal months during the Interim Period. From and after the fulfillment of the Opening Requirements, Tenant shall commence the regular payment of Rent computed in the way and manner as provided by this Lease accruing from and after the date the Opening Requirements were met, in lieu of Interim Rent.
- (d) If the Opening Requirements have not been met within six (6) months after the expiration of the Construction Period, then Tenant shall have the continuing right thereafter and prior to the Opening Requirements being met, to terminate this Lease effective on the date stated in Tenant's notice but no earlier than one (1) month after such notice. If Tenant is open, Tenant shall have the right to continue Interim Rent until the effective date of termination. Once such termination right has been exercised by Tenant, Tenant's termination shall not be affected or nullified by the fact that the Opening Requirements are later met unless Tenant, in its sole discretion, elects to revoke its termination notice and reinstate this Lease.

- (e) If the Opening Requirements have not been met within nine (9) months after the expiration of the Construction Period, and Tenant has not terminated this Lease, then, effective the first day of the tenth (10th) month after the expiration of the Construction Period, Tenant shall have no further rights under this Section 13.2, provided that Tenant's obligation to operate and pay Rent shall be governed by the other provisions of this Lease, and provided further that any waiting period before which Tenant may exercise the Operating Requirement Remedies (as defined in Section 13.4) shall be deemed to have commenced after the Commencement Date on the applicable date the Operating Requirements first ceased to be satisfied pursuant to Section 13.3.
- (f) If Tenant in good faith thinks that the Opening Requirements have not been met, then upon Tenant's written request Landlord shall deliver to Tenant a notice certifying the then current tradename and GLA of each tenant of the Shopping Centre and any other information requested by Tenant for the purpose of verifying whether the Opening Requirements were or are being met, provided that Landlord shall not be required to provide such information more frequently than twice during the period commencing on the start of the Construction Period and ending nine (9) months after the expiration of the Construction Period. If such information provided by Landlord discloses that the Opening Requirements have not been met and Tenant elects to pay Interim Rent for such period of violation in accordance with Section 13.2(c), Landlord shall rebate to Tenant the overcharge or, at Tenant's election, Tenant may off-set the amount of the overcharge against Rent becoming due.

13.3 Operating Requirements

- (a) Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to open the Premises for business at all nor operate during Designated Times (or, in the absence thereof, Minimum Times) unless the Ongoing Key Store is open for business during the Designated Times (or, in the absence thereof, the Minimum Times) ("Ongoing Key Store Requirements") and retail stores (other than the Excluded Areas) having an aggregate of seventy-five percent (75%) or more of the total GLA of the Shopping Centre (other than the Excluded Areas) are also open for business during the Designated Times (or, in the absence thereof, Minimum Times) ("GLA Requirements"). Collectively, the GLA Requirements and the Ongoing Key Store Requirements may be referred to as the "Operating Requirements". As used herein: (1) "Excluded Areas" means all of the following: the Premises; any store leased to the Tenant or a Related Party of the Tenant and which is closed in violation of its lease; the Ongoing Key Store and any other Major Stores; basement areas; remote storage space having no Mall frontage and not within a retail store; mezzanine space within a retail store but used only for non-retail purposes; office premises located on a level or wing of the Shopping Centre dedicated to office use and having no frontage onto a retail Mall; and (2) "Major Store" means a single store, having a GLA of at least one hundred thousand (100,000) square feet.
- (b) A store shall not be considered open for business if such store is open and operating (1) less than the Designated Times (or, in the absence thereof, Minimum Times), or (2) in less than substantially all of its space. Failure to meet either the Key Store Requirements or the GLA Requirements shall be deemed a failure of the Operating Requirements and may sometimes be referred to as a "Co-Tenancy Failure." If the Operating Requirements are not being met because a store is closed by reason of casualty, expropriation, or the making of repairs or alterations as a result of casualty or expropriation (collectively, an "Excused Closure"), such Excused Closure shall not give rise to Tenant's right to pursue Operating Requirement Remedies pursuant to Section 13.4 unless such Excused Closure continues for more than a period of one hundred eighty (180) days. Any waiting period before which Tenant may exercise the Operating Requirement Remedies shall be deemed to run concurrently with such 180-day grace period for an Excused Closure. Landlord shall promptly notify Tenant of any Co-Tenancy Failure.
- (c) Ongoing Key Store. The Ongoing Key Store is the following retailer occupying the floor area indicated:

<u>Tradename</u>	<u>Floor Area</u>
Real Canadian Superstore	103,816 square feet (comprising a ground floor GLA of 94,137 square feet and a mezzanine GLA of 9,679 square feet)

- (d) If Tenant in good faith thinks that a Cotenancy Failure may have occurred, then upon Tenant's written request Landlord shall deliver to Tenant a notice certifying the then current tradename and GLA of each tenant of the Shopping Centre and any other

- 20 -

information requested by Tenant for the purpose of verifying whether the Operating Requirements were or are being met, provided that Landlord shall not be required to provide such information more frequently than twice in each Lease Year. If such information provided by Landlord discloses a violation of the Operating Requirements and Tenant elects to pay Alternate Rent for such period of violation in accordance with Section 13.4(A), Landlord shall rebate to Tenant the overcharge or, at Tenant's election, Tenant may offset the amount of the overcharge against Rent becoming due.

- (e) In the event Landlord undertakes a major remodel of the Shopping Center which shall be defined as a remodel involving more than fifty percent (50%) of the CRU space in the Shopping Center ("Major Remodel"), then the GLA Requirement shall be reduced to sixty percent (60%), until such time as Landlord has completed the Major Remodel, but in no event longer than eighteen (18) months.

13.4 Operating Requirement Remedies

- (a) If the Operating Requirements are not met for a continuous period of ninety (90) days, then, effective immediately, Tenant shall have the following rights:
 - (i) **Right to Close Remedy.** Tenant may close the Premises for business and, during such period of closure, Tenant shall pay Minimum Rent and all other Rent (excluding Percentage Rent) in accordance with all applicable provisions of this Lease and shall perform all of such other obligations as are applicable to a vacant premises. This remedy is referred to herein as the "Right to Close Remedy."
 - (ii) **Alternate Rent Remedy.** Tenant may remain open for business and pay monthly, as "Alternate Rent" during the period that the Operating Requirements are not being met, in lieu of Minimum Rent, Percentage Rent and Other Charges, an amount equal to the seventy-five percent (75%) of the Monthly Total Rent for the first three (3) months, and fifty percent (50%) of the Monthly Total Rent for each month thereafter. For Purposes of this Section 13.4(A)(2), "Monthly Total Rent" means and comprises the total monthly rent payable under this Lease on account of then applicable Minimum Rent, Taxes, the CAM Charge and all Other Charges. Each such payment of the Alternate Rent shall be made in advance on the first day of each month. Notwithstanding the foregoing, throughout the said period Tenant shall be responsible for one hundred percent (100%) of the utilities charges payable under Section 11.1. This remedy is referred to herein as the "Alternate Rent Remedy."
- (b) Tenant may elect the Right to Close Remedy or the Alternate Rent Remedy alternately, from time to time. Upon the date (the "Resumption Date") that the Operating Requirements are once again met for a continuous period of sixty (60) days with occupants under leases with terms of at least one (1) year, Tenant shall, in the case where Tenant had elected the Right to Close Remedy, reopen the Premises for business, and, in the case where Tenant had elected the Alternate Rent Remedy, cease the payment of the Alternate Rent, and in the case of either remedy resume (where the same had been otherwise suspended) the payment of regular Rent computed in the manner set forth in this Lease.
- (c) **Termination Remedy.** If the Operating Requirements are not met for a continuous period of twelve (12) months from the date that the GLA Requirements are not met, or eighteen (18) months from the date the Ongoing Key Store Requirements are not met, then, in addition to the Right to Close Remedy and the Alternate Rent Remedy, Tenant shall have the continuing right thereafter and while such condition continues, to terminate this Lease upon thirty (30) days' written notice to Landlord. This remedy is referred to herein as the "Termination Remedy." Once such Termination Remedy has been exercised by Tenant, Tenant's termination shall not be affected or nullified by the fact that the Operating Requirements have once again been met during the thirty (30) day termination notice period unless Tenant, in its sole discretion, elects to revoke its termination notice and reinstate this Lease. At any time after the expiry of the aforesaid twelve (12) month or eighteen (18) month period, as the case may be, if Tenant is then open for business on the Premises and paying Alternate Rent, and has not exercised the Termination Remedy, Landlord shall be entitled to terminate this Lease by written notice to Tenant to take effect on the sixtieth (60th) day following the date such notice is given. In that event Tenant shall be entitled to nullify Landlord's notice of termination by notifying Landlord in writing at least thirty (30) days prior to the scheduled termination date that, effective immediately upon the giving of Tenant's notice (the "Resumption Date"), Tenant shall cease the payment of Alternate Rent and resume the payment of regular Rent computed in the manner set forth in this Lease. If Tenant's exercise of its Alternate Rent Remedy up until the Resumption Date had resulted from a violation of the Ongoing Key Store

- 21 -

Requirements, Tenant shall not be entitled to again exercise any of its remedies for violation of the Ongoing Key Store Requirements until at least twelve (12) months following the Resumption Date. If Tenant's exercise of its Alternate Rent Remedy up until the Resumption Date had resulted from a violation of the GLA Requirements, Tenant shall not be entitled to again exercise any of its remedies for violation of the GLA Requirements until at least twelve (12) months following the Resumption Date. For example and for greater certainty, if there has been a violation of the GLA Requirements for twelve (12) months or a violation of the Ongoing Key Store Requirements for eighteen (18) months and Tenant is paying Alternate Rent, and if Landlord elects to terminate this Lease and Tenant elects to resume the payment of regular Rent as herein provided, then Tenant shall not be entitled to exercise any remedies for violation of the GLA Requirements or the Ongoing Key Store Requirements until at least twelve (12) months following the Resumption Date.

- (d) The Right to Close Remedy, the Alternate Rent Remedy and the Termination Remedy are collectively referred to herein as "Operating Requirement Remedies." For purposes of this Article 13, the Operating Requirements shall not be deemed to have been met after a Co-Tenancy Failure unless and until Landlord provides Tenant reasonable written evidence that each substitution tenant (1) has opened for business and (2) has a binding lease or operating agreement with a term of one (1) year or longer (excluding any portion of the term subject to cancellation and excluding any option term) and with requirements to open and operate during the Designated Times (or, in the absence thereof, Minimum Times).
- (e) In the event Tenant elects the Right to Close Remedy pursuant to this Article 13, and the Premises have been closed for a period of more than ninety (90) consecutive days pursuant to the Right to Close Remedy, then: (i) Landlord shall have the right to terminate this Lease by giving Tenant written notice that it intends to terminate this Lease effective as of the sixtieth (60th) day subsequent to the date of such notice and (ii) Landlord shall be entitled (upon reasonable advance notice and during reasonable hours) to enter the Premises to exhibit the same to any prospective tenant, lender or purchaser without being liable to Tenant for any trespass or breach of any covenant contained in this Lease or otherwise. Provided, however, Tenant shall be entitled to nullify Landlord's notice of termination by notifying Landlord in writing at least thirty (30) days prior to the scheduled termination date that Tenant intends to re-open and operate pursuant to the Alternate Rent Remedy, so long as Tenant does in fact re-open and operate within seventy-five (75) days following the date it gives such notice to Landlord.
- (f) In the event this Lease is terminated pursuant to any provision of this Section 13.4, Landlord and Tenant shall be released and discharged from any obligations or liabilities which would otherwise arise from and after the termination date of this Lease, but not from obligations which arose or were attributable to the period prior to such termination.

13.5 Substitution

- (a) If Landlord desires to substitute a another key store for the Ongoing Key Store for purposes of satisfying the Operating Requirements, Landlord shall submit the name of such substitute key store to Tenant for its prior written approval. The approval of Tenant shall not be unreasonably withheld if: (1) the use to be conducted by such substitute key store is substantially the same as that conducted by the Ongoing Key Store it is intended to replace or is substantially the same as a department store or junior department store; (2) the merchandise sold by such substitute key store is of equal or better quality, and is offered at similar price points as the Ongoing Key Store it is intended to replace or is department store or junior department store merchandise; and (3) such substitute key store will operate a retail business from substantially all of the ground floor of the premises being vacated by the Ongoing Key Store it is intended to replace. Notwithstanding the foregoing, Landlord shall not require Tenant's approval of a substitute key store which is named on the list of acceptable substitute key stores attached hereto as Exhibit F.
- (b) Notwithstanding Section 13.5(A), Landlord shall be entitled to replace not more than one Ongoing Key Store with a combination of substitute retailers (each a "Box Store") provided the following conditions (together the "Box Store Substitution Test") are met: (1) each Box Store must have a GLA of at least twenty thousand (20,000) feet; (2) the Box Stores must together occupy at least eighty percent (80%) of the ground floor GLA previously occupied by the replaced Ongoing Key Store, after deducting therefrom the area occupied by new Malls within the former Ongoing Key Store space so long as the size of those new Malls is not excessive compared to the size of existing Malls in the Shopping Centre; and (3) each Box Store must either be one of the retailers named on the list of acceptable substitute Box Stores attached hereto as Exhibit F-1, or be approved in

- 22 -

writing in advance by Tenant, which approval shall not be unreasonably withheld having regard to the reputation of the Box Store, the type, quality and price points of its merchandise, and any other relevant factors. Furthermore, and notwithstanding anything to the contrary in Sections 13.5(A) and (B), if the Ongoing Key Store closes, and Landlord does not replace it with a substitute key store under Section 13.5(A) or with Box Stores which satisfy the Box Store Substitution Test, then Landlord may elect to modify the Ongoing Key Store Requirements so as to exclude that Ongoing Key Store, in which event the definition of "GLA Requirements" in Section 13.3(A) shall immediately be amended by substituting "eighty percent (80%)" for "seventy-five percent (75%)". If Landlord makes such election, then the GLA previously occupied by the Ongoing Key Store, or in the event the Box Store Substitution Test is met, any part or parts of such GLA which are not replaced by Box Stores which satisfy the Box Store Substitution Test (excluding any new Mall area referred to above in this Section 13.5(B)), shall, in each of the foregoing events as applicable, be added to the GLA of the Shopping Centre for purposes of the GLA Requirements pursuant to Article 13.

- (c) The aforementioned rights of approval of Tenant are solely for the purpose of determining whether such proposed replacement retailer qualifies as an Ongoing Key Store or Box Store for purposes of determining Tenant's rights under this Lease and is not intended to impair or restrict the freedom of Landlord to enter into leases or operating agreements with any party with whom Landlord desires in the exercise of its sole and absolute discretion.

ARTICLE 14 - MAINTENANCE

14.1 Landlord's Repairs

Subject to Articles 19 and 20, Landlord shall at all times, at its sole cost and expense (but subject to partial reimbursement under Article 10, if applicable), keep, replace and maintain in good condition, order and repair:

- (i) all portions of the Building other than the Premises, and further excluding improvements in other rentable premises to the extent the tenant or occupant thereof is responsible for same;
- (ii) all portions of the roof, roof structures, supports and walkpads; and all structural portions of the Building containing the Premises, including but not limited to, the foundation and structural supports, exterior and load bearing walls, floor slab (but not floor coverings), gutters, downspouts and exterior doors (other than exterior doors of the Premises installed as part of its storefront, and exterior doors of other rentable premises to the extent the tenant or occupant thereof is responsible for same); and Tenant's interior ceiling, floors and walls damaged from leaking attributable to any space adjoining or directly above the Premises being occupied by a restaurant, hair salon, spa or other heavy water user;
- (iii) all other portions of the Premises which constitute Landlord's Work for a period of one (1) year from the date of completion thereof or for the period of the warranties of Landlord's contractors, whichever is longer;
- (iv) all utilities to the point of entry to the Premises;
- (v) all driveways, sidewalks and parking areas of the Property and all other Common Areas, including the removal of snow and ice therefrom;
- (vi) latent defects in the Premises (excluding parts of the Premises constructed by Tenant);
- (vii) subject to the release and waiver provisions of Section 17.4, any damage to the Premises caused by the willful act or the negligence of Landlord or Landlord's Agents.

14.2 Tenant's Right to Cure

Tenant shall give Landlord notice in accordance with Section 22.3 of any such repairs to be performed by Landlord and Landlord shall commence and complete such repairs as soon as is reasonably possible under the circumstances (and immediately in the event of an emergency) after having received notice. If Landlord fails to perform its obligations within the requisite period under Section 22.3, Tenant may perform the repairs or maintenance. In an emergency Tenant may undertake immediate repairs which would be Landlord's responsibility and notify Landlord promptly after such repairs have been undertaken. If Tenant undertakes such repairs, Tenant may deduct the cost thereof from the Rent next coming due, in

STONE ROAD MALL- OLD NAVY

- (B) (ii) to remain open later than 9:30 p.m. Monday through Saturday, or 5:00 p.m. on Sundays, or
- (C) To be open Easter Sunday, Thanksgiving Day, Christmas Day, or New Year's Day; or
- (D) To be open when to do so would violate any law, criminal or civil, or subject Tenant or its employees to fine or penalty, whether criminal or civil in nature.

Tenant agrees that it will remain open during those extended hours established by Landlord during the Christmas season provided the Operating Requirements are met.

5.04 **Continuous Occupancy** Tenant acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to neighbouring tenants and to Landlord in the renting of space in the Project, the renewal of other leases therein, the efficient and economic supply of services and utilities, the maintenance of Percentage Rent, and in the character and quality of the other tenants in the Project. Tenant covenants and agrees that subject to Article 5.05 throughout the Initial Term it will occupy the entire Premises, comply strictly with the provisions of Article 5.03 and not vacate or abandon the Premises at any time during the Initial Term. Tenant acknowledges that Landlord is executing this Lease in reliance thereupon and that the same is a material element inducing Landlord to execute this Lease. Tenant further agrees that if it vacates or abandons the Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Premises for any purpose not specifically herein authorized and allowed, Tenant will be in breach of Tenant's obligations under this Lease, and then, without constituting a waiver of Tenant's obligations or limiting Landlord's remedies under this Lease, all Rent reserved in this Lease will immediately become due and payable to Landlord unless guaranteed to the satisfaction of Landlord.

5.05 **Ongoing Co-Tenancy**

- (a) **Operating Requirements:** For the purpose of this Article "Operating Requirements" shall mean those stores representing the following minimum co-tenancy conditions are open for business and operating during the normal business hours and days of the Project as designated by Landlord from time to time but in no event less than the minimum hours set forth in Article 5.03: (i) Sears department store ("Department Store") (or a Suitable Replacement Tenant(s) as defined herein, for such Department Store) and (ii) stores occupying at least eighty percent (80%) of the gross leaseable area of the Project (excluding the Department Store or Suitable Replacements thereof and the Premises).

"Suitable Replacement" shall mean a single department store occupying the entire space formerly occupied by the Department Store, or a combination of high quality "big box" retailing tenants in excess of 15,000 square feet each which are consistent with the standards to which the Project is to be maintained pursuant to the terms of this Lease, such as, but not limited to, Chapters/Indigo, Pacific Linen,

Business Depot, Sport Chek, Toys' "R" Us, Future Shop or Winners. If a Suitable Replacement is a combination of big box retailers, the Operating Requirement for such former Department Store premises shall be deemed to be satisfied if 70% or more of the gross leaseable area of the former Department Store premises are occupied by tenants of 20,000 square feet or more, and provided that the remaining 30% (or less) of the former Department Store space may be occupied by tenants of any size.

- (b) **Tenant's Right to Alternative Rent:** If such Operating Requirements are not met any time for a period of three (3) consecutive months (the "Grace Period") then upon expiry of the Grace Period, Tenant may from time to time at its option either:
- (i) close the Premises for business and during such period of closure Tenant shall pay the Annual Rent but no Percentage Rent or Occupancy Costs or other rent or additional rent or charges otherwise payable under this Lease and will not be required to perform any other obligations under this Lease except those as are applicable to vacant premises; or
 - (ii) remain open for business but pay monthly, as alternative rent (the "Alternative Rent") during the period that the Operating Requirements are not being met, in lieu of Annual Rent and Percentage Rent and Occupancy Costs and other rent or additional rent or charges otherwise payable under this Lease, the lesser of: (1) 2.5% of Tenant's monthly Gross Revenue for the first 3 months and 2% of Tenant's monthly Gross Revenue thereafter, or (2) the then applicable monthly Annual Rent payable hereunder.

Upon the date that the Operating Requirements are once again met Tenant shall, in the case where Tenant had made the election under (i) above, re-open the Premises for business, and in the case where Tenant had made the election under (ii) above, cease the payment of the Alternative Rent, and in the case of either (i) or (ii) above resume (where the same had been otherwise suspended) the payment of Annual Rent, Occupancy Costs, Percentage Rent (calculated in the manner set forth in this Lease), and any other rent and additional rents and charges due under this Lease accruing from and after the date that the Operating Requirements were once again met. For the purposes of this Article, the Operating Requirements shall be deemed to have been "met", in the case of the department stores upon the execution of a lease or binding letter of intent, and in the case of the other retail stores when they have been open and operating for a continuous period of at least forty-five (45) days.

- (c) **Tenant's Right to Terminate:** If the Operating Requirements fail to be met for a period of nine (9) consecutive months, then Tenant shall have the continuing right thereafter and prior to the Operating Requirements once again being met, to elect,

by giving thirty (30) days' notice in writing to Landlord, to cancel and terminate this Lease. Once such thirty (30) day notice is given, the validity and effectiveness of Tenant's cancellation shall not be affected nor nullified by the fact that the Operating Requirements are again met during such thirty (30) day period unless Tenant in its sole discretion elects to revoke its cancellation notice and re-open.

- (d) **Landlord's Right to Terminate:** If the Premises have been closed for a period of at least nine (9) consecutive months, pursuant to Tenant's election under subclause (b) (i) above to close the Premises or if Tenant continues to pay Alternative Rent for a period of six consecutive months pursuant to Tenant's election under subclause (b) (ii) above, then Landlord shall have the continuing right thereafter, prior to the Tenant either exercising its right to terminate the Lease pursuant to clause (c) above, or re-opening the Premises for business and paying Annual Rent, Occupancy Costs, Percentage Rent and any other rent and additional rents and charges payable under the Lease, to terminate this Lease by the giving of sixty (60) days' notice in writing to Tenant.

During the first thirty (30) days of such sixty (60) day notice period, Tenant upon written notice to Landlord given within such thirty (30) day period, may elect (herein called the "Option to Reinstate") to re-open the Premises for business and recommence paying Rent in accordance with this Lease. Should Tenant exercise the Option to Reinstate, and in fact re-open the Premises or recommence paying Rent on or before the expiry of the sixty (60) day period after Landlord's notice of termination, then Landlord's notice of termination shall be null and void. If Tenant exercises the Option to Reinstate, then Tenant's remedies set out in clauses (b) and (c) above shall not apply for a period of nine (9) months after tenant re-opens the Premises pursuant to the Option to Reinstate whether or not the Operating Requirements are met during such period.

5.06 *Restrictions on Use & Occupancy*

- (a) Tenant will carry on its business on the Premises in a reputable manner and in compliance with all the provisions of this Lease, and in particular Tenant will not advertise, do, omit, permit or suffer to be done or exist upon the Premises anything which will be or result in or bring about a breach of any provision of this Lease.
- (b) Tenant will not conduct or advertise on or from or pertaining to the Premises as any part of its business or the sale of bankruptcy, distress or secondhand goods, war surplus articles, insurance salvage stock, fire sale stock or merchandise damaged by fire or purported to be damaged by fire, unless such damage actually occurred on the Premises, or hold any auctions, an outlet store, flea market, dollar store or any retailer carrying on business as a Giant Tiger or Saan.
- (c) Tenant, or anyone acting through, for, or in place of Tenant, will not conduct or advertise on or from or pertaining to the Premises any auction, bankruptcy or

PEN CENTRE- OLD NAVY

12.3 Days and Hours of Operation

(A) Expressly subject to other relevant provisions of this Lease, including, without limitation, Section 12.3(B) and Article 13, and except for closures for the purpose of alterations, renovations, repairs or inventory-taking, and closures resulting from damage or destruction, expropriation or Force Majeure, Tenant shall from and after the Commencement Date continuously remain open and operate its business at the Premises during the days and hours of the Shopping Centre designated by Landlord ("Designated Times"), or, in the absence of Designated Times, from 10:00 a.m. to 6:00 p.m., Mondays through Saturdays ("Minimum Times").

(B) Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to open or operate:

- (1) earlier than 10:00 a.m. Monday through Saturday, or earlier than 12:00 noon on Sunday (if Sundays are Designated Times);
- (2) later than 10:00 p.m. Monday through Saturday or 6:00 p.m. on Sunday (if Sundays are Designated Times);
- (3) at all if Tenant would thus be required to be open for business less than the Minimum Times or less than five hours on Sunday (if Sundays are Designated Times);
- (4) during the making of repairs to or remodeling of the Premises or during periods when Tenant is taking inventory;
- (5) on Easter Sunday, Thanksgiving Day, Christmas Day or New Years Day; or
- (6) when to do so would violate any Legal Requirement, criminal or civil, or subject Tenant or its employees to a fine or penalty, whether criminal or civil in nature.

(C) Tenant shall have the right, but not the obligation, to open for business on days and for hours in excess of Designated Times (or, in the absence thereof, Minimum Times), provided that if the Premises have no exterior customer access and must be accessed through a Mall then Tenant shall give reasonable advance notice of its intended extra operating hours to the manager of the Shopping Centre. In all cases when Tenant is open for business outside of Designated Times, Tenant shall comply with Landlord's reasonable security precautions, and Landlord may require Tenant to pay for any extra cleaning and security costs reasonably attributable to such extra hours of operation. Landlord's reasonable security precautions may include the closure of the interior Mall where the Premises has exterior customer access, and where the Premises has no exterior customer access such precautions may include limiting customer access to and from the Premises through the interior Mall to that portion of the Mall in the vicinity of the Premises which leads to that customer entrance to (and exit from) the Shopping Centre which is closest to the Premises.

12.4 Trade Name

Tenant agrees to operate for the first two (2) years of the Initial Term under one or any combination of the following trade names: "OLD NAVY", "GAP", "GAP MEN", "GAP WOMEN", "GAP KIDS", "BABY GAP", "GAP BODY", "BANANA REPUBLIC", "BANANA REPUBLIC MEN", "BANANA REPUBLIC WOMEN", or any other trade name operated by Tenant or its Affiliates (except an outlet concept, which Tenant shall not be permitted to operate under). After the first two (2) years of the Initial Term there shall be no trade name requirement and this section shall be of no further force or effect.

ARTICLE 13: CO-TENANCY REQUIREMENTS

13.1 Intentionally Deleted

13.2 Opening Requirements

(A) Notwithstanding that the Construction Period may have expired, Tenant shall not be required to open the Premises for business, nor shall the Commencement Date occur or the obligation to pay Rent begin, until: seventy-five percent (75%) or more of the total GLA of the mall level of the former Eaton's space as shown cross hatched on Exhibit A-3 (other than the Premises)

shall have opened or shall be concurrently opening for business with Tenant (the "Opening Requirements").

(B) Intentionally deleted

(C) If Tenant elects in its sole discretion to open for business prior to the fulfillment of the Opening Requirements, then the Commencement Date shall be deemed to have occurred on the date Tenant opens the Premises for business (provided that Landlord shall continue to be obligated to satisfy the Delivery of Possession requirements). During the period from the Commencement Date until the fulfillment of the Opening Requirements (the "Interim Period"), Tenant shall pay to Landlord as a substitute rent (the "Interim Rent") for such Interim Period, in lieu of Minimum Rent, Percentage Rent, and Other Charges, an amount equal to the Alternate Rent under Section 13.4 (A)(2). From and after the fulfillment of the Opening Requirements, Tenant shall commence the regular payment of Rent computed in the way and manner as provided by this Lease accruing from and after the date the Opening Requirements were met, in lieu of Interim Rent.

(D) If the Opening Requirements have not been met within six (6) months after the expiration of the Construction Period, then Tenant shall have the continuing right the right for a period of three (3) months thereafter and prior to the Opening Requirements being met, to terminate this Lease. Once such termination right has been exercised by Tenant, Tenant's termination shall not be affected or nullified by the fact that the Opening Requirements are later met unless Tenant, in its sole discretion, elects to revoke its termination notice and reinstate this Lease.

(E) If the Opening Requirements have not been met within nine (9) months after the expiration of the Construction Period, and Tenant has not terminated this Lease, then, effective the first day of the tenth (10th) month after the expiration of the Construction Period, Tenant shall have no further rights under this Section 13.2, provided that Tenant's obligation to operate and pay Rent shall be governed by the other provisions of this Lease, and provided further that any waiting period before which Tenant may exercise the Operating Requirement Remedies (as defined in Section 13.4) shall be deemed to have elapsed.

(F) Tenant or its designated agent shall have the right at its own cost and expense to audit and/or inspect Landlord's records with respect to the Opening Requirements. Tenant shall give Landlord not less than thirty (30) days' written notice of its intention to conduct any such audit. If such audit discloses a violation of the Opening Requirements and Tenant elects to pay Interim Rent for such period of violation in accordance with Section 13.2(C), Landlord shall rebate to Tenant the overcharge or, at Tenant's election, Tenant may offset the amount of the overcharge against Rent becoming due.

13.3 Operating Requirements

(A) Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to open the Premises for business at all nor operate during Designated Times (or, in the absence thereof, Minimum Times) unless the Key Stores are open for business during the Designated Times (or, in the absence thereof, the Minimum Times) ("Key Store Requirements") and retail stores (other than the Excluded Areas) having an aggregate of eighty percent (80%) or more of the total GLA of the Shopping Centre (other than the Excluded Areas) are also open for business during the Designated Times (or, in the absence thereof, Minimum Times) ("GLA Requirements"). Collectively, the GLA Requirements and the Key Store Requirements may be referred to as the "Operating Requirements". As used herein: (1) "Excluded Areas" means all of the following: the Premises; any store leased to a the Tenant or a Related Party of the Tenant and which is closed in violation of its lease; the Key Stores and any other Major Stores; basement areas; remote storage space having no Mall frontage and not within a retail store; mezzanine space within a retail store but used only for non-retail purposes; office premises located on a level or wing of the Shopping Centre dedicated to office use and having no frontage onto a retail Mall, the theater, the Zellers premises so long as such premises remains a single store, with one trade name, having a GLA of at least 95,000 square feet, and (2) "Major Store" means a single store, having a GLA of at least one hundred thousand (100,000) square feet.

(B) A store shall not be considered open for business if such store is open and operating (1) less than the Designated Times (or, in the absence thereof, Minimum Times), or (2) in less than substantially all of its space. Failure to meet either the Key Store Requirements or the GLA Requirements shall be deemed a failure of the Operating Requirements and may sometimes be

referred to as a "Co-Tenancy Failure." If the Operating Requirements are not being met because a store is closed by reason of casualty, expropriation, or the making of repairs or alterations as a result of casualty or expropriation (collectively, an "Excused Closure"), such Excused Closure shall not give rise to Tenant's right to pursue Operating Requirement Remedies pursuant to Section 13.4 unless such Excused Closure continues for more than a period of one hundred eighty (180) days. Any waiting period before which Tenant may exercise the Operating Requirement Remedies shall be deemed to run concurrently with such 180-day grace period for an Excused Closure. Landlord shall promptly notify Tenant of any Co-Tenancy Failure.

(C) **Key Stores.** The Key Stores are the following retailers occupying the floor area indicated:

<u>Tradename</u>	<u>Floor Area</u>
The Bay	151,000 s.f.
Sears	207,000 s.f.

(D) If Tenant in good faith thinks that a Cotenancy Failure may have occurred, then upon Tenant's written request Landlord shall deliver to Tenant a notice certifying the then current tradename and GLA of each tenant of the Shopping Centre and any other information requested by Tenant for the purpose of verifying whether the Operating Requirements were or are being met, provided that Landlord shall not be required to provide such information more frequently than twice in each Lease Year. If such information provided by Landlord discloses a violation of the Operating Requirements and Tenant elects to pay Alternate Rent for such period of violation in accordance with Section 13.4(A), Landlord shall rebate to Tenant the overcharge or, at Tenant's election, Tenant may offset the amount of the overcharge against Rent becoming due.

(E) In the event Landlord undertakes a major remodel of the Shopping Center which shall be defined as a remodel involving more than fifty percent (50%) of the CRU space in the Shopping Center ("Major Remodel"), then the GLA Requirement shall be reduced to sixty-five percent (65%), until such time as Landlord has completed the Major Remodel, but in no event longer than eighteen (18) months.

13.4 Operating Requirement Remedies

(A) If the Operating Requirements are not met for a continuous period of ninety (90) days, then, effective immediately, Tenant shall have the following rights:

(1) **Right to Close Remedy.** Tenant may close the Premises for business and, during such period of closure, Tenant shall pay Minimum Rent and all other Rent (excluding Percentage Rent) in accordance with all applicable provisions of this Lease and shall perform all of such other obligations as are applicable to a vacant premises. This remedy is referred to herein as the "Right to Close Remedy."

(2) Tenant may remain open for business and pay monthly, as "Alternate Rent" during the period that the Operating Requirements are not being met, in lieu of Minimum Rent, Percentage Rent and Other Charges, an amount equal to Seventy-five percent (75%) of the Monthly Total Rent for the first three months, and Fifty percent (50%) of the Monthly Total Rent for each month thereafter. For the purpose of this Section 13.4, "Monthly Total Rent" means and comprises the total monthly rent payable under this Lease on account of Minimum Rent, Percentage Rent, Taxes payable by Tenant under Section 9.2 (B) (if any), and all Other Charges (if any). Each component of Alternate Rent (as identified in the preceding sentence) shall be payable in accordance with the applicable provisions in the Lease and furthermore the parties acknowledge and agree as follows:

- (i) in calculating Percentage Rent payable as a component of Alternate Rent, the Breakpoints shall be determined on the basis that the full Minimum Rent under Section 6.1 is payable and there shall be no reduction in the Breakpoints for the reason that the Alternate Rent includes less than 100% of the Minimum Rent; and
- (ii) notwithstanding the foregoing, Tenant shall be responsible for 100% of the utility charges under Section 11.1.

This remedy is referred to herein as the "Alternate Rent Remedy".

(B) Tenant may elect the Right to Close Remedy or the Alternate Rent Remedy alternately, from time to time. Upon the date (the "Resumption Date") that the Operating Requirements are once again met for a continuous period of sixty (60) days with occupants under leases with terms of at least one (1) year, Tenant shall, in the case where Tenant had elected the Right to Close Remedy, reopen the Premises for business, and, in the case where Tenant had elected the Alternate Rent Remedy, cease the payment of the Alternate Rent, and in the case of either remedy resume (where the same had been otherwise suspended) the payment of regular Rent computed in the manner set forth in this Lease.

(C) Termination Remedy. If the Operating Requirements are not met for a continuous period of twelve (12) months from the date that the GLA Requirements are not met, or eighteen (18) months from the date the Key Store Requirements are not met, then, in addition to the Right to Close Remedy and the Alternate Rent Remedy, Tenant shall have the continuing right thereafter and while such condition continues, to terminate this Lease upon thirty (30) days' written notice to Landlord. This remedy is referred to herein as the "Termination Remedy." Once such Termination Remedy has been exercised by Tenant, Tenant's termination shall not be affected or nullified by the fact that the Operating Requirements have once again been met during the thirty (30) day termination notice period unless Tenant, in its sole discretion, elects to revoke its termination notice and reinstate this Lease. At any time after the expiry of the aforesaid twelve (12) month or eighteen (18) month period, as the case may be if Tenant is then open for business on the Premises and paying Alternate Rent, and has not exercised the Termination Remedy, Landlord shall be entitled to terminate this Lease by written notice to Tenant to take effect on the sixtieth (60th) day following the date such notice is given. In that event Tenant shall be entitled to nullify Landlord's notice of termination by notifying Landlord in writing at least thirty (30) days prior to the scheduled termination date that, effective immediately upon the giving of Tenant's notice (the "Resumption Date"), Tenant shall cease the payment of Alternate Rent and resume the payment of regular Rent computed in the manner set forth in this Lease. If Tenant's exercise of its Alternate Rent Remedy up until the Resumption Date had resulted from a violation of the Key Store Requirements, Tenant shall not be entitled to again exercise any of its remedies for violation of the Key Store Requirements until at least twelve (12) months following the Resumption Date. If Tenant's exercise of its Alternate Rent Remedy up until the Resumption Date had resulted from a violation of the GLA Requirements, Tenant shall not be entitled to again exercise any of its remedies for violation of the GLA Requirements until at least twelve (12) months following the Resumption Date. For example and for greater certainty, if there has been a violation of the GLA Requirements for twelve (12) months or a violation of the Key Store Requirements for eighteen (18) months and Tenant is paying Alternate Rent, and if Landlord elects to terminate this Lease and Tenant elects to resume the payment of regular Rent as herein provided, then Tenant shall not be entitled to exercise any remedies for violation of the GLA Requirements or the Key Store Requirements until at least twelve (12) months following the Resumption Date.

(D) The Right to Close Remedy, the Alternate Rent Remedy and the Termination Remedy are collectively referred to herein as "Operating Requirement Remedies." For purposes of this Article 13, the Operating Requirements shall not be deemed to have been met after a Co-Tenancy Failure unless and until Landlord provides Tenant reasonable written evidence that each substitution tenant (1) has opened for business and (2) has a binding lease or operating agreement with a term of one (1) year or longer (excluding any portion of the term subject to cancellation and excluding any option term) and with requirements to open and operate during the Designated Times (or, in the absence thereof, Minimum Times).

(E) In the event Tenant elects the Right to Close Remedy pursuant to this Article 13, and the Premises have been closed for a period of more than ninety (90) consecutive days pursuant to the Right to Close Remedy, then: (i) Landlord shall have the right to terminate this Lease by giving Tenant written notice that it intends to terminate this Lease effective as of the sixtieth (60th) day subsequent to the date of such notice and (ii) Landlord shall be entitled (upon reasonable advance notice and during reasonable hours) to enter the Premises to exhibit the same to any prospective tenant, lender or purchaser without being liable to Tenant for any trespass or breach of any covenant contained in this Lease or otherwise. Provided, however, Tenant shall be entitled to nullify Landlord's notice of termination by notifying Landlord in writing at least thirty (30) days prior to the scheduled termination date that Tenant intends to re-open and operate pursuant to the Alternate Rent Remedy, so long as Tenant does in fact re-open and operate within seventy-five (75) days following the date it gives such notice to Landlord.

(F) In the event this Lease is terminated pursuant to any provision of this Section 13.4, Landlord and Tenant shall be released and discharged from any obligations or liabilities which would otherwise arise from and after the termination date of this Lease, but not from obligations which arose or were attributable to the period prior to such termination.

13.5 Substitution

(A) If Landlord desires to substitute a department store for one of the Key Stores for purposes of satisfying the Operating Requirements, Landlord shall submit the name of such substitute department store to Tenant for its prior written approval. The approval of Tenant shall not be unreasonably withheld if: (1) the use to be conducted by such substitute department store is substantially the same as that conducted by the Key Store it is intended to replace; (2) the merchandise sold by such substitute department store is of equal or better quality, and is offered at similar price points as the Key Store it is intended to replace; and (3) such substitute department store will operate a retail business from substantially all of the premises being vacated by the Key Store it is intended to replace. Notwithstanding the foregoing, Landlord shall not require Tenant's approval of a substitute department store which is named on the list of acceptable substitute department stores attached hereto as Exhibit F.

(B) Notwithstanding Section 13.5(A), Landlord shall be entitled to replace not more than one Key Store with a combination of substitute retailers (each a "Box Store") provided the following conditions (together the "Box Store Substitution Test") are met: (1) each Box Store must have a GLA of at least twenty thousand (20,000) feet; (2) the Box Stores must together occupy at least eighty percent (80%) of the GLA previously occupied by the replaced Key Store, after deducting therefrom the area occupied by new Malls within the former Key Store space so long as the size of those new Malls is not excessive compared to the size of existing Malls in the Shopping Centre; and (3) each Box Store must either be one of the retailers named on the list of acceptable substitute Box Stores attached hereto as Exhibit F-1, or be approved in writing in advance by Tenant, which approval shall not be unreasonably withheld having regard to the reputation of the Box Store, the type, quality and price points of its merchandise, and any other relevant factors. Furthermore, and notwithstanding anything to the contrary in Sections 13.5(A) and (B), if a Key Store closes, and Landlord does not replace it with a substitute department store under Section 13.5(A) or with Box Stores which satisfy the Box Store Substitution Test, then Landlord may elect to modify the Key Store Requirements so as to exclude that Key Store, in which event the definition of "GLA Requirements" in Section 13.3(A) shall immediately be amended by substituting "eighty-five percent (85%)" for "eighty percent (80%)". If Landlord makes such election, then the GLA previously occupied by the Key Store, or in the event the Box Store Substitution Test is met, any part or parts of such GLA which are not replaced by Box Stores which satisfy the Box Store Substitution Test (excluding any new Mall area referred to above in this Section 13.5(B)), shall, in each of the foregoing events as applicable, be added to the GLA of the Shopping Centre for purposes of the GLA Requirements pursuant to Article 13.

(C) The aforementioned rights of approval of Tenant are solely for the purpose of determining whether such proposed replacement retailer qualifies as a Key Store or Box Store for purposes of determining Tenant's rights under this Lease and is not intended to impair or restrict the freedom of Landlord to enter into leases or operating agreements with any party with whom Landlord desires in the exercise of its sole and absolute discretion.

ARTICLE 14: MAINTENANCE

14.1 Landlord's Repairs

Subject to Articles 19 and 20, Landlord shall at all times, at its sole cost and expense (but subject to partial reimbursement under Article 10, if applicable), keep, replace and maintain in good condition, order and repair:

(1) all portions of the Building other than the Premises, and further excluding improvements in other rentable premises to the extent the tenant or occupant thereof is responsible for same;

(2) all portions of the roof, roof structures, supports and walkpads; and all structural portions of the Building containing the Premises, including but not limited to, the foundation and structural supports, exterior and load bearing walls, floor slab (but not floor coverings), gutters, downspouts and exterior doors (other than exterior doors of the Premises

**LANDSDOWNE PLACE-
OLD NAVY**

(3) at all if Tenant would thus be required to be open for business less than the Minimum Times or less than five hours on Sunday (if Sundays are Designated Times);

(4) during the making of repairs to or remodeling of the Premises or during periods when Tenant is taking inventory;

(5) on Easter Sunday, Thanksgiving Day, Christmas Day or New Years Day;
or

(6) when to do so would violate any Legal Requirement, criminal or civil, or subject Tenant or its employees to a fine or penalty, whether criminal or civil in nature.

(C) Tenant shall have the right, but not the obligation, to open for business on days and for hours in excess of Designated Times (or, in the absence thereof, Minimum Times), provided that if the Premises have no exterior customer access and must be accessed through a Mall then Tenant shall give reasonable advance notice of its intended extra operating hours to the manager of the Shopping Centre. In all cases when Tenant is open for business outside of Designated Times, Tenant shall comply with Landlord's reasonable security precautions, and Landlord may require Tenant to pay for any extra cleaning and security costs reasonably attributable to such extra hours of operation. Landlord's reasonable security precautions may include the closure of the interior Mall where the Premises has exterior customer access, and where the Premises has no exterior customer access such precautions may include limiting customer access to and from the Premises through the interior Mall to that portion of the Mall in the vicinity of the Premises which leads to that customer entrance to (and exit from) the Shopping Centre which is closest to the Premises.

12.4 Trade Name

Tenant agrees to operate for the first two (2) years of the Initial Term under one, or a combination, of the following trade names: "OLD NAVY", "GAP", "GAP MEN", "GAP WOMEN", "GAP KIDS", "BABY GAP", "GAP BODY", "BANANA REPUBLIC", "BANANA REPUBLIC MEN", "BANANA REPUBLIC WOMEN", or any other trade name operated by Tenant or its Affiliates (except an outlet concept, which Tenant shall not be permitted to operate under). After the first two (2) years of the Initial Term there shall be no trade name requirement and this section shall be of no further force or effect.

ARTICLE 13: CO-TENANCY REQUIREMENTS

13.1 Initial Key Store Requirements - Intentionally Deleted

13.2 Opening Requirements - Intentionally Deleted

13.3 Operating Requirements

(A) Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to open the Premises for business at all nor operate during Designated Times (or, in the absence thereof, Minimum Times) unless the Ongoing Key Store is open for business during the Designated Times (or, in the absence thereof, the Minimum Times) ("Ongoing Key Store Requirements") and retail stores (other than the Excluded Areas) having an aggregate of seventy-five percent (75%) or more of the total GLA of the Shopping Centre (other than the Excluded Areas) are also open for business during the Designated Times (or, in the absence thereof, Minimum Times) ("GLA Requirements"). Collectively, the GLA Requirements and the Ongoing Key Store Requirements may be referred to as the "Operating Requirements". As used herein: (1) "Excluded Areas" means all of the following: the Premises; any store leased to the Tenant or a Related Party of the Tenant and which is closed in violation of its lease; the Ongoing Key Store and any other Major Stores; basement areas; remote storage space having no Mall frontage and not within a retail store; mezzanine space within a retail store but used only for non-retail purposes; office premises located on a level or wing of the Shopping Centre dedicated to office use and having no frontage onto a retail Mall; and (2) "Major Store" means a single store, having a GLA of at least one hundred thousand (100,000) square feet.

(B) A store shall not be considered open for business if such store is open and operating (1) less than the Designated Times (or, in the absence thereof, Minimum Times), or (2) in less than substantially all of its space. Failure to meet either the Key Store Requirements or the GLA Requirements shall be deemed a failure of the Operating Requirements and may sometimes be referred to as a "Co-Tenancy Failure." If the Operating Requirements are not

being met because a store is closed by reason of casualty, expropriation, or the making of repairs or alterations as a result of casualty or expropriation (collectively, an "Excused Closure"), such Excused Closure shall not give rise to Tenant's right to pursue Operating Requirement Remedies pursuant to Section 13.4 unless such Excused Closure continues for more than a period of one hundred eighty (180) days. Any waiting period before which Tenant may exercise the Operating Requirement Remedies shall be deemed to run concurrently with such 180-day grace period for an Excused Closure. Landlord shall promptly notify Tenant of any Co-Tenancy Failure.

(C) Ongoing Key Store. The Ongoing Key Store is the following retailer occupying the floor area indicated:

<u>Tradename</u>	<u>Floor Area</u>
Sears	99,370 square feet

(D) If Tenant in good faith thinks that a Cotenancy Failure may have occurred, then upon Tenant's written request Landlord shall deliver to Tenant a notice certifying the then current tradename and GLA of each tenant of the Shopping Centre and any other information requested by Tenant for the purpose of verifying whether the Operating Requirements were or are being met, provided that Landlord shall not be required to provide such information more frequently than twice in each Lease Year. If such information provided by Landlord discloses a violation of the Operating Requirements and Tenant elects to pay Alternate Rent for such period of violation in accordance with Section 13.4(A), Landlord shall rebate to Tenant the overcharge or, at Tenant's election, Tenant may offset the amount of the overcharge against Rent becoming due.

(E) In the event Landlord undertakes a major remodel of the Shopping Center which shall be defined as a remodel involving more than fifty percent (50%) of the CRU space in the Shopping Center ("Major Remodel"), then the GLA Requirement shall be reduced to sixty percent (60%), until such time as Landlord has completed the Major Remodel, but in no event longer than eighteen (18) months.

13.4 Operating Requirement Remedies

(A) If the Operating Requirements are not met for a continuous period of ninety (90) days, then, effective immediately, Tenant shall have the following rights:

(1) Right to Close Remedy. Tenant may close the Premises for business and, during such period of closure, Tenant shall pay Minimum Rent and all other Rent (excluding Percentage Rent) in accordance with all applicable provisions of this Lease and shall perform all of such other obligations as are applicable to a vacant premises. This remedy is referred to herein as the "Right to Close Remedy."

(2) Alternate Rent Remedy. Tenant may remain open for business and pay monthly, as "Alternate Rent" during the period that the Operating Requirements are not being met, in lieu of Minimum Rent, Percentage Rent and Other Charges, an amount equal to the seventy-five percent (75%) of the Monthly Total Rent for the first three (3) months, and fifty percent (50%) of the Monthly Total Rent for each month thereafter. For Purposes of this Section 13.4(A)(2), "Monthly Total Rent" means and comprises the total monthly rent payable under this Lease on account of then applicable Minimum Rent, Taxes, the CAM Charge and all Other Charges. Each such payment of the Alternate Rent shall be made in advance on the first day of each month. Notwithstanding the foregoing, throughout the said period Tenant shall be responsible for one hundred percent (100%) of the utilities charges payable under Section 11.1. This remedy is referred to herein as the "Alternate Rent Remedy."

(B) Tenant may elect the Right to Close Remedy or the Alternate Rent Remedy alternately from time to time. Upon the date (the "Resumption Date") that the Operating Requirements are once again met for a continuous period of sixty (60) days with occupants under leases with terms of at least one (1) year, Tenant shall, in the case where Tenant had elected the Right to Close Remedy, reopen the Premises for business, and, in the case where Tenant had elected the Alternate Rent Remedy, cease the payment of the Alternate Rent, and in the case of either remedy resume (where the same had been otherwise suspended) the payment of regular Rent computed in the manner set forth in this Lease.

(C) Termination Remedy. If the Operating Requirements are not met for a continuous period of twelve (12) months from the date that the GLA Requirements are not met,

or eighteen (18) months from the date the Ongoing Key Store Requirements are not met, then, in addition to the Right to Close Remedy and the Alternate Rent Remedy, Tenant shall have the continuing right thereafter and while such condition continues, to terminate this Lease upon thirty (30) days' written notice to Landlord. This remedy is referred to herein as the "Termination Remedy." Once such Termination Remedy has been exercised by Tenant, Tenant's termination shall not be affected or nullified by the fact that the Operating Requirements have once again been met during the thirty (30) day termination notice period unless Tenant, in its sole discretion, elects to revoke its termination notice and reinstate this Lease. At any time after the expiry of the aforesaid twelve (12) month or eighteen (18) month period, as the case may be, if Tenant is then open for business on the Premises and paying Alternate Rent, and has not exercised the Termination Remedy, Landlord shall be entitled to terminate this Lease by written notice to Tenant to take effect on the sixtieth (60th) day following the date such notice is given. In that event Tenant shall be entitled to nullify Landlord's notice of termination by notifying Landlord in writing at least thirty (30) days prior to the scheduled termination date that, effective immediately upon the giving of Tenant's notice (the "Resumption Date"), Tenant shall cease the payment of Alternate Rent and resume the payment of regular Rent computed in the manner set forth in this Lease. If Tenant's exercise of its Alternate Rent Remedy up until the Resumption Date had resulted from a violation of the Ongoing Key Store Requirements, Tenant shall not be entitled to again exercise any of its remedies for violation of the Ongoing Key Store Requirements until at least twelve (12) months following the Resumption Date. If Tenant's exercise of its Alternate Rent Remedy up until the Resumption Date had resulted from a violation of the GLA Requirements, Tenant shall not be entitled to again exercise any of its remedies for violation of the GLA Requirements until at least twelve (12) months following the Resumption Date. For example and for greater certainty, if there has been a violation of the GLA Requirements for twelve (12) months or a violation of the Ongoing Key Store Requirements for eighteen (18) months and Tenant is paying Alternate Rent, and if Landlord elects to terminate this Lease and Tenant elects to resume the payment of regular Rent as herein provided, then Tenant shall not be entitled to exercise any remedies for violation of the GLA Requirements or the Ongoing Key Store Requirements until at least twelve (12) months following the Resumption Date.

(D) The Right to Close Remedy, the Alternate Rent Remedy and the Termination Remedy are collectively referred to herein as "Operating Requirement Remedies." For purposes of this Article 13, the Operating Requirements shall not be deemed to have been met after a Co-Tenancy Failure unless and until Landlord provides Tenant reasonable written evidence that each substitution tenant (1) has opened for business and (2) has a binding lease or operating agreement with a term of one (1) year or longer (excluding any portion of the term subject to cancellation and excluding any option term) and with requirements to open and operate during the Designated Times (or, in the absence thereof, Minimum Times).

(E) In the event Tenant elects the Right to Close Remedy pursuant to this Article 13, and the Premises have been closed for a period of more than ninety (90) consecutive days pursuant to the Right to Close Remedy, then: (i) Landlord shall have the right to terminate this Lease by giving Tenant written notice that it intends to terminate this Lease effective as of the sixtieth (60th) day subsequent to the date of such notice and (ii) Landlord shall be entitled (upon reasonable advance notice and during reasonable hours) to enter the Premises to exhibit the same to any prospective tenant, lender or purchaser without being liable to Tenant for any trespass or breach of any covenant contained in this Lease or otherwise. Provided, however, Tenant shall be entitled to nullify Landlord's notice of termination by notifying Landlord in writing at least thirty (30) days prior to the scheduled termination date that Tenant intends to re-open and operate pursuant to the Alternate Rent Remedy, so long as Tenant does in fact re-open and operate within seventy-five (75) days following the date it gives such notice to Landlord.

(F) In the event this Lease is terminated pursuant to any provision of this Section 13.4, Landlord and Tenant shall be released and discharged from any obligations or liabilities which would otherwise arise from and after the termination date of this Lease, but not from obligations which arose or were attributable to the period prior to such termination.

13.5 Substitution

(A) If Landlord desires to substitute a department store for the Ongoing Key Store for purposes of satisfying the Operating Requirements, Landlord shall submit the name of such substitute department store to Tenant for its prior written approval. The approval of Tenant shall not be unreasonably withheld if: (1) the use to be conducted by such substitute department store is substantially the same as that conducted by the Ongoing Key Store it is intended to replace; (2) the merchandise sold by such substitute department store is of equal or better quality, and is offered at similar price points as the Ongoing Key Store it is intended to replace;

and (3) such substitute department store will operate a retail business from substantially all of the premises being vacated by the Ongoing Key Store it is intended to replace. Notwithstanding the foregoing, Landlord shall not require Tenant's approval of a substitute department store which is named on the list of acceptable substitute department stores attached hereto as Exhibit F.

(B) Notwithstanding Section 13.5(A), Landlord shall be entitled to replace not more than one Ongoing Key Store with a combination of substitute retailers (each a "Box Store") provided the following conditions (together the "Box Store Substitution Test") are met: (1) each Box Store must have a GLA of at least twenty thousand (20,000) feet; (2) the Box Stores must together occupy at least eighty percent (80%) of the GLA previously occupied by the replaced Ongoing Key Store, after deducting therefrom the area occupied by new Malls within the former Ongoing Key Store space so long as the size of those new Malls is not excessive compared to the size of existing Malls in the Shopping Centre; and (3) each Box Store must either be one of the retailers named on the list of acceptable substitute Box Stores attached hereto as Exhibit F-1, or be approved in writing in advance by Tenant, which approval shall not be unreasonably withheld having regard to the reputation of the Box Store, the type, quality and price points of its merchandise, and any other relevant factors. Furthermore, and notwithstanding anything to the contrary in Sections 13.5(A) and (B), if the Ongoing Key Store closes, and Landlord does not replace it with a substitute department store under Section 13.5(A) or with Box Stores which satisfy the Box Store Substitution Test, then Landlord may elect to modify the Ongoing Key Store Requirements so as to exclude that Ongoing Key Store, in which event the definition of "GLA Requirements" in Section 13.3(A) shall immediately be amended by substituting "eighty percent (80%)" for "seventy-five percent (75%)". If Landlord makes such election, then the GLA previously occupied by the Ongoing Key Store, or in the event the Box Store Substitution Test is met, any part or parts of such GLA which are not replaced by Box Stores which satisfy the Box Store Substitution Test (excluding any new Mall area referred to above in this Section 13.5(B)), shall, in each of the foregoing events as applicable, be added to the GLA of the Shopping Centre for purposes of the GLA Requirements pursuant to Article 13.

(C) The aforementioned rights of approval of Tenant are solely for the purpose of determining whether such proposed replacement retailer qualifies as an Ongoing Key Store or Box Store for purposes of determining Tenant's rights under this Lease and is not intended to impair or restrict the freedom of Landlord to enter into leases or operating agreements with any party with whom Landlord desires in the exercise of its sole and absolute discretion.

ARTICLE 14: MAINTENANCE

14.1 Landlord's Repairs

Subject to Articles 19 and 20, Landlord shall at all times, at its sole cost and expense (but subject to partial reimbursement under Article 10, if applicable), keep, replace and maintain in good condition, order and repair:

- (1) all portions of the Building other than the Premises, and further excluding improvements in other rentable premises to the extent the tenant or occupant thereof is responsible for same;
- (2) all portions of the roof, roof structures, supports and walkpads; and all structural portions of the Building containing the Premises, including but not limited to, the foundation and structural supports, exterior and load bearing walls, floor slab (but not floor coverings), gutters, downspouts and exterior doors (other than exterior doors of the Premises installed as part of its storefront, and exterior doors of other rentable premises to the extent the tenant or occupant thereof is responsible for same); and Tenant's interior ceiling, floors and walls damaged from leaking attributable to any space adjoining or directly above the Premises being occupied by a restaurant, hair salon, spa or other heavy water user;
- (3) all other portions of the Premises which constitute Landlord's Work for a period of one (1) year from the date of completion thereof or for the period of the warranties of Landlord's contractors, whichever is longer;
- (4) all utilities to the point of entry to the Premises;
- (5) all driveways, sidewalks and parking areas of the Property and all other Common Areas, including the removal of snow and ice therefrom;

MAPLEVIEW SHOPPING CENTRE- GAP

MASTER AMENDMENT TO LEASES – CO-TENANCY

THIS MASTER AMENDMENT TO LEASES – CO-TENANCY (this "Amendment") is made as of December 31, 2011, but to be effective as of January 1, 2010 (the "Effective Date"), by and between each of the LANDLORD ENTITIES listed on Exhibit A attached hereto (collectively referred to as "Lessor" or "Landlord Entities" or any of them singularly as "Landlord Entity"), and the TENANT ENTITIES listed on Exhibit A attached hereto (collectively referred to as "Lessee" or as "Tenant Entity"). Lessor and Lessee shall sometimes hereinafter collectively be referred to as the "Parties" or singularly as a "Party."

RECITALS

A. Lessor is the landlord of numerous shopping centres in which Lessee currently leases certain premises. The Landlord Entities and the Tenant Entities that are the Parties to this Amendment, the shopping centres affected by this Amendment (the "Shopping Centres") and the leases between the Parties within such Shopping Centres affected by this Amendment (as so amended or extended, the "Leases") are listed on Exhibit A to this Amendment. The "Leases" also include any other leases for a Gap, Gap Kids, Old Navy, Banana Republic or other affiliated Lessee store in the Shopping Centres listed on Exhibit A to this Amendment.

B. It is the intent of the Parties that this Amendment shall constitute a lease amendment for each of the Leases, to the extent permitted by applicable law, as described herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Co-Tenancy Provisions. Lessee acknowledges that where Zellers exists as a named co-tenant in a Shopping Centre, or where the leasable square footage of Zellers is included in an aggregate leasable square footage co-tenancy requirement in a Shopping Centre, pursuant to one or more of the Leases, with respect to any Co-Tenancy, Operating Requirements, or other similar provisions contained in the Leases requiring a Zellers store (or all or a portion of the leasable square footage comprising the Zellers store) to be open and operating in its respective Shopping Centre, however such provision is denominated or defined (the "Co-Tenancy Provisions"), the Parties acknowledge and agree, in addition to and without limiting such Co-Tenancy Provisions, as follows: (a) Target is a "Suitable Replacement," or as otherwise denominated or defined in the affected Lease, with respect to Zellers, to the effect that if a Target store is open and operating in its respective Shopping Centre in substantially all of the premises previously occupied by Zellers (the "Zellers Premises") or in other premises in the Shopping Centre (other than the Zellers Premises) the size of which is comparable to the Zellers Premises (the "New Target Premises"), the Co-Tenancy Provisions will be satisfied with respect to the Zellers named co-tenant component of the Co-Tenancy Provisions; and/or (b) the leasable square footage of a Target store in the Zellers Premises or the New Target Premises shall be included in the aggregate leasable square footage co-tenancy requirement component of the Co-Tenancy Provisions where the leasable square footage of Zellers is included in such component pursuant to the Co-Tenancy Provisions of the respective Lease. Whether Target occupies a Zellers Premises or a New Target Premises in a given Shopping Centre shall be determined by Lessor in its sole discretion.

In the event that Target becomes a Suitable Replacement for Zellers by occupying the New Target Premises, the occupation of the Zellers Premises or a replacement tenant for Zellers in the Zellers Premises will no longer be a requirement of the Co-Tenancy Provision. For greater certainty, Lessor will be under no further obligation under the Co-Tenancy Provision in connection with the occupation of the Zellers Premises in such event.

If Lessor anticipates that Target will replace Zellers (either in the Zellers Premises or the New Target Premises) and Lessee becomes entitled to the Co-Tenancy Remedies under either Paragraph 2 or Paragraph 3 herein, and if it is later determined that Target will not in fact replace Zellers, then Lessee will be entitled to the Co-Tenancy Remedies, retroactively, for the period commencing at the end of the relevant "Grace Period" provided in the Lease to the day immediately before Lessee is entitled to the Co-Tenancy Remedies under the terms of this Amendment.

2. Target Store Renovation in the Zellers Premises. In the event that Target requires renovations to be conducted before opening and operating in the Zellers Premises, Zellers will not be deemed to be closed for purposes of triggering a co-tenancy failure (whether a named co-tenant failure or an aggregate leasable square footage co-tenancy requirement failure) and no remedies provided by the Co-Tenancy Provisions in the event of a violation or failure of the Co-Tenancy Provisions will be available to Lessee unless (i) Zellers has ceased operations in the Zellers Premises for at least nine (9) months, (ii) Target is not open and operating in substantially all of the Zellers Premises within such nine (9) month period and (iii) the sales test set out in Paragraph 4 herein has been satisfied (the "Sales Test"), (collectively the "Target Requirements"). If the Target Requirements occur, Lessee may immediately thereafter exercise any rights and remedies available under the Co-Tenancy Provisions (by way of example, any rent reduction or termination right, if any) (the "Co-Tenancy Remedies"). To be clear, the nine (9) month period described above shall be in lieu of, and not in addition to, any waiting period or other "Grace Period"

set out in the Co-Tenancy Provisions in the Leases, or any other time period intended to toll the Co-Tenancy Remedies.

3. New Target Premises In the event that Target requires construction or renovations to be conducted before opening and operating in the New Target Premises, Zellers will not be deemed to be closed for purposes of triggering a co-tenancy failure (whether a named co-tenant failure or an aggregate leasable square footage requirement failure) and no remedies provided by the Co-Tenancy Provisions in the event of a violation or failure of the Co-Tenancy Provisions will be available to Lessee unless (i) Zellers has ceased operations in the Zeller's Premises for at least twelve (12) months, (ii) Target is not open and operating in substantially all of the New Target Premises within such twelve (12) month period and (iii) the Sales Test has been satisfied, (collectively the "New Target Requirements"). If the New Target Requirements occur, Lessee may immediately thereafter exercise the Co-Tenancy Remedies. To be clear, the twelve (12) month period described above shall be in lieu of, and not in addition to, any waiting period or other "Grace Period" set out in the Co-Tenancy Provisions in the Leases, or any other time period intended to toll the Co-Tenancy Remedies.

For greater certainty, in the event that Target becomes a Suitable Replacement for Zellers by occupying the New Target Premises, the occupation of the Zellers Premises or a replacement for Zellers in the Zellers Premises will no longer be a requirement of the Co-Tenancy Provision. For greater certainty, Lessor will be under no further obligation under the Co-Tenancy Provision in connection with the occupation of the Zellers Premises.

4. Sales Test In the instance where the sole event causing the initiation of the Co-Tenancy Remedies under a given Lease is the occurrence of both items (i) and (ii) of either Paragraph 2 or Paragraph 3 above, then, notwithstanding anything to the contrary, such Co-Tenancy Remedies shall not apply unless Lessee's gross sales from the subject premises for any consecutive thirty (30) day period calculated from the day immediately following the nine (9) month period or twelve (12) month period, as the case may be, (each such period being referred to herein as the "Measuring Period"), are ninety-five percent (95%) or less than Lessee's sales from such premises during the same thirty (30) day period in the year immediately preceding the Measuring Period. Lessee's sales shall be evidenced by a financial statement provided to Lessor, and reasonably satisfactory to Lessor, and certified as accurate by a financial officer or other authorized representative of Lessee and calculated pursuant to Lessee's normal accounting standards and definitions. In order for Lessee to satisfy the foregoing Sales Test, Lessee will need to have operated in the subject premises during the Measuring Period in a manner materially the same as, and at least during the same days and hours as, Lessee operated during the subject months of the year preceding the Measuring Period.

5. No New Co-Tenancy Requirements Nothing contained in this Amendment shall create any co-tenancy requirements in addition to those existing in the Leases as of the date of this Amendment.

6. Consent Each of Lessor and Lessee represents and warrants to the other that no consents of third parties are necessary for the execution and performance of this Amendment.

7. Representative Capacity Each person executing this Amendment in a representative capacity warrants and represents that he/she is empowered and authorized to do so.

8. No Waiver of Claims The parties agree that except for the terms and conditions set forth in this Amendment, this Amendment shall not alter, waive or modify any rights, remedies or claims that Lessor or Lessee now has or may hereafter have under or arising out of the Leases whether known or unknown and whether relating to periods of time before or after the date of this Amendment, including, without limitation, any rights, remedies or claims of Lessor or Lessee based in whole or in part on a default by the other party of its obligations under the Leases, or the non-satisfaction or failure of any requirement or condition under the Leases.

9. Counterparts To facilitate execution, this Amendment may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto hereby covenant and agree that, for purposes of facilitating the execution of this Amendment, and all executed counterparts of this Amendment shall be deemed to be originals, but all such counterparts taken together or collectively, as the case may be, shall constitute one and the same agreement.

10. Miscellaneous Time is of the essence of this Amendment. This Amendment shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, successors and assigns (as the case may be) of the Parties hereto to the same extent as binding upon the Parties hereto. In the event of conflict or inconsistency between the provisions of this Amendment and any provisions of the Leases, the provisions of this Amendment shall govern. Except as set forth in this Amendment, all of the terms and conditions of the Leases shall continue in full force and effect throughout the term of the Leases.

11. Entire Agreement The terms and provisions set forth in this Amendment constitute the entire agreement and understanding between Lessor and Lessee with respect to the specific subject matter addressed herein, and are hereby deemed to supersede all prior agreements and understandings (including, without limitation,

**MAPLEVIEW SHOPPING CENTRE-
GAP KIDS/ BABY**

MASTER AMENDMENT TO LEASES – CO-TENANCY

THIS MASTER AMENDMENT TO LEASES – CO-TENANCY (this "Amendment") is made as of December 31, 2011, but to be effective as of January 1, 2010 (the "Effective Date"), by and between each of the LANDLORD ENTITIES listed on Exhibit A attached hereto (collectively referred to as "Lessor" or "Landlord Entities" or any of them singularly as "Landlord Entity"), and the TENANT ENTITIES listed on Exhibit A attached hereto (collectively referred to as "Lessee" or as "Tenant Entity"). Lessor and Lessee shall sometimes hereinafter collectively be referred to as the "Parties" or singularly as a "Party."

RECITALS

A. Lessor is the landlord of numerous shopping centres in which Lessee currently leases certain premises. The Landlord Entities and the Tenant Entities that are the Parties to this Amendment, the shopping centres affected by this Amendment (the "Shopping Centres") and the leases between the Parties within such Shopping Centres affected by this Amendment (as so amended or extended, the "Leases") are listed on Exhibit A to this Amendment. The "Leases" also include any other leases for a Gap, Gap Kids, Old Navy, Banana Republic or other affiliated Lessee store in the Shopping Centres listed on Exhibit A to this Amendment.

B. It is the intent of the Parties that this Amendment shall constitute a lease amendment for each of the Leases, to the extent permitted by applicable law, as described herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Co-Tenancy Provisions. Lessee acknowledges that where Zellers exists as a named co-tenant in a Shopping Centre, or where the leasable square footage of Zellers is included in an aggregate leasable square footage co-tenancy requirement in a Shopping Centre, pursuant to one or more of the Leases, with respect to any Co-Tenancy, Operating Requirements, or other similar provisions contained in the Leases requiring a Zellers store (or all or a portion of the leasable square footage comprising the Zellers store) to be open and operating in its respective Shopping Centre, however such provision is denominated or defined (the "Co-Tenancy Provisions"), the Parties acknowledge and agree, in addition to and without limiting such Co-Tenancy Provisions, as follows: (a) Target is a "Suitable Replacement," or as otherwise denominated or defined in the affected Lease, with respect to Zellers, to the effect that if a Target store is open and operating in its respective Shopping Centre in substantially all of the premises previously occupied by Zellers (the "Zellers Premises") or in other premises in the Shopping Centre (other than the Zellers Premises) the size of which is comparable to the Zellers Premises (the "New Target Premises"), the Co-Tenancy Provisions will be satisfied with respect to the Zellers named co-tenant component of the Co-Tenancy Provisions; and/or (b) the leasable square footage of a Target store in the Zellers Premises or the New Target Premises shall be included in the aggregate leasable square footage co-tenancy requirement component of the Co-Tenancy Provisions where the leasable square footage of Zellers is included in such component pursuant to the Co-Tenancy Provisions of the respective Lease. Whether Target occupies a Zellers Premises or a New Target Premises in a given Shopping Centre shall be determined by Lessor in its sole discretion.

In the event that Target becomes a Suitable Replacement for Zellers by occupying the New Target Premises, the occupation of the Zellers Premises or a replacement tenant for Zellers in the Zellers Premises will no longer be a requirement of the Co-Tenancy Provision. For greater certainty, Lessor will be under no further obligation under the Co-Tenancy Provision in connection with the occupation of the Zellers Premises in such event.

If Lessor anticipates that Target will replace Zellers (either in the Zellers Premises or the New Target Premises) and Lessee becomes entitled to the Co-Tenancy Remedies under either Paragraph 2 or Paragraph 3 herein, and if it is later determined that Target will not in fact replace Zellers, then Lessee will be entitled to the Co-Tenancy Remedies, retroactively, for the period commencing at the end of the relevant "Grace Period" provided in the Lease to the day immediately before Lessee is entitled to the Co-Tenancy Remedies under the terms of this Amendment.

2. Target Store Renovation in the Zellers Premises. In the event that Target requires renovations to be conducted before opening and operating in the Zellers Premises, Zellers will not be deemed to be closed for purposes of triggering a co-tenancy failure (whether a named co-tenant failure or an aggregate leasable square footage co-tenancy requirement failure) and no remedies provided by the Co-Tenancy Provisions in the event of a violation or failure of the Co-Tenancy Provisions will be available to Lessee unless (i) Zellers has ceased operations in the Zeller's Premises for at least nine (9) months, (ii) Target is not open and operating in substantially all of the Zellers Premises within such nine (9) month period and (iii) the sales test set out in Paragraph 4 herein has been satisfied (the "Sales Test"), (collectively the "Target Requirements"). If the Target Requirements occur, Lessee may immediately thereafter exercise any rights and remedies available under the Co-Tenancy Provisions (by way of example, any rent reduction or termination right, if any) (the "Co-Tenancy Remedies"). To be clear, the nine (9) month period described above shall be in lieu of, and not in addition to, any waiting period or other "Grace Period"

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4. Sales Test In the instance where the sole event causing the initiation of the Co-Tenancy Remedies under a given Lease is the occurrence of both items (i) and (ii) of either Paragraph 2 or Paragraph 3 above, then, notwithstanding anything to the contrary, such Co-Tenancy Remedies shall not apply unless Lessee's gross sales from the subject premises for any consecutive thirty (30) day period calculated from the day immediately following the nine (9) month period or twelve (12) month period, as the case may be, (each such period being referred to herein as the "Measuring Period"), are ninety-five percent (95%) or less than Lessee's sales from such premises during the same thirty (30) day period in the year immediately preceding the Measuring Period. Lessee's sales shall be evidenced by a financial statement provided to Lessor, and reasonably satisfactory to Lessor, and certified as accurate by a financial officer or other authorized representative of Lessee and calculated pursuant to Lessee's normal accounting standards and definitions. In order for Lessee to satisfy the foregoing Sales Test, Lessee will need to have operated in the subject premises during the Measuring Period in a manner materially the same as, and at least during the same days and hours as, Lessee operated during the subject months of the year preceding the Measuring Period.

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**METROPOLIS AT METROTOWN-
BANANA REPUBLIC**

MASTER AMENDMENT TO LEASES – CO-TENANCY

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AGREEMENT

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In the event that Target becomes a Suitable Replacement for Zellers by occupying the New Target Premises, the occupation of the Zellers Premises or a replacement tenant for Zellers in the Zellers Premises will no longer be a requirement of the Co-Tenancy Provision. For greater certainty, Lessor will be under no further obligation under the Co-Tenancy Provision in connection with the occupation of the Zellers Premises in such event.

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METROPOLIS AT METROTOWN- GAP

MASTER AMENDMENT TO LEASES – CO-TENANCY

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In the event that Target becomes a Suitable Replacement for Zellers by occupying the New Target Premises, the occupation of the Zellers Premises or a replacement tenant for Zellers in the Zellers Premises will no longer be a requirement of the Co-Tenancy Provision. For greater certainty, Lessor will be under no further obligation under the Co-Tenancy Provision in connection with the occupation of the Zellers Premises in such event.

If Lessor anticipates that Target will replace Zellers (either in the Zellers Premises or the New Target Premises) and Lessee becomes entitled to the Co-Tenancy Remedies under either Paragraph 2 or Paragraph 3 herein, and if it is later determined that Target will not in fact replace Zellers, then Lessee will be entitled to the Co-Tenancy Remedies, retroactively, for the period commencing at the end of the relevant "Grace Period" provided in the Lease to the day immediately before Lessee is entitled to the Co-Tenancy Remedies under the terms of this Amendment.

2. Target Store Renovation in the Zellers Premises. In the event that Target requires renovations to be conducted before opening and operating in the Zellers Premises, Zellers will not be deemed to be closed for purposes of triggering a co-tenancy failure (whether a named co-tenant failure or an aggregate leasable square footage co-tenancy requirement failure) and no remedies provided by the Co-Tenancy Provisions in the event of a violation or failure of the Co-Tenancy Provisions will be available to Lessee unless (i) Zellers has ceased operations in the Zeller's Premises for at least nine (9) months, (ii) Target is not open and operating in substantially all of the Zellers Premises within such nine (9) month period and (iii) the sales test set out in Paragraph 4 herein has been satisfied (the "Sales Test"), (collectively the "Target Requirements"). If the Target Requirements occur, Lessee may immediately thereafter exercise any rights and remedies available under the Co-Tenancy Provisions (by way of example, any rent reduction or termination right, if any) (the "Co-Tenancy Remedies"). To be clear, the nine (9) month period described above shall be in lieu of, and not in addition to, any waiting period or other "Grace Period"

set out in the Co-Tenancy Provisions in the Leases, or any other time period intended to toll the Co-Tenancy Remedies.

3. New Target Premises In the event that Target requires construction or renovations to be conducted before opening and operating in the New Target Premises, Zellers will not be deemed to be closed for purposes of triggering a co-tenancy failure (whether a named co-tenant failure or an aggregate leasable square footage requirement failure) and no remedies provided by the Co-Tenancy Provisions in the event of a violation or failure of the Co-Tenancy Provisions will be available to Lessee unless (i) Zellers has ceased operations in the Zeller's Premises for at least twelve (12) months, (ii) Target is not open and operating in substantially all of the New Target Premises within such twelve (12) month period and (iii) the Sales Test has been satisfied, (collectively the "New Target Requirements"). If the New Target Requirements occur, Lessee may immediately thereafter exercise the Co-Tenancy Remedies. To be clear, the twelve (12) month period described above shall be in lieu of, and not in addition to, any waiting period or other "Grace Period" set out in the Co-Tenancy Provisions in the Leases, or any other time period intended to toll the Co-Tenancy Remedies.

For greater certainty, in the event that Target becomes a Suitable Replacement for Zellers by occupying the New Target Premises, the occupation of the Zellers Premises or a replacement for Zellers in the Zellers Premises will no longer be a requirement of the Co-Tenancy Provision. For greater certainty, Lessor will be under no further obligation under the Co-Tenancy Provision in connection with the occupation of the Zellers Premises.

4. Sales Test In the instance where the sole event causing the initiation of the Co-Tenancy Remedies under a given Lease is the occurrence of both items (i) and (ii) of either Paragraph 2 or Paragraph 3 above, then, notwithstanding anything to the contrary, such Co-Tenancy Remedies shall not apply unless Lessee's gross sales from the subject premises for any consecutive thirty (30) day period calculated from the day immediately following the nine (9) month period or twelve (12) month period, as the case may be, (each such period being referred to herein as the "Measuring Period"), are ninety-five percent (95%) or less than Lessee's sales from such premises during the same thirty (30) day period in the year immediately preceding the Measuring Period. Lessee's sales shall be evidenced by a financial statement provided to Lessor, and reasonably satisfactory to Lessor, and certified as accurate by a financial officer or other authorized representative of Lessee and calculated pursuant to Lessee's normal accounting standards and definitions. In order for Lessee to satisfy the foregoing Sales Test, Lessee will need to have operated in the subject premises during the Measuring Period in a manner materially the same as, and at least during the same days and hours as, Lessee operated during the subject months of the year preceding the Measuring Period.

5. No New Co-Tenancy Requirements Nothing contained in this Amendment shall create any co-tenancy requirements in addition to those existing in the Leases as of the date of this Amendment.

6. Consent Each of Lessor and Lessee represents and warrants to the other that no consents of third parties are necessary for the execution and performance of this Amendment.

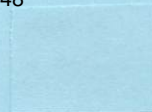
7. Representative Capacity Each person executing this Amendment in a representative capacity warrants and represents that he/she is empowered and authorized to do so.

8. No Waiver of Claims The parties agree that except for the terms and conditions set forth in this Amendment, this Amendment shall not alter, waive or modify any rights, remedies or claims that Lessor or Lessee now has or may hereafter have under or arising out of the Leases whether known or unknown and whether relating to periods of time before or after the date of this Amendment, including, without limitation, any rights, remedies or claims of Lessor or Lessee based in whole or in part on a default by the other party of its obligations under the Leases, or the non-satisfaction or failure of any requirement or condition under the Leases.

9. Counterparts To facilitate execution, this Amendment may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto hereby covenant and agree that, for purposes of facilitating the execution of this Amendment, and all executed counterparts of this Amendment shall be deemed to be originals, but all such counterparts taken together or collectively, as the case may be, shall constitute one and the same agreement.

10. Miscellaneous Time is of the essence of this Amendment. This Amendment shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, successors and assigns (as the case may be) of the Parties hereto to the same extent as binding upon the Parties hereto. In the event of conflict or inconsistency between the provisions of this Amendment and any provisions of the Leases, the provisions of this Amendment shall govern. Except as set forth in this Amendment, all of the terms and conditions of the Leases shall continue in full force and effect throughout the term of the Leases.

11. Entire Agreement The terms and provisions set forth in this Amendment constitute the entire agreement and understanding between Lessor and Lessee with respect to the specific subject matter addressed herein, and are hereby deemed to supersede all prior agreements and understandings (including, without limitation,



**OSHAWA CENTRE-
GAP & GAP KIDS**

ARTICLE 5.00 USE OF PREMISES

5.01 Use and Business Name The Premises shall be used primarily for the sale of wearing apparel and related accessories, including, at Tenant's option, footwear provided the sale of footwear is not its principal use. The Premises may also be used for the sale of luggage; umbrellas; sunglasses; watches; pins; infants', toddlers' and/or children's items such as baby strollers, stuffed animals, toys and games and furniture; cosmetics and other personal care items; domestic products, including, without limitation, candles, sundries, kitchenware, bedding, bath items, furniture and accents for the home; and pre-packaged foods and candies. In addition, up to ten percent (10%) of the Premises may be used for any other lawful retail purpose, selling such merchandise or offering such services as are found in a majority of Tenant's other stores in Canada operating under the same trade name as is used by Tenant at the Premises, with the prior approval of Landlord. Any permitted merchandise may be sold through the use of vending machines, (limited to fifty (50) square feet of the total selling area and which will not block the store opening) or block any view of the Premises from outside the Premises), situated in the Premises which sales will be included in the determination of Gross Revenue. Notwithstanding the foregoing, Tenant may sell from the Premises ready-to-eat foods and non-alcoholic beverages (which will be limited to five hundred (500) square feet of the total selling area of the Premises) which are sold in a majority of Tenant's other stores in Eastern Canada (defined as Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island) operating under the same trade name as is used by Tenant at the Premises. The business of Tenant in the Premises shall be carried on under the name and style of "GAP" and/or "GAP KIDS" or such other name as is used by at least six (6) stores in all of Canada, including no less than four (4) of Tenant's stores in Eastern Canada (defined as Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island) operated by Tenant, and under no other name and style unless approved by Landlord in writing. Tenant will not use nor permit the whole or any part of the Premises to be used for or in respect to or in connection with the sale or distribution of any food or food product, unless specifically agreed to by Landlord, or unless permitted under the terms of this Article 5.01.

5.01.1 Landlord's Warranty as to Use. Landlord represents and warrants to Tenant that as at the date of execution of this Lease there are no exclusive rights granted to other tenants of the Project which would conflict with or inhibit the conduct of Tenant's permitted use set out above or any part thereof and covenants and agrees not to grant after the date of execution of this Lease an exclusive right to any tenant which would be violated by the operation of the business permitted under Article 5.01.

5.02 Hours of Business During the Term of this Lease, Tenant will conduct its business in the Premises on such days and during such hours as is required, from time to time, by regulation of Landlord unless prevented from so doing by properly constituted authority.

In the event Tenant fails to conduct its business in accordance with this Article 5.02 then Landlord will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring Tenant to comply with the provisions of this Article 5.02.

5.02.1 CO-TENANCY

(a) **Operating Requirements:** For the purpose of this Article "Operating Requirements" shall mean those stores representing the following minimum co-tenancy conditions are open for business and operating during the normal business hours and days of the Project, as designated by Landlord from time to time: (i) two (2) department stores (one of which shall be The Bay) or their respective successors and assigns (or a Suitable Replacement Tenant(s), as defined herein) (collectively and individually, the "Department Stores") and; (ii) at least seventy-five percent (75%) by number and area of the in-line retail premises including, without limitation, banks, post offices and offices located in CRU premises that cater to walk-in trade (such as dentists, tax preparation offices, optometrists, weight-loss clinic, etc.), provided that the leasable area of such tenants shall not exceed five percent (5%) of the gross leasable area of the Project having frontage on the mall plus stores occupying at least seventy-five percent (75%) of the gross leasable area of the Project (excluding the Major Tenants and not counting the Premises toward meeting the said seventy-five percent (75%) requirement (the "CRU Tenants"). Tenant agrees that, in the event the tenant operating under the trade name

“Target” opens for business to the public in the Project. “Target” will be deemed a department store for the purpose of this Article.

“Suitable Replacement” shall mean a single department store occupying the entire space formerly occupied by one of the Department Stores, as the case may be (as distinguished from several occupants in such space which has been subdivided and/or sublet for such purpose), and which carries a merchandise assortment, in terms of breadth of selection and quality of said merchandise, which is equal to or better than that carried by one of the Department Stores. For clarity, it is agreed that large single purpose stores such as (for example and not by way of limitation) furniture stores, toy stores or sporting goods stores, shall not be considered “department stores” or “Suitable Replacements”: regardless of such store’s size and trade name and whether or not they carry merchandise of the same or better quality than was carried in one of the departments of the Department Stores.

Notwithstanding the foregoing and for this GAP lease at Oshawa Centre only, with respect to one (1) Department Store, a “Suitable Replacement” shall also include a combination of not more than three (3) high quality “big box” retailing tenants which are consistent with the standards to which the Project is to be maintained pursuant to the terms of this Lease, one of which will have an area of 30,000 square feet or more and the second of which will have an area of 25,000 square feet or more and the third of which must occupy at least 15,000 square feet of space such as, but not limited to, Chapters, Pacific Linen, Business Depot, Sport-Chek, Toys “R” Us, Future Shop or Winners, and which together in the aggregate occupy substantially all of the non-operating department store premises;

(b) Tenant’s Right to Close: If such Operating Requirements are not met any time in the case of the CRU Tenants for a period of three (3) consecutive months, (or in the case of Department Stores for six (6) consecutive months), (excluding the Expansion Period, as set out in paragraph (f) hereunder) (the “Grace Period”) then upon expiry of the Grace Period, Tenant may from time to time at its option either:

(i) close the Premises for business and during such period of closure, Tenant shall pay the Annual Rent but no other rent or additional rent or charges otherwise payable under this Lease and will not be required to perform any other obligations under this Lease except those as are applicable to vacant premises;
or

(ii) remain open for business but pay monthly, as alternative rent (the “Alternative Rent”), during the period that the Operating Requirements are not being met, in lieu of Annual Rent, Percentage Rent and additional rent, fifty percent (50%) of the Tenant’s Annual Rent for the first three (3) months after the Grace Period and twenty-five percent (25%) of Tenant’s monthly Annual Rent thereafter until such conditions are met, plus, in both cases, metered utilities supplied to the Premises and billed directly to Tenant (if any).

Upon the date that the Operating Requirements are once again met, Tenant shall, in the case where Tenant had made the election under (i) above, re-open the Premises for business, and in the case where Tenant had made the election under (ii) above, cease the payment of the Alternative Rent, and in the case of either (i) or (ii) above, resume (where the same had been otherwise suspended) the payment of Annual Rent, Percentage Rent (calculated in the manner set forth in this Lease), the Occupancy Costs, and any other additional rents and charges due under this Lease accruing from and after the date that the Operating Requirements were once again met. For the purposes of this Article, the Operating Requirements shall be deemed to have been “met”, in the case of the Department Stores upon opening thereof, and in the case of the CRU Tenants when they have been open and operating for a continuous period of at least forty-five (45) days.

(c) Tenant’s Right to Terminate: If the Operating Requirements fail to be met for a period of six (6) consecutive months in the case of the CRU Tenants (or in the case of Department Stores, twelve (12) consecutive months) (excluding the Expansion Period,

as set out in paragraph (f) hereunder, then Tenant shall have the continuing right thereafter and prior to the Operating Requirements once again being met, to elect, by giving thirty (30) days' notice in writing to Landlord, to cancel and terminate this Lease. Once such thirty (30) day notice is given, the validity and effectiveness of Tenant's cancellation shall not be affected or nullified by the fact that the Operating Requirements are again met during such thirty (30) day period unless Tenant, in its sole discretion, elects to revoke its cancellation notice and re-open.

- (d) Landlord's Right to Terminate: If the Premises have been closed for a period of at least twelve (12) consecutive months, pursuant to Tenant's election under subclause (b) (i) above to close the Premises, then Landlord shall have the continuing right thereafter, prior to the Tenant either exercising its right to terminate the Lease pursuant to clause (c) above, or re-opening the Premises for business and paying Annual Rent, Percentage Rent, Occupancy Costs and any other additional rents and charges payable under the Lease, to terminate this Lease by the giving of sixty (60) days' notice in writing to Tenant.

During the first thirty (30) days of such sixty (60) day notice period, Tenant upon written notice to Landlord given within such thirty (30) day period, may elect (herein called the "Option to Reinstate") to re-open the Premises for business and shall thereafter re-open the Premises and shall pay to Landlord effective from the earlier of the date of re-opening or the last day of the sixty (60) day notice period, all Annual Rent, Percentage Rent, Occupancy Costs and any other additional rents and charges payable pursuant to the terms of this Lease. Should Tenant exercise the Option to Reinstate, and in fact re-open the Premises on or before the expiry of the sixty (60) day period after Landlord's notice of termination, then Landlord's notice of termination shall be null and void. If Tenant exercises the Option to Reinstate, then Tenant's remedies set out in clauses (b) and (c) above shall not apply for a period of nine (9) months after Tenant re-opens the Premises pursuant to the Option to Reinstate whether or not the Operating Requirements are met during such period.

- (e) Notwithstanding anything contained herein and whether or not the requirements of the preceding paragraphs are being met, in no event may the required Project days or hours as determined by Landlord be such as to require Tenant:

- (A) (i) to open later than 10:00 a.m. Monday through Saturday, or
 (ii) to remain open later than 10:00 p.m. Monday through Friday, 6:00 p.m. on Saturdays or 5:00 p.m. on Sundays, or
 (iii) to close earlier than 6:00 p.m. Monday through Saturday; or
- (B) To be open Easter Sunday, Thanksgiving Day, Christmas Day or New Years Day; or
- (C) To be open when to do so would violate any law, criminal or civil, or subject Tenant or its employees to fine or penalty, whether criminal or civil in nature.

Tenant agrees that it will remain open during those extended hours established by Landlord during the Christmas season and such extended hours as a result of occasional midnight madness sales, provided the Operating Requirements are met.

- (f) Notwithstanding anything to the contrary contained herein, Tenant acknowledges that Landlord is in the process of finalizing plans to expand and/or redevelop the Project (the "Project Expansion") and Tenant agrees that said Project Expansion shall not constitute a failure on the part of Landlord to meet the CRU Operating Requirements under this Article 5.02.1. Landlord shall have a grace period commencing one day following the date Landlord receives its general occupancy permit for the Project Expansion (the "Occupancy Permit") and expiring two (2) years thereafter (the "Expansion Period"). During which Expansion Period, Tenant acknowledges Landlord shall be completing its leasing of the expansion area and Tenant shall not

make any CRU Tenants co-tenancy failure claims resulting from the Project Expansion. Upon the expiry of the Expansion Period it is understood and agreed that Landlord's obligation to meet the Operating Requirements for the CRU Tenants shall be reinstated immediately. Landlord shall be required to inform Tenant of the commencement of the Expansion Period by written notice delivered to Tenant as soon as the Occupancy Permit for the Project Expansion is issued to Landlord.

- 5.03 **Continuous Occupancy** Tenant acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to neighbouring tenants and to Landlord in the renting of space in the Project. Tenant therefore covenants and agrees that **subject to Article 5.02** throughout the Term it will occupy the entire Premises, comply strictly with the provisions of Article 5.02 and not vacate or abandon the Premises at any time during the Term. Tenant acknowledges that Landlord is executing this Lease in reliance thereupon and that the same is a material element inducing Landlord to execute this Lease. Tenant further agrees that if it vacates or abandons the Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Premises for any purpose not specifically herein authorized and allowed, Tenant will be in breach of Tenant's obligations under this Lease, and then, without constituting a waiver of Tenant's obligations or limiting Landlord's remedies under this Lease, all Rent reserved in this Lease **for the next ensuing three (3) months** will immediately become due and payable to Landlord unless guaranteed to the satisfaction of Landlord. Landlord will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring Tenant to comply with the provisions of this Article 5.03.
- 5.04 **Restrictions on Use & Occupancy**
- (a) Tenant will carry on its business on the Premises in a reputable manner and in compliance with all the provisions of this Lease, and in particular Tenant will not advertise, do, omit, permit or suffer to be done or exist upon the Premises anything which will be or result in or bring about a breach of any provision of this Lease.
 - (b) Tenant will not conduct or advertise on or from or pertaining to the Premises as any part of its business a mail order or catalogue store or the sale of bankruptcy, distress or secondhand goods, war surplus articles, insurance salvage stock, fire sale stock or merchandise damaged by fire or purported to be damaged by fire, unless such damage actually occurred on the Premises, or hold any auctions or conduct any business which because of the merchandise likely to be sold or the merchandising methods likely to be used would tend to lower the character of the Project or injure the Project or the business done therein.
 - (c) Tenant, or anyone acting through, for, or in place of Tenant, will not conduct or advertise on or from or pertaining to the Premises any auction, bankruptcy or receivership sale or any closing out wholesale business, nor **except as expressly permitted hereunder** will Tenant grant any concession, license or permission to any third party to sell or take orders for merchandise or services in the Premises. Tenant will not divert to another location business that would normally be conducted on or from the Premises.
 - (d) Tenant will not use in the Premises any travelling or flashing lights or signs or any loudspeakers, television, phonographs, radio or other audio-visual or mechanical devices in a manner so that they can be heard or seen outside the Premises **which may unreasonably disturb the enjoyment of the Project and all the Common Areas and facilities thereof by customers and other tenants of the Project**. Landlord will be entitled to remove such equipment without notice at any time and such removal will be done and all damages as a result thereof will be made good, in each case at the cost of Tenant payable as Rent forthwith on demand.
- 5.05 **Inventory, Staff and Fixtures** Tenant will maintain available a substantial stock of goods, wares and merchandise adequate to ensure successful operation of Tenant's business, and will employ and maintain sales and other personnel sufficient at all times for proper service to customers, but Tenant will store and stock in the Premises only such inventories as Tenant intends to sell at retail on or from the Premises, and unless otherwise agreed by Landlord, Tenant will use for office, storage and other non-selling purposes only such space in the Premises as is reasonably required to maintain Tenant's

**OSHAWA CENTRE-
OLD NAVY**

ARTICLE 5.00 USE OF PREMISES

- 5.01 *Use and Business Name* ~~The Premises will be used and occupied only as and the business of Tenant in the Premises will be carried on under the name and style of and under no other name and style unless approved by Landlord in writing. Unless (and then only to that extent) expressly permitted under the provisions of this Article 5.01, Tenant will not use nor permit the whole or any part of the Premises to be used for or in respect to or in connection with the sale or distribution of any food or food product.~~

The Premises will be used and occupied only for the retail sale of wearing apparel and related accessories as sold by Tenant in its other stores of a similar size including, at Tenant's option, footwear, provided that the retail sale of footwear shall not become Tenant's primary use of the Premises. The Premises may also be used as ancillary to such principal use for the sale of luggage, umbrellas, sunglasses, watches, pins, infants', toddlers' and children's items such as baby strollers, stuffed animals, toys and games and furniture; cosmetics and other personal care items; domestic products, including, without limitation, candles, sundries, kitchenware, bedding, bath items, furniture and accents for the home; and pre-packaged foods and candies. The Premises may also be used for an operation for the preparation and sale of ready-to-eat foods and non-alcoholic beverages. In addition, so long as the tenant is Old Navy (Canada) Inc., up to ten percent (10%) of the Premises may be used for any other lawful retail purpose, selling of such merchandise or offering such services as are found in a majority of Tenant's other stores of a similar size and operating under the same trade name as is used by Tenant at the Premises. Any lawful merchandise may be sold through the use of vending machines. The foregoing is collectively referred to herein as the "Permitted Use", and the Subject to Article 11.00, the business of Tenant in the Premises will, for the first five (5) years of the Term, be carried on under the name and style of "OLD NAVY" and under no other name and style unless approved by Landlord in writing. Tenant will not use nor permit the whole or any part of the Premises to be used for or in respect to or in connection with the sale or distribution of any food or food product, unless specifically agreed to by Landlord, or unless permitted under the terms of this Article 5.01.

Landlord's Warranty as to Use. Landlord represents and warrants to Tenant that as at the date of execution of this Lease there are no exclusive rights granted to other tenants of the Project which would conflict with or inhibit the conduct of Tenant's permitted use set out above or any part thereof and covenants and agrees not to grant after the date of execution of this Lease an exclusive right to any tenant which would be violated by the operation of the business permitted under Article 5.01.

- 5.02 *Hours of Business* During the Term of this Lease, Tenant will conduct its business in the Premises on such days and during such hours as is required, from time to time, by regulation of Landlord unless prevented from so doing by properly constituted authority.

In the event Tenant fails to conduct its business in accordance with this Article 5.02 then Landlord will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring Tenant to comply with the provisions of this Article 5.02.

Co-Tenancy

- (a) Operating Requirements: For the purpose of this Article "Operating Requirements" shall mean those stores representing the following minimum co-tenancy conditions are open for business and operating during the normal business hours and days of the Project as designated by Landlord from time to time: (i) two department stores (one of which shall be The Bay) or their respective successors and assigns (as permitted in such tenant's respective leases) (or a Suitable Replacement Tenant(s), as defined herein, for such department stores) (collectively and individually the "Department Stores") and (ii) at least seventy-five percent (75%) by number and area of the in-line retail premises including, without limitation, banks, post offices and offices located in CRU premises that cater to walk-in trade (such as dentists, tax preparation offices, optometrists, weight-loss clinic, etc.), provided that the leasable area of such tenants shall not exceed five percent (5%) of the gross leasable area of the Project having frontage on the mall plus stores occupying at least eighty seven percent (87%) of the gross leasable area of the Project (excluding the Major Tenants and not counting the Premises toward meeting the



said seventy-five percent (75%) requirements).

“Suitable Replacement” shall mean a single department store occupying the entire space formerly occupied by the Department Stores, as the case may be (as distinguished from several occupants in such space which has been subdivided and/or sublet for such purpose), and which carries a merchandise assortment, in terms of breadth of selection and quality of said merchandise, which is equal to or better than that carried by the Department Store. For clarity, it is agreed that large single purpose stores such as (for example and not by way of limitation) furniture stores, toy stores or sporting goods stores, shall not be considered “department stores” or “Suitable Replacements”: regardless of such stores’ size and trade name and whether or not they carry merchandise of the same or better quality than was carried in one of the departments of the Department Stores.

Notwithstanding the foregoing and for this Old Navy Lease at Oshawa Centre only, with respect to one (1) Department Store, a “Suitable Replacement” shall also include a combination of not more than 3 high quality “big box” retailing tenants which are consistent with the standards to which the Project is to be maintained pursuant to the terms of this Lease, one of which will have an area of 30,000 square feet or more and the second (2nd) of which will have an area of 25,000 square feet or more and the third (3rd) of which must occupy at least 15,000 square feet of space such as, but not limited to, Chapters, Pacific Linen, Business Depot, Sport-Chek, Toys “R” Us, Future Shop or Winners, and which together in the aggregate occupy substantially all of the non-operating department store premises;

- (b) Tenant’s Right to Close: If such Operating Requirements are not met any time in the case of CRU premises for a period of three (3) consecutive months, or in the case of Department Stores for six (6) consecutive months, (the “Grace Period”) then upon expiry of the Grace Period, Tenant may from time to time at its option either:
- (i) close the Premises for business and during such period of closure Tenant shall pay the Annual Rent but no other rent or additional rent or charges otherwise payable under this Lease and will not be required to perform any other obligations under this Lease except those as are applicable to vacant premises; or
 - (ii) remain open for business but pay monthly, as alternative rent (the “Alternative Rent”), during the period that the Operating Requirements are not being met, in lieu of Annual Rent and Percentage Rent and Additional Rent, fifty percent (50%) of the Tenant’s Annual Rent for the first three (3) months after the Grace Period and twenty-five percent (25%) of Tenant’s monthly Annual Rent thereafter until such conditions are met, plus, in both cases, metered utilities supplied to the Premises and billed directly to Tenant (if any).

Upon the date that the Operating Requirements are once again met Tenant shall, in the case where Tenant had made the election under (i) above, re-open the Premises for business, and in the case where Tenant had made the election under (ii) above, cease the payment of the Alternative Rent, and in the case of either (i) or (ii) above resume (where the same had been otherwise suspended) the payment of Annual Rent, Percentage Rent (calculated in the manner set forth in this Lease), the Occupancy Costs, and any other additional rents and charges due under this Lease accruing from and after the date that the Operating Requirements were once again met. For the purposes of this Article, the Operating Requirements shall be deemed to have been “met”, in the case of the Department Stores upon opening thereof, and in the case of the other CRU premises stores when they have been open and operating for a continuous period of at least forty-five (45) days.

- (c) Tenant’s Right to Terminate: If the Operating Requirements fail to be met for a period of six (6) consecutive months (or in the case of the Department Stores, twelve (12) consecutive months), then Tenant shall have the continuing right thereafter and prior to the Operating Requirements once again being met, to elect, by giving thirty (30) days’ notice in writing to Landlord, to cancel and terminate this Lease. Once such thirty (30) day notice is given, the validity and effectiveness of Tenant’s cancellation shall not be affected or nullified by the fact that the Operating



Calise de dépôt et placement
du Québec

Requirements are again met during such thirty (30) day period unless Tenant, in its sole discretion, elects to revoke its cancellation notice and re-open.

- (d) Landlord's Right to Terminate: If the Premises have been closed for a period of at least twelve (12) consecutive months, pursuant to Tenant's election under subclause (b) (i) above to close the Premises, then Landlord shall have the continuing right thereafter, prior to the Tenant either exercising its right to terminate the Lease pursuant to clause (c) above, or re-opening the Premises for business and paying Annual Rent, Percentage Rent, Occupancy Costs and any other additional rents and charges payable under the Lease, to terminate this Lease by the giving of sixty (60) days' notice in writing to Tenant.

During the first thirty (30) days of such sixty (60) day notice period, Tenant upon written notice to Landlord given within such thirty (30) day period, may elect (herein called the "Option to Reinstate") to re-open the Premises for business and shall thereafter re-open the Premises and shall pay to Landlord effective from the earlier of the date of re-opening or the last day of the sixty (60) day notice period, all Annual Rent, Percentage Rent, Occupancy Costs and any other additional rents and charges payable pursuant to the terms of the Lease. Should Tenant exercise the Option to Reinstate, and in fact re-open the Premises on or before the expiry of the sixty (60) day period after Landlord's notice of termination, then Landlord's notice of termination shall be null and void. If Tenant exercises the Option to Reinstate, then Tenant's remedies set out in clauses (b) and (c) above shall not apply for a period of nine (9) months after Tenant re-opens the Premises pursuant to the Option to Reinstate whether or not the Operating Requirements are met during such period.

- (e) Notwithstanding anything contained herein and whether or not the requirements of the preceding paragraphs are being met, in no event may the required Project days or hours as determined by Landlord be such as to require Tenant:
- (A) (i) to open later than 10:00 a.m. Monday through Saturday, or
 - (ii) to remain open later than 10:00 p.m. Monday through Friday, 6:00 p.m. on Saturdays or 5:00 p.m. on Sundays, or
 - (iii) to close earlier than 6:00 p.m. Monday through Saturday; or
 - (B) To be open Easter Sunday, Thanksgiving Day, Christmas Day or New Years Day; or
 - (C) To be open when to do so would violate any law, criminal or civil, or subject Tenant or its employees to fine or penalty, whether criminal or civil in nature.

Tenant agrees that it will remain open during those extended hours established by Landlord during the Christmas season and such extended hours as a result of occasional midnight madness sales, provided the Operating Requirements are met.

- 5.03 *Continuous Occupancy* Tenant acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to neighbouring tenants and to Landlord in the renting of space in the Project. Tenant therefore covenants and agrees that subject to Article 5.02 throughout the Term it will occupy the entire Premises, comply strictly with the provisions of Article 5.02 and not vacate or abandon the Premises at any time during the Term. Tenant acknowledges that Landlord is executing this Lease in reliance thereupon and that the same is a material element inducing Landlord to execute this Lease. Tenant further agrees that if it vacates or abandons the Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Premises for any purpose not specifically herein authorized and allowed, Tenant will be in breach of Tenant's obligations under this Lease, and then, without constituting a waiver of Tenant's obligations or limiting Landlord's remedies under this Lease, all Rent reserved in this Lease for the next ensuing three (3) months will immediately become due and payable to Landlord unless guaranteed to the satisfaction of Landlord. Landlord will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring Tenant to comply with the provisions of this Article 5.03.

SOUTHGATE CENTRE-
BANANA REPUBLIC

MASTER AMENDMENT TO LEASES – CO-TENANCY

THIS MASTER AMENDMENT TO LEASES – CO-TENANCY (this "Amendment") is made as of December 31, 2011, but to be effective as of January 1, 2010 (the "Effective Date"), by and between each of the LANDLORD ENTITIES listed on Exhibit A attached hereto (collectively referred to as "Lessor" or "Landlord Entities" or any of them singularly as "Landlord Entity"), and the TENANT ENTITIES listed on Exhibit A attached hereto (collectively referred to as "Lessee" or as "Tenant Entity"). Lessor and Lessee shall sometimes hereinafter collectively be referred to as the "Parties" or singularly as a "Party."

RECITALS

A. Lessor is the landlord of numerous shopping centres in which Lessee currently leases certain premises. The Landlord Entities and the Tenant Entities that are the Parties to this Amendment, the shopping centres affected by this Amendment (the "Shopping Centres") and the leases between the Parties within such Shopping Centres affected by this Amendment (as so amended or extended, the "Leases") are listed on Exhibit A to this Amendment. The "Leases" also include any other leases for a Gap, Gap Kids, Old Navy, Banana Republic or other affiliated Lessee store in the Shopping Centres listed on Exhibit A to this Amendment.

B. It is the intent of the Parties that this Amendment shall constitute a lease amendment for each of the Leases, to the extent permitted by applicable law, as described herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Co-Tenancy Provisions. Lessee acknowledges that where Zellers exists as a named co-tenant in a Shopping Centre, or where the leasable square footage of Zellers is included in an aggregate leasable square footage co-tenancy requirement in a Shopping Centre, pursuant to one or more of the Leases, with respect to any Co-Tenancy, Operating Requirements, or other similar provisions contained in the Leases requiring a Zellers store (or all or a portion of the leasable square footage comprising the Zellers store) to be open and operating in its respective Shopping Centre, however such provision is denominated or defined (the "Co-Tenancy Provisions"), the Parties acknowledge and agree, in addition to and without limiting such Co-Tenancy Provisions, as follows: (a) Target is a "Suitable Replacement," or as otherwise denominated or defined in the affected Lease, with respect to Zellers, to the effect that if a Target store is open and operating in its respective Shopping Centre substantially all of the premises previously occupied by Zellers (the "Zellers Premises") or in other premises in the Shopping Centre (other than the Zellers Premises) the size of which is comparable to the Zellers Premises (the "New Target Premises"), the Co-Tenancy Provisions will be satisfied with respect to the Zellers named co-tenant component of the Co-Tenancy Provisions; and/or (b) the leasable square footage of a Target store in the Zellers Premises or the New Target Premises shall be included in the aggregate leasable square footage co-tenancy requirement component of the Co-Tenancy Provisions where the leasable square footage of Zellers is included in such component pursuant to the Co-Tenancy Provisions of the respective Lease. Whether Target occupies a Zellers Premises or a New Target Premises in a given Shopping Centre shall be determined by Lessor in its sole discretion.

In the event that Target becomes a Suitable Replacement for Zellers by occupying the New Target Premises, the occupation of the Zellers Premises or a replacement tenant for Zellers in the Zellers Premises will no longer be a requirement of the Co-Tenancy Provision. For greater certainty, Lessor will be under no further obligation under the Co-Tenancy Provision in connection with the occupation of the Zellers Premises in such event.

If Lessor anticipates that Target will replace Zellers (either in the Zellers Premises or the New Target Premises) and Lessee becomes entitled to the Co-Tenancy Remedies under either Paragraph 2 or Paragraph 3 herein, and if it is later determined that Target will not in fact replace Zellers, then Lessee will be entitled to the Co-Tenancy Remedies, retroactively, for the period commencing at the end of the relevant "Grace Period" provided in the Lease to the day immediately before Lessee is entitled to the Co-Tenancy Remedies under the terms of this Amendment.

2. Target Store Renovation in the Zellers Premises. In the event that Target requires renovations to be conducted before opening and operating in the Zellers Premises, Zellers will not be deemed to be closed for purposes of triggering a co-tenancy failure (whether a named co-tenant failure or an aggregate leasable square footage co-tenancy requirement failure) and no remedies provided by the Co-Tenancy Provisions in the event of a violation or failure of the Co-Tenancy Provisions will be available to Lessee unless (i) Zellers has ceased operations in the Zeller's Premises for at least nine (9) months, (ii) Target is not open and operating in substantially all of the Zellers Premises within such nine (9) month period and (iii) the sales test set out in Paragraph 4 herein has been satisfied (the "Sales Test"), (collectively the "Target Requirements"). If the Target Requirements occur, Lessee may immediately thereafter exercise any rights and remedies available under the Co-Tenancy Provisions (by way of example, any rent reduction or termination right, if any) (the "Co-Tenancy Remedies"). To be clear, the nine (9) month period described above shall be in lieu of, and not in addition to, any waiting period or other "Grace Period"

set out in the Co-Tenancy Provisions in the Leases, or any other time period intended to toll the Co-Tenancy Remedies.

3. New Target Premises In the event that Target requires construction or renovations to be conducted before opening and operating in the New Target Premises, Zellers will not be deemed to be closed for purposes of triggering a co-tenancy failure (whether a named co-tenant failure or an aggregate leasable square footage requirement failure) and no remedies provided by the Co-Tenancy Provisions in the event of a violation or failure of the Co-Tenancy Provisions will be available to Lessee unless (i) Zellers has ceased operations in the Zeller's Premises for at least twelve (12) months, (ii) Target is not open and operating in substantially all of the New Target Premises within such twelve (12) month period and (iii) the Sales Test has been satisfied, (collectively the "New Target Requirements"). If the New Target Requirements occur, Lessee may immediately thereafter exercise the Co-Tenancy Remedies. To be clear, the twelve (12) month period described above shall be in lieu of, and not in addition to, any waiting period or other "Grace Period" set out in the Co-Tenancy Provisions in the Leases, or any other time period intended to toll the Co-Tenancy Remedies.

For greater certainty, in the event that Target becomes a Suitable Replacement for Zellers by occupying the New Target Premises, the occupation of the Zellers Premises or a replacement for Zellers in the Zellers Premises will no longer be a requirement of the Co-Tenancy Provision. For greater certainty, Lessor will be under no further obligation under the Co-Tenancy Provision in connection with the occupation of the Zellers Premises.

4. Sales Test In the instance where the sole event causing the initiation of the Co-Tenancy Remedies under a given Lease is the occurrence of both items (i) and (ii) of either Paragraph 2 or Paragraph 3 above, then, notwithstanding anything to the contrary, such Co-Tenancy Remedies shall not apply unless Lessee's gross sales from the subject premises for any consecutive thirty (30) day period calculated from the day immediately following the nine (9) month period or twelve (12) month period, as the case may be, (each such period being referred to herein as the "Measuring Period"), are ninety-five percent (95%) or less than Lessee's sales from such premises during the same thirty (30) day period in the year immediately preceding the Measuring Period. Lessee's sales shall be evidenced by a financial statement provided to Lessor, and reasonably satisfactory to Lessor, and certified as accurate by a financial officer or other authorized representative of Lessee and calculated pursuant to Lessee's normal accounting standards and definitions. In order for Lessee to satisfy the foregoing Sales Test, Lessee will need to have operated in the subject premises during the Measuring Period in a manner materially the same as, and at least during the same days and hours as, Lessee operated during the subject months of the year preceding the Measuring Period.

5. No New Co-Tenancy Requirements Nothing contained in this Amendment shall create any co-tenancy requirements in addition to those existing in the Leases as of the date of this Amendment.

6. Consent Each of Lessor and Lessee represents and warrants to the other that no consents of third parties are necessary for the execution and performance of this Amendment.

7. Representative Capacity Each person executing this Amendment in a representative capacity warrants and represents that he/she is empowered and authorized to do so.

8. No Waiver of Claims The parties agree that except for the terms and conditions set forth in this Amendment, this Amendment shall not alter, waive or modify any rights, remedies or claims that Lessor or Lessee now has or may hereafter have under or arising out of the Leases whether known or unknown and whether relating to periods of time before or after the date of this Amendment, including, without limitation, any rights, remedies or claims of Lessor or Lessee based in whole or in part on a default by the other party of its obligations under the Leases, or the non-satisfaction or failure of any requirement or condition under the Leases.

9. Counterparts To facilitate execution, this Amendment may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto hereby covenant and agree that, for purposes of facilitating the execution of this Amendment, and all executed counterparts of this Amendment shall be deemed to be originals, but all such counterparts taken together or collectively, as the case may be, shall constitute one and the same agreement.

10. Miscellaneous Time is of the essence of this Amendment. This Amendment shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, successors and assigns (as the case may be) of the Parties hereto to the same extent as binding upon the Parties hereto. In the event of conflict or inconsistency between the provisions of this Amendment and any provisions of the Leases, the provisions of this Amendment shall govern. Except as set forth in this Amendment, all of the terms and conditions of the Leases shall continue in full force and effect throughout the term of the Leases.

11. Entire Agreement The terms and provisions set forth in this Amendment constitute the entire agreement and understanding between Lessor and Lessee with respect to the specific subject matter addressed herein, and are hereby deemed to supersede all prior agreements and understandings (including, without limitation,

SOUTHGATE CENTRE- GAP



ARTICLE 5.00 USE OF PREMISES

5.01 Use and Business Name The Premises shall be used primarily for the sale of wearing apparel and related accessories, including, at Tenant's option, footwear provided the sale of footwear is not its principal use. The Premises may also be used for the sale of luggage; umbrellas; sunglasses; watches; pins; infants', toddlers' and/or children's items such as baby strollers, stuffed animals, toys and games and furniture; cosmetics and other personal care items; domestic products, including, without limitation, candles, sundries, kitchenware, bedding, bath items, furniture and accents for the home; and pre-packaged foods and candies. In addition, up to 10% of the Premises may be used for any other lawful retail purpose, selling such merchandise or offering such services as are found in a majority of Tenant's other stores in Canada operating under the same trade name as is used by Tenant at the Premises, with the prior approval of Landlord. Any permitted merchandise may be sold through the use of vending machines, (limited to 50 square feet of the total selling area and which will not block the store opening) or block any view of the Premises from outside the Premises, situated in the Premises which sales will be included in the determination of Gross Revenue. Notwithstanding the foregoing, Tenant may sell from the Premises ready-to-eat foods and non-alcoholic beverages (which will be limited to 500 square feet of the total selling area of the Premises) which are sold in a majority of Tenant's other stores in Eastern Canada operating under the same trade name as is used by Tenant at the Premises. The business of Tenant in the Premises shall be carried on under the name and style of "GAP AND/OR GAP KIDS" or such other name as is used by at least six (6) stores in all of Canada, including no less than 4 of Tenant's stores in Eastern Canada operated by Tenant, and under no other name and style unless approved by Landlord in writing. Tenant will not use nor permit the whole or any part of the Premises to be used for or in respect to or in connection with the sale or distribution of any food or food product, unless specifically agreed to by Landlord, or unless permitted under the terms of this Article 5.01.

"Eastern Canada" means: Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island

5.01.1 Landlord's Warranty as to Use. Landlord represents and warrants to Tenant that as at the date of execution of this Lease there are no exclusive rights granted to other tenants of the Project which would conflict with or inhibit the conduct of Tenant's permitted use set out above or any part thereof and covenants and agrees not to grant after the date of execution of this Lease an exclusive right to any tenant which would be violated by the operation of the business permitted under Article 5.01.

5.02 Hours of Business During the Term of this Lease, Tenant will conduct its business in the Premises on such days and during such hours as is required, from time to time, by regulation of Landlord unless prevented from so doing by properly constituted authority.

In the event Tenant fails to conduct its business in accordance with this Article 5.02 then Landlord will have the right, without prejudice to any other rights which it may have under this Lease or at law, to obtain an injunction requiring Tenant to comply with the provisions of this Article 5.02.

5.02.1 CO-TENANCY

(a) **Operating Requirements:** For the purpose of this Article "Operating Requirements" shall mean those stores representing the following minimum co-tenancy conditions are open for business and operating during the normal business hours and days of the Project, as designated by Landlord from time to time: (i) The Bay and Sears or their respective successors and assigns (or a Suitable Replacement Tenant(s), as defined herein) (collectively and individually, the "Department Stores") and; (ii) at least seventy-five percent (75%) by number and area of the in-line retail premises including, without limitation, banks, post offices and offices located in CRU premises that cater to walk-in trade (such as dentists, tax preparation offices, optometrists, weight-loss clinic, etc.), provided that the leasable area of such tenants shall not exceed five percent (5%) of the gross leasable area of the Project having frontage on the mall plus stores occupying at least seventy-five percent (75%) of the gross leasable area of the Project (excluding the Major Tenants and not counting the Premises toward meeting the said seventy-five percent (75%) requirement (the "CRU Tenants").



“Suitable Replacement” shall mean a single department store occupying the entire space formerly occupied by The Bay or Sears, as the case may be (as distinguished from several occupants in such space which has been subdivided and/or sublet for such purpose), and which carries a merchandise assortment, in terms of breadth of selection and quality of said merchandise, which is equal to or better than that carried by The Bay or Sears. For clarity, it is agreed that large single purpose stores such as (for example and not by way of limitation) furniture stores, toy stores or sporting goods stores, shall not be considered “department stores” or “Suitable Replacements”: regardless of such store’s size and trade name and whether or not they carry merchandise of the same or better quality than was carried in one of the departments of The Bay or Sears department stores.

Notwithstanding the foregoing with respect to Sears only, a “Suitable Replacement” shall also include a combination of not more than three (3) high quality “big box” retailing tenants which are consistent with the standards to which the Project is to be maintained pursuant to the terms of this Lease, one of which will have an area of 30,000 square feet or more and the second of which will have an area of 25,000 square feet or more and the third of which must occupy at least 15,000 square feet of space such as, but not limited to, Chapters, Pacific Linen, Business Depot, Sport-Chek, Toys “R” Us, Future Shop or Winners, and which together in the aggregate occupy substantially all of the non-operating department store premises:

- (b) Tenant’s Right to Close: If such Operating Requirements are not met any time in the case of the CRU Tenants for a period of three (3) consecutive months, (or in the case of Department Stores for six (6) consecutive months), (the “Grace Period”) then upon expiry of the Grace Period, Tenant may from time to time at its option either:
- (i) close the Premises for business and during such period of closure, Tenant shall pay the Annual Rent but no other rent or additional rent or charges otherwise payable under this Lease and will not be required to perform any other obligations under this Lease except those as are applicable to vacant premises; or
 - (ii) remain open for business but pay monthly, as alternative rent (the “Alternative Rent”), during the period that the Operating Requirements are not being met, in lieu of Annual Rent, Percentage Rent and additional rent, fifty percent (50%) of the Tenant’s Annual Rent for the first three (3) months after the Grace Period and twenty-five percent (25%) of Tenant’s monthly Annual Rent thereafter until such conditions are met, plus, in both cases, metered utilities supplied to the Premises and billed directly to Tenant (if any).

Upon the date that the Operating Requirements are once again met, Tenant shall, in the case where Tenant had made the election under (i) above, re-open the Premises for business, and in the case where Tenant had made the election under (ii) above, cease the payment of the Alternative Rent, and in the case of either (i) or (ii) above, resume (where the same had been otherwise suspended) the payment of Annual Rent, Percentage Rent (calculated in the manner set forth in this Lease), the Occupancy Costs, and any other additional rents and charges due under this Lease accruing from and after the date that the Operating Requirements were once again met. For the purposes of this Article, the Operating Requirements shall be deemed to have been “met”, in the case of the Department Stores upon opening thereof, and in the case of the CRU Tenants when they have been open and operating for a continuous period of at least forty-five (45) days.

- (c) Tenant’s Right to Terminate: If the Operating Requirements fail to be met for a period of six (6) consecutive months in the case of the CRU Tenants (or in the case of Department Stores, twelve (12) consecutive months) then Tenant shall have the continuing right thereafter and prior to the Operating Requirements once again being met, to elect, by giving thirty (30) days’ notice in writing to Landlord, to cancel and terminate this Lease. Once such thirty (30) day notice is given, the validity and effectiveness of Tenant’s cancellation shall not be affected or nullified by the fact that



the Operating Requirements are again met during such thirty (30) day period unless Tenant, in its sole discretion, elects to revoke its cancellation notice and re-open.

- (d) Landlord's Right to Terminate: If the Premises have been closed for a period of at least twelve (12) consecutive months, pursuant to Tenant's election under subclause (b) (i) above to close the Premises, then Landlord shall have the continuing right thereafter, prior to the Tenant either exercising its right to terminate the Lease pursuant to clause (c) above, or re-opening the Premises for business and paying Annual Rent, Percentage Rent, Occupancy Costs and any other additional rents and charges payable under the Lease, to terminate this Lease by the giving of sixty (60) days' notice in writing to Tenant.

During the first thirty (30) days of such sixty (60) day notice period, Tenant upon written notice to Landlord given within such thirty (30) day period, may elect (herein called the "Option to Reinstate") to re-open the Premises for business and shall thereafter re-open the Premises and shall pay to Landlord effective from the earlier of the date of re-opening or the last day of the sixty (60) day notice period, all Annual Rent, Percentage Rent, Occupancy Costs and any other additional rents and charges payable pursuant to the terms of this Lease. Should Tenant exercise the Option to Reinstate, and in fact re-open the Premises on or before the expiry of the sixty (60) day period after Landlord's notice of termination, then Landlord's notice of termination shall be null and void. If Tenant exercises the Option to Reinstate, then Tenant's remedies set out in clauses (b) and (c) above shall not apply for a period of nine (9) months after Tenant re-opens the Premises pursuant to the Option to Reinstate whether or not the Operating Requirements are met during such period.

- (e) Notwithstanding anything contained herein and whether or not the requirements of the preceding paragraphs are being met, in no event may the required Project days or hours as determined by Landlord be such as to require Tenant:

- (A) (i) to open later than 10:00 a.m. Monday through Saturday, or
 (ii) to remain open later than 10:00 p.m. Monday through Friday, 6:00 p.m. on Saturdays or 5:00 p.m. on Sundays, or
 (iii) to close earlier than 6:00 p.m. Monday through Saturday; or
- (B) To be open Easter Sunday, Thanksgiving Day, Christmas Day or New Years Day; or
- (C) To be open when to do so would violate any law, criminal or civil, or subject Tenant or its employees to fine or penalty, whether criminal or civil in nature.

Tenant agrees that it will remain open during those extended hours established by Landlord during the Christmas season and such extended hours as a result of occasional midnight madness sales, provided the Operating Requirements are met.

- 5.03 Continuous Occupancy Tenant acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to neighbouring tenants and to Landlord in the renting of space in the Project. Tenant therefore covenants and agrees that subject to Article 5.02 throughout the Term it will occupy the entire Premises, comply strictly with the provisions of Article 5.02 and not vacate or abandon the Premises at any time during the Term. Tenant acknowledges that Landlord is executing this Lease in reliance thereupon and that the same is a material element inducing Landlord to execute this Lease. Tenant further agrees that if it vacates or abandons the Premises or fails to so conduct its business therein, or uses or permits or suffers the use of the Premises for any purpose not specifically herein authorized and allowed, Tenant will be in breach of Tenant's obligations under this Lease, and then, without constituting a waiver of Tenant's obligations or limiting Landlord's remedies under this Lease, all Rent reserved in this Lease for the next ensuing three (3) months will immediately become due and payable to Landlord unless guaranteed to the satisfaction of Landlord. Landlord will have the right, without prejudice to any other

NORTHGATE SHOPPING CENTRE- GAP

or earlier than 12:00 noon on Sunday (if Sundays are Designated Times);

(2) later than 10:00 p.m. Monday through Saturday or 6:00 p.m. on Sunday (if Sundays are Designated Times);

(3) at all if Tenant would thus be required to be open for business less than the Minimum Times or less than five hours on Sunday (if Sundays are Designated Times);

(4) during the making of repairs to or remodeling of the Premises or during periods when Tenant is taking inventory;

(5) on Easter Sunday, Christmas Day or New Years Day; or

(6) when to do so would violate any Legal Requirement, criminal or civil, or subject Tenant or its employees to a fine or penalty, whether criminal or civil in nature.

(C) Tenant shall have the right, but not the obligation, to open for business on days and for hours in excess of Designated Times (or, in the absence thereof, Minimum Times), provided that Tenant shall pay its proportionate share (along with any other tenants open during such excess hours) of the additional costs related to the extra hours of operation such as electrical charges.

12.5 Tenant's Exclusive Use Rights

Provided Tenant is not in a material Event of Default, Landlord shall not lease or permit any space within the Shopping Centre other than the Premises, or a Department Store as defined in this Lease herein, to be used for the sale, rental or display of children's apparel in excess of 5,000 square feet, or for the primary purpose of the sale, rental or display of children's apparel being ages (0-12) ("Tenant's Exclusive"). If any tenant or occupant of the Shopping Centre violates Tenant's Exclusive, then Tenant shall have all remedies available at law or in equity, including injunctive relief. Landlord shall indemnify, defend and hold Tenant harmless from and against any and all Indemnified Costs (as defined in Section 18.1) relating to any violation of Tenant's Exclusive. Tenant agrees and acknowledges that the above Tenant's Exclusive shall not apply to the premises leased by Wal-Mart or Sears or their respective sub-tenants, successors, assigns, or licensees.

ARTICLE 13: CO-TENANCY REQUIREMENTS

13.3 Co-Tenancy Requirements

(A) The "Co-Tenancy Requirements" are satisfied only when the Key Stores plus retail stores (other than the Premises and the Key Stores) having an aggregate of eighty percent (80%) or more of the total GLA of the Shopping Centre (other than the Premises and the Key Stores) are also open for business during the days and hours of the Shopping Centre designated by Landlord ("Designated Times"), or, in the absence of Designated Times, from 10:00 a.m. to 6:00 p.m., Mondays through Saturdays ("Minimum Times"). A "Co-Tenancy Failure" occurs when the Co-Tenancy Requirements are not satisfied.

(B) A store shall not be considered open for business if such store is open and operating (1) less than the Designated Times (or, in the absence thereof, Minimum Times), or (2) in less than substantially all of its space. If the Co-Tenancy Requirements are not being met because a store is closed by reason of casualty, expropriation or the making of repairs or alterations (collectively, an "Excused Closure"), such Excused Closure shall not give rise to a Co-Tenancy Failure unless such Excused Closure continues for more than a period of sixty (60) days. Any waiting period before which Tenant may exercise the Co-Tenancy Remedies shall be deemed to run concurrently with such 60-day grace period for an Excused Closure. Landlord shall promptly notify Tenant of any Co-Tenancy Failure.

(C) Landlord shall deliver to Tenant, upon Tenant's request from time to time, a notice certifying the then current tradename and GLA of each tenant of the Shopping Centre. Tenant or its designated agent shall have the right at its own cost and expense to audit and/or inspect Landlord's records with respect to the Co-Tenancy Requirements. Tenant shall give Landlord not less than thirty (30) days' written notice of its intention to conduct any such audit. If such audit discloses a violation of the Co-Tenancy Requirements and Tenant elects to pay Alternate Rent for

such period of violation in accordance with Section 13.4, Landlord shall promptly rebate to Tenant the overcharge or, at Tenant's election, Tenant may offset the amount of the overcharge against Rent becoming due.

(D) Key Stores. The Key Stores are the retailers operating under the following tradenames and occupying the approximate floor area indicated:

<u>Tradename</u>	<u>Approximate Floor Area</u>
Wal-Mart	127,500 sf
Sears	120,000 sf

13.4 Remedies for Co-Tenancy Failure

(A) Right to Close Remedy. If a Co-Tenancy Failure for a continuous period of ninety (90) days, then, effective immediately, Tenant may close the Premises for business and, during such period of closure, Tenant shall pay Minimum Rent in lieu of all other Rent and perform all of such other obligations as are applicable to a vacant premises. This remedy is referred to herein as the "Right to Close Remedy."

(B) Alternate Rent Remedy. If a Co-Tenancy Failure occurs for a continuous period of ninety (90) days, then, effective immediately, Tenant may remain open for business and pay monthly, as "Alternate Rent" during the period of the Co-Tenancy Failure, in lieu of Minimum Rent, Percentage Rent and Other Charges, an amount equal to the lesser of: (a) four percent (4%) of all Gross Sales made in the Premises for each month (or portion thereof) during such period, or (b) the amount of Minimum Rent then applicable. Each such payment of the Alternate Rent shall be made within thirty (30) days after the end of each month (except that utilities costs shall be paid when due, if other than monthly) and shall be accompanied by Tenant's Statement of Gross Sales made during the previous month. This remedy is referred to herein as the "Alternate Rent Remedy."

(C) Termination Remedy. If the Co-Tenancy Requirements are not met for a continuous period of six (6) months, then, in addition to the Right to Close Remedy and the Alternate Rent Remedy, Tenant shall have the continuing right thereafter and while such condition continues, to terminate this Lease by written notice to Landlord, which termination shall be effective as of a date which shall be specified in Tenant's notice of termination, provided that such date shall be no less than thirty (30) days following receipt by Landlord of such notice. This remedy is referred to herein as the "Termination Remedy." Once such Termination Remedy has been exercised by Tenant, Tenant's termination shall not be affected or nullified by the fact that the Co-Tenancy Requirements have once again been met prior to the effective date of the termination unless Tenant, in its sole discretion, elects to revoke its termination notice and reinstate this Lease.

(D) Tenant may elect the Right to Close Remedy or the Alternate Rent Remedy alternately, from time to time. Upon the date (the "Resumption Date") that the Co-Tenancy Requirements are once again met for a continuous period of sixty (60) days with occupants under leases with terms of at least three (3) years, Tenant shall, in the case where Tenant had elected the Right to Close Remedy, reopen the Premises for business, and, in the case where Tenant had elected the Alternate Rent Remedy, cease the payment of the Alternate Rent, and in the case of either remedy resume (where the same had been otherwise suspended) the payment of regular Rent computed in the manner set forth in this Lease.

(E) The Right to Close Remedy, the Alternate Rent Remedy and the Termination Remedy are collectively referred to herein as "Co-Tenancy Requirement Remedies." A Co-Tenancy Failure shall not be cured until Landlord provides Tenant reasonable written evidence that each substitution tenant (1) has opened for business and (2) has a binding lease or operating agreement with a term of three (3) years or longer (excluding any portion of the term subject to cancellation and excluding any option term) and with requirements to open and operate during the Designated Times (or, in the absence thereof, Minimum Times).

13.5 Substitution

(A) If Landlord desires to substitute a retailer for one of the Key Stores for purposes of satisfying the Co-Tenancy Requirements, such substitute retailer shall meet the requirements set forth in this Section 13.5 for Department Store (as hereinafter defined):

The term "Department Store" shall be defined as follows:

(A) **Basic Requirements.** A Department Store shall mean a retail store: (i) occupying not less than 100,000 square feet within a single set of demising walls and operating a business therein under one tradename; and (ii) conducting a business which shall be multi-departmented, selling a variety of classes of merchandise which, subject to Paragraph (B) below, must include: apparel; apparel accessories; cosmetics and perfume; jewelry; plus at least two of the following categories - housewares; domestics and linens; electronics; home furnishings; appliances; furniture; floor coverings.

(B) **Specifically Approved Department Stores.** Provided that the requirements under Paragraph (A) (i) have been satisfied, Sears, Costco, Zeller's and Home Depot, The Bay and Canadian Tire shall be considered a Department Store regardless of whether (x) the merchandise in such store is broader or narrower than the classes of merchandise listed in Paragraph (A)(ii) above, or (y) the store would otherwise be excluded under Paragraph (C) below:

(C) **Specifically Excluded Types of Stores.** Except as herein provided, the following types of stores shall not be considered a Department Store whether or not they meet the requirements of Paragraph A above;

1. "super" drug stores such as, for example and without limitation, Longs or Payless;
2. home improvement centers such as, for example and without limitation Builder's Emporium;
3. a catalog store;
4. an off-price or discount store.

(D) **Suitable Replacement .** Notwithstanding anything to the contrary contained herein, and for purposes of this Article 13, the Landlord shall have the right to replace Wal Mart or its acceptable replacement (and not Sears) with a "Suitable Replacement" as hereinafter defined: the term "Suitable Replacement" means: any number of tenants which occupy substantially all of the premises vacated by the departing Key Store (i.e Wal Mart), or Department Store provided that each such replacement tenant occupies at least 20,000 square feet. In such event the Co-Tenancy Requirements for purposes of this Article 13, shall be deemed satisfied only when Sears (or its acceptable replacement) plus retail stores (other than the Premises and Sears, or its acceptable replacement) having an aggregate of eighty-five percent (85%) or more of the total GLA of the Shopping Centre (other than the Premises and Sears, or its acceptable replacement) are also open for business during Designated Times, or, in the absence of Designated Times, during Minimum Times.

ARTICLE 14: MAINTENANCE

14.1 Landlord's Repairs

(A) Except for repairs specifically required herein to be made by Tenant and subject to Articles 19 and 20, Landlord shall at all times, at its sole cost and expense (subject to Article 10), keep, replace and maintain in good condition, order and repair:

- (1) all portions of the Building other than the Premises;
- (2) all portions of the roof, roof structures, supports and walkpads (including Tenant's interior ceiling damaged from leaking), and all structural portions of the Premises, including but not limited to, the foundation and structural supports, exterior and load bearing walls, floors (but not floor coverings), gutters, downspouts and exterior doors to Common Areas;
- (3) all other portions of the Premises which constitute Landlord's Work for a period of one (1) year from the date of completion thereof or for the period of the warranties of Landlord's contractors, whichever is longer;
- (4) all utilities to the point of entry to the Premises;

COQUITLAM CENTRE- GAP

- (vii) the Tenant shall have the right, but not the obligation, to open for business on days and for hours in excess of Designated Times.

ARTICLE 13 CO-TENANCY REQUIREMENTS

13.1 Intentionally Deleted

13.2 Intentionally Deleted

13.3 Co-Tenancy Requirements

(A) The "Co-Tenancy Requirements" are satisfied only when the Key Stores plus retail stores (other than the Premises and the Key Stores) having an aggregate of ninety percent (90%) or more of the total GLA of the Shopping Centre (other than the Premises and the Key Stores) are also open for business during the days and hours of the Shopping Centre designated by Landlord ("Designated Times"), or, in the absence of Designated Times, from 10:00 a.m. to 5:30 p.m., Mondays through Saturdays ("Minimum Times"). A "Co-Tenancy Failure" occurs when the Co-Tenancy Requirements are not satisfied.

(B) A store shall not be considered open for business if such store is open and operating (1) less than the Designated Times (or, in the absence thereof, Minimum Times), or (2) in less than substantially all of its space. If the Co-Tenancy Requirements are not being met because a store is closed by reason of Force Majeure (as defined in Section 27.4), damage or destruction pursuant to Article 19, reasonable temporary closures for the purposes of repair and/or renovation, or, only with respect to the Key Stores, reasonable temporary closures for the purpose of re-merchandising (collectively, an "Excused Closure"), such Excused Closure shall not give rise to a Co-Tenancy Failure unless such Excused Closure continues for more than a period of sixty (60) days. Any waiting period before which Tenant may exercise the Co-Tenancy Remedies shall be deemed to run concurrently with such 60-day grace period for an Excused Closure, unless such Excused Closure is by reason of Force Majeure in which case the waiting period shall commence to run upon the expiry of such 60-day maximum grace period for Force Majeure. Landlord shall promptly notify Tenant of any Co-Tenancy Failure.

(C) Landlord shall deliver to Tenant, upon Tenant's written request from time to time, a notice certifying the then current tradename and GLA of each tenant of the Shopping Centre. Tenant or its designated agent shall have the right at its own cost and expense to audit and/or inspect Landlord's records with respect to the Co-Tenancy Requirements. Tenant shall give Landlord not less than thirty (30) days' written notice of its intention to conduct any such audit. If such audit discloses a violation of the Co-Tenancy Requirements and Tenant elects to pay Alternate Rent for such period of violation in accordance with Section 13.4, Landlord shall promptly rebate to Tenant the overcharge or, at Tenant's election, Tenant may offset the amount of the overcharge against Rent becoming due.

(D) Key Stores. The Key Stores are the retailers operating under the following tradenames and occupying the approximate floor area indicated:

Tradename	Approximate Floor Area
The Bay	120,000 sf
Sears	151,000 sf
Zellers	115,000 sf

13.4 Remedies for Co-Tenancy Failure

(A) Alternate Rent Remedy. If a Co-Tenancy Failure occurs, then, effective immediately, so long as Tenant is open for business Tenant may pay monthly, as "Alternate Rent" during the period of the Co-Tenancy Failure, in lieu of Minimum Rent, Percentage Rent and Other Charges the lower of:

- (1) 2% of Tenant's monthly Gross Sales; or

(2) Tenant's then-applicable Minimum Rent.

This remedy is referred to herein as the "Alternate Rent Remedy".

(B) Closure Remedy. If a Co-Tenancy Failure occurs then, effective immediately, Tenant may close its business and pay Minimum Rent only in lieu of Minimum Rent, Percentage Rent and Other Charges. This remedy is referred to herein as the "Closure Remedy".

(C) Termination Remedy. If the Co-Tenancy Requirements are not met for a continuous period of three (3), then, in addition to the Alternate Rent Remedy, Tenant shall have the continuing right thereafter and while such condition continues, to terminate this Lease by written notice to Landlord, which termination shall be effective as of a date which shall be specified in Tenant's notice of termination, provided that such date shall be no less than thirty (30) days following receipt by Landlord of such notice. This remedy is referred to herein as the "Termination Remedy". Once such Termination Remedy has been exercised by Tenant, Tenant's termination shall not be affected or nullified by the fact that the Co-Tenancy Requirements have once again been met prior to the effective date of the termination unless Tenant, in its sole discretion, elects to revoke its termination notice and reinstate this Lease.

(D) If Tenant has elected the Alternate Rent Remedy or the Closure Remedy, upon the date (the "Resumption Date") that the Co-Tenancy Requirements are once again met for a continuous period of sixty (60) days with occupants under leases or operating agreements with terms of at least three (3) years, Tenant shall resume (where the same had been otherwise suspended) the payment of regular Rent computed in the manner set forth in this Lease.

(E) The Alternate Rent Remedy, Closure Remedy and the Termination Remedy are collectively referred to herein as "Co-Tenancy Requirement Remedies". A Co-Tenancy Failure shall not be cured until Landlord provides Tenant reasonable written evidence that each substitution tenant (1) has opened for business and (2) has a binding lease or operating agreement with a term of three (3) years or longer (excluding any portion of the term subject to cancellation and excluding any option term) and with requirements to open and operate during the Designated Times (or, in the absence thereof, Minimum Times).

13.5 Substitution

(A) If Landlord desires to substitute a retailer for one of the Key Stores for the purposes of satisfying the Co-Tenancy Requirements, Landlord shall submit the name of such substitute retailer to Tenant for its prior written approval. The approval of Tenant shall not be unreasonably withheld if:

- (1) the use to be conducted by such substitute retailer is substantially the same as that conducted by the Key Store it is intended to replace;
- (2) the merchandise sold by such substitute retailer is of equal or better quality and is offered at similar price points as the Key Store it is intended to replace; and
- (3) such substitute retailer will operate a retail business in at least the square footage outlined in section 13.5(C).

Notwithstanding the foregoing, Landlord may substitute a retailer for one of the Key Stores for purposes of satisfying the Co-Tenancy Requirements without the Tenant's consent if:

- (i) the substitute retailer is one of the national or regional retailers identified on Exhibit G (the "Substitute Key Store List");
- (ii) such substitute retailer operates a retail business in at least the square footage outlined in section 13.5(C); and
- (iii) Landlord notifies Tenant in writing (promptly following the substitution) of such substitution, including the identity of the

substitute retailer from the Substitute Key Store List and the GLA of the premises being occupied by the substitute retailer.

(B) The aforementioned right of approval of Tenant is solely for the purpose of determining whether such proposed replacement retailer qualifies as a Key Store for purposes of determining Tenant's rights under this Lease and is not intended to impair or restrict the freedom of Landlord to enter into leases or operating agreements with any party with whom Landlord desires in the exercise of its sole and absolute discretion.

(C) Furthermore, so long as at least one Key Store continues to operate as a department store in substantially all of its premises, the second floor of one other Key Store may be converted to non-retail use and the ground floor of that same Key Store may be retenanted with a combination of retail tenants occupying in the aggregate at least sixty thousand (60,000) square feet of GLA, at least two (2) of whom each occupy at least twenty thousand (20,000) square feet of GLA and are tenants of high calibre in terms of their reputation and the type, quality and price points of their merchandise, such as by way of example, Future Shop, Chapters and Pottery Barn. Any part or parts of the ground floor GLA previously occupied by the Key Stores which are not replaced by tenants occupying at least twenty thousand (20,000) square feet of GLA shall be added to and included in the GLA of the Shopping Centre for purposes of satisfying the Co-Tenancy Requirements with respect to the GLA of the Shopping Centre as set out in section 13.3(A). Any of the substitutions described above in this Section 13.5 shall satisfy the Co-Tenancy Requirements with respect to the Key Stores.

ARTICLE 14 MAINTENANCE

14.1 Landlord's Repairs

(A) Except for repairs specifically required herein to be made by Tenant and subject to Articles 19 and 20, Landlord shall at all times, at its sole cost and expense but subject to recoveries by Landlord of the Tenant's CAM Charge in accordance with the applicable provisions of this Lease, keep, replace and maintain in good condition, order and repair, subject to ordinary wear and tear:

- (1) all portions of the Building other than the Premises;
- (2) all portions of the roof, roof structures, supports and walkpads (including Tenant's interior ceiling damaged from leaking), and all structural portions of the Premises, including but not limited to, the foundation and structural supports, exterior and load bearing walls, floors (but not floor coverings), gutters, downspouts and exterior doors;
- (3) all other portions of the Premises which constitute Landlord's Work for a period of one (1) year from the date of completion thereof or for the period of the warranties of Landlord's contractors, whichever is longer;
- (4) all utilities to the point of entry to the Premises;
- (5) all driveways, sidewalks, parking areas and all other Common Areas of the Property, including the removal of snow and ice therefrom;
- (6) latent defects in the Premises (other than the Tenant's Work) as well as any damage to the Premises caused by the willful act or the negligence of Landlord or Landlord's Agents.

(B) The Construction Period shall be extended by one day for each day (or portion thereof) of delay in the performance of Tenant's Work caused by a failure to repair items for which Landlord is responsible.

COQUITLAM CENTRE- OLD NAVY

12.5 Tenant's Exclusive Use Rights

Except for the Premises and except for premises which are subject to the existing Restrictions, Landlord shall not lease or permit any space within the Shopping Centre to be used for the sale or display of infants', babies' or children's apparel, except for incidental sales in premises of not more than 8,000 square feet and excluding the Key Stores ("Tenant's Exclusive"). If any tenant or occupant of the Shopping Centre violates Tenant's Exclusive, then Tenant shall have all remedies available at law or in equity, including injunctive relief. Landlord shall indemnify, defend and hold Tenant harmless from and against any and all Indemnified Costs (as defined in Section 18.1) relating to any violation of Tenant's Exclusive.

ARTICLE 13 CO-TENANCY REQUIREMENTS

13.1 INTENTIONALLY DELETED

13.2 Opening Requirements

(A) Notwithstanding that the Construction Period may have expired, Tenant shall not be required to open the Premises for business, nor shall the Commencement Date occur or the obligation to pay Rent begin, until: (1) Zellers, plus (2) stores (other than the Premises and Zellers) having an aggregate of seventy percent (70%) or more of the GLA of the Shopping Centre Expansion Area (other than the Premises and Zellers) shall have opened or shall be concurrently opening for business with Tenant (the "Opening Requirements"). "Shopping Centre Expansion Area" means the area of the Shopping Centre shown hatched on the sketch attached as Exhibit A-6.

(B) The Key Stores are the retailers operating under the following trade names and occupying the approximate floor area indicated:

Tradename	Floor Area
The Bay	120,000 sf
Sears	151,000 sf
Zellers	115,000 sf

(C) If Tenant elects in its sole discretion to open for business prior to the fulfillment of the Opening Requirements, then the Commencement Date shall be deemed to have occurred on the date Tenant opens the Premises for business (provided that Landlord shall continue to be obligated to satisfy the Delivery of Possession requirements). During the period from the Commencement Date until the fulfillment of the Opening Requirements (the "Interim Period"), Tenant shall pay to Landlord as a substitute rent (the "Interim Rent") for such Interim Period, in lieu of Minimum Rent, Percentage Rent and Other Charges, an amount equal to seventy-five percent (75%) of Minimum Rent for the first three (3) months and fifty percent (50%) of the Minimum Rent thereafter. From and after the fulfillment of the Opening Requirements, Tenant shall commence the regular payment of Rent computed in the way and manner as provided by this Lease accruing from and after the date the Opening Requirements were met, in lieu of Interim Rent.

(D) If the Opening Requirements have not been met within nine (9) months after the expiration of the Construction Period, then Tenant or Landlord shall have the continuing right thereafter but prior to the Opening Requirements being met, to terminate this Lease effective on the date stated in Tenant's or Landlord's notice of termination, which termination date shall be at least sixty (60) days after the date of delivery of the notice of termination. Once such termination right has been exercised by Tenant, Tenant's termination shall not be affected or nullified by the fact that the Opening Requirements are later met prior to the effective date of the termination unless Tenant, in its sole discretion, elects to revoke its termination notice and reinstate this Lease. If Landlord gives notice of termination, Tenant shall nevertheless have the right to nullify

the termination by electing to pay Rent computed in the way and manner as provided by this Lease accruing from and after the date of such Tenant election.

(E) Tenant or its designated agent shall have the right at its own cost and expense to audit and/or inspect Landlord's records with respect to the Opening Requirements. Tenant shall give Landlord not less than thirty (30) days' written notice of its intention to conduct any such audit. If such audit discloses a violation of the Opening Requirements and Tenant elects to pay Interim Rent for such period of violation in accordance with Section 13.2(C), Landlord shall rebate to Tenant the overcharge or, at Tenant's election, Tenant may offset the amount of the overcharge against Rent becoming due.

13.3 Operating Requirements

(A) Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to open the Premises for business at all nor operate unless Sears and Zellers (or any replacement retailer pursuant to Section 13.5) plus stores (other than the Premises and Sears and Zellers or their replacements) having an aggregate of eighty percent (80%) or more of the total GLA of the Shopping Centre (other than the Premises and Sears and Zellers or their replacements) are also open for business during the days and hours of the Shopping Centre designated by Landlord ("Designated Times"), or, in the absence of Designated Times, from 10:00 a.m. to 5:30 p.m., Mondays through Saturdays ("Minimum Times") (the "Operating Requirements"). A "Co-Tenancy Failure" occurs when the Operating Requirements are not satisfied.

(B) A store shall not be considered open for business if such store is open and operating (1) less than the Designated Times (or, in the absence thereof, Minimum Times), or (2) in less than substantially all of its space. If the Operating Requirements are not being met because a store is closed by reason of Force Majeure (as defined in Section 27.4), damage or destruction pursuant to Article 19, reasonable temporary closures for the purposes of repair and/or renovation, or, only with respect to the Key Stores, reasonable temporary closures for the purpose of re-merchandising (collectively, an "Excused Closure"), such Excused Closure shall not give rise to a Co-Tenancy Failure unless such Excused Closure continues for more than a period of sixty (60) days. Any waiting period before which Tenant may exercise the Operating Remedies shall be deemed to run concurrently with such 60-day grace period for an Excused Closure, unless such Excused Closure is by reason of Force Majeure in which case the waiting period shall commence to run upon the expiry of such 60-day maximum grace period for Force Majeure. Landlord shall promptly notify Tenant of any Co-Tenancy Failure.

(C) Landlord shall deliver to Tenant, upon Tenant's written request from time to time, a notice certifying the then current tradename and GLA of each tenant of the Shopping Centre. Tenant or its designated agent shall have the right at its own cost and expense to audit and/or inspect Landlord's records with respect to the Operating Requirements. Tenant shall give Landlord not less than thirty (30) days' written notice of its intention to conduct any such audit. If such audit discloses a violation of the Operating Requirements and Tenant elects to pay Alternate Rent for such period of violation in accordance with Section 13.4, Landlord shall promptly rebate to Tenant the overcharge or, at Tenant's election, Tenant may offset the amount of the overcharge against Rent becoming due.

13.4 Operating Requirement Remedies

(A) If a Co-Tenancy Failure occurs, then, effective immediately, Tenant shall have the following rights:

(1) Closure Remedy. Tenant may close its business and, during such period of closure, pay Minimum Rent only in lieu of Minimum Rent, Percentage Rent and Other Charges. This remedy is referred to herein as the "Closure Remedy."

(2) Alternate Rent Remedy. So long as Tenant is open for business, Tenant may pay monthly, as "Alternate Rent" during the period of the Co-Tenancy Failure, in lieu of Minimum Rent, Percentage Rent and Other Charges, an amount equal to seventy-five percent

(75%) of Minimum Rent for the first three (3) months and twenty-five percent (25%) of Minimum Rent thereafter. This remedy is referred to herein as the "Alternate Rent Remedy."

(B) If Tenant has elected the Closure Remedy or the Alternate Rent Remedy, upon the date (the "Resumption Date") that the Operating Requirements are once again met for a continuous period of sixty (60) days with occupants under leases or operating agreements with terms of at least three (3) years, Tenant shall, in the case where Tenant had elected the Closure Remedy, reopen the Premises for business, and, in the case where Tenant had elected the Alternate Rent Remedy, cease the payment of the Alternate Rent, and in the case of either remedy resume (where the same had been otherwise suspended) the payment of regular Rent computed in the manner set forth in this Lease.

(C) Termination Remedy. If the Operating Requirements are not met for a continuous period of six (6) months, then:

1. in addition to the Alternate Rent Remedy, Tenant shall have the continuing right thereafter and while such condition continues, to terminate this Lease by written notice to Landlord, which termination shall be effective as of a date which shall be specified in Tenant's notice of termination, provided that such date shall be no less than thirty (30) days following receipt by Landlord of such notice. This remedy is referred to herein as the "Termination Remedy." Once such Termination Remedy has been exercised by Tenant, Tenant's termination shall not be affected or nullified by the fact that the Operating Requirements have once again been met prior to the effective date of the termination unless Tenant, in its sole discretion, elects to revoke its termination notice and reinstate this Lease; and
2. Landlord shall have the continuing right thereafter while such condition continues to terminate this Lease by written notice to Tenant, which termination shall be effective as of a date which shall be specified in Landlord's notice of termination, provided that such date shall be no less than thirty (30) days following receipt by Tenant of such notice. Notwithstanding such notice, Tenant can nullify Landlord's termination by electing to pay Rent computed in the way and manner as provided by this Lease accruing from and after the date of such Tenant election.

(D) The Closure Remedy, the Alternate Rent Remedy and the Termination Remedy are collectively referred to herein as "Operating Requirement Remedies." For purposes of this Article 13, a Co-Tenancy Failure shall not be cured until Landlord provides Tenant reasonable written evidence that each substitution tenant (1) has opened for business and (2) has a binding lease or operating agreement with a term of three (3) years or longer (excluding any portion of the term subject to cancellation and excluding any option term) and with requirements to open and operate during the Designated Times (or, in the absence thereof, Minimum Times).

13.5 Substitution

(A) If Landlord desires to substitute a retailer for one of the Key Stores for the purposes of satisfying the Operating Requirements, Landlord shall submit the name of such substitute retailer to Tenant for its prior written approval. The approval of Tenant shall not be unreasonably withheld if:

- (1) the use to be conducted by such substitute retailer is substantially the same as that conducted by the Key Store it is intended to replace;
- (2) the merchandise sold by such substitute retailer is of equal or better quality and is offered at similar price points as the Key Store it is intended to replace; and
- (3) such substitute retailer will operate a retail business in at least the square footage outlined in section 13.5(C).

Notwithstanding the foregoing, Landlord may substitute a retailer for one of the Key Stores for purposes of satisfying the Operating Requirements without the Tenant's consent if:

- (i) the substitute retailer is one of the national or regional retailers identified on Exhibit G (the "Substitute Key Store List");
- (ii) such substitute retailer operates a retail business in at least the square footage outlined in section 13.5(C); and
- (iii) Landlord notifies Tenant in writing (promptly following the substitution) of such substitution, including the identity of the substitute retailer from the Substitute Key Store List and the GLA of the premises being occupied by the substitute retailer.

(B) The aforementioned right of approval of Tenant is solely for the purpose of determining whether such proposed replacement retailer qualifies as a Key Store for purposes of determining Tenant's rights under this Lease and is not intended to impair or restrict the freedom of Landlord to enter into leases or operating agreements with any party with whom Landlord desires in the exercise of its sole and absolute discretion.

(C) Furthermore, so long as at least one Key Store continues to operate as a department store in substantially all of its premises, the second floor of one other Key Store may be converted to non-retail use and the ground floor of that same Key Store may be retenanted with a combination of retail tenants occupying in the aggregate at least sixty thousand (60,000) square feet of GLA, at least two (2) of whom each occupy at least twenty thousand (20,000) square feet of GLA and are tenants of high calibre in terms of their reputation and the type, quality and price points of their merchandise, such as by way of example, Future Shop, Chapters and Pottery Barn. Any part or parts of the ground floor GLA previously occupied by the Key Stores which are not replaced by tenants occupying at least twenty thousand (20,000) square feet of GLA shall be added to and included in the GLA of the Shopping Centre for purposes of satisfying the Operating Requirements with respect to the GLA of the Shopping Centre as set out in section 13.3(A). Any of the substitutions described above in this Section 13.5 shall satisfy the Operating Requirements with respect to the Key Stores.

ARTICLE 14 MAINTENANCE

14.1 Landlord's Repairs

(A) Except for repairs specifically required herein to be made by Tenant and subject to Articles 19 and 20, Landlord shall at all times, at its sole cost and expense, keep, replace and maintain in good condition, order and repair, subject to ordinary wear and tear:

- (1) all portions of the Building other than the Premises;
- (2) all portions of the roof, roof structures, supports and walkpads (including Tenant's interior ceiling damaged from leaking), and all structural portions of the Premises, including but not limited to, the foundation and structural supports, exterior and load bearing walls, floors (but not floor coverings), gutters, downspouts and exterior doors;
- (3) all other portions of the Premises which constitute Landlord's Work for a period of one (1) year from the date of completion thereof or for the period of the warranties of Landlord's contractors, whichever is longer;
- (4) all utilities to the point of entry to the Premises;
- (5) all driveways, sidewalks, parking areas and all other Common Areas of the Property, including the removal of snow and ice therefrom;
- (6) latent defects in the Premises (other than the Tenant's Work) as well as any damage to the Premises caused by the wilful act or the negligence of Landlord or Landlord's Agents.

**SEVENOAKS SHOPPING CENTRE-
GAP**

Permitted Use (as defined in Section 12.1) specifically including the retail sale of children's apparel, Landlord covenants not to lease any premises in the Shopping Centre to any occupant other than Tenant to be used for the sale of children's apparel in a single premises having a GLA in excess of 6,000 square feet, except for incidental sales in not more than fifteen percent (15%) of the GLA of such premises ("Tenant's Exclusive"). If any tenant or occupant of the Shopping Centre violates Tenant's Exclusive, then Tenant shall have all remedies available at law or in equity, including injunctive relief. Landlord shall indemnify, defend and hold Tenant harmless from and against any and all Indemnified Costs (as defined in Section 18.1) relating to any violation of Tenant's Exclusive. Notwithstanding the foregoing, Tenant's Exclusive shall not apply to the premises or business of: (i) any department store, junior department store, drug store or variety store which is at any time conducting business in or from the Shopping Centre; or (ii) any tenants operating in the Shopping Centre as of the Commencement Date and their successors, assigns and replacements. For greater certainty, if Tenant discontinues the sale of children's apparel in the Premises, Tenant's Exclusive shall thereafter become null and void and Landlord will from then on not be bound by it.

ARTICLE 13: CO-TENANCY REQUIREMENTS

13.1 Intentionally Deleted

13.2 Intentionally Deleted

13.3 Co-Tenancy Requirements

(A) The "Co-Tenancy Requirements" are satisfied only when the Key Stores plus retail stores (other than the Premises and the Key Stores and also excluding the following stores or premises: Extra Foods; kiosks; storage areas not within leaseable premises; free-standing buildings; leaseable areas that are not at or near the level of a mall and do not have direct enclosed pedestrian access to and frontage on a mall; and mezzanine areas inside leaseable premises) having an aggregate of eighty percent (80%) or more of the total GLA of the Shopping Centre (other than the Premises and the Key Stores and also excluding the following stores or premises: Extra Foods; kiosks; storage areas not within leaseable premises; free-standing buildings; leaseable areas that are not at or near the level of a mall and do not have direct enclosed pedestrian access to and frontage on a mall; and mezzanine areas inside leaseable premises) are also open for business during the days and hours of the Shopping Centre designated by Landlord ("Designated Times"), or, in the absence of Designated Times, from 10:00 a.m. to 5:30 p.m., Mondays through Saturdays ("Minimum Times"). A "Co-Tenancy Failure" occurs when the Co-Tenancy Requirements are not satisfied.

(B) A store shall not be considered open for business if such store is open and operating (1) less than the Designated Times (or, in the absence thereof, Minimum Times), or (2) in less than substantially all of its space. If the Co-Tenancy Requirements are not being met because a store is closed by reason of Force Majeure (as defined in Section 27.4), damage or destruction pursuant to Article 19, reasonable temporary closures for the purposes of repair and/or renovation, or, only with respect to the Key Stores, reasonable temporary closures for the purpose of re-merchandising (collectively, an "Excused Closure"), such Excused Closure shall not give rise to a Co-Tenancy Failure unless such Excused Closure continues for more than a period of sixty (60) days. Any waiting period before which Tenant may exercise the Co-Tenancy Remedies shall be deemed to run concurrently with such 60-day grace period for an Excused Closure, unless such Excused Closure is by reason of Force Majeure in which case the waiting period shall commence to run upon the expiry of such 60-day maximum grace period for Force Majeure. Landlord shall promptly notify Tenant of any Co-Tenancy Failure.

(C) Landlord shall deliver to Tenant, upon Tenant's written request from time to time, a notice certifying the then current tradename and GLA of each tenant of the Shopping Centre. Tenant or its designated agent shall have the right at its own cost and expense to audit and/or inspect Landlord's records with respect to the Co-Tenancy Requirements. Tenant shall give Landlord not less than thirty (30) days' written notice of its intention to conduct any such audit. If such audit discloses a violation of the Co-Tenancy Requirements and Tenant elects to pay Alternate Rent for such period of violation in accordance with Section 13.4, Landlord shall promptly rebate to Tenant the overcharge or, at Tenant's election, Tenant may offset the amount of the overcharge against Rent becoming due.

(D) Key Stores. The Key Stores are the retailers operating under the following

42818 1 Gap/GapKids #9886/9123
Sevenoaks S/C
Abbotsford, B.C.

tradenames and occupying the approximate floor area indicated:

<u>Tradename</u>	<u>Approximate Floor Area</u>
The Bay	132,000 sf
Sears	136,000 sf

13.4 Remedies for Co-Tenancy Failure

(A) **Alternate Rent Remedy.** If a Co-Tenancy Failure occurs for the duration of a period (the "Waiting Period") of one hundred and eighty (180) consecutive days in the case of a Key Store, or ninety (90) consecutive days in the case of other premises, then, effective immediately, so long as Tenant is open for business Tenant may pay monthly, as "Alternate Rent" during the period of the Co-Tenancy Failure, in lieu of Minimum Rent, Percentage Rent and Other Charges: (i) for the first three (3) months an amount equal to fifty percent (50%) of the aggregate amount of Minimum Rent, Percentage Rent and Other Charges then applicable, and (ii) thereafter an amount equal to twenty-five percent (25%) of the aggregate amount of Minimum Rent, Percentage Rent and Other Charges then applicable. For clarity, the Annual Breakpoint or Partial Breakpoint for calculation of Percentage Rent shall be based on the entire amount of Minimum Rent then applicable as set out in Section 6.1, without regard to the aforesaid 50% and then 75% reduction in Minimum Rent for the purpose of calculating Alternate Rent. In addition to the Alternate Rent, Tenant shall remain responsible for payment of utilities consumed in the Premises which are not included in CAM Costs, and all business taxes and any other charges imposed on Tenant personally by a governmental authority. This remedy is referred to herein as the "Alternate Rent Remedy".

(B) **Termination Remedy.** If the Co-Tenancy Requirements are not met for a continuous period of twelve (12) months after expiry of a Waiting Period, then, in addition to the Alternate Rent Remedy, Tenant shall have the continuing right thereafter and while such condition continues, to terminate this Lease by written notice to Landlord, which termination shall be effective as of a date which shall be specified in Tenant's notice of termination, provided that such date shall be no less than ninety (90) days following receipt by Landlord of such notice. This remedy is referred to herein as the "Termination Remedy." Once such Termination Remedy has been exercised by Tenant, Tenant's termination shall not be affected or nullified by the fact that the Co-Tenancy Requirements have once again been met prior to the effective date of the termination unless Tenant, in its sole discretion, elects to revoke its termination notice and reinstate this Lease. If Tenant does not exercise the Termination Remedy, then upon expiry of the said twelve (12) month period Tenant shall cease the payment of Alternate Rent and resume paying regular Rent computed in the manner set forth in this Lease, without regard to the Cotenancy Requirements.

(C) If Tenant has elected the Alternate Rent Remedy, upon the date (the "Resumption Date") that the Co-Tenancy Requirements are once again met for a continuous period of sixty (60) days with occupants under leases or operating agreements with terms of at least three (3) years, Tenant shall resume (where the same had been otherwise suspended) the payment of regular Rent computed in the manner set forth in this Lease.

(D) The Alternate Rent Remedy and the Termination Remedy are collectively referred to herein as "Co-Tenancy Requirement Remedies." A Co-Tenancy Failure shall not be cured until Landlord provides Tenant reasonable written evidence that each substitution tenant (1) has opened for business and (2) has a binding lease or operating agreement with a term of three (3) years or longer (excluding any portion of the term subject to cancellation and excluding any option term) and with requirements to open and operate during the Designated Times (or, in the absence thereof, Minimum Times).

13.5 Substitution

(A) Landlord may substitute a retailer for each of the Key Stores for purposes of satisfying the Co-Tenancy Requirements, so long as: (1) the use to be conducted by such substitute retailer is substantially the same as that conducted by the Key Store it is intended to replace; (2) the merchandise sold by such substitute retailer is of equal or better quality, and is offered at similar price points as the Key Store it is intended to replace; and (3) such substitute retailer will operate a retail business from substantially all of the premises being vacated by the Key Store it is intended to replace.

(B) Furthermore, so long as at least one Key Store continues to operate as a department store in substantially all of its premises, the second floor of the other Key Store may be

converted to non-retail use and the ground floor of that same Key Store may be retenanted with a combination of retail tenants occupying in the aggregate at least sixty thousand (60,000) square feet of GLA, at least two (2) of whom each occupy at least twenty thousand (20,000) square feet of GLA and are tenants of high calibre in terms of their reputation and the type, quality and price points of their merchandise, such as by way of example Future Shop, Chapters and Pottery Barn. Any part or parts of the ground floor GLA previously occupied by the Key Store which are not replaced by tenants occupying at least twenty thousand (20,000) square feet of GLA shall be added to and included in the GLA of the Shopping Centre for purposes of satisfying the Co-tenancy Requirements with respect to the GLA of the Shopping Centre as set out in Section 13.3(A). Any of the substitutions described above in this Section 13.5(B) shall satisfy the Co-tenancy Requirements with respect to the Key Stores, but if any such substitution is made without obtaining the prior written approval of Tenant, which may be withheld in Tenant's sole and unfettered discretion without any obligation to act reasonably or in good faith pursuant to Section 27.12(B), then Tenant shall be entitled to terminate this Lease by written notice given to Landlord at any time within eighteen (18) months following the date on which such substitute tenant(s) have opened for business. Such termination shall be effective as of a date which shall be specified in Tenant's notice of termination, provided that such date shall be no less than ninety (90) days following receipt by Landlord of such notice.

ARTICLE 14: MAINTENANCE

14.1 Landlord's Repairs

(A) Except for repairs specifically required herein to be made by Tenant and subject to Articles 19 and 20, Landlord shall at all times, at its sole cost and expense but subject to recoveries by Landlord of CAM Costs in accordance with the applicable provisions of this Lease, keep, replace and maintain in good condition, order and repair, subject to ordinary wear and tear:

- (1) all portions of the Building other than the Premises;
- (2) all portions of the roof, roof structures, supports and walkpads (including Tenant's interior ceiling damaged from leaking), and all structural portions of the Premises, including but not limited to, the foundation and structural supports, exterior and load bearing walls, floors (but not floor coverings), gutters, downspouts and exterior doors;
- (3) all other portions of the Premises which constitute Landlord's Work for a period of one (1) year from the date of completion thereof or for the period of the warranties of Landlord's contractors, whichever is longer;
- (4) all utilities to the point of entry to the Premises;
- (5) all driveways, sidewalks, parking areas and all other Common Areas of the Property, including the removal of snow and ice therefrom;
- (6) latent defects in the Premises (other than the Tenant's Work) as well as any damage to the Premises caused by the willful act or the negligence of Landlord or Landlord's Agents.

(B) The Construction Period shall be extended by one day for each day (or portion thereof) of delay in the performance of Tenant's Work caused by a failure to repair items for which Landlord is responsible.

14.2 Tenant's Right to Cure

Tenant shall give Landlord notice of any such repairs to be performed by Landlord and Landlord shall commence and complete such repairs as soon as is reasonably possible under the circumstances (and immediately in the event of an emergency) after having received notice. If Landlord fails to perform its obligations within a reasonable period, Tenant may perform the repairs or maintenance. In an emergency Tenant may undertake immediate repairs which would be Landlord's responsibility and notify Landlord promptly after such repairs have been undertaken. If Tenant undertakes such repairs, Tenant may deduct the cost thereof from the Rent next

T A B L E

**THIS IS EXHIBIT "E"
TO THE AFFIDAVIT OF
MATTHEW IRWIN
SWORN SEPTEMBER 7TH, 2018**

Suren Reed

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

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

TWELFTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

February 13, 2018

Contents

Section	Page
A. INTRODUCTION.....	2
B. PURPOSE	4
C. TERMS OF REFERENCE.....	4
D. LITIGATION TRUSTEE MOTION.....	6

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

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

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

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

APPLICANTS

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

A. INTRODUCTION

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

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

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

B. PURPOSE

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

C. TERMS OF REFERENCE

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

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

D. PRELIMINARY DISCUSSIONS REGARDING STAKEHOLDER LITIGATION

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

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

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

E. LITIGATION TRUSTEE MOTION

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

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

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

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

Identification of Litigation Inspector / Trustee

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

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

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

Mandate of the Litigation Inspector/Trustee

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

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

The Committee

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

Monitor Claims

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

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

Information Sharing

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

Monitor's Recommendation

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

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

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

Dated this 13th day of February, 2018.

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



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

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

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

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Monitor

T A B F

**THIS IS EXHIBIT "F"
TO THE AFFIDAVIT OF
MATTHEW IRWIN
SWORN SEPTEMBER 7TH, 2018**

Jason Quaid

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

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

FOURTEENTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

March 1, 2018

Contents

Section	Page
A. INTRODUCTION.....	2
B. PURPOSE	4
C. LITIGATION TRUSTEE MOTION.....	4
D. EXTENSION OF PERIOD TO FILE INTERCOMPANY CLAIMS REPORT	9
E. UPDATES ON THE CCAA PROCEEDINGS.....	10
F. RECEIPTS AND DISBURSEMENTS FOR THE SIX WEEK PERIOD ENDING FEBRUARY 17, 2018.....	17

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

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

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

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

APPLICANTS

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

A. INTRODUCTION

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

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

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

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

B. PURPOSE

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

C. LITIGATION TRUSTEE MOTION

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

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

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

Background

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

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

(the "**Preliminary Outstanding Matters**").

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

Status Update

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

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

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

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

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

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

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

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Monitor's Comments and Recommendation

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

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

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

D. EXTENSION OF PERIOD TO FILE INTERCOMPANY CLAIMS REPORT

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

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

E. UPDATES ON THE CCAA PROCEEDINGS

Claims Process

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

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

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

Disclaimer of Contracts / Craftsman License

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

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

Tax Losses

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

Second Liquidation Process

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

Real Estate Sale Process

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

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

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

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

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

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

Residual Asset Sales

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

Employee Matters

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

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

Pension Wind-Up

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

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

65. Explanations for the key variances are as follows:

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

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

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

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

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

Dated this 1st day of March, 2018.

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



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

Appendix "A"

Draft Form Of Litigation Investigator Order

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

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

THE HONOURABLE MR.)	FRIDAY, THE 2 nd
)	
JUSTICE HAINEY)	DAY OF MARCH, 2018

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

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

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

LITIGATION INVESTIGATOR ORDER

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

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

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

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

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

Litigation Investigator Reporting

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

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

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

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

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

The Committee

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

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

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

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

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

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

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

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

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

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

Litigation Investigator Costs

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

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

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

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

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

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

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

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

17. **THIS COURT ORDERS** that notwithstanding:

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

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

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative bodies having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Litigation Investigator in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Litigation Investigator as may be necessary or desirable to give effect to this Order, or to assist the Litigation Investigator in carrying out the terms of this Order.

HAINES, J.

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

Court File No. CV-15-523714-00CP

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

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

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

Proceeding commenced at Toronto

LITIGATION INVESTIGATOR ORDER

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

Appendix "B"

Endorsement

Endorsement

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

47A

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

OR
TRUSTEE

Hainley J

February 27, 2018

Appendix "C"

Pre-hearing Conference Brief

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

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

February 6, 2018

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- 2 -

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Lawyers for 1291079 Ontario Limited

- 2 -

INTRODUCTION

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

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

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

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

Notice of Intended Decision - Tab 1

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

- 3 -

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

Initial Order dated June 22, 2017 - Tab 2

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

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

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

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

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

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

Request for Hearing dated December 7, 2017 - Tab 5

MATTERS IN ISSUE

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

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

Single Proceeding is Preferred

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

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

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

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

- 5 -

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

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

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

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

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

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

² Eagle River, *ibid.*, para. 77.

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

- 6 -

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

Superintendent's actions are stayed

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

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

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

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

⁵ *Ibid.*, para. 36 – **Tab 8**.

- 7 -

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

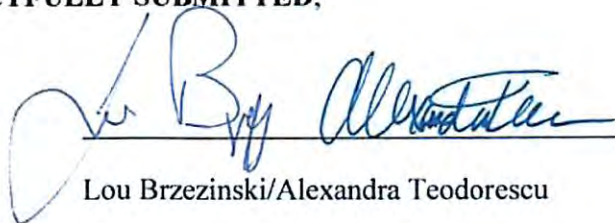
It seems to be that, even though the Notice may be described as a warning shot across the bow, the effect of the Notice in this case is something far more significant. It clearly puts the Applicants and the Monitor on notice that there is a substantial claim that is being considered in the CCAA proceedings.

...

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

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED,



Lou Brzezinski/Alexandra Teodorescu

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

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

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

TAB G

**THIS IS EXHIBIT "G"
TO THE AFFIDAVIT OF
MATTHEW IRWIN
SWORN SEPTEMBER 7TH, 2018**

James Read

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

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

TWENTY-FIRST REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

JULY 20, 2018

Contents

Section	Page
A. INTRODUCTION.....	2
B. PURPOSE	6
C. TERMS OF REFERENCE.....	7
D. UPDATE ON THE CCAA PROCEEDINGS AND THE ACTIVITIES OF THE SEARS CANADA ENTITIES AND THE MONITOR	8
E. RECEIPTS AND DISBURSEMENTS FOR THE ELEVEN-WEEK PERIOD ENDING JULY 14, 2018	19
F. REVISED CASH FLOW FORECAST FOR THE PERIOD ENDING DECEMBER 22, 2018	23
G. STAY EXTENSION	25
H. NORD EXTENSION ORDER.....	26

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC.,
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ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND
3339611 CANADA INC.

APPLICANTS

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

A. INTRODUCTION

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

- (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017;
 - (c) authorized the Sears Canada Entities to enter into the DIP Credit Agreements and access funds available under the facilities provided under these agreements; and
 - (d) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the Stay Period to October 4, 2017. In addition, the following orders were issued:
- (a) the amended and restated Initial Order;
 - (b) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities (“**Employee Representative Counsel**”);
 - (c) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters (“**Pension Representative Counsel**”);
 - (d) an order authorizing the eventual suspension of special payments under the Sears Canada Pension Plan, certain payments in connection with supplemental pension plans and certain payments under post-retirement benefit plans pursuant to a term sheet agreed to by the Ontario Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund (the “**Superintendent**”), Employee Representative Counsel, Pension Representative Counsel, each of their respective representatives, and the Sears Canada Entities; and

- (e) an order approving a sale and investor solicitation process (the “SISP”) to solicit interest in potential transactions, including investment and liquidation proposals, involving the business, property, assets and/or leases of the Applicants.
4. On July 18, 2017, the Court issued an order approving an agreement and a process for the liquidation of inventory and FF&E at certain initial closing Sears Canada locations, which liquidation process is now completed.
 5. On October 13, 2017, the Court issued, among other orders, an order (a) approving an agreement and a process (the “**Second Liquidation Process**”) for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations, which liquidation commenced shortly thereafter and is now completed.
 6. 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; and (ii) an Omnibus Approval and Vesting Order (the “**Omnibus Approval and Vesting Order**”) authorizing the Applicants to complete sales of residual assets (“**Residual Assets**”) not exceeding \$5 million in any one transaction without seeking further Court approval, and vesting those residual assets in the applicable purchaser free and clear of the claims and encumbrances against those assets.
 7. The Claims Procedure Order also directed the Monitor to assess in detail, with reasonably sufficient particulars and analysis, the validity and quantum of all intercompany claims, and to serve on the Service List and file with the Court a report detailing the work performed (the “**Intercompany Claims Report**”). The Monitor served the Intercompany Claims Report on the Service List on April 2, 2018 and filed it with the Court.
 8. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the “**E&R Claims Procedure Order**” and, together with the Claims Procedure Order, the “**Claims Procedure Orders**”) approving a process for the identification,

determination and adjudication of claims of employees and retirees of the Sears Canada Entities.

9. On March 2, 2018, the Court issued an Order appointing Lax O’Sullivan Lisus Gottlieb LLP as Litigation Investigator (as amended on April 26, 2018, the “**Litigation Investigator Order**”), with a mandate to identify and report on certain rights and claims that the Sears Canada Entities and/or any creditors of the Sears Canada Entities may have against any parties.
10. On May 9, 2018, the Court issued an Order approving a process for a mediation among stakeholders with the goal of achieving a potential resolution of significant claim and distribution matters (the “**Mediation**”) as a preliminary step toward a global resolution of material estate matters, potentially through a plan of compromise or arrangement. As discussed further below, the mediation was commenced on June 13-14, 2018 with Regional Senior Justice Morawetz as mediator.
11. 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 monetization of Residual Assets is now substantially complete. The major assets of the Sears Canada Entities that remain to be realized upon are the Applicants’ remaining owned real estate assets, as described in paragraph 34 through 46 below .
12. Since the date of the Comeback Motion, the stay period has been extended a number of times and currently expires on July 31, 2018.
13. As discussed in greater detail below, at this time the following is a list of the most significant matters that remain to be resolved in these proceedings:
 - (a) resolution of claims filed pursuant to the Claims Procedure Orders, including certain material litigation claims and landlord claims;
 - (b) resolution of priority disputes and claim issues relating to the wind-up deficiency in the defined benefit component of the Sears Canada Pension Plan;

- (c) negotiation and completion of sale transactions or alternative steps for the remaining real estate owned by Sears Canada;
 - (d) determination of an appropriate path, and a funding plan to advance any litigation that the Litigation Investigator recommends to be pursued for the benefit of the Sears Canada Entities or their creditors;
 - (e) access to the WEPP (as defined below) for former employees of the Sears Canada Entities;
 - (f) resolving outstanding governance issues for Sears Canada that will be the subject of a future motion, as described below; and
 - (g) determination and implementation of an appropriate process to distribute proceeds to creditors of the Sears Canada Entities.
14. In connection with the CCAA Proceedings, the Monitor has provided twenty reports and twelve supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada/ (the “**Monitor's Website**”).

B. PURPOSE

15. The purpose of this twenty-first report of the Monitor (the “**Twenty-First Report**”) is to provide the Court with information regarding:
- (a) developments in the CCAA Proceedings since the date of the Monitor’s Eighteenth Report to the Court dated May 7, 2018 (the “**Eighteenth Report**”);
 - (b) the Applicants’ request for an order (the “**Stay Extension Order**”) extending the Stay Period to December 18, 2018 and extending the Application Period set out in the Employee Hardship Fund Term Sheet to December 18, 2018;

- (c) the Applicants' request for an order (the "**NORD Extension Order**") extending the deadline for the Monitor to issue Notices of Revision or Disallowance in respect of D&O Claims and indemnity claims filed by Directors and Officers pursuant to the Claims Procedure Order and the E&R Claims Procedure Order; and
- (d) the Monitor's comments and recommendations in connection with the foregoing.

C. TERMS OF REFERENCE

16. In preparing this Twenty-First Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, certain financial information and forecasts prepared by the Sears Canada Entities and discussions and correspondence with, among others, the senior management ("**Management**") of, and advisors to, the Sears Canada Entities (collectively, the "**Information**").
17. Except as otherwise described in this Twenty-First Report:
 - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Twenty-First Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
18. Future-oriented financial information reported in or relied on in preparing this Twenty-First Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.

19. The Monitor has prepared this Twenty-First Report in connection with the Applicants' motions for the Stay Extension Order and the NORD Extension Order. The Twenty-First Report should not be relied on for any other purpose.
20. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
21. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the following documents filed as part of the CCAA Proceedings: (i) the affidavits of Mr. Billy Wong, the former Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms. Becky Penrice, Executive Vice-President and Chief Operating Officer of Sears Canada; (iii) the affidavits of Mr. Philip Mohtadi, General Counsel and Corporate Secretary of Sears Canada; and (iv) the Prior Reports.

D. UPDATE ON THE CCAA PROCEEDINGS AND THE ACTIVITIES OF THE SEARS CANADA ENTITIES AND THE MONITOR

22. A comprehensive update on the status of the CCAA Proceedings was provided in the Seventeenth Report and the Eighteenth Report. Set out below is a summary of material developments since the date of the Seventeenth Report and the Eighteenth Report.

Claims Process

23. As noted in the Seventeenth Report, in connection with the Claims Procedure Order, the Monitor has received in excess of 2,000 proofs of claim in amounts totalling not less than \$36 billion¹. This amount includes a significant number of claims where the claimant has filed multiple claims for the same amount under different claim types (e.g. Pre-Filing, Post-Filing, Restructuring and D&O) or against multiple Sears Canada Entities.
24. The Monitor, in consultation with the Sears Canada Entities, has conducted a review of the vast majority of claims filed and, where appropriate, has issued (or will be issuing

¹ The amounts noted in this sentence do not include Claims of Employees and Retirees filed, or deemed filed, pursuant to the E&R Claims Procedure Order.

prior to the July 31, 2018 deadline mandated by the Claims Procedure Orders) Notices of Revision or Disallowance in respect of such claims.

25. In reviewing claims, the Monitor has ensured that the level of review was proportionate to the quantum of the claim asserted and the expected recoveries on such claims.
26. To date, the Monitor has received:
 - (a) 36 Notices of Dispute from construction contractors in connection with Construction Claims under the Claims Procedure Order;
 - (b) 14 Notices of Dispute from employees or former employees pursuant to the E&R Claims Procedure Order;
 - (c) 910 requests for correction of information received from employees, former employees and retirees pursuant to the E&R Claims Procedure Order; and
 - (d) 11 Notices of Dispute from other claimants in response to Notices of Revision or Disallowance delivered pursuant to the Claims Procedure Order.
27. In addition, the Monitor, with the assistance of its counsel, has engaged with stakeholders who filed material claims against the Applicants with a view to resolving the valuation of these claims in an efficient and cost-effective manner.
28. To the extent that disputes cannot be resolved in the near term, the Monitor will be referring disputed claims to the Honourable Mr. James Farley, Q.C., one of the two claims officers appointed pursuant to the Claims Procedure Order. The Monitor anticipates that the first disputes would be heard in early September.
29. A claimant receiving a Notice of Revision or Disallowance has 30 days to dispute that determination through a Notice of Dispute of Revision or Disallowance.
30. The Monitor has agreed, in accordance with the Claims Procedure Order, to extend the date for landlords to file Notices of Dispute of Revision or Disallowance to July 31, 2018, regardless of the date on which a Notice of Revision or Disallowance was

delivered to a landlord. This extension was provided as the Monitor and the landlords have been engaged in without prejudice discussions regarding the resolution of certain preliminary claim and proceeds allocation issues.

Construction Lien Matters

31. As described in the Monitor's Eighteenth Report, the Claims Procedure Order established a specific procedure for the filing of claims of Construction Contractors and Construction Sub-Contractors.
32. To the extent a dispute has arisen in connection with claims of Construction Contractors and Construction Sub-Contractors who registered liens against owned or leased properties that were either sold, surrendered or assigned for cash proceeds to which such liens attached or for which reserves were established, the Monitor, in consultation with Sears Canada, prepared a reconciliation of such claims, and has worked with counsel to the Construction Contractors (on their own behalf and on behalf of their Construction Sub-Contractors) to resolve any disputes regarding that reconciliation.
33. As of the date of this Twenty-First Report, the Monitor has obtained two orders approving the payment of approximately \$3.9 million to Construction Contractors (on their own behalf and on behalf of their Construction Sub-Contractors) in full and final settlement of 23 secured claims of Construction Contractors (as well as the claims of their Construction Sub-Contractors). The process of reconciling and resolving further secured claims is ongoing and additional requests for approval of payments of secured claims will be brought forward as these matters are reconciled and resolved.

Real Estate Sale Process

34. At the time of the Monitor's Seventeenth Report, Sears Canada continued to own the following real estate assets:
 - (a) Upper Canada Mall full-line store (Newmarket, ON);
 - (b) Distribution center (Belleville, ON);

- (c) Fleur de Lys full-line store (Quebec City, QC);
 - (d) Windsor full-line store (Windsor, ON);
 - (e) Peterborough full-line store (Peterborough, ON);
 - (f) Barrie full-line store (Barrie, ON);
 - (g) Trois-Rivières full-line store (Trois-Rivières, QC);
 - (h) Place Vertu liquidation store (Montréal, QC);
 - (i) Lévis full-line store (Lévis, QC);
 - (j) Charlottetown store (Charlottetown, PEI);
 - (k) Chicoutimi residual land (Chicoutimi, QC);
 - (l) Edmonton residual land (Edmonton, AB); and
 - (m) Sainte-Agathe-des-Monts residual land (Sainte-Agathe-des-Monts, QC),
- (collectively, the “**Remaining Real Estate Assets**”).
35. On February 7, 2018, BMO delivered an updated sale process letter (the “**Updated Sale Process Letter**”) soliciting bids for all of the Remaining Real Estate Assets other than the assets located in Charlottetown, Edmonton, Chicoutimi and Sainte-Agathe-des-Monts (which properties are listed by CBRE Limited and are discussed below). The Updated Sale Process Letter provided a bid deadline of March 7, 2018 at 5:00 p.m. (Eastern).
36. On March 7, 2018, BMO and the Monitor received a number of competing offers on the Remaining Real Estate Assets that were the subject of the Updated Sale Process Letter. BMO and the Sears Canada Entities have engaged in negotiations with potential purchasers in respect of those assets. Following consultation with the Monitor and the Owned Real Estate Consultation Parties and the negotiation of final purchase agreements, the Sears Canada Entities returned to court for approval of transactions for the sale of:

- (a) Fleur de Lys full-line store (Quebec City, QC);
 - (b) Trois-Rivières full-line store (Trois-Rivières, QC);
 - (c) Place Vertu liquidation store (Montréal, QC); and
 - (d) Lévis full-line store (Lévis, QC).
37. The sales of these assets have now been approved by the Court and were completed during June and July.
38. As also described in the Seventeenth Report of the Monitor, a separate sale process has been commenced for the real property located in Charlottetown, Edmonton, Chicoutimi and Sainte-Agathe-des-Monts. These locations are being marketed under an Exclusive Sales Listing Agreement with CBRE Limited pursuant to which CBRE Limited acts as sale advisor. The Monitor remains optimistic that transactions for these real estate assets will be completed in the near term, subject to court approval where required.
39. On June 13, 2018, Sears Canada entered into an agreement of purchase and sale with 1979353 Ontario Inc. (the “**Newmarket Sale**”) for the Upper Canada Mall full-line store in Newmarket, Ontario (the “**Newmarket Store**”). On June 14, 2018, the Monitor received from 1979353 Ontario Inc. the required deposit in respect of the Newmarket Sale.
40. Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (the “**Mall Owners**”) held a right of first refusal and an option to purchase in relation to the Newmarket Store. The right of first refusal could be exercised up to June 29, 2018. The option to purchase could be exercised up to July 24, 2018.
41. The Newmarket Sale was conditional upon: (i) the right of first refusal having validly expired or having been waived; and (ii) the Mall Owner not having given notice of the exercise of the option to purchase.
42. The Mall Owners advised on June 29, 2018 that they were exercising the option to purchase.

43. The terms of the option to purchase provide that the exercise price for the option is based upon a specific definition of current value of the property less set-offs for amounts owing by Sears Canada to the Mall Owners.
44. The option agreement provides that following exercise of the option to purchase, the current value of the property is to be determined by:
 - (a) agreement among the parties within seven days;
 - (b) if no agreement is reached, appraisals by an appraiser for each of Sears Canada and the Mall Owner, separately.
 - (c) if the foregoing appraisals are not within a 5% value range, arbitration.
45. Following exercise of the option to purchase, Sears Canada and the Mall Owners were unable to agree on the current value of the Newmarket Store and therefore are now engaged in an appraisal process as contemplated under the option to purchase.
46. Under the option to purchase, once the current value has been determined, a secondary issue of purchase price adjustments must be considered. The option agreement states, in part, as follows: “At the Closing, the purchase price shall be subject to the adjustments as described in Section 13(b) hereof and all amounts due by Sears to the co-owners or by the co-owners to Sears in respect of Upper Canada Mall and the Sears Lands shall be settled and set-off or paid in full.” The proposed adjustments described in this paragraph have the effect of reducing the cash purchase price for this asset by allowing the proposed purchaser to effectively recover amounts owing to it by creating a set off through the purchase transaction. The Monitor has concerns about the exercise of set-off in this manner in the context of an insolvency proceeding and further direction from the court may be required in this regard.

Employee Matters

47. As of the date of this Twenty-First Report, the Applicants have 29 remaining employees including 19 employees at Sears Canada’s current headquarter offices in Toronto, and 10 employees located at, or overseeing, the Remaining Real Estate Assets.

48. The Monitor, with the assistance of the remaining Sears Canada senior management, regularly reviews staffing requirements and expects that the number of employees will continue to decrease as claims are resolved and real estate assets sold. The Monitor is working with senior management to determine those employees whose services will be needed for the longer term and an appropriate employment and remuneration structure for those individuals.
49. To date, the Monitor has received 79 applications for assistance from the Employee Hardship Fund, of which 58 have been approved. So far, approximately \$131,875.00 has been paid out of the Employee Hardship Fund. The time period for applications to the Employee Hardship Fund currently expires on July 31, 2018. The Monitor believes the application period for the Employee Hardship Fund should be extended in a manner consistent with the proposed extension of the Stay Period.
50. The Monitor, the Sears Canada Entities and Employee Representative Counsel continue discussions with representatives of the Federal Government in connection with the timing and availability of the *Wage Earning Protection Program* (“WEPP”) to the former employees of the Sears Canada Entities who qualify for the assistance provided under that program. The Monitor, the Sears Canada Entities and Employee Representative Counsel are working together to ensure that qualifying employees receive the most favourable treatment available to them under the WEPP in the circumstances as a result of potential increases in the maximum amount available to qualifying employees under the WEPP that may be implemented in the near future.

Directors and Governance

51. On July 13, 2018, Employee Representative Counsel served a motion (the “**ERC Director Motion**”) seeking an order removing the directors of Sears Canada and expanding the powers of the Monitor to oversee the remaining operations, management and wind-down of the Sears Canada Entities.
52. This Motion is scheduled to be heard on August 27, 2018 and a schedule has been agreed upon for delivery of materials and examinations.

53. The Monitor will serve a separate report in connection with that Motion closer to the date of the hearing.
54. At this time, the Monitor understands the Motion is expected to be opposed.

Litigation Matters

55. In the Eleventh Report of the Monitor dated January 15, 2018, the Monitor identified certain Transactions of Interest to be further investigated to determine if remedies should be pursued by the Monitor in connection with such transactions pursuant to Section 36.1 of the CCAA.
56. The Monitor understands a number of meetings of the Creditors' Committee (as defined in the Litigation Investigator Order) and the Litigation Investigator have occurred. Discussions at those meetings are the subject of confidentiality obligations of all parties in attendance.
57. The Monitor continues to consider appropriate next steps in connection with litigation matters. The Monitor believes any such next steps should be coordinated with the Litigation Investigator following a final determination of the potential rights and claims of the Sears Canada Entities or any creditors of the Sears Canada Entities that should be pursued. The Monitor understands these matters remain under consideration by the Litigation Investigator and the Creditors' Committee appointed pursuant to the Litigation Investigator Order.

Mediation Process

58. As described in the Eighteenth Report, during the week of March 26, 2018, the Monitor and the Sears Canada Entities met with counsel representing clients with significant claims in the estate including landlords, Employee Representative Counsel, Pension Representative Counsel, the Superintendent, the Plan Administrator, the Hometown Dealers, and their respective advisors to discuss ways to bring about a timely and efficient conclusion to these CCAA Proceedings. During the course of these discussions, it became clear that there was support for considering the potential resolution of

significant estate matters in the context of the Mediation, and completion of the distributions to the creditors of the Sears Canada Entities through a possible plan of compromise or arrangement pursuant to the CCAA.

59. The goal of the Mediation is to achieve consensus on preliminary proceeds allocation issues necessary to allow the Sears Canada Entities, in consultation with the Monitor, to pursue a proposed CCAA plan for the purpose of dividing and distributing estate proceeds as efficiently and quickly as possible.
60. The Monitor expects recoveries from the sales of the Sears Canada assets will be very low relative to the claims filed against Sears Canada. Accordingly, an efficient and expedited distribution process is in the best interests of all stakeholders.
61. The Mediation process was approved by the Court on May 9, 2018.
62. The Mediation commenced on June 13, 2018 and June 14, 2018. The Mediation process has not been terminated at this time and discussions among stakeholders regarding the subject matter of the Mediation are ongoing.
63. Absent an outcome that allows a proposed CCAA plan to proceed quickly and without material objection, the Monitor believes the Applicants will need to move to an expedited alternative process, such as bankruptcy, to salvage remaining recoveries for creditors. However, the Monitor does not believe such steps are necessary at this stage as, in the Monitor's view, dialogue is continuing among stakeholders in a constructive manner and the Monitor believes a reasonable opportunity for an agreed upon resolution remains at this time. The Monitor's view may change if the matters that are the subject of the Mediation are not resolved in the very near term.
64. The Monitor notes that the communications at the Mediation remain confidential.

Sears Canada Trademark License

65. Sears Canada and Sears Holdings Corp. (as successor to Sears, Roebuck and Co.) ("Sears US") are parties to a trademark license agreement dated January 26, 1987 (as amended from time to time, the "TM License Agreement"). A copy of the TM License

Agreement and amendments was attached as Exhibit “B” to the Affidavit of Billy Wong, sworn June 22, 2017.

66. The TM License Agreement provided Sears Canada an exclusive royalty free right to use various trademarks owned by Sears US in Canada in relation to goods and services in the field of merchandising.
67. The license is personal to Sears Canada and shall not be assigned, transferred, conveyed or pledged by Sears Canada.
68. The TM License Agreement states that in the event Sears Canada does not make bona fide use of any licensed trade mark, Sears US may terminate the license with respect to such licensed trade mark.
69. As noted earlier in this report, the retail operations of Sears Canada have been terminated. Therefore, the trademarks licensed under the TM License Agreement are no longer used for merchandising purposes in Canada.
70. Sears US has proposed a consensual termination of the TM License Agreement, subject only to Sears Canada’s right to continued use of the licensed trademarks for specified corporate purposes and in connection with these or any other insolvency proceedings of the Sears Canada Entities.
71. Sears Canada, in consultation with the Monitor, has determined that it no longer has a need to use the trademarks licensed under the TM License Agreement. The Monitor, in consultation with Sears Canada, has engaged with Sears US on the terms of a consensual termination of the TM License Agreement. The Monitor does not believe that the termination of the TM License Agreement will affect any claims that may exist against Sears US, including in connection with the Transactions of Interest previously reported upon. Such claims and rights are expressly preserved in the proposed form of termination agreement between Sears Canada and Sears US. Subject to entry into the proposed form of termination agreement, the Monitor has no objection to the termination of the TM License Agreement. The Monitor understands that Sears US and Sears

Canada intend to enter into that termination agreement 20 days following the date of this Twenty-First Report.

Other Activities of the Monitor

72. The Monitor's principal activities since the Eighteenth Report, in addition to the items noted above, included the following:
- (a) monitored the Sears Canada Entities' receipts and disbursements;
 - (b) maintained the current Service List for the CCAA Proceedings and posted regular updates of the Service List to the Monitor's Website;
 - (c) supervised and assisted in activities related to the sale of the Remaining Real Estate Assets, including engaging with BMO, CBRE and stakeholders regarding same;
 - (d) worked with Employee Representative Counsel, Pension Representative Counsel and their advisors to respond to questions and provide information to their respective constituents;
 - (e) worked with the Sears Canada Entities to assist in appropriately accounting for pre-filing and post-filing obligations;
 - (f) attended numerous meetings and teleconferences with stakeholders, their counsel and advisors;
 - (g) attended board meetings and teleconferences;
 - (h) planned and worked with the Sears Canada Entities to facilitate an orderly wind-down of their operations;
 - (i) responded to requests by former employees for financial assistance under the Employee Hardship Fund;
 - (j) continued to operate and monitor its telephone hotline and email account for stakeholder inquiries and to respond to such inquiries;

- (k) continued its extensive work in connection with the claims processes contemplated pursuant to the Claims Procedure Orders;
- (l) worked with senior management to determine appropriate and efficient current and future staffing levels;
- (m) responded to information requests by stakeholders and their advisors;
- (n) responded to requests for information directed to the Monitor by counsel to the Mall Owners and worked with Sears Canada management and counsel to address information requests directed to the Company by counsel to the Mall Owners in connection with the Newmarket Sale; and
- (o) participated in multiple court attendances and prepared responding materials in connection with a motion by the Mall Owners regarding the Newmarket Sale that was subsequently withdrawn.

E. RECEIPTS AND DISBURSEMENTS FOR THE ELEVEN-WEEK PERIOD ENDING JULY 14, 2018

73. The Sears Canada Entities' actual net cash inflow on a consolidated basis for the eleven-week period ended July 14, 2018 was approximately \$8.5 million, compared to a forecast net cash outflow of \$21.1 million presented in the Monitor's Eighteenth Report dated May 7, 2018, resulting in a positive variance of approximately \$29.6 million as indicated in the table below:

VARIANCE REPORT			
	Actual	Forecast	Variance
(CAD in Millions)	For the 11 Week Period Ending July 14, 2018		
Receipts	20.0	-	20.0
Operating Disbursements			
Payroll and Employee Related Costs	(1.9)	(1.8)	(0.1)
Merchandise Vendors	0.9	-	0.9
Non-Merchandise Vendors	(1.3)	(3.9)	2.6
Rent and Property Taxes	(5.1)	(1.1)	(4.0)
Sales Taxes	3.8	-	3.8
IT Costs	(1.7)	(4.5)	2.8
Total Operating Disbursements	(5.3)	(11.3)	6.0
Net Operating Cash Inflows / (Outflows)	14.7	(11.3)	26.0
Professional Fees	(6.2)	(9.8)	3.6
Net Cash Inflows / (Outflows)	8.5	(21.1)	29.6
Cash			
Beginning Balance	126.2	126.2	-
Net Cash Inflows / (Outflows)	8.5	(21.1)	29.6
Ending Balance	134.7	105.1	29.6

74. Explanations for the key variances are as follows:

- (a) the positive variance in Receipts of \$20.0 million consists of:
- (i) a positive permanent difference of \$21.8 million primarily related to proceeds from the sale of owned real property which were not included in the forecast due to uncertainty around the timing and amount of these sale proceeds; and
 - (ii) a negative permanent difference of \$1.8 million associated with break fees paid and funds transferred in trust that may need to be paid to would-be purchasers in respect of two owned real property sale transactions where a right of first refusal or option pursuant to an underlying operating or other agreement with Sears Canada Inc. has been exercised;

- (b) the positive variance in Merchandise Vendor disbursements of \$0.9 million consists of a permanent difference due to refunds and collections received from vendors which were not included in the forecast due to uncertainty of the amounts and timing of these refunds;
- (c) the positive variance in Non-Merchandise Vendor disbursements of \$2.6 million is a permanent difference due to a combination of refunds received from vendors and lower-than-forecast non-merchandise payments;
- (d) the negative variance in Rent and Property Taxes of \$4.0 million consists of a negative permanent difference of \$3.4 million primarily due to the payment of post-filing rent and property tax obligations that were identified as part of the post-filing claims reconciliation not included in the forecast and the payment of post-filing rent to certain landlords that was not included in the forecast based on the assumption that proceeds from the letters of credit drawn by the landlords would be applied against all post-filing obligations, including rent amounts. There is also a negative timing difference of \$0.6 million between actual and forecast property tax payment schedules which is expected to reverse in future forecast periods;
- (e) the positive variance in Sales Taxes of \$3.8 million is a permanent variance consisting primarily of sales tax refunds received that were not included in the forecast due to uncertainty of the amounts and timing of these refunds;
- (f) the positive variance in IT Costs of \$2.8 million consists of a permanent difference of \$2.4 million due to lower-than-forecast post-filing IT payments based on earlier than forecast disclaimer of contracts and reconciliation of the claim amounts, and a timing difference of \$0.4 million that is expected to reverse in future forecast periods; and
- (g) the positive variance in Professional Fees of \$3.6 million is primarily a timing difference that is expected to reverse in future forecast periods as outstanding

invoices are paid. The Monitor has and will continue to request that all professional firms submit invoices on a regular and frequent basis.

75. The Sears Canada Group's cumulative receipts and disbursements since the commencement of the CCAA proceedings through the week ended July 14, 2018 are reflected in the table below:

CUMULATIVE RECEIPTS AND DISBURSEMENTS	
(CAD in Millions)	
For the 56 Week Period Ending July 14, 2018	
Receipts	1,267.0
Operating Disbursements	
Payroll and Employee Related Costs	(265.3)
Merchandise Vendors	(291.0)
Non-Merchandise Vendors	(176.4)
Rent and Property Taxes	(90.0)
Sales Taxes	(67.9)
Pension	(14.7)
IT Costs	(27.2)
Recovery of Expenses from Agent	83.6
Capital Expenditures	(0.8)
Total Operating Disbursements	(849.7)
Net Operating Cash Inflows / (Outflows)	417.3
Professional Fees	(71.2)
Repayments of Existing Credit Facilities	(283.3)
DIP Fees and Interest Paid	(19.7)
Net Cash Inflows / (Outflows)	43.1
Cash	
Beginning Balance	126.5
Net Cash Inflows / (Outflows)	43.1
DIP Draws / (Repayments)	(32.0)
Others incl. FX Valuation	(2.9)
Ending Balance	134.7

76. The Initial Order allowed the Sears Canada Group to continue to use their existing Cash Management System as described in the First Wong Affidavit and the pre-filing report of the Monitor. After the commencement of the CCAA Proceedings, the Sears Canada

Group has continued to use its Cash Management System in a manner consistent with past practice.

F. REVISED CASH FLOW FORECAST FOR THE PERIOD ENDING DECEMBER 22, 2018

77. A revised cash flow forecast for the period until December 22, 2018 has been prepared and is attached to hereto as **Appendix “A”** (the “**Revised Cash Flow Forecast**”).
78. Pursuant to section 23(1)(b) of the CCAA² and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Monitor hereby reports to the Court as follows:
- (a) the Monitor has reviewed the Revised Cash Flow Forecast, which was prepared by Management for the purpose described in notes to the Revised Cash Flow Forecast (the “**Forecast Notes**”), using the Probable Assumptions and Hypothetical Assumptions set out therein;
 - (b) the review consisted of inquiries, analytical procedures and discussion related to information provided by certain members of Management and employees of the Sears Canada Entities. Since Hypothetical Assumptions need not be supported, the Monitor’s procedures with respect to the Hypothetical Assumptions were limited to evaluating whether the Hypothetical Assumptions were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor has also reviewed the support provided by Management for the Probable Assumptions and the preparation and presentation of the Revised Cash Flow Forecast;
 - (c) based on that review, and as at the date of this Twenty-First Report, nothing has come to the attention of the Monitor that causes it to believe that:
 - (i) the Hypothetical Assumptions are inconsistent with the purpose of the Revised Cash Flow Forecast;

² Section 23(1)(b) of the CCAA requires the Monitor to review the Sears Canada Entities’ cash-flow statements as to its reasonableness and file a report with the court on the Monitor’s findings.

- (ii) the Probable Assumptions are not suitably supported or consistent with the plans of the Sears Canada Entities or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Hypothetical Assumptions; or
 - (iii) the Revised Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions; and
 - (d) since the Revised Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the forecast even if the Hypothetical Assumptions occur. Those variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Twenty-First Report, or relied upon by the Monitor in preparing this Twenty-First Report.
79. The Revised Cash Flow Forecast assumes a continuation of these CCAA Proceedings toward a resolution pursuant to a plan of compromise or arrangement. If it appears to the Monitor that this assumption ceases to be reasonable, which may occur if the Mediation process fails to achieve an agreed upon resolution within an acceptable time period, the Monitor will report to the Court regarding any adjustments to the Revised Cash Flow Forecast that may be required to reflect an alternative path to completion of these proceedings.
80. The Monitor notes that the Revised Cash Flow Forecast also includes forecasted professional fees in connection with potential claims relating to the Transactions of Interest.
81. The Revised Cash Flow Forecast also assumes fees relating to the board of directors, legal counsel to the board of directors, Employee Representative Counsel, Pension Representative Counsel and their respective financial advisors remain consistent with prior periods. However, this assumption may cease to be valid as these proceedings continue to progress, including following the hearing of the ERC Director Motion.

82. The Revised Cash Flow Forecast may be updated if developments occur that have a material impact on the forecasted cash flows of the Sears Canada Entities.
83. The Revised Cash Flow Forecast has been prepared solely for the purpose described in the Forecast Notes. The Revised Cash Flow Forecast should not be relied upon for any other purpose.
84. The Revised Cash Flow Forecast shows total net operating cash inflows of approximately \$0.6 million, before professional fees of approximately \$12.9 million, such that net cash outflows for the period are forecasted to be \$12.3 million, excluding any proceeds that may be generated from additional sales of owned real estate assets.
85. The professional fee forecast has been prepared based on fee estimates provided by each of the professional firms included therein. The total forecast professional fee disbursements of \$12.9 million include approximately \$3.6 million of accrued but unpaid fees as described in Paragraph 74(g) of this report and forecast fees of \$9.3 million to the end of the forecast period.

G. STAY EXTENSION

86. The Stay Period currently expires on July 31, 2018.
87. The Applicants are requesting an extension of the Stay Period to December 18, 2018. The Monitor believes the requested extension of the Stay Period is reasonable in the circumstances as it is consistent with the Monitor's view of the likely time period necessary to achieve an agreed resolution of all material issues in the proceeding and to file a plan of compromise or arrangement of the Applicants. Further, the proposed longer extension of the Stay Period limits court attendances and costs associated with further extensions that would otherwise be necessary in the interim.
88. During the proposed extended Stay Period, the Monitor will continue to facilitate discussions among stakeholders on a resolution for these proceedings, continue to resolve claims that have been filed in the claims processes, and continue to oversee steps to monetize Sears Canada's remaining owned real property. For all of these

purposes, the continued stability of the stay of proceedings granted in the Initial Order is required.

89. The Monitor believes it will be appropriate to re-evaluate progress toward a global resolution and report to the court on that progress before the completion of the proposed extension of the Stay Period. The Monitor intends to do so not later than September 28, 2018. Following that reporting, stakeholders and the Monitor will be able to determine whether the proposed global resolution remains viable or if an alternative approach, such as a bankruptcy process should be pursued.
90. The Sears Canada Entities no longer have any operations and currently hold cash balances of approximately \$135 million.
91. The Revised Cash Flow Forecast demonstrates that, subject to the underlying assumptions, the Applicants will have sufficient liquidity to fund these proceedings during the proposed extension of the Stay Period.
92. The Monitor believes that the Applicants have acted and continue to act in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.

H. NORD EXTENSION ORDER

93. Pursuant to the Claims Procedure Order and the E&R Claims Procedure Order, the Monitor must notify claimants (other than a holder of a Sears Pension Claim (as defined in the E&R Claims Procedure Order)) whose claims have been revised or disallowed of such revision or disallowance and the reasons therefore by sending a Notice of Revision or Disallowance by no later than July 31, 2018 or such later date as ordered by the Court.³
94. The Monitor notes that a large proportion of the D&O Claims (as defined in the E&R Claims Procedure Order and the Claims Procedure Order) filed relate to contingent

³ The application for such extension was contemplated by the Claims Procedure Order to be made by the Monitor. However, for efficiency in the current case this application has been made by the Applicants as part of their motion to extend the Stay Period.

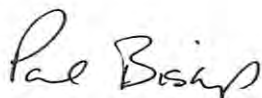
litigation matters and that corresponding indemnity claims filed by Directors and Officers (as defined in the E&R Claims Procedure Order and the Claims Procedure Order) against the Sears Canada Entities similarly relate to contingent litigation outcomes. As a result, the Monitor is not able to assess the validity of these claims or deliver Notices of Revision or Disallowance in respect of these contingent claims at this time.

95. Based upon the foregoing, the Monitor believes an extension of the period to deliver Notices of Revision or Disallowance in connection with any D&O Claims or indemnity claims filed by Directors or Officers is appropriate. The Monitor proposes an extension to October 1, 2018, at which point the Monitor expects to have more information about the contingent matters that are the subject of many of the D&O Claims and Director or Officer indemnity claims.
96. No stakeholder is prejudiced by the proposed extension as (i) the extension will assist in allowing the Monitor time to consider these claims and to deliver a Notice of Revision or Disallowance, if required, to each applicable claimant; and (ii) to the extent distributions are available to the relevant claimants, no distributions are expected to be made to creditors in connection with any claims during the period of the extension.

The Monitor respectfully submits to the Court this, its Twenty-First Report.

Dated this 20th day of July, 2018.

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"

Scars Canada Group

CCMA Cash Flow Forecast

(CAD in thousands)

	21-Jun-18	28-Jul-18	4-Aug-18	11-Aug-18	18-Aug-18	25-Aug-18	1-Sep-18	8-Sep-18	15-Sep-18	22-Sep-18	29-Sep-18	6-Oct-18	13-Oct-18	20-Oct-18	27-Oct-18	3-Nov-18	10-Nov-18	17-Nov-18	24-Nov-18	1-Dec-18	8-Dec-18	15-Dec-18	22-Dec-18	Total	
Total Receipts⁽¹⁾																									9,194
Operating Disbursements																									
Payroll and Employee Related Costs ⁽¹⁾	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)	(388)
Owned Real Property - Carrying Costs / Non-Merchandise Vendors ⁽¹⁾	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)	(282)
Rent and Property Taxes ⁽¹⁾	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)	(179)
IT Costs ⁽¹⁾	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)	(461)
Net Operating Cash Inflows / (Outflows)	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734	8,734
Professional Fees⁽¹⁾	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)	(1,602)
Net Cash Inflows / (Outflow)	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132
Cash																									
Beginning Balance	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670	134,670
Net Cash Inflow / (Outflow)	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132	5,132
Ending Cash Balance	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802	139,802

NOTES:

- (1) The purpose of this cash flow forecast is to estimate the liquidity requirements of the Sears Canada Group during the forecast period.
- (2) Forecast Receipts reflect the return of funds relating to cash collateralized letters of credit that were held by the DIP lender until expiry of all letters of credit. The forecast does not include the proceeds from the sale of any owned real estate properties.
- (3) Forecast Payroll and Employee Related Costs reflect recent payroll amounts and reflect future forecasted headcount reductions.
- (4) Forecast Owned Real Property - Carrying Costs / Non-Merchandise Vendors include all operating costs associated with the owned properties excluding common area maintenance and property taxes.
- (5) Forecast Rent and Property Taxes includes lease, common area maintenance, and property taxes.
- (6) Forecast IT Costs reflect emburments made to certain IT related vendors based on existing terms and conditions of the contracts.
- (7) Forecast Professional Fees include legal and financial advisor fees associated with the CCMA proceedings. The fee forecasts have been provided by the professional firms as reflected below.

Professional Firm	Outstanding	Forecast	Fees	Total Fees
Legal Counsel to Applicants	1,256	940	2,196	
Investment Bank	-	200	200	
Legal Counsel to Directors	118	125	243	
Financial Advisor to Directors	2	13	15	
Monitor	382	2,700	3,082	
Legal Counsel (as Monitor)	1,135	1,994	3,128	
Counsel to the Release Group	394	1,200	1,594	
Counsel to Active Employee Group	314	200	514	
Litigation Investigator	-	200	200	
Claims Officer	-	200	200	
Subtotal	3,602	8,221	11,823	
Sales Tax	-	1,069	1,069	
Total Professional Fee Disbursements	3,602	9,290	12,892	

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

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

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

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

Court File No: CV-17-11846-00CL²⁷⁹

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
Toronto

AFFIDAVIT OF MATTHEW IRWIN

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Law Society Reg. # 26882N
Lawyer for the Plaintiff

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	TUESDAY THE 16 TH DAY OF
)	
JUSTICE HAINEY)	OCTOBER, 2018

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

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

ORDER

THIS MOTION, made by Gap (Canada) Inc. and Old Navy (Canada) Inc. ("Gap") for a Declaration that the stay of proceedings provided in paragraph 15 of the Amended and Restated Initial Order the Honourable Justice Hainey dated Thursday the 22nd Day of June, 2017, and as extended by subsequent Orders made in this proceeding, is no longer of any force or effect in accordance with its terms as against Gap, and other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Matthew Irwin sworn September 7, 2018, and on hearing the submission of counsel for Gap, the Applicants, the Monitor, and such other counsel as were present, and upon being advised that the Service List was served with the Motion Record of Gap,

1. **THIS COURT ORDERS AND DECLARES** that the stay of proceedings ("Co-Tenancy Stay") provided in paragraph 15 of the Amended and Restated Initial Order of the Honourable Mr. Justice Hainey dated Thursday the 22nd day of June, 2017 ("Initial Order"),

and as extended by subsequent orders made in this proceeding, is no longer of any force or effect in accordance with its terms as against Gap and, without limiting the generality of the foregoing, is no longer of any force or effect, in particular, in relation to the following Gap leases (the "Listed Leases"):

LOCATION	LANDLORD	TENANT
Halifax Shopping Centre, Halifax, Nova Scotia	OPB Realty Inc.	Gap (Canada) Inc. o/a "Banana Republic"
Erin Mills Town Centre, Mississauga, Ontario	OPB (EMTC) Inc.	Gap (Canada) Inc.
Quinte Mall, Belleville, Ontario	Quinte Mall Limited	Old Navy (Canada) Inc.
Erin Mills Town Centre, Mississauga, Ontario	OPB (EMTC) Inc.	Old Navy (Canada) Inc.
Park Place Shopping Centre, Lethbridge, Alberta	Park Place Mall Holdings Inc.	Old Navy (Canada) Inc.
Cornwall Centre, Regina, Saskatchewan	Cornwall Centre Inc.	Gap (Canada) Inc. o/a "Gap/Gap Kids"
Landsdowne Place, Peterborough, Ontario	Landsdowne Mall Inc.	Gap (Canada) Inc. o/a "Gap Factory Store"
Stone Road Mall, Guelph, Ontario	Stone Road Mall Holdings Inc., Limited	Old Navy (Canada) Inc.
Pen Centre, St. Catharines, Ontario	OPB Realty Inc.	Old Navy (Canada) Inc.
Landsdowne Place,	Landsdowne Mall Inc.	Old Navy (Canada) Inc.

Peterborough, Ontario		o/a "Old Navy"
Mapleview Shopping Centre, Burlington, Ontario	Canapen (Halton) Limited and Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap"
Mapleview Shopping Centre, Burlington, Ontario	Canapen (Halton) Limited and Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap Kids/Baby"
Metropolis at Metrotown, Burnaby, British Columbia	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Banana Republic"
Metropolis at Metrotown, Burnaby, British Columbia	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap"
Oshawa Centre, Oshawa, Ontario	Oshawa Centre Holdings Inc.	Gap (Canada) Inc. o/a "Gap" and "Gap Kids"
Oshawa Centre, Oshawa, Ontario	Oshawa Centre Holdings Inc.	Old Navy (Canada) Inc.
Southgate Centre, Edmonton, Alberta	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Banana Republic"
Southgate Centre, Edmonton, Alberta	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap"
Northgate Shopping Centre, North Bay, Ontario	Hoopp Realty Inc.	Gap (Canada) Inc. o/a "Gap"
The Coquitlam Centre, Coquitlam, British Columbia	Pensionfund Realty Limited	Gap (Canada) Inc.

The Coquitlam Centre, Coquitlam, British Columbia	Pensionfund Realty Limited	Old Navy (Canada) Inc.
Sevenoaks Shopping Centre, Abbotsford, British Columbia	Sevenoaks S.C. Limited Partnership	Gap (Canada) Inc. o/a "Gap"

and that, as a result, Gap is entitled to exercise any rights which it may have as against Landlords whose Leases were affected by the Co-Tenancy Stay including in particular, without limiting the generality of the foregoing, the Landlords of the Listed Leases, where such rights arose from the failure of any of the Applicants to operate in such shopping centre or retail development (the "Co-Tenancy Rights").

2. **THIS COURT ORDERS AND DECLARES** that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of the Co-Tenancy Rights by Gap, and that the relief granted in paragraph 1 of this Order shall operate retroactively.
-

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

Court File No: CV-17-11846-00CL²⁸⁵

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
Toronto

ORDER

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

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

THE HONOURABLE)	TUESDAY THE 16 TH DAY OF
)	
JUSTICE HAINEY)	OCTOBER, 2018

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

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

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ON READING the Affidavit of Matthew Irwin sworn September 7, 2018, and on hearing the submission of counsel for Gap, the Applicants, the Monitor, and such other counsel as were present, and upon being advised that the Service List was served with the Motion Record of Gap,

1. **THIS COURT ORDERS AND DECLARES** that the stay of proceedings ("Co-Tenancy Stay") provided in paragraph 15 of the Amended and Restated Initial Order of the Honourable Mr. Justice Hainey dated Thursday the 22nd day of June, 2017 ("Initial Order"), and as extended by subsequent orders made in this proceeding, is permanently vacated and lifted as against Gap, and, without limiting the generality of the foregoing is permanently

vacated and lifted, in particular, in relation to the following Gap leases (the “Listed Leases”):

LOCATION	LANDLORD	TENANT
Halifax Shopping Centre, Halifax, Nova Scotia	OPB Realty Inc.	Gap (Canada) Inc. o/a “Banana Republic”
Erin Mills Town Centre, Mississauga, Ontario	OPB (EMTC) Inc.	Gap (Canada) Inc.
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Erin Mills Town Centre, Mississauga, Ontario	OPB (EMTC) Inc.	Old Navy (Canada) Inc.
Park Place Shopping Centre, Lethbridge, Alberta	Park Place Mall Holdings Inc.	Old Navy (Canada) Inc.
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Landsdowne Place, Peterborough, Ontario	Landsdowne Mall Inc.	Gap (Canada) Inc. o/a “Gap Factory Store”
Stone Road Mall,	Stone Road Mall Holdings	Old Navy (Canada) Inc.

Guelph, Ontario	Inc., Limited	
Pen Centre, St. Catharines, Ontario	OPB Realty Inc.	Old Navy (Canada) Inc.
Landsdowne Place, Peterborough, Ontario	Landsdowne Mall Inc.	Old Navy (Canada) Inc. o/a "Old Navy"
Mapleview Shopping Centre, Burlington, Ontario	Canapen (Halton) Limited and Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap"
Mapleview Shopping Centre, Burlington, Ontario	Canapen (Halton) Limited and Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap Kids/Baby"
Metropolis at Metrotown, Burnaby, British Columbia	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Banana Republic"
Metropolis at Metrotown, Burnaby, British Columbia	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a "Gap"
Oshawa Centre, Oshawa, Ontario	Oshawa Centre Holdings Inc.	Gap (Canada) Inc. o/a "Gap" and "Gap Kids"

Oshawa Centre, Oshawa, Ontario	Oshawa Centre Holdings Inc.	Old Navy (Canada) Inc.
Southgate Centre, Edmonton, Alberta	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a “Banana Republic”
Southgate Centre, Edmonton, Alberta	Ivanhoe Cambridge II Inc.	Gap (Canada) Inc. o/a “Gap”
Northgate Shopping Centre, North Bay, Ontario	Hoopp Realty Inc.	Gap (Canada) Inc. o/a “Gap”
The Coquitlam Centre, Coquitlam, British Columbia	Pensionfund Realty Limited	Gap (Canada) Inc.
The Coquitlam Centre, Coquitlam, British Columbia	Pensionfund Realty Limited	Old Navy (Canada) Inc.
Sevenoaks Shopping Centre, Abbotsford, British Columbia	Sevenoaks S.C. Limited Partnership	Gap (Canada) Inc. o/a “Gap”

and that, as a result, Gap is entitled to exercise any rights which it may have as against Landlords whose Lease were affected by the Co-Tenancy Stay including in particular, without limiting the generality of the foregoing, the Landlords of the Listed Leases, where such rights arose from the failure of any of the Applicants to operate in such shopping centre or retail development (the “Co-Tenancy Rights”).

2. **THIS COURT ORDERS AND DECLARES** that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of the Co-Tenancy Rights by Gap, and that the relief granted in paragraph 1 of this Order shall operate retroactively.
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, C. c-36, AS AMENDED

Court File No: CV-17-11846-00CL²⁹²

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
Toronto

ORDER

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

293
Court File No: CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
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MOTION RECORD

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