

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., CORBEIL  
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., 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

**MOTION RECORD OF THE APPLICANTS  
(Motion for Approval of Lease Amending Agreement with  
Crombie Developments Limited  
Avalon Mall, St. John's (Store #1639))**

September 29, 2017

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Lawyers for the Applicants

**TO: SERVICE LIST**

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# TAB 1

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

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
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CANADA INC.

Applicants

**NOTICE OF MOTION**

**(Motion for Approval of Lease Amending Agreement with  
Crombie Developments Limited Avalon Mall, St. John's (Store 1639))**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on October 4, 2017 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. An Order (the "**Approval and Vesting Order**") substantially in the form attached to the Motion Record, *inter alia*:
  - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;

- (b) approving the Lease Amending Agreement entered into as of September 25, 2017 between Sears Canada Inc. ("**Sears Canada**") and Crombie Developments Limited ("**Crombie**"), and vesting Sears Canada's right, title and interest in and to the Property (as defined in the Approval and Vesting Order) in Crombie; and
  - (c) sealing from the public record certain commercially-sensitive information and documents (as described below).
2. Such further and other relief as this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**") pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated;
2. FTI Consulting Canada Inc. was appointed to act as the Monitor (the "**Monitor**") in the CCAA proceeding;

**Approval and Vesting Order**

3. On July 13, 2017, the Court approved a process (the "**SISP**") by which BMO Nesbitt Burns Inc. (the "**Sale Advisor**") on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada and the Monitor sought bids and proposals for a broad range of transaction alternatives with respect to the business, assets and/or leases of the Applicants;
4. On September 25, 2017, Sears Canada entered into a Lease Amending Agreement in which Sears Canada has agreed to amend the Term of Lease so as to expire on February 28, 2018 in respect of the Avalon Mall, St. John's (Store 1639);

5. The consideration to be received in the transaction is fair and reasonable, and approved by the Monitor;
6. The process leading to the Lease Amending Agreement was fair and reasonable in the circumstances;
7. The Lease Amending Agreement is in the best interests of the creditors and other stakeholders of the Applicants;
8. The relief sought on this motion is supported by the Sale Advisor and the Monitor;
9. The debtor-in-possession credit agreements (“**DIP Agreements**”) require that the Net Proceeds of any Disposition (both as defined in the DIP Agreements) shall be applied promptly, and in any event no later than three business days after receipt thereof, to prepay the Obligations (as defined in the DIP Agreements) in the priority provided for in the DIP Agreements;

#### **Sealing Order**

10. The Confidential Appendix to the Third Report of the Monitor contains confidential and commercially sensitive information which, if made public, would be materially prejudicial to Sears Canada and detrimental to the SISP if the proposed transaction is not completed and the leases must be the subject of further marketing efforts;
11. There are no reasonable alternative measures to sealing this information from the public record;
12. The salutary effects of sealing this information outweigh the deleterious effects of doing so;
13. The provisions of the CCAA, including section 36, and the inherent and equitable jurisdiction of this Honourable Court;

14. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

15. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Affidavit of Billy Wong sworn September 28, 2017 and the exhibits attached thereto;
2. The Affidavit of Billy Wong sworn June 22, 2017 and exhibit K attached thereto;
3. The Third Report of the Monitor; and
4. Such further and other evidence as counsel may advise and this Court may permit.

September 29, 2017

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Lawyers for the Applicants

**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-17-11846-00CL

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.

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

**NOTICE OF MOTION**  
(Motion For Approval of Lease Amending Agreement with  
Crombie Developments Limited Avalon Mall,  
St. John's (Store 1639))

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Lawyers for the Applicants

# TAB 2

*Ontario*  
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CANADA INC.

APPLICANTS

**AFFIDAVIT OF BILLY WONG  
(Sworn September 28, 2017)**

**(Motion for Approval of Lease Amending Agreement with  
Crombie Developments Limited  
Avalon Mall, St. John's (Store #1639))**

I, Billy Wong, of the City of Toronto, in the Province of Ontario, MAKE OATH

AND SAY:

1. I am the Executive Vice-President and Chief Financial Officer of the Applicant Sears Canada Inc. ("**Sears Canada**"). I am also a director of each of the other Applicants. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with members of the senior management team of Sears Canada, legal, financial and other advisors of Sears Canada, and representatives of FTI Consulting Canada Inc. (the "**Monitor**").

2. I swear this Affidavit in support of the motion brought by the Applicants seeking an Order, substantially in the form attached to the Motion Record, approving the Lease Amending Agreement made as of September 25, 2017 (the “**Lease Amending Agreement**”) between Sears Canada and Crombie Developments Limited (“**Crombie**”) relating to the lease held by Sears Canada (the “**Lease**”) for Sears Canada’s full-line store located at the Avalon Mall (Store #1639) in St. John’s, Newfoundland and Labrador, the details of which are summarized in the following chart:

<b>Property</b>	<b>City</b>	<b>Landlord</b>	<b>Size of Store (square feet)</b>	<b>Lease Expiration</b>	<b>Options Remaining, Outside Expiration</b>
Avalon Mall	St. John’s, NL	Crombie Developments Limited	128,941	November 2, 2020	4 options, November 2, 2050

3. Capitalized terms used in this Affidavit that are not otherwise defined have the meaning given to them in the Lease Amending Agreement.

4. This Affidavit should be read in conjunction with the Affidavit of Mark Caiger sworn September 28, 2017 (the “**Caiger Affidavit**”), which describes in more detail the sales efforts undertaken by Sears Canada and BMO Nesbitt Burns Inc. (the “**Sale Advisor**”) pursuant to the Court-approved Sale and Investment Solicitation Process (the “**SISP**”), which efforts resulted in, among other things, Crombie’s bid and the Lease Amending Agreement which is the subject of this motion.

5. I understand from the Monitor that the consideration that Sears Canada will receive in this proposed transaction (the “**Surrender Fee**”) is included in a Confidential

Appendix to the Monitor's Report that will be filed separately in connection with this motion. In the view of the Applicants and the Sale Advisor, the Surrender Fee is confidential information and general disclosure of such information could be materially prejudicial to the Applicants in connection with the SISP generally and in connection with any further marketing of the Lease in particular in the event that the proposed transaction does not proceed to close as anticipated. As such, the Surrender Fee in the Lease Amending Agreement, which is attached as Exhibit "A" to this Affidavit, has been redacted. The Applicants are requesting that a sealing order be granted with respect to the Confidential Appendix.

6. The Applicants and the Sale Advisor believe that this transaction is in the best interests of the Applicants and their stakeholders, and that the Surrender Fee to be paid in respect of the transaction is fair and reasonable. Moreover, the Applicants and the Sale Advisor believe that the process leading to the transaction, as described in the Caiger Affidavit and herein, was reasonable in the circumstances.

7. It is my understanding that the Monitor approves the process that has been followed by Sears Canada and the Sale Advisor, and supports the Applicants' motion seeking approval of the Lease Amending Agreement.

### **Background to Crombie's Bid**

8. On July 13, 2017, the Court granted the Applicants' request for an order approving the SISP that would be conducted by Sears Canada's Sale Advisor under the supervision of the Monitor and a special committee of independent directors of the board of Sears Canada (the "**Special Committee**").

9. The purpose of the SISP was to seek out proposals for the acquisition of, or an investment in, the Applicants' business, property and/or leases, and to implement one or a combination of such proposals with the objective of maximizing value for the benefit of the Applicants' stakeholders.

10. The Caiger Affidavit provides details regarding the steps that were taken to market and solicit interest in Sears Canada's assets pursuant to the SISP, including the Lease which is subject to the Lease Amending Agreement.

11. After discussions with the Sale Advisor, on September 21, 2017, Crombie submitted a bid in respect of the Lease in which Crombie offered to amend the Lease on the terms and conditions set out in its proposed form of lease amending agreement.

12. Following receipt of the bid, the Special Committee directed Sears Canada and the Sale Advisor to engage in negotiations with Crombie in an effort to conclude a transaction. I am advised by Mr. Caiger and believe that negotiations ensued with Crombie in respect of financial and legal aspects of its bid, draft documents were exchanged by the parties, and follow up discussions were held as necessary. After considering Crombie's offer and alternatives available, the Sale Advisor recommended to the Special Committee, and the Special Committee subsequently recommended to the Board, that Sears Canada enter into a transaction with Crombie in respect of the Lease. The Board carefully considered Crombie's offer and was satisfied that the Surrender Fee being offered was fair and reasonable, and in the best interests of the Applicants and their stakeholders.

13. In coming to this view, Sears Canada and the Special Committee, in consultation with the Sale Advisor, took into account the fact that by reducing the term remaining on the lease, the proposed transaction also eliminates certain potential claims into the Applicants' estate.

### **The Lease Amending Agreement**

14. On September 28, 2017, Sears Canada and Crombie entered into the Lease Amending Agreement. The Lease Amending Agreement provides for, among other things, the following:

- (a) On the Effective Date, the Term of the Lease will be amended so as to expire as of 11:59 p.m. on February 28, 2018 (the "**Lease Termination Date**").
- (b) Crombie will pay the Surrender Fee to the Monitor, in trust, on the first business day following five days from the issuance of the Approval Order.
- (c) The Lease Amending Agreement and the Transaction contemplated therein is conditional upon the Court issuing and entering the Approval Order and the Monitor delivering the Monitor's Certificate on or before October 25, 2017, or such later date as Sears Canada (with the consent of the Monitor) may advise Crombie in writing, provided that such date will be no later than December 24, 2017, without the consent of Crombie.
- (d) During the period between the Effective Date and the Lease Termination Date, Sears Canada will be entitled to carry out a liquidation sale of its inventory,

trade fixtures, furniture, chattels, signs bearing logo, trade-mark, trade-name or other mark of Sears Canada. During that time, Sears Canada will be obliged to comply with all the terms of the Lease, including the obligation to pay rent as required under the Initial Order, and any sale must be conducted in accordance with the sale guidelines appended to the Liquidation Sale Approval Order dated July 18, 2017.<sup>1</sup>

### **Proposed Distribution of Proceeds of Transaction**

15. The proposed Approval Order provides that the Monitor will distribute the Surrender Fee to repay amounts owing under the DIP ABL Credit Agreement or the DIP Term Credit Agreement (a “**Distribution**”). Upon delivery of the Monitor’s Certificate, any Distribution shall be free and clear of all claims and encumbrances (as described in the Approval Order). If all amounts owing under the DIP Credit Agreements have been repaid, the Monitor will retain any Net Proceeds remaining on behalf of the Applicants pending further Order of the Court.

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<sup>1</sup> The Applicants will be seeking Court approval for a proposed liquidation process in order to conduct a sale at the premises subject to the Lease.



16. For all of the foregoing reasons, the Applicants believe that approval of the Lease Amending Agreement is in the best interests of the Applicants and their stakeholders.

SWORN BEFORE ME at the City of Toronto, on the 28<sup>th</sup> day of September, 2017.

Waleed Mulla  
Commissioner for taking Affidavits

  
\_\_\_\_\_  
Billy Wong

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME ON  
THIS 28<sup>th</sup> DAY OF SEPTEMBER, 2017.**

*Waleed Malik*

---

A commissioner for taking Affidavits

**THIS LEASE AMENDING AGREEMENT** (the "**Agreement**") is made as of the 25th day of September, 2017

**B E T W E E N:**

**SEARS CANADA INC.**  
(the "**Tenant**")

- and -

**CROMBIE DEVELOPMENTS LIMITED** (the "**Landlord**")

**RECITALS:**

- A. On June 22, 2017, the Tenant and certain of its affiliates and subsidiaries (the "**Sears Group**") applied for and were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") pursuant to the Initial Order granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on June 22, 2017 (as amended, restated, supplemented and/or modified from time to time, the "**Initial Order**"). Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor (the "**Monitor**") in connection with the proceedings commenced under the CCAA by the Sears Group pursuant to the Initial Order (Court File No. CV-17-11846-00CL) (the "**CCAA Proceedings**").
- B. On July 13, 2017, the Court granted an Order (as amended, restated, supplemented and/or modified from time to time, the "**SISP Order**"), which, among other things, approved the Sale and Investment Solicitation Process (the "**SISP**"). The SISP Order and the SISP govern the process for soliciting and selecting bids for the sale of all or substantially all of the Business, Assets and/or Leases (each as defined in the SISP) of the Sears Group.
- C. Pursuant to a lease dated November 3, 2005 between Crombie Developments Limited, as landlord, and the Tenant, as such lease may have been assigned, amended, restated, renewed, supplemented and/or modified to the date hereof, including but not limited to those documents listed in Schedule "A" attached hereto, collectively the "**Lease**", the Landlord leased to the Tenant certain premises located within the retail mall known as Avalon Mall and located at 48 Kenmount Rd, in the City of St. John's, Province of Newfoundland and Labrador, as more particularly described in the Lease (the "**Sears Store Premises**").
- D. The Landlord is the successor in interest to the landlord named in the Lease.
- E. The Landlord hereby offers to amend the terms of the Lease on the terms and conditions set out herein (the "**Offer**").
- F. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Lease.

**THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1  
AMENDMENTS**

**1.1 Offer and Acceptance**

- (a) Subject to the Initial Order and the SISP Order, the Landlord hereby agrees to amend the terms of the Lease in accordance with the terms and conditions of this Agreement.
- (b) This Offer is irrevocable to the Landlord and open for acceptance by the Tenant until twenty (20) business days following the Binding Bid Deadline (as defined in the SISP Order). This Offer shall terminate on the 21<sup>st</sup> Business Day following the Binding Bid Deadline, unless extended by the Landlord in writing.
- (c) Upon the Effective Date (defined below), this Offer shall constitute a binding agreement to amend the terms of the Lease, on the terms of this Agreement.

**1.2 Amendments of Lease**

The Lease is hereby amended effective as of the Effective Date as follows:

(a) **Term of the Lease**

Effective as of the Effective Date, the Term of the Lease shall be amended so as to expire as of 11:59 pm on February 28, 2018 ( the "**Lease Termination Date**"). During that period between the Effective Date and the Lease Termination Date, Tenant shall be entitled to carry out or conduct a liquidation sale of its inventory, trade fixtures, furniture, chattels, signs bearing logo, trade-mark, trade-name or other mark of Tenant provided that during that period Tenant shall be obligated to comply with all of the terms of the Lease including the obligation to pay Rent as required under the Initial Order and provided that such sale is conducted in accordance with the sale guidelines appended to the Liquidation Sale Approved Order dated July 18, 2017.

(b) **Payment by Landlord to Tenant:**

On the first business day following 5 days of the issuance of the Approval Order, the Landlord shall pay to the Monitor in trust the sum of [REDACTED] (the "**Surrender Fee**").

**1.3 Conditions and Closing**

This Agreement is subject to the following conditions to be fulfilled or performed, on or before October 25, 2017, or such later date as the Tenant (with the consent of the Monitor) may advise the Landlord in writing, provided that such date shall be no later sixty (60) days following October 25, 2017 without the further consent of the Landlord (the "**Outside Date**"), which conditions are for the mutual benefit of each of the Landlord and the Tenant and may only be waived, in whole or in part, by agreement of the parties to this Agreement:

- (a) an order issued by the Court approving this Agreement and the transactions contemplated by this Agreement, which order shall be in the form agreed to between the parties (the "**Approval Order**"), shall have been issued and entered by the Court; and
- (b) the Monitor shall have delivered the Monitor's Certificate to be attached to the Approval Order (the "**Monitor's Certificate**").

If the foregoing conditions are not satisfied on or before the Outside Date, this Agreement shall automatically terminate.

Upon receipt of the Approval Order and receipt by the Monitor of the Surrender Fee, the Monitor shall deliver copies of the Monitor's Certificate to the parties hereto and release the Surrender Fee to the Tenant and following the Effective Date file the Monitor's Certificate with the Court.

#### **1.4 CCAA Proceedings**

- (a) Upon acceptance of this Offer, and then only to the extent required by the CCAA Proceedings, the Tenant shall be entitled to disclose this Agreement and all information provided by the Landlord in connection herewith, to the Court, the Monitor and parties in interest to the CCAA Proceedings.
- (b) The Landlord and the Tenant acknowledge and agree that the Monitor, acting in its capacity as the Monitor, will have no liability in connection with this Agreement whatsoever, in its capacity as Monitor, in its personal capacity or otherwise.

### **ARTICLE 2 GENERAL**

#### **2.1 Acknowledgement**

The parties hereto acknowledge that the Lease as amended by this Agreement is in full force and effect and that time in all respects shall remain of the essence.

#### **2.2 Enurement**

This Agreement shall become effective upon the delivery by the Monitor of the Monitor's Certificate (the "**Effective Date**") and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by the Tenant without the consent of the Landlord.

#### **2.3 Entire Agreement**

This Agreement and the Lease constitute the entire agreement between the parties with respect to the Lease and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement and



the Lease. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement or the Lease.

#### 2.4 Waiver

- (a) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver.
- (b) No failure on the part of the Tenant or the Landlord to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

#### 2.5 Notice

Any notice, consent or approval required or permitted to be given in connection with this Agreement (but not the Lease) (a "Notice") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

- (a) in the case of a Notice to the Tenant at:

Sears Canada Inc.  
290 Yonge Street, Suite 700  
Toronto, ON M5B 2C3  
Attn:  
Email:

With a copy to:

Osler, Hoskin & Harcourt LLP  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto, ON M5X 1B8

Attn: Marc Wasserman & Tracy Sandler  
Email: mwasserman@osler.com & tsandler@osler.com

With a copy to:

FTI Consulting Canada Inc.  
TD South Tower  
Suite 2010, P.O. Box 104



Toronto, ON M5K 1G8

Attn: Paul Bishop  
Email: paul.bishop@fticonsulting.com

With a copy to:

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

Attn: Orestes Pasparakis & Virginie Gauthier  
Email: orestes.pasparakis@nortonrosefulbright.com &  
virginie.gauthier@nortonrosefulbright.com

(b) in the case of a Notice to the Landlord at:

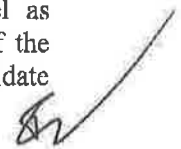
Crombie Developments Limited  
610 East River Road, Ste 200  
New Glasgow, Nova Scotia, B2H 3S2  
Attn: Donald Clow, President CEO  
Email: don.clow@crombie.ca

with a copy to:

McLean & Kerr LLP  
130 Adelaide St. West | Suite 2800  
Toronto | M5H 3P5 | Canada

Attn: Linda Galessiere  
Email: lgalessiere@mcleankerr.com

A Notice is deemed to be given and received (i) if sent by personal delivery or same day courier, on the date of delivery if it is a business day and the delivery was made prior to 5:00 p.m. (local time in the place of receipt) and otherwise on the next business day, (ii) if sent by overnight courier, on the next business day, or (iii) if transmitted by facsimile, on the business day following the date of confirmation of transmission by the originating facsimile, or (iv) if sent by email, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic "read receipt" does not constitute acknowledgment of an email for purposes of this section. Any party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the party at its changed address. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a party.



## **2.6 Further Assurances**

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further documents and assurances as may be deemed necessary or advisable from time to time in order to effectively amend the Lease and carry out the terms and conditions of this Agreement in accordance with their true intent.

## **2.7 Severability**

If any provision of this Agreement shall be determined to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

## **2.8 Governing Law**

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Newfoundland and Labrador and the federal laws of Canada as may be applicable. Each party to this Agreement submits and attorns to the exclusive jurisdiction of the Courts in Newfoundland and Labrador. If, during the CCAA Proceedings, an action, application, reference or other proceeding as against the Sears Group (or any one of them) arises out of or related to this Agreement, then the parties agree that all claims in respect of any such actions, application, reference or other proceeding shall be heard and determined in the CCAA Proceedings before the Court. For clarification purposes, if this Agreement is assigned to a Successful Bidder in accordance with the terms of this Agreement and an action, application, reference or other proceeding arises out of or related to this Agreement, then such proceeding need not be determined in the CCAA Proceedings.

## **2.9 English Language**

The parties hereto have requested that this Agreement be drafted in English only. *Les parties aux présentes ont demandé à ce que la présente convention soit rédigée en anglais seulement.*

## **2.10 Statute References**

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

## **2.11 Headings**

The division of this Agreement into Sections, the insertion of headings is for convenience of reference only and are not to be considered in, and shall not affect, the construction or interpretation of any provision of this Agreement.

## **2.12 References**

Where in this Agreement reference is made to an article or section, the reference is to an article or section in this Agreement unless the context indicates the reference is to some other agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any





agreement supplemental hereto. The word "includes" or "including" shall mean "includes without limitation" or "including without limitation", respectively. The word "or" is not exclusive.

**2.13 Number and Gender**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

**2.14 Counterparts and Delivery**

All parties agree that this Agreement may be executed in counterpart and transmitted by telecopier or e-mail (PDF) and that the reproduction of signatures in counterpart by way of telecopier or e-mail (PDF) will be treated as though such reproduction were executed originals.

[Signature pages follow.]

A handwritten signature in black ink, consisting of a stylized initial 'D' followed by a long, sweeping horizontal line that curves upwards at the end.

IN WITNESS WHEREOF the Tenant has executed this Agreement.

SEARS CANADA INC.

By: P. MOWEL  
Name: P. MOWEL  
Title: Secretary

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF the Landlord has executed this Agreement.

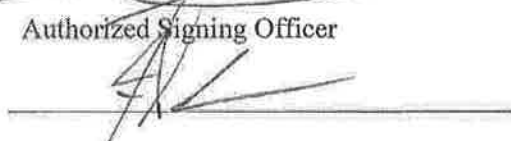
**Crombie Developments Limited**

By:



Authorized Signing Officer

By:



Authorized Signing Officer

**SCHEDULE "A" - LEASE PARTICULARS**

Lease dated November 3<sup>rd</sup>, 2005

A handwritten signature in black ink, consisting of a stylized, cursive script.

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

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF BILLY WONG  
(Motion for Approval of Lease Amending Agreement  
with Crombie Developments Limited  
Avalon Mall (Store #1639))**

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Tel: 416.862.5949  
Fax: 416.862.6666

Lawyers for the Applicants

**TAB 3**



Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Landlord, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2017, filed:

### **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the Lease Amending Agreement, as applicable.

### **APPROVAL OF THE LEASE AMENDING AGREEMENT**

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the Lease Amending Agreement by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor after consultation with the DIP Lenders) and the Landlord may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Lease Amending Agreement and this Order, and shall not incur any liability as a result thereof. The legal descriptions with respect to the Sears Store Premises (as defined in the Lease Amending Agreement) are as set out on Schedule “B” hereto.
4. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, the Surrender Fee (as defined in the Lease Amending Agreement), in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable (a “**Distribution**”).



5. THIS COURT ORDERS that upon the delivery of a Monitor's certificate to the Landlord substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Lease and/or the Sears Store Premises, including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors' Priority Charge, the DIP ABL Lenders' Charge, the DIP Term Lenders' Charge, the KERP Subordinated Charge and the Directors' Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings; and
- (b) all charges, security interests or claims evidenced by registrations pursuant to any personal property registry system.

6. THIS COURT ORDERS that, notwithstanding:

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

the distribution permitted by paragraph 4 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other

applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Surrender Fee or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

8. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

### **SEALING**

9. THIS COURT ORDERS that Confidential Appendix "●" to the ● Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

### **GENERAL PROVISIONS**

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

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

## SCHEDULE "A"

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

### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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

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

### MONITOR'S CERTIFICATE

#### RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2017 (the "**Approval Order**") approving the Lease Amending Agreement between Sears Canada Inc. ("**Sears Canada**"), as Tenant, and Crombie Developments Limited (the "**Landlord**") as Landlord dated September 25, 2017 (the "**Lease Amending Agreement**"), a copy of which is attached as Exhibit A to the Affidavit of Billy Wong dated September 28, 2017.

B. Pursuant to the Approval Order the Court approved the Lease Amending Agreement, which Lease Amending Agreement is to be effective upon the delivery by the Monitor to the Landlord and Sears Canada of a certificate confirming that (i) the Approval Order has been issued and entered by the Court, and (ii) the Surrender Fee (as defined in the Lease Amending Agreement) has been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The Approval Order has been issued and entered by the Court; and
2. The Surrender Fee has been received by the Monitor.

This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal or corporate capacity

Per: \_\_\_\_\_

Name:

Title:

## SCHEDULE "B"

No.	Location/ Address	Province	Land Registry Office	Legal Description
1.	48 Kenmount Rd., St. John's	NF	Registry of Deeds	<p>ALL that piece or parcel of land situate and being on the southeastern side of O'Leary Avenue, 18.29 metres wide, at St. John's, Newfoundland, in the electoral district of St. John's North, and being bounded and abutted as follows, that is to say:</p> <p>BEGINNING at a point southeastern side of O'Leary A venue, at St. John's, said point having coordinates of North 5 269 084.20 metres and East 322 967.10 metres in the Modified Three Degree Transverse Mercator Projection for the province of Newfoundland, Zone One;</p> <p>THENCE running along the southeastern side of O'Leary Avenue, North 72° 43' 33" East, 141.229 metres; thence along the arc of counter-clockwise curve, 71.246 metres long with a radius of 89.992 metres on a chord bearing and distance of, North 44° 50' 26" East, 69.400 metres; thence North 24° 48' 24" East, 119.732 metres;</p> <p>THENCE turning and running along the southern side of Thorborn Road, varying width, South 70° 20' 05" East, 79.399 metres; thence along the arc of a counter-clockwise curve, 61.416 metres long with a radius of 700.000 metres on a chord bearing and distance of, South 72° 59' 10" East, 61.396 metres; thence along the arc of a clockwise curve, 97.620 metres long with a radius of 1057.400 metres on a chord bearing and distance of, South 77° 45' 03" East, 97.585 metres; thence South 81° 03' 00" East, 18.504 metres; thence South 78° 37' 02" East, 47.066 metres; thence South 76° 15' 20" East, 37.343 metres; thence South 77° 36' 08" East, 50.780 metres; thence South 81° 18' 42" East, 55.928 metres; thence South 81° 55' 20" East, 12.994 metres; thence South 84° 16' 59" East, 12.940 metres; thence South 87° 52' 20" East, 11.547 metres; thence South 81° 49' 58" East, 14.278 metres;</p> <p>THENCE turning and running along the Off Ramp for Columbus Drive, South 6° 39' 59" East, 5.648 metres; thence South 6° 17' 13" East, 12.703 metres; thence South 3° 42' 30" East, 13.295 metres; thence South 0° 14' 38" East, 13.988 metres; thence South 1° 19' 09" West, 13.858 metres; thence South 7° 43' 31" West, 14.312 metres; thence along the arc of a clockwise curve, 35.477 metres long with a radius of 74.000 metres on a chord bearing and distance of, South 26° 55' 26" West, 35.138 metres;</p> <p>THENCE turning and running along the northwestern side of Kenmount Road, varying width, South 53° 01' 15" West, 55.896 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Canadian Shopping Centres Ltd., North 36° 08' 35" West, 77.084 metres; thence South 59° 08' 13" West, 99.679 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, South 66° 53' 01" West, 43.190 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Tom Woodford Limited, South 73° 53' 00" West, 48.616 metres; thence South 30° 27' 00" East, 100.584 metres;</p> <p>THENCE turning and running along the northwestern side of Kenmount Road, South 68° 39' 36" West, 40.916 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Ultramar Canada Inc., North 18° 53' 49" West, 97.485 metres; thence South 73° 50' 12" West, 53.858 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, North 86° 15' 48" West, 32.802 metres; thence North 76° 47' 57" West, 106.846 metres;</p>

No.	Location/ Address	Province	Land Registry Office	Legal Description
				<p>THENCE turning and crossing Leary's Brook, North 06° 21' 37" East, 8.506 metres;</p> <p>THENCE turning and running along the northern side of Leary's Brook, South 81° 52' 32" West 42.428 metres; thence South 74° 08' 56" West, 45.750 metres; thence South 67° 11' 07" West, 46.329 metres; thence South 65° 06' 11" West, 30.480 metres; thence South 86° 58' 11" West, 46.116 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Canadian Shopping Centres Ltd., North 17° 03' 49" West, 115.519 metres, more or less, to the point of commencement and containing an area of 12.610 hectares, more or less, Job No. 96-063, dated May 24, 1996.</p> <p>The above described piece or parcel of land, being subject to two Nfld. Light &amp; Power easements, 5.49 metres wide, extending onto the northeastern portion of the property. There is a ancillary easement, 9.14 metres wide, running through portions or the southeastern boundary.</p> <p>The above described piece or parcel of land, being subject to a sanitary and storm sewer easement, 4.57 metres wide, running through the property.</p> <p>CONTAINED within the above described piece or parcel of land, an area leased from the City of St. John's, situate and being on the south side of Thorbom Road and being bounded and abutted as follows, that is to say:</p> <p>BEGINNING at a point on the southern side of Thorburn Road, said point having co-ordinates of North 5 269 168.88 metres and East 323 620.17 metres in the Modified Three Degree Transverse Mercator Projection for the Province of Newfoundland, Zone One;</p> <p>THENCE running across Leary's Brook, South 48° 42' 48" East, 19.964 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, South 28° 33' 12" West, 30.480 metres; thence South 50° 10' 12" West, 50.719 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Canadian Shopping Centres Limited, South 59° 08' 13" West, 99.679 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, South 66° 53' 01" West, 43.190 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Tom Woodford Limited, South 73° 53' 00" West, 48,616 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, South 63° 23' 53" West, 20.923 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Ultramar Canada Inc., South 73° 50' 12" West, 53.858 metres;</p> <p>THENCE turning and running along the land, now or formerly, or Atlantic Shopping Centres Limited, North 86° 15' 48" West, 32.802 metres; thence North 76° 47' 57" West, 106.846 metres;</p> <p>THENCE turning and crossing Leary's Brook, North 06° 21' 37" East, 8.506 metres;</p> <p>THENCE turning and running along the land, now or formerly, of Atlantic Shopping Centres Limited, North 81° 52' 32" East, 17.099 metres; thence South 16° 19' 28" East, 4.481 metres; thence South 78° 23' 28" East, 59.162 metres; thence South 80° 39' 28" East, 28.255 metres; thence South 80° 50' 07" East, 11.600 metres; thence North 74° 38' 12" East, 79.614 metres; thence North 67° 17' 12" East, 131.430 metres; thence North 57° 12' 12" East, 89.245 metres; thence North 33° 03' 12" East, 51.816 metres, more or less, to the point of commencement, and ,containing an area of, 8,224.7 square metres, more or less.</p>

No.	Location/ Address	Province	Land Registry Office	Legal Description
				<p>ALSO, an area of land, leased by Ultramar Canada Inc. from Atlantic Shopping Centres Limited, at Registry of Deeds, Volume 837 and Folio 158.</p> <p>All bearings are Grid bearings referred in Grid North of the Three Degree Modified Transverse Mercator Projection at Central Meridian 53° West. All distances are horizontal ground distances.</p>

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.

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANTS**  
(Motion for Approval of Lease Amending Agreement with  
Crombie Developments Limited  
Avalon Mall, St. John's (Store #1639)  
returnable October 4, 2017)

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