Court File No. CV-25-00738613-00CL

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 HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC**.**

Applicants

COMBINED FACTUM OF MORGUARD INVESTMENTS LIMITED, IVANHOÉ CAMBRIDGE and WESTCLIFF MANAGEMENT LTD.

(Addressing Operational Issues regarding PurchaserCo's Bid)
Motion Returnable August 28, 2025

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PART I- Overview

1. The motion before the court, brought by the Applicants (collectively "**HBC**"), is for, among other things, an order under section 11.3 of the *Companies' Creditors Arrangement Act* ("**CCAA**") approving the assignment of 25 leases to Ruby Liu Commercial Investment Corp. ("**PurchaserCo**").

2. In connection with its motion for an order assigning leases, HBC requests that the court grant an approval and vesting order ("**AVO**") vesting certain assets in PurchaserCo. The draft form of AVO in HBC's motion record does not accord with AVOs granted in numerous other CCAA proceedings where leases are impacted. If HBC is successful in its request to assign leases, the AVO must be amended to ensure that no rights and remedies of the landlords under the leases are vested out or expunged by operation of the AVO.

3. The responding landlords Morguard Investments Limited ("**Morguard**"), Ivanhoé Cambridge ("**Ivanhoé**") and Westcliff Management Ltd. ("**Westcliff**") (collectively the "**Landlords**") are landlords of 7 of the leases which HBC seeks to assign to PurchaserCo.

4. While this Factum is filed on behalf of the Landlords, it is submitted in conjunction with and on behalf of all landlords responding to HBC's motion. The Landlords rely on the affidavits and factums filed by the other landlords opposing HBC's motion.

5. This Factum outlines information relating to the Landlords and their leases with HBC and addresses various <u>operational issues</u> with PurchaserCo's proposed tenancy – all of which confirm that (i) PurchaserCo will not able to perform the obligations under the leases and (ii) PurchaserCo is not an appropriate person to whom the rights and obligations of the leases should be assigned. As such HBC's motion should be dismissed with costs to the Landlords.

Landlords will Suffer Harm

6. HBC occupied the most prominent and strategically important retail spaces within the shopping centres. The assignment of these leases to an unproven tenant with an undeveloped concept or untested business model will negatively impact the entire shopping centres in that it will impede the ability of the Landlords to procure tops rents from other tenants and attract other new best in class tenants to the mall – all of which may lead to the devaluation of the asset as the value of shopping centres always take into account the identity and covenant of the anchor tenants.

7. An ill-suited tenant not only risks underperformance and early failure, <u>but can also undermine the centre's reputation and delay the opportunity for a successful long-term replacement. Short-term income does not justify probable long-term reputational damage.</u>

Part II – Brief review of the Facts

Landlords' Industry Knowledge and Expertise

8. **<u>MORGUARD</u>**: David Wyatt, the Senior Vice President, Retail with Morguard, swore an affidavit on behalf Morguard. Mr. Wyatt currently leads the asset management leasing and operations group for Morguard's retail portfolio (which real estate portfolio exceeds 15.5M square feet of commercial retail space - valued at over $4.7B) and oversees more than 100 employees.[1] Mr. Wyatt has over 35 years of experience in retail real estate operations and leasing having worked in major markets in both Eastern and Western Canada.[2]

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[1] Affidavit of D. Wyatt: Responding Motion Record of Morguard Vol I, Tab 1, paras 1, 8.
[2] Affidavit of D. Wyatt: Responding Motion Record of Morguard Vol I, Tab 1, para 5.

9. Mr. Wyatt was the Senior Vice President, Leasing & Operations with Morguard when Sears filed for insolvency protection and in that role he directed the leasing and redevelopment efforts undertaken by Morguard when stores were assigned and/or disclaimed in that insolvency proceeding.[3]

10. **IVANHOÉ:** Ruby Paola, a Managing Director, Real Estate Asset Management, Canada with La Caisse de dépoôt et placement du Quebec ("**La Caisse**"), the parent entity of the various Ivanhoé entities, swore an affidavit on behalf of Ivanhoé. La Caisse is responsible for managing the assets/investments of its 48 depositors, representing over 6 million Quebecers and contributing to Quebec's economic development. La Caisse's net assets totaled CAD $473 billion. Ms Paola currently leads the Real Estate Asset Management group outside of the province of Quebec for La Caisse with a real estate portfolio that exceeds 12M square feet of commercial retail space.[4]

11. Ms Paola has over 25 years of experience in retail real estate operations and leasing. During her career Ms Paola worked in major markets across Canada, including Ontario, Alberta, and British Columbia, including curating, implementing and executing merchandising plans in new ground up super regional and outlet shopping centres.[5]

12. **WESTCLIFF**: Alan Marcovitz, the President and Chairman of the Board of Westcliff swore an affidavit on behalf of Westcliff. Westcliff and its affiliates, own, develop, construct and manage major real estate projects in Canada and the United States. Westcliff's portfolio includes

[3] Affidavit of D. Wyatt: Responding Motion Record of Morguard Vol I, Tab 1, para 7.
[4] Affidavit of R. Paola: Responding Motion Record of Ivanhoé, Tab 1, paras 1, 8 and 10.
[5] Affidavit of R. Paola: Responding Motion Record of Ivanhoé, Tab 1, paras 5-6.

over 40 major projects, including 23 shopping centres with approximately 10M square feet of rental space.[6]

13. Mr. Marcovitz has over 42 years of experience in retail real estate operations and leasing. During his career he has worked in all major markets across Canada. Prior to his work with Westcliff, Mr. Marcovitz was a lawyer at Torys LLP and Bramalea Limited.[7]

14. Each of the affiants have had extensive hands on direct experience with tenants across the country addressing tenant leasing/operational needs and are experts in area of commercial retail leases. The Landlords operate their portfolio of assets with a view to implementing property specific strategies designed to optimize long term value and position in the market.[8]

No History of Objecting to forced Assignment of Leases

15. Although the Landlords have been impacted by many retail insolvencies wherein motions to assign leases pursuant to section 11.3 of the CCAA have been sought, the Landlords have never opposed such motions. Both Morguard and Ivanhoé have consented to the assignment of leases (Target/Nordstrom) and including in these very proceeding where Ivanhoé consented to the assignment of three leases to YM Inc. This is the first time the Landlords have objected to the assignment of their leases in an insolvency proceeding.[9]

Careful Strategic Tenant Review

16. With their extensive experience evaluating retail performance, the Landlords have

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[6] Affidavit of A. Marcovitz: Responding Motion Record of Westcliff, Tab 1, paras 1 and 7.
[7] Affidavit of A. Marcovitz: Responding Motion Record of Westcliff, Tab 1, paras 5 and 6.
[8] Affidavit of D. Wyatt, paras 6/8; Affidavit of R. Paola, paras 9/10; Affidavit of A. Marcovitz, paras 5/8.
[9] Affidavit of D. Wyatt, para 4; Affidavit of R. Paola, para 4; Affidavit of A. Marcovitz, para 4.

identified key traits that consistently drive success. Top-performing retailers demonstrate a deep understanding of their target customers, competitive landscape, supply chain, operational infrastructure, and brand presentation. They are also well-positioned to secure financing when needed. This comprehensive command of both front and back-end operations enables them to attract customers, meet expectations, and convert traffic into sales.[10]

17. New tenants to the market that meet all other criteria are customarily asked to provide guarantees or letters of credit as security for the financial obligations of the lease.[11] When Target came to Canada, although it had a proven track record in the U.S. and a well-planned strategy for entering Canada, it's US parent was required to provide a guarantee for the leases in Canada.[12]

18. Tenants are customarily asked for information regarding the business model, financial investments and forecasts, products and merchandising, technology and IT software, operational and management teams, and vendors and supply chains.[13] When required, landlords will send teams to visit the tenant's other retail locations and meet with key management personnel. This was the case before Target was approved to lease locations in the Landlords' portfolios.[14]

19. In no circumstance have the Landlords ever agreed to lease a premises of over 100,000 sq. ft. in any of their shopping centres to a new, unknown retailer.[15]

HBC - Anchor Tenant: In every case, HBC served as an "anchor" tenant of the Landlords' shopping centres.

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[10] Affidavit of D. Wyatt, para 12; Affidavit of R. Paola, para 15; Affidavit of A. Marcovitz, para 12.
[11] Affidavit of R. Paola: Responding Motion Record of Ivanhoé Tab 1, para 19.
[12] Affidavit of D. Wyatt: Responding Motion Record of Morguard Vol I, Tab 1, para 13.
[13] Affidavit of D. Wyatt, para 14; Affidavit of R. Paola, para 16; Affidavit of A. Marcovitz, paras 12/13.
[14] Affidavit of D. Wyatt, para 15; Affidavit of R. Paola, para 16.
[15] Affidavit of D. Wyatt, para 62; Affidavit of R. Paola, para 18; Affidavit of A. Marcovitz, paras 45/46.

20. Anchor tenants play a critical role in the financial viability of a shopping centre for both the landlord and other tenants in the shopping centre in that they provide the single largest or one of the largest draws of customers to the shopping centres. The identity, performance, and brand strength of these key tenants attract new tenants, support market lease rates, and contribute to retaining existing tenants. In many cases, the long-term viability of a shopping centre and its atmosphere, ambiance are closely tied to the quality and recognition of these key tenants.[16]

21. Other retail tenants will include provisions in their leases that require the anchor tenants to be open and operating failing which rents may be reduced or abated. Although there are fewer large store anchor tenants, anchor tenants continue to be essential to shopping centres.[17]

22. HBC was aware of its role as an anchor tenant and its impact on the shopping centres and the other tenants in the shopping centres. Even as HBC's performance declined in recent years, particularly during COVID-related retail shutdowns, it was able to obtain rent relief from Morguard and others, relief that was not extended to many smaller tenants. This was due to HBC's market significance and the impact its presence had on co-tenancy clauses in other leases. Morguard provided relief to HBC to preserve the operational stability across its centres.[18]

Landlords will suffer Harm - Essential to Replace HBC with an Appropriate Tenant

23. Given that HBC occupied one of the most prominent and strategically important retail spaces within the shopping centres, it is critical to the Landlords that any re-leasing or reconfiguration results in a high-impact replacement. Introducing an unproven tenant with an

[16] Affidavit of D. Wyatt, paras 20-23; Affidavit of R. Paola, paras 27/29; Affidavit of A. Marcovitz, para 17.
[17] Affidavit of D. Wyatt, paras 21-22; Affidavit of A. Marcovitz: paras 17-18.
[18] Affidavit of D. Wyatt, paras 23/24; Affidavit of R. Paola, paras 28/29; Affidavit of A. Marcovitz, para 19.

undeveloped concept or untested business model in the largest most significant location in the shopping centres will negatively impact the entire shopping centre in that it will impede the ability of the landlord to procure tops rents from other tenants and attract other new best in class tenants to the mall – all of which may lead to the devaluation of the asset as the value of shopping centres always take into account the identity and covenant of the anchor tenants.[19]

24. As the retail leasing market is dynamic, the most suitable replacement tenants may not always be immediately available. In such cases, it is prudent to exercise patience in securing the right fit rather than rushing into a lease with a poorly aligned operator. An ill-suited tenant will also undermine the centre's reputation and delay the opportunity for a successful long-term replacement. Short-term income does not justify probable long-term reputational damage.[20]

25. **The HBC Leases:** At the commencement of HBC's CCAA proceeding, HBC operated the following retail stores in the Landlord's portfolios:

(a) Morguard had seven HBC leases - three leases were disclaimed and the remaining four leases are the subject of PurchaserCo's bid:

(1) Centrepoint Mall in North York, Ontario (122,502 SF);
(2) Bramalea City Centre in Brampton, Ontario (131,438 SF);
(3) Coquitlam Shopping Centre in Coquiltam, B.C (120,527 SF); and
(4) St. Laurent Shopping Centre in Ottawa, Ontario (158,314 SF).[21]

(b) Ivanhoé had nine HBC leases (plus one operated by CF) – three leases were disclaimed, three leases were assigned with the consent of Ivanhoé, to YM Inc.; one lease was assigned to an related Ivanhoé entity and the remaining two leases are the subject of PurchaserCo's bid:

[19] Affidavit of D. Wyatt, para 26; Affidavit of R. Paola, para 79; Affidavit of A. Marcovitz, paras 11/ 12/47.
[20] Affidavit of D. Wyatt, para 26; Affidavit of R. Paola, paras 14/18; Affidavit of A. Marcovitz, para 11.
[21] Affidavit of D. Wyatt, Responding Motion Record of Morguard Vol I, Tab 1, paras 18/28.

(1) Guilford Town Centre in Surrey, B.C. (174,462 SF); and
(2) Mapleview Centre in Burlington, Ontario (129,066 SF).[22]

(c) Westcliff had three HBC leases – two were disclaimed and the remaining lease located in the Fairview Park Mall, in Kitchener Ontario (184,714 SF), is the subject of PurchaserCo's bid.[23]

26. A summary of the more salient portions of the Landlord's leases is appended to this Factum at **Schedule "C"**.

27. In all cases HBC was in **arrears of rent** for each of its leased locations when it filed for CCAA protection.[24]

28. The HBC leases required that HBC **operate in a first class manner** or in a first-rate merchandising manner; or a manner intended to enhance the character, quality and image of the shopping centres or a typical department store in a first class regional shopping centre or a first-class, high quality retail department store.[25]

29. Several of the leases contained **restrictions on what HBC could sell** within its store (no grocery stores or sale of alcohol) and while HBC was permitted to use **concession vendors**, several leases limited the size of such vendors.[26]

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[22] Affidavit of R. Paola: Responding Motion Record of Ivanhoé, Tab 1, paras 26 and 36.
[23] Affidavit of A. Marcovitz: Responding Motion Record of Westcliff, Tab 1, paras 16 and 21.
[24] Affidavit of D. Wyatt, paras 34(4), 42(4), 50(4) and 58(4); Affidavit of R. Paola, paras 42(4) and 50(4); Affidavit of A. Marcovitz, para 27(4).
[25] Affidavit of D. Wyatt, paras 34/42/50/58 and Morguard Leases at **Exhibits "B", "D", "F" and "H"**; Affidavit of R. Paola, paras 42/50 and Ivanhoé leases at **Exhibits "B" and "D";** Affidavit of A. Marcovitz, para 27 and Westcliff lease at **Exhibit "B"**. See also **Schedule "C"** to this Factum for a summary of leases.
[26] Ibid. See also **Schedule "C"** to this Factum for a summary of leases.

30. The leases also required that HBC remain open and **continuously operate** its business in the leased premises. In Ivanhoé's leases, HBC acknowledged that its continuous operation was essential to maintain that character and reputation of the shopping centre and to facilitate the leasing of vacant space and renewing leases of existing tenants in the shopping centre.[27]

31. The terms of the leases with Morguard and Westcliff include **numerous options to extend the terms of the leases** such that if all options to extend are exercised, the lease terms would end between 2060 – 2091.[28]

32. In most cases, the leases obligate the landlords to **operate the shopping centres in a first class manner** and prohibit the landlord from leasing to tenants that may lower the "character" of the shopping centre including leasing to discount department stores.[29]

33. The leases require that HBC obtain **landlord consent for the assignment** of the leases to unrelated parties.[30]

34. The lease **require that HBC maintain the leased premises in a good state of repair** and undertake all repairs and replacements of the systems servicing the leased premises including HVAC, mechanical, electrical, plumbing and exterior facades and roof.[31]

35. The **leases with Morguard contain several restrictions** including (i) limiting the landlord's ability to alter the shopping centre's merchandising plan, (ii) requiring HBC's consent

[27] Supra at para 26. See also **Schedule "C"** to this Factum for a summary of leases.
[28] Supra at para 26. See also **Schedule "C"** to this Factum for a summary of leases.
[29] Supra at para 26. See also **Schedule "C"** to this Factum for a summary of leases.
[30] Supra at para 26. See also **Schedule "C"** to this Factum for a summary of leases.
[31] Ssupra at para 26. See also **Schedule "C"** to this Factum for a summary of leases.

for lease to other tenants within 100 feet of the entrance to HBC's store and (iii) requiring HBC's consent to **redevelop and/or alter** certain portions of the shopping centre and parking areas.[32]

36. The special lease restrictions (where applicable) and other terms in the leases were granted in favour of HBC as it was a nationally recognized brand that would act as the anchor tenant of the shopping centre driving sales/foot traffic and contributing to the first class mall character. [33]

No Ulterior Motive

37. HBC refers to the landlords' desire to remove the redevelopment restrictions as being their true motivation for opposing PurchaserCo as a tenant. The theory is untrue and unfounded for several reasons: first, if obtaining the leases back to remove restrictions was of paramount concern, Morguard would not have provided HBC with COVID rent relief but would have defaulted HBC non-payment of rent (and/or defaulted HBC for failing to upkeep and repair the stores);[34] second, during his cross examination Mr. Wyatt was asked about redevelopment plans for the four shopping centres, and the only plans being pursued relate to the former Sears space at BCC, and there are no plans to redevelop the HBC store.[35] Even HBC's evidence regarding its ability to monetize its consent rights listed only a small handful of examples from its portfolio of 96 stores.[36]

38. Neither Ivanhoé nor Westcliff have any redevelopment restriction in their leases, yet they too oppose the assignment of their leases. The Landlords are opposed to the assignment of their

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[32] Affidavit of D. Wyatt, paras 34/42/50/58 and Morguard Leases at **Exhibits "B", "D", "F" and "H".**
[33] Affidavit of D. Wyatt, paras 35-36, 43-44, 51-52, 59-60; Affidavit of R. Paola, paras 43-44, 51; Affidavit of A. Marcovitz, para 29.
[34] Affidavit of D. Wyatt, para 24.
[35] Cross Examination of D. Wyatt: Brief of Transcripts, Vol 6 Tab L, page p.3700, lines 11-25 and p..3701) lines 1-12: **NOTE** HBC has no restrictions over the Sears space at BCC.
[36] HBC Factum para 128.

leases because PurchaserCo is a totally unfit tenant.[37]

39. In addition, landlords will not benefit from a "windfall" if the leases are disclaimed, as the uncontracted evidence is that the costs to re-demise and/or, construct and re-tenant these locations **will far exceed any increase in rent that the landlords may charge** new tenants (such was the case in both Target and Sears locations). Further landlords will not receive any recoveries from HBC's estate for their other disclaimed locations.[38]

HBC's failure to maintain its Leased Locations

40. Although HBC was obligated to repair and maintain each of the store premises, HBC failed to do so such that the stores are now in need of significant costly repairs. Each of the Landlords obtained Building Condition Assessments or prepared preliminary repair budgets for their locations. The deficiencies are numerous and extensive and the cost to repair far exceed the amounts provided by PurchaserCo in its budget (which budget is approximately $4.6M per store.)[39]

41. When Target came to Canada it expended between $10-$15M per location and if the stores are to fixture as represented by Ms Liu, an investment of at least $15M per location will be necessary.[40]

PART III - Significant Operational issues: PurchaserCo is Not an Appropriate Tenant

42. It is essential to the Landlords that its tenants are best in class retailers who will enhance

[37] Affidavit of R. Paola, paras 44 and 52; Affidavit of A. Marcovitz, paras 26 and 28.
[38] Affidavit of D. Wyatt, paras 132; Affidavit of R. Paola, para 81; Affidavit of A. Marcovitz, para 47.
[39] Affidavit of D. Wyatt, paras 61-65 and **Exhibits "I, J, K, L"**; Affidavit of R. Paola, paras 53-56 and **Exhibits "E,F"**; Affidavit of A. Marcovitz, para 30 and **Exhibit "C"**.
[40] Affidavit of D. Wyatt, para 62; Affidavit of A. Marcovitz, para 32; Expert Report of S. Lee: Responding Motion Record of Ivanhoé, Tab 2B, p. 48.

the shopping centres' atmosphere and character and will drive sales in the malls. For tenants wishing to lease large anchor tenant space, the proposed tenant must have both a strong brand and a proven track record of financial success.[41] PurchaserCo, fails in every respect.

No Retail Experience

43. PurchaserCo has no prior experience as a retailer. Although certain Central Walk entities own and operate three retail shopping centres, owing and operating shopping centres differs greatly from operating a multi-chain department store[42] – as is clearly evident from PurchaserCo's inability to formulate a suitable business plan (notwithstanding significant assistance from HBC, Reflect and other advisors).

44. The Landlords have never leased a premises over 100,000 SF in any of their shopping centres to a new start up retailer.[43] The Landlords owe a duty to their tenants and investors not to enter into long term leases for the largest and most significant premises in their shopping centres with an entity having no track record of success.[44]

45. The lack of retail experience alone would render PurchaserCo an inappropriate assignee for HBC's anchor tenant leases. While the test under the CCAA may not require perfection, it must require more than mere aspiration particularly for large anchor tenant locations.

No Credible Management Team – False and Misleading Retainer

46. Notwithstanding the assertions of HBC, PurchaserCo does not have a reliable, sound

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[41] Affidavit of D. Wyatt, paras 10-16; Affidavit of R. Paola, paras 12-19; Affidavit of A. Marcovitz, paras 10-14.
[42] Affidavit of T.Warnaar: Responding Motion Record of KingSett, Tab 1, para 38; Cross Examination of D. Wyatt: Brief of Transcripts, Vol 6 Tab L, at pp.3682 line 17, to p.3683, line 11.
[43] Affidavit of D. Wyatt, para 62; Affidavit of R. Paola, para 18; Affidavit of A. Marcovitz, paras 45/46.
[44] Affidavit of D. Wyatt, para 82; Affidavit of R. Paola, paras 13, 17.

management team. PurchaserCo's management team has varied dramatically over the past several weeks, includes persons with no retail experience, and others with no contractual agreements in place. In addition, and most troubling, PurchaserCo previously made false and misleading statements regarding its retainer of key personnel. Below is a chart listing the composition of the management teams on the dates stipulated:

May 26, 2025[45]	**June 2, 2025**	**July 29 2025**[46]
Weihong Liu: Founder		Weihong Liu
Linda Qin: (CEO)		Linda Qin: (CEO)
Karen Liu: (CFO)		~~**Karen Liu: (CFO)**~~
Andrew Grimley: (CMO) Marketing		~~**Andrew Grimley: (CMO) Marketing**~~ Michael Zhang (CMO) Marketing (former title was CMO of merchandising)
Charles Thurlow: (COO)		~~**Charles Thurlow: (COO)**~~ Mithun Sinharoy: (COO)
Michael Zhang: CMO Merchandising		
Mae Wang: CHRO		Mae Wang: CHRO
	Wayne Drummond: suppliers/inventory and review of product mix	~~**Wayne Drummond: suppliers/inventory and review of product mix**~~
		Lei Wang: Vice President of Sourcing & Procurement
		Franco Perugini: General Counsel, SVP of Real Estate
		Lou Ampas:VP Construction and Facilities

[45] May 26 Operations Presentation, Affidavit of R. Paola: Responding Motion Record of Ivanhoé, **Exhibit "G"**. p.132

[46] PurchaserCo's Business Plan, Affidavit of Ruby Liu: Supporting Motion Record, Tab 1A p. 79-80.

47. **Linda Qin, Chief Executive Officer**: Ms Qin has been the CEO of Central Walk for 4 months, since May 2025. Ms Qin's most recent experience was as a residential real estate broker for the last 15 years. She has no experience running department stores or retail of any kind.[47]

48. **Mae Wang, Chief HR Officer**: Ms Wang was an Executive Assistant with Central Walk in China, before working as an early childhood educator for 6 years. Ms Wang was promoted to "Head of Human Resources" at Central Walk after her career as an early childhood educator.[48]

49. **Lei Wang**, **Vice President of Sourcing & Procurement**: Ms Wang was the Director, Imports Operations with HBC. Her role included overseeing "the preparation and submission of required customs documentation to ensure that all paperwork is accurate and submitted in a timely manner to avoid delays." She has no experience in retail sourcing or procurement to suggest that she would be able to source $135 million of store inventory as set out in the proposed business plan. It is unknown whether Ms Wang has a contract of engagement from PurchaserCo.[49]

50. **Franco Perugini, General Counsel, SVP of Real Estate :** In his affidavit Franco Perugini confirmed he agreed to have his *name* included in PurchaserCo's org chart in an email dated July 24, 2025. During his cross examination, Mr. Perugini confirmed he has no contract of engagement, is unsure which entity he would be engaged with and has had no discussions regarding his duties or remuneration.[50] Ms Liu confirmed that she did not review Mr. Perugini resume, but agreed to retain him because he was "*a good looking guy*".[51] Mr. Perugini's alleged affiliation with

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[47] Affidavit of R. MacLeod: Responding Motion Record of CF, para 145(a) and **Exhibit "FF"**.
[48] Affidavit of R. MacLeod: Responding Motion Record of CF, para 145(b) and **Exhibit "GG"**.
[49] Affidavit of R. MacLeod: Responding Motion Record of CF, para 145(c) and **Exhibit "HH"**.
[50] Affidavit of F. Perugini: Motion Record of HBC, Tab 2, para 3 and **Exhibit "A"**; Cross Examination F. Perugini: Brief of Transcripts, Vol 2, Tab D, p.695, Q. 775-785 ("**they're interested in putting you on the org chart. Are you willing to be put on the org chart**?")
[51] Cross Examination of R. Liu: Brief of Transcripts, Vol 4,Tab H, p.2239, line15, p.2240, line 1-5

PurchaserCo is tenuous at best and should be disregarded.

51. **Lou Ampas, VP Construction and Facilities**: Lou Ampas also agreed to have his name included in PurchaserCo's org chart following an email from Reflect Advisors on July 25, 2025.[52] Mr. Ampas was also cross examined on this point and confirmed that he too has no contract of employment with PurchaserCo.[53] Mr. Ampas' affiliation with PurchaserCo is very suspect and should be totally disregarded.

52. **Mithun Sinharoy COO**: Mr. Perugini confirmed speaking with Mr. Sinharoy who advised that he too does not have any contractual agreements with PurchaserCo.[54]

53. **Wayne Drummond – hired for 5 hours**: During the meeting held at Stikeman's offices, landlords were told that Wayne Drummond, former President of HBC, who was in attendance at the meetings, had been retained by PurchaserCo to assist with the establishment of the new venture[55] and presumably landlords should take comfort in the viability of the proposed business venture given Mr. Drummond's retainer. Mr. Drummond's retainer was again reiterated in the June 6, 2025 letter sent by PurchaserCo's then counsel Miller Thomson to landlords ("**MT Landlord Letter**"), as one of the key steps to "maintain and reengage HBC's existing value chain**"**.[56] **Unbeknownst to landlords the assertions made regarding Mr. Drummond's retainer were totally false**.

54. In response to undertakings given during Ms Liu's cross examinations, correspondence relating to Mr. Drummond's retainer were disclosed. The correspondence revealed that Mr.

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[52] Affidavit of L. Ampas: Motion Record of HBC, Tab 3, para 2 and **Exhibit "A"**.
[53] Cross Examination L. Ampas: Brief of Transcripts, Vol 3, Tab F, p.1423, line 20 – p. 1424, lines 1-11.
[54] Cross Examination F. Perugini: Brief of Transcripts, Vol 2, Tab D, p.702, Q. 816-820.
[55] Affidavit of D. Wyatt, para 80; Affidavit of R. Paola: para 78.
[56] Letter from Miller Thomson, **Exhibit "P"**: Responding Motion Record Morguard, Vol III; Aff D. Wyatt, para 74.

Drummond had been retained directly by Ms Liu for only 5 hours to attend the meetings with landlords and an e-transfer for $3000 was sent to Mr. Drummond on the morning of June 2, 2005 just before the first meeting commenced. Mr. Drummond was then retained for 4 more hours for a second day of meetings with landlords on June 3, 2025.[57] **At the time the MT Landlord Letter was sent, there was no consulting agreement with Mr. Drummond whatsoever**. Making matters worse, on June 17, 2025 Linda Qin requested that Mr. Drummond attend additional meetings, as a "senior consultant" for a cash payment of $1500. Mr. Drummond agreed but asked for particulars of the meetings.[58] In response he was advised in a text of the following:

L. Qin: 11-12 will be meeting with a specific media outlet. 1-2:30 or 3pm will be at our lawyer's office. We will walk there together. In terms of role and responsibilities, we can discuss more tomorrow. Thanks and good night.
L. Qin: you can talk about staffs and how loyal and great they are at HBC. You are happy to be hired by Ruby as a senior consultant
W. Drummond: Hi Linda, I don't feel it is appropriate for me to participate in a media outlet event with no prior warning, limited understanding of the full details of the concept, and no agreed upon contract. I believe I should plan to meet you at 1pm at the Lawyers office
L. Qin: I have told Ruby about your thought. She asked me to let you know that, **if you don't feel comfortable to come to meet with media outlet with us, then she does not think you need to go to the lawyer's office**. Sorry! Thanks Linda

55. Although Mr. Drummond was willing to be retained and provide assistance, Ruby Liu refused to retain him, but continued to reference his name in media reports such that on June 26, 2025 Mr. Drummond sent a **formal letter demanding that Ruby Liu stop using his name in public statements**. In his letter Mr. Drummond stated that:

[57] R. Liu Answer to Undertakings, #10 at pp. 38, 41 and 42
[58] R. Liu Answer to Undertakings, #10 at p. 45

*I must make it unequivocally clear that this **statement is false and misleading**. I have no contractual relationship with your company and have not been involved in securing suppliers, inventory, or advising on the product mix in any formal or informal capacity.* ***I demand that you take immediate steps to correct the public record.***[59]

56. Ms Liu and Ms Qin's did not take any steps to correct the public record but rather hid the information from landlords.

57. Ms Liu and Ms Qin's calculated participation in a scheme to deceive landlords and the public should automatically disqualify PurchaserCo's bid for HBC's leases. In no circumstance should landlords be required to enter into long term contractual agreements with persons that engage in misleading and dishonest conduct. This is not the only example of Ms Liu and Ms Qin's inappropriate/unethical conduct. Ms Liu and Ms Qin privately wrote to the court in an attempt to influence the outcome of the court proceedings *after having been advised not to do so*[60] As set out more fully below, Ms Liu represented in her business plan reliance on a "key" supplier J2, but did not reveal her decision not to use the supplier until cross-examined.

Unwilling to Hire Required Professionals

58. In addition, and contrary to the assertions of HBC and Pathlight, the evidence is that Ms Liu and PurchaserCo **will not hire appropriate professionals to assist them**. It should be noted that Ruby Liu was so resistant to hiring required professionals, that HBC offered to reduce the purchase price by $3M to incentivise Ms Liu to hire KPMG and Liz Rodbell as a consultant.[61] The Monitor refers to the reduction in purchase price to retain professionals,[62] but neither KPMG nor

[59] R. Liu Answer to Undertakings, #10, at p. 25.
[60] Email dated July 10, 2025 to J. Osborne, p. 783, **Exhibit "S"**; Responding Motion Record of Morguard: Cross Examination R. Liu: Brief of Transcripts, Vol 4, Tab H p.118 (p. 2227), lines 11-20 **intention to influence court**.
[61] Stikeman Letter July 5, 2025: **Exhibit "S"**, Responding Motion Record Morguard, Vol III, p. 786
[62] Monitor's Eighth Report, para 3.13 lists APA amendments including reductions in price to retain professionals.

Ms Rodbell were retained. During his cross examination, Mr.Perugini advised that he was aware **that Ms Liu had retained Craig Patterson[63] - a reporter with Retail Inside -** not an accounting professional or retailer.

59. All indicators are that PurchaserCo's business team is not retained, reliable, sound or appropriate to operate the proposed new venture and Ms Liu and PurchaserCo will not hire appropriate professionals to assist. Ms Liu acquired three stores in her own malls, yet no professionals have been retained to assist with the implementation of "Ruby Liu" in those stores.

No Brand Recognition

60. The proposed banner "Ruby Liu" has no brand recognition whatsoever[64]. It is impossible for this tenant to be a major source of foot traffic in the mall when there is no brand recognition. HBC was Canada's oldest and most prominent department store (even when it was failing).[65] In contrast, Ruby Liu is a totally unknown brand.

61. The lack of brand recognition is further complicated by PurchaserCo's desire to launch three differing formats in yet undetermined locations.[66] How customer loyalty will be built across the portfolio with divergent and uncertain formats is unknown.

No Warehousing or Logistics Management Plan – No Inventory IT program

62. In its business plan provided to landlords, PurchaserCo relies entirely on J2 Retail

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[63] Cross Examination F. Perugini: Brief of Transcripts, Vol 2, Tab D, p.758, lines 1061-1062.
[64] We note that the brand is now associated with the negative publicity of Ms Liu's inappropriate and unethical conduct as the principal of PurcaserCo.
[65] Cross Examination F. Perugini: Brief of Transcripts, Vol 2, Tab D, p.571, Q. 256-257.
[66] Cross Examination R. Liu: Brief of Transcripts, Vol 4, Tab H p.2245, line 5-18 where she confirms a final decision of which stores will be in which category has not been determined.

Management ("**J2**"), a third party brand promoter to provide it with apparel and all of its warehousing and logistics needs. Reference is made to a preliminary high-level proposal from J2 that contains no details whatsoever.[67] Mr. Perugini, who sworn an affidavit on behalf of HBC, although never reviewing the J2 proposal, espoused J2 as a sensible solution for PurchaserCo's warehousing and logistic needs and the supply of apparel.[68]

63. J2's proposal and website indicate that it caters to small and medium-sized businesses providing third party logistics in Toronto and Montreal, whereas PurchaserCo's venture is intended to be a large-scale operation and 10 of the 25 stores in the proposed assignment are in Alberta and British Columbia. The unusual approach to managing this function and the lack of detail did not provide the Landlords with a level of confidence that the proposed assignee would be able to ensure product replenishment at a reliable level.[69]

64. **During her cross examination, Ms Liu unexpectedly revealed that she did not intend to use J2's services** – not for the supply of apparel, warehousing, logistics or IT inventory software, leaving PurchaserCo with no plans whatsoever for these critical services.[70] Although J2 was referenced as a key supplier, **at no time prior to her cross examination, did Ruby Liu or another other persons on PurchaserCo's management team advise the Landlords that J2 would no longer be used. Mr. Perugini was also cross examined and he too did not reveal this critical information.** Withholding critical information from the Landlords and the court is misleading and unethical.

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[67] Affidavit of R. Liu: Reply Motion Record R. Liu, paras 14-15 and J2 Proposal **Exhibit "1E"**.
[68] Cross Examination F. Perugini: Brief of Transcripts, Vol 2, Tab D, p.700, Q.806, see also Affidavit of F. Perugini paras76, 97-101; Affidavit of A. Zalev, para 24-25 and Reply Affidavit of A. Zalev, para 50-51.
[69] Affidavit of D. Wyatt, paras 89/118-119.
[70] Cross Examination R. Liu: Brief of Transcripts, Vol 4, Tab H p.2264, lines 9-20.

65. There are 1000s of kilometers between Ontario and B.C. and without a fully formulated logistics management plan in place, PurchaserCo cannot operate the stores. If an untested plan is hurriedly put in place to deliver merchandise to fill over 3.8M SF of retail space (excluding Central Walk's three stores) and (assuming PurchaserCo is able to find a replacement source for apparel to be supplied by J2), the operation is certain to suffer from understocked shelves at launch and/or an inability to restock thereafter. One of the most significant challenges to Target's operations was its inability to re-stock its shelves.[71]

66. Most retailers take great care to ensure these channels are in place, tested and highly functioning before stores are launched, whereas for PurchaserCo's, it appears to be an afterthought.[72] HBC's admission that PurchaserCo's plans are not yet fully formed (the plan is missing basic essential elements)[73] is strong evidence that PurchaserCo is not able to perform the obligations of the leases and operate a department store.

No discernible Merchandising Plan

67. PurchaserCo has no discernible merchandising plan. It is impossible for the Landlords to assess if the proposed merchandising of the stores will complement existing retailers or comply with the use clauses. No information regarding the size of departments, the assortment of goods in the departments, the quality of goods, the display of such goods has been provided. The problem is exacerbated by the fact that PurchaserCo states there will be three store models. Which model will be implemented in each store is unknown.

[71] *Target Canada Co. (Re)*, 2015 ONSC 303 (CanLII), <https://canlii.ca/t/gg18d> at para 16; See also Affidavit of D. Wyatt, para 121: See also Expert Report S. Lee: Responding Motion Record of Ivanhoé, Tab 2A, para 52 p. 318.
[72] Affidavit of D. Wyatt: Responding Motion Record of Morguard Vol I, Tab 1, para 117.
[73] HBC Factum paras 37 and 94.

68. In contrast, when Landlords met with representatives of Target regarding their desire to open in Canada, Target had merchandising plans, department store layout, price points for its products, estimated sale based on historical data from its US stores, and even with all this information, landlords sent teams to the U.S. to inspect their stores and meet top management. Landlords also required its parent company to guarantee the leases.[74]

69. With regard to PurchaserCo's possible vendors, none of the vendors who have expressed an interest in suppling PurchaserCo are high end or designer vendors – vendors that PurchaserCo. claims it will sell in its stores.[75]

70. How does PurchaserCo intend to operate in a first-rate merchandising manner; or a manner intended to enhance the character, quality and image of the shopping centres and drive sales and foot traffic in the mall without a merchandising plan in place and without the inclusion of any designer items? The fact that the terms of the leases permit the tenant to sell a wide assortment of goods, does not absolve the tenant of the obligation to provide landlords with evidence of a viable and acceptable merchandising plan.

71. Without a clear merchandising plan, the Landlords are unable to determine what goods or services PurchaserCo proposes to implement that the Landlords may be prohibited from permitting due to exclusive uses contractually given to other tenants.[76]

Insufficient Employees and Inventory

72. PurchaserCo projects the need to hire 1800 staff for 25 stores (being 72 employees per

[74] Affidavit of D. Wyatt, para 13, 15, 88; Affidavit of R. Paula, para 16.
[75] Affidavit of D. Wyatt, para 91-92; Expert Report of S. Lee: Responding Record of Ivanhoé, Tab 2A p. 321.
[76] Affidavit of D. Wyatt, para 93; Affidavit of R. Paula, para 75.

store).[77] This number seems very low to staff a first class department store in excess of 100,000SF.

73. HBC reported that it employed 9346 people (or 97 per store based on a store count of 96 including the Saks and Off 5th stores). HBC was notorious for understaffing it stores.[78] There is no explanation how PurchaserCo can operate a first class department store with 25% less employees.

74. In contrast both Target and Walmart staffed their stores with 100-225 employees per store.[79] Although Target and Walmart sell groceries, which may require more employees, many of HBC's stores are significantly larger than Target stores, thereby requiring more employees.

75. When landlords re-demise (if necessary) and re-let their HBC locations, there is every reasons to believe that the new tenants over the 25 locations will employ more than PurchaserCo's projected 1800 employees.[80]

76. With regard to inventory, PurchaserCo estimates lower inventory levels than HBC's 2023 levels. The financial information appended to the MT Landlord Letter, included "Inventory" information for the 25 stores as compared to HBC 2023 inventory levels. The average 2023 HBC inventory levels were approximately $7M per store, while PurchaserCo's peak inventory per store level is $5.4M.[81] This too is a 25% reduction in what HBC's inventory levels were. Less inventory means less sales, means less likelihood of success.

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77 Affidavit of R. Liu: Supporting Motion Record, Tab 1, para 52.

78 Affidavit of D. Wyatt, para 123. Cross Examination A. Zalev, Brief of Transcripts Vol 1, Tab A, p 128, Q.481 - 484.

79 *Target Canada Co. (Re)*, 2015 ONSC 303 (CanLII), <https://canlii.ca/t/gg18d> at para 12; Expert Report S. Lee: Responding Motion Record of Ivanhoé, Tab 2A, page 321, "Projected Staff Requirements of 1,800".

80 Affidavit of Wyatt, para 125.

81 Affidavit of Wyatt, paras 126 and MT Landlord Letter dated June 6, 2025, **Exhibit "P",** 768.

Scott Lee – Expert Opinion

77. Mr. Scott Lee was retained by the landlord to provide his professional opinion regarding two matters: commercial retail terms and his opinion regarding the viability of PurchaserCo's proposed business plan. Mr. Lee has over 35 year of commercial retail estate experience having completed over 1000 sale and leases transactions for retailers such as Old Navy, PetsMart, Winner, HomeSense, Marshalls, Town Shoes, Wal-Mart Canada, Lowe's, Nordstrom and Target. For both Nordstrom and Target, Mr. Lee was retained to implement their real estate strategies across all regions of Canada and to assist with lease termination discussions when both companies exited Canada.[82]

78. Mr. Lee advised that no retailer—domestic or foreign—has ever successfully opened 11 to 28 department-sized locations in Canada within an 18-month window, especially within former anchor premises. This pace would strain even the most experienced retail organizations. The absence of retail experience in Canada raises serious concerns about the viability of executing such a large-scale rollout successfully.[83]

79. When both Target and Nordstrom entered the Canadian market, they each faced heightened landlord scrutiny and in addition to providing landlords with a comprehensive business plan covering merchandising strategy, store layout, staffing model, pricing approach, marketing plans, and capital requirements, Target hosted Canadian landlords for tours of its US executive offices, operational facilities, and several stores to showcase product mix, merchandising standards, and customer experience. These visits, combined with in-depth discussions of financials, market

[82] Curriculum Vitae for S. Lee, **Exhibit "A"**: Affidavit of S. Lee: Responding Motion Record of Ivanhoé, Tab 2A.
[83] Expert Report of S. Lee: Responding Motion Record of Ivanhoé, Tab 2B, p.40.

research, competitive positioning, and store design, gave landlords a comprehensive understanding of the concept. Despite the thorough process, some landlords concluded the risk remained too high and declined to proceed with Target — underscoring the stringent criteria anchors must meet.[84]

E-commerce or Omnichannel Strategy

80. With regard to the fact that PurchaserCo's business plan provides no meaningful discussion of an e-commerce or omnichannel strategy, Mr. Lee stated that this alone was a significant red flag. Major department stores such as Nordstrom generated 36% of their total 2024 revenue through online channels. Similarly, Walmart reported that online sales outpaced instore growth in Q1 of its fiscal 2026 year, with e-commerce sales increasing more than 15% year-over-year in each of the last ten quarters. A retailer without an online shopping platform is often viewed as outdated.[85]

81. Mr. Lee advised that any retailer entering the Canadian market must be ready to launch its e-commerce platform simultaneously with the opening of its stores. PurchaserCo's business plan lacks a comprehensive omnichannel strategy, making only passing reference to online operations without demonstrating any system integration, digital marketing plans, or logistics infrastructure. E-commerce platforms often require customization, refinement and testing before opening to the public which takes significant time to implement. This is a significant oversight and places the entire business model at a competitive disadvantage.[86] During his cross examination, Mr. Lee confirmed that although Winners and HomeSense were successful retailers without online platform, this was due to the fact these retailers do not operate as traditional department stores, but

[84] Expert Report of S. Lee: Responding Motion Record of Ivanhoé, Tab 2B, p. 315, para 48(j).
[85] Expert Report of S. Lee: Responding Motion Record of Ivanhoé, Tab 2B, p.315. para 48 and p.320
[86] Expert Report of S. Lee: Responding Motion Record of Ivanhoé, Tab 2B, p. 320;

rather focus on selling "the deal" with limited inventory items (train load of T-shirt), unlike the business to be operated by PurchaserCo.[87]

82. Target, a well established retailer with a recognized brand, listed its lack of a Canadian online retail presence as contributing to its failure in Canada.[88]

83. After carefully reviewing various aspects of PurchaserCo's business plan, and based on his extensive experience assisting retailers in Canada, Mr. Lee concluded that, "the retail operation proposed by PurchaserCo is not feasible as presented, and that the likelihood of achieving commercial success — or even full implementation — is extremely low given the current strategy, resources, and assumptions outlined in the business plan".[89]

PART IV – Conclusion and Relief Requested

84. HBC was Canada's most recognized national department store – and it failed. PurchaserCo, with a business plan that is not fully conceived, and numerous other operational issues, is unlikely to succeed. As such, it is not an appropriate tenant for the Landlords' HBC anchor leases. The Landlords have already suffered as a result of HBC's insolvency filing with no recovery whatsoever on the significant claims following the disclaimer of leases, and replacing HBC in the remaining stores with another poor tenant will significantly exacerbate such harms. HBC's motion to assign the leases should be dismissed with costs to the Landlords.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of August 2025.

Linda Galessiere, Camelino Galessiere LLP

[87] Cross Examination of S. Lee: Brief of Transcripts, Vol 5 Tab J, p. 3092, Q245-249.
[88] Supra at 72.
[89] Expert Report of S. Lee: Responding Motion Record of Ivanhoé, Tab 2B, p. 329

Schedule "A"

List of Authorities

1. Target Canada Co. (Re), 2015 ONSC 303 (CanLII), <https://canlii.ca/t/gg18d>

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date: August 25, 2025

Linda Galessiere

<u>Schedule "B"</u>

Text of Statutes and Regulations

Companies' Creditors Arrangement Act, RSC 1985, c C-36.as amended.

11.3 (1) Assignment of agreements - On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

(2) Exceptions - Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

> (a) an agreement entered into on or after the day on which proceedings commence under this Act;
>
> (b) an eligible financial contract; or
>
> (c) a collective agreement.

(3) Factors to be considered - In deciding whether to make the order, the court is to consider, among other things,

> (a) whether the monitor approved the proposed assignment;
>
> (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
>
> (c) whether it would be appropriate to assign the rights and obligations to that person.

(4) Restriction - The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

Schedule "C"
Summary of HBC Lease Terms

Morguard HBC Lease Summary

Centerpoint Mall

HBC occupied the largest premises in the mall with over 120,000 SF on two levels. Below is a summary of the more salient provisions of the lease dated April 3, 1974.

(1) **Term s. 3**: The initial Term of the Lease was for 30 years and 28 days ending on April 30, 2004. HBC was granted seven 10 year options. If all seven option are exercised, the Lease will expire on **April 30, 2074**. The current terms ends April 30, 2034.

(2) **Premises size:** 122,502 SF.

(3) **Rent:** The currently monthly rent is $9,790.10 (being $0.96 psf).
Common Area Maintenance ("**CAM**"): CAM monthly charges are $39,273.15.
Realty Taxes: Monthly Realty Tax charges are $26,177.17
Total monthly payment: **$75,240.42.**

(4) **Current Arrears of rent**: $137,889.63

(5) **Use and Operating Covenant s.6.00(1)**: HBC to continuously operate its business in the leased premises as a **first-class, high quality retail department store**. See also s. 21.01(2) requirement on landlord only to lease to tenants that will occupy locations.

(6) **Use limitation s.6.00(i)**: limited restaurant permitted however no alcohol can be served.

(7) **Landlord's Operation obligations s.7.00**: Landlord to operate a First Class regional Shopping Centre, (7.01) manage and maintain the shopping centre in accordance with best standards of shopping centre management which have been adopted by first-class centres in Canada and (7.02) ensure other tenants are open and operating during established hours of business.

(8) **Tenant Repair obligations s.12:00**: Tenant to maintain and keep in good and substantial state of repair the store building in accordance with the standards of a

careful owner, including all repairs, major and minor, structural or otherwise, exterior or interior including those made necessary by age and damage (including HVAC, electrical, pluming etc).

(9) **No Assignment s.21.00:** HBC may not assign the lease without landlord consent.

(10) **Disputes to be resolved by experts 22.00**: Disputes between the Landlord and HBC are to be resolved by a shopping centre consultant for questions relating to the operation and standards of the shopping centre.

Special Lease Restrictions/Terms granted in favour of HBC

(11) **Restrictions on landlord's Sign Policy .7.01(5):** HBC's approval is required with respect to the landlord's sign policy for other tenants in the shopping centre**.**

(12) **Restrictions on Parking s.7.04(b):** Landlord may not impose any charges for parking without HBC approval.

(13) **Parking Ratios s.7.04(c)(2):** Landlord is to maintain minimum parking stalls as ratio of number of stalls per 1000 SF of rentable space of the shopping centre.

(14) **Restrictions on landlord's Rules and Regulations s.7.05**: HBC has consent rights over landlord rules and regulations which are applicable to all tenants in the shopping centre.

(15) **Restrictions on landlord Merchandising Plan s.14.00**: Landlord is obligated to comply with Merchandising Plan when leasing to other tenants; HBC consent required to amend Merchandising Plan (s.14.00(c)) – **proposed tenants must be in "best interest" of shopping centre**. HBC's consent maybe withheld if proposed type and quality or class of use would not maintain in all material respects a fair balance of customer attraction throughout the shopping centre (s.14.00(c)(2))

(16) **Restrictions on Leasing to other Tenants s.14.00(2):** Landlord to lease only to tenants whose business and reputation is consistent with good leasing practice in first class regional shopping centre, and if the tenant will be within 100 feet of the HBC store, HBC must approve the tenant;

(17) **Restrictions on Provisions in leases with other Tenants s.14.02:** Landlord is to ensure that, subject to certain exceptions, leases with other tenants prohibit such tenants from assigning their leases including changing the identity of the tenant without landlord consent, and no landlord consent to be granted without HBC

approval. Also (**Most Favoured Nation Provision**) in that no other department store to have more favourable assigning etc. rights that HBC.

(18) **Prohibited Uses s.14.04**: Landlord is not to lease to tenants for listed prohibited uses, including discount department stores or businesses whose merchandising or pricing methods likely to lower the "character" of the shopping centre.

(19) **Restrictions on Outdoor selling areas s.17.01:** Outdoor selling areas of other departments stores are not to exceed 10,000 SF and (**Most Favoured Nation Provision**) in that no other department store to have more favourable terms for outdoor area than HBC.

(20) **Automotive Centre s.18.00 and 18.02**: HBC has right of first refusal for an automotive centre.

(21) **Expansion Rights s.19.00**: HBC granted the right to alter, reconstruct or expand the HBC store.

(22) **Restrictions on Landlord rights to expand the Shopping Centre s.20.00**: Landlord redevelopment rights for the shopping centre are limited and require HBC's consent.

Morguard HBC Lease Summary

Bramalea City Centre ("BCC")

HBC occupied the largest premises in BCC with over 130,000 SF on two levels. Below is a summary of the more salient provisions of the lease dated March 18, 1973.

(23) **Term (s. 3)**: The Term of the Lease was for **101 years ending on March 31, 2074** The lease was amended to grant HBC the right to terminate the lease commencing as of March 31, 2029 and each successive 10 year anniversary thereafter.

(24) **Premises size:** 131,438 SF.

(25) **Rent:** The current monthly rent is $33,123.75 (being $3.02 psf).
Common Area Maintenance: CAM monthly charges are $31,326.06 (CAM cost are subject to a cap and are significantly lower than actual costs).
Realty Taxes: Monthly Realty Tax charges are $29,156.25
Total monthly payment: $93,606.06.

(26) **Current Arrears of rent**: $156,635.68

(27) **Use and Operating Covenant s.5(1)**: HBC is to continuously operate its business in the leased premises as a **first-rate merchandising activity in the business of retail department store**. Licensees permitted for up to 20% of the store premise. See also s. 6(1) requirement on landlord ensure other tenants will occupy locations be open during business hours.

(28) **Use limitation s.5(3)**: No food supermarket is permitted until March 28, 2034 at which time a supermarket is permitted in an area not to exceed 30,000.

(29) **Landlord's Operation obligations s.6(1)**: Landlord is to operate BCC in the highest standards in the shopping centre industry and ensure other tenants are open and operating during established hours of business. See also s.8(5) obligating the landlord to ensure any merchandising activity does not lower the standard of the mall (subsection (h)).

(30) **Tenant Repair obligations s.8**: Tenant is to maintain and keep in good and repair the store (both inside and out) in a good and workmanlike manner including all repairs (subject to Article XIII – expansion and alteration by tenant) structural or otherwise as a prudent owner to property maintain the premise.

Special Lease Restrictions/Terms granted in favour of HBC

(31) **Restrictions on landlord's Sign Policy s.5(4) as amended by (2g) of LAA dated March 8, 2007):** HBC's approval is required with respect to sign policy for parking facility and the exterior of the shopping centre**.**

(32) **Restrictions on Parking s.6.6(d):** Landlord may not impose any charges for parking without HBC approval.

(33) **Parking Ratios s.1(1)(r) as amended by LAA dated Marcy 8, 2007:** Landlord to maintain minimum parking stalls as ratio of number of stalls per 1000 SF. of rentable space of the shopping centre.

(34) **Restrictions on landlord's Rules and Regulations s.6.6**: HBC has consent rights over landlord rules and regulations in the shopping centre.

(35) **Restrictions on Leasing to other Tenants s.6(2) as amended by LAA March 2007 (s.2(i)):** Landlord must obtain HBC consent to any lease with another tenant that will be located within 80 feet of the HBC store entrance. See also s. 6(1) requirement on landlord to ensure other tenants will be open during business hours.

(36) **HBC Expansion Rights s.13(1) as amended by LAA March 2007**: HBC granted the right to alter, reconstruct or expand the HBC store.

(37) **Restrictions on Landlord rights to alter or amend uses of Shopping Centre s.6(1)(2):** Landlord must only permit shopping centre to be used as a retail shopping centre.

(38) **Restrictions on Landlord rights build s. 14(2) (as amended by LAA March 2007**): Landlord may not construct or build or undertake any improvements on the Bramalea Lands without the consent of HBC.

Morguard HBC Lease Summary

Coquitlam Centre

1. HBC occupied the largest premises in the centre with over 120,000 SF on two levels. Below is a summary of more salient provisions of the lease dated January 6, 1997.

(1) **Term (s. 3)**: The initial Term of the Lease was for 35 years on or about July 31, 2014. HBC was granted six 10 year options and one additional 5 year option (which options were later amended to be thirteen 5 options). If all options are exercised, the Lease will expire on **July 31, 2079.** The current term ends July 31, 2029.

(2) **Premises size:** 120,527 SF.

(3) **Rent:** The currently monthly rent is $49,918.27 (being $4.97 psf).
Common Area Maintenance: CAM monthly charges are $25,310.67.
Realty Taxes: Monthly Realty Tax charges are $14,521.09
Total monthly payment: $89,750.03.

(4) **Current Arrears of rent**: $167,192.45.

(5) **Use and Operating Covenant s.11 as amended by LAA dated Oct. 8, 1999:** HBC is to continuously operate its business in the leased premises in a similar manner to that of its typical department store operations in Lower Mainland Area. See also s. 10.02 requirement on landlord to ensure other tenants will occupy and remain open and limit other tenant assignment rights. NOTE: s.11.08, subject to listed exceptions, HBC not to permitted to have a food supermarket.

(6) **Landlord's Operation obligations s.10.01**: Landlord is to operate a First Class regional Shopping Centre, 10.02 manage and maintain the shopping centre in accordance with best standards of shopping centre management which have been adopted by first-class centres in Canada and (10.02) ensure other tenants are open and operating during established hours of business. See also s.12.01(a) "best standards of a first class regional shopping centre".

(7) **Tenant Repair obligations s.16.06**: Tenant is to maintain and keep in good and substantial state of repair the HBC store.

(8) **No Assignment s.18.01:** HBC may not assign the lease without landlord consent.

Special Lease Restrictions/Terms granted in favour of HBC

(9) **Restrictions on landlord's Sign Policy 10.04:** HBC's approval is required to alter sign policy stipulated in Schedule E to the Lease.

(10) **Restrictions on Parking s.10.02(n):** Landlord may not impose any charges for parking without HBC approval.

(11) **Parking Ratios s.10.02(o):** Landlord to maintain minimum parking stalls as ratio of number of stalls per 1000 SF of rentable space of the shopping centre.

(12) **Restrictions on landlord's Rules and Regulations s.11.04(a)**: HBC has consent rights over landlord rules and regulations which are applicable to all tenants in the shopping centre.

(13) **Restrictions on landlord Merchandising Plan s.12.01; 12.02**: Landlord is obligated to comply with Merchandising Plan when leasing to other tenants; HBC consent required to amend Merchandising Plan (s.12.01(c)); Landlord is to maintain in all material respects a fair balance of customer attraction throughout the shopping centre (s.12.01(a))

(14) **Restrictions on Leasing to other Tenants s.12.01(b):** HBC approval required for leases to other tenants within 100 feet of the HBC store.

(15) **Restrictions on Provisions in leases with other Tenants s.10.02:** Landlord is to ensure that it includes appropriate lease terms with other tenants to control assignment and operations.

(16) **Prohibited Uses s.10.02(g)**: Landlord is not to lease to tenants for listed prohibited uses, or any activity not in keeping with the "character" of the shopping centre.

(17) (**Most Favoured Nation Provision) 5.02:** Neither Eatons nor Woodward is to be treated by the Landlord more favourably than HBC re management, operations, expansions of their premises etc.

(18) **No Additional Department Stores s.17.08(**g): HBC consent required for construction of another department store.

(19) **Site Control s.2.05(a) and 17.08(i):** Landlord is prohibited from making alterations to plan/area on Schedule A, without HBC consent.

(20) **Expansion of HBC store 17.01**: HBC granted the right to alter, reconstruct or expand the HBC store.

Morguard HBC Lease Summary

St. Laurent Centre

1. HBC occupied the largest premises in the mall with 158,314SF on two levels. Below is a summary of the more salient provisions of the lease dated March 25, 1997 (amended March 13, 1991).

(1) **Term (s.3)**: The initial Term of the Lease was for 20 years ending on March 12, 2021. HBC was originally granted eight 10 year options to extend the term of the lease. HBC exercised its first option and thereafter the remaining seven 10 year options were amended to be fourteen 5 year options. If all option are exercised, the Lease will expire on **March 12, 2091**. The current term ends March 12, 2026.

(2) **Premises size:** 158,314SF.

(3) **Rent:** The currently monthly rent is $39,578.50 (being $3.00 psf).
Common Area Maintenance ("**CAM**"): CAM monthly charges are $18,134.25 (which amount is capped at $2.00 pst and amount well below actual costs)
Realty Taxes: Monthly Realty Tax charges are $31,789.90
Total monthly payment: $89,502.65

(4) **Current Arrears of rent**: $156,635.68

(5) **Use and Operating Covenant s.6.00(1) and 6.02**: HBC is to continuously operate its business in the leased premises similar to **first-class department stores operated by HBC in Toronto**.

(6) **Landlord's Operation obligations s.7.00**: Landlord is to operate a First Class regional Shopping Centre, (7.01) manage and maintain the shopping centre in accordance with best standards of shopping centre management which have been adopted by first-class centres in Canada and (7.02) ensure other tenants are open and operating during established hours of business.

(7) **Tenant Repair obligations s.12:00**: Tenant is to maintain and keep in good and substantial state of repair the store building in accordance with the standards of a careful owner, including all repairs, major and minor, structural or otherwise, exterior or interior including those made necessary by age and damage (including HVAC, electrical, plumbing etc).

(8) **No Assignment s.21.00:** HBC may not assign the lease without landlord consent.

Special Lease Restrictions/Terms granted in favour of HBC

(9) **Restrictions on landlord's Sign Policy s.7.01(6) (23.01):** HBC's approval is required with respect to the landlord's sign policy for other tenants in the shopping centre**.**

(10) **Restrictions on Parking s.7.04(b):** Landlord may not impose any charges for parking without HBC approval.

(11) **Parking Ratios s.7.04(c)(2):** Landlord is to maintain minimum parking stalls as ratio of number of stalls per 1000 SF of rentable space of the shopping centre.

(12) **Restrictions on landlord's Rules and Regulations s.7.05**: HBC has consent rights over landlord rules and regulations which are applicable to all tenants in the shopping centre.

(13) **Restrictions on landlord Merchandising Plan s.14.01**: Landlord is obligated to comply with the Merchandising Plan when leasing to other tenants.

(14) **Restrictions on Leasing to other Tenants s.14.00(1):** Landlord to lease only in accordance with Merchandising plan and, and if the tenant will be within 100 feet of the HBC store, HBC must approve the tenant;

(15) **Restrictions on Provisions in leases with other Tenants s.14.02:** Landlord is to ensure that, subject to certain exceptions, leases with other tenants prohibit such tenants from assigning their leases including changing the identity of the tenant without landlord consent, and no landlord consent to be granted without HBC approval.

(16) **Prohibited Uses s.14.04**: Landlord is not to lease to tenants for listed prohibited uses, including department stores or businesses who's merchandising or pricing methods likely to lower the "character" of the shopping centre.

(17) **Restrictions on Outdoor selling areas s.17.01:** Outdoor selling areas of other departments stores not to exceed 8,000 SF.

(18) **Expansion Rights s.19.00**: HBC is granted the right to alter, reconstruct or expand the HBC store.

(19) **Restrictions on Landlord rights to expand the Shopping Centre s.20.00 and 21.00**: Landlord redevelopment rights for the shopping centre are limited and require HBC's consent.

(20) **No Build Areas s.21.01(3):** No buildings permitted on specified area on Schedule B, subject to approval of HBC witch may be arbitrarily withheld.

Ivanhoé HBC Lease Summary

Guildford Town Centre

HBC occupied the largest premises in the shopping centre with over 174,000 SF on two levels.

Below is a summary of the more salient provision of the lease dated February 1, 2024.

(21) **Term s.1.05**: The Term of the Lease is for 10 years ending on February 2, 2034. Ivanhoé has the option to extend the lease for 5 years upon notice to HBC

(22) **Premises size:** 174,462 SF.

(23) **Rent s.1.09:** The currently monthly rent is $109,038.75 (being $7.50 psf).
Common Area Maintenance (“**CAM”) s.1.11**: No CAM charges
Realty Taxes: Monthly Realty Tax charges are $10,729.92
Water and Electricity s.1.14: $9,167.62
Total monthly payment: **<u>$128,936.29</u>** plus HST

(24) **Current Arrears of rent**: $40,880.

(25) **Use and Operating Covenant s.1.07 and s.5.03**: HBC to operate a department store consistent with standards of other department stores operated by the Tenant in Vancouver. The Tenant acknowledges that it forms part of an over-all merchandising mix designed to enhance the character, quality, image and reputation of the Shopping Centre, and that its continuous operation of the Premises is essential to Landlord to maintain that character, quality, image, nature and reputation and to facilitate the leasing of vacant space and renewing leases of existing tenants. Failure to operate will result in all Rent reserved becoming immediately due and payable.

(26) **Use limitation s14.00 and Exhibit D Rules and Regulations**: Tenant is not permitted to prepare or sell food from the Premises.

(27) **Landlord’s Operation obligations s.6.00**: Landlord is to operate the shopping centre as would a prudent and diligent owner of a similar shopping centre, having regard to the size, age, nature, location and region where the Shopping Centre is situated, as well as the type of clientele the Shopping Centre services and the general image Landlord is attempting to project for the Shopping Centre.

(28) **Tenant Repair obligations s.7.02; 7.03**: Tenant will, at its sole cost and expense maintain the Premises and all improvements therein in good order and condition. HBC to maintain, repair and replace all HVAC systems, elevators, escalator, mechanical, electrical and pluming systems.

(29) **No Assignment s.11.00:** HBC may not assign the lease without landlord consent. Assignment without consent entitles the landlord to terminate the lease.

Ivanhoé HBC Lease Summary

Mapleview Centre

HBC occupied the largest premises in the shopping centre with 129,066SF on two levels.

Below is a summary of the more salient provision of the lease dated February 1, 2024.

(30) **Term s.1.05**: The Term of the Lease is for 10 years ending on February 2, 2034. Ivanhoé has the option to extend the lease for 5 years upon notice to HBC

(31) **Premises size:** 129,066 SF.

(32) **Rent s.1.09:** The currently monthly rent is $46,212.92 (being $4.30 psf).
Common Area Maintenance (**"CAM") s.1.11**: 21,630.92
Realty Taxes: Monthly Realty Tax charges are $25,245.83
Total monthly payment: **$93,089.67** plus HST

(33) **Current Arrears of rent**: $19,645.

(34) **Use and Operating Covenant s.1.07 and s.5.03**: HBC to operate a department store consistent with standards of other department stores operated by the Tenant in Toronto. Tenant acknowledges that it forms part of an over-all merchandising mix designed to enhance the character, quality, image and reputation of the Shopping Centre, and that its continuous operation of the Premises is essential to Landlord to maintain that character, quality, image, nature and reputation and to facilitate the leasing of vacant space and renewing leases of existing tenants. Failure to operate will result in all Rent reserved becoming immediately due and payable.

(35) **Use limitation s14.00 and Exhibit D Rules and Regulations**: Tenant is not permitted to prepare or sell food from the Premises.

(36) **Landlord's Operation obligations s.6.00**: Landlord is to operate the shopping centre as would a prudent and diligent owner of a similar shopping centre, having regard to the size, age, nature, location and region where the Shopping Centre is situated, as well as the type of clientele the Shopping Centre services and the general image Landlord is attempting to project for the Shopping Centre,.

(37) **Tenant Repair obligations s.7.02; 7.03**: Tenant will, at its sole cost and expense maintain the Premises and all improvements therein in good order and condition. HBC to maintain, repair and replace all HVAC systems, elevators, escalator, mechanical, electrical and pluming systems.

(38) **No Assignment s.11.00:** HBC may not assign the lease without landlord consent. Assignment without consent entitles the landlord to terminate the lease.

Westcliff HBC Lease Summary

Fairview Park Shopping Centre

HBC occupied the largest premises in the shopping centre with 184,714 SF on three levels. Below is a summary of the more salient provision of a sublease agreement between Simpsons Limited and HBC dated May 1, 1986, and an assignment agreement between Simpsons Limited assigned to HBC dated August 20, 1975 ("**Head Lease**") as amended pursuant to a mass lease amending agreement made between HBC and CF (the then landlord).

(39) **Term s.1.26**: The initial term of the lease was for 30 years ending on August 19, 2005. HBC was granted one 15 year option and four 10 year options. If all options are exercised, the Lease will expire on **August 19, 2060**. The current terms ends August 19, 2030.

(40) **Premises size:** 184,714 SF.

(41) **Rent s.1.09:** The currently monthly rent is $19,087.11 (being $1.22 psf).
Common Area Maintenance ("**CAM")**: CAM charges are 34,097.33 (CAM costs are capped)
Realty Taxes: Monthly Realty Tax charges are $45,719.80
Total monthly payment: **$98,904.24** plus HST

(42) **Current Arrears of rent**: $125,933.31.

(43) **Use and Operating Covenant s.6.01**: HBC continuously, actively and diligently operate to a first-class standard as a typical department store and outdoor selling area of the tenant and for no other purpose without prior consent to the Landlord.

(44) **Use limitation s. 6.13**: Tenant is not permitted to sublease space for a food supermarket.

(45) **Landlord's Operation obligations s.10.01; 10.02**: Landlord is to continuously operate as a shopping centre and its improvements are to be as a prudent owner in accordance with **first class shopping centre standards**.

(46) **Tenant Repair obligations s.13.01-13:03**: HBC shall, at its sole cost and expense is to maintain the building as a prudent owner and make all repairs/replacements

whether major or minor or structural or otherwise, whether exterior or interior, including those made necessary by age.

(47) **No Assignment s.7.01:** HBC may not assign the lease without landlord consent. Subleases or concession permitted not to exceed 25% of the GLA of the building (s.7.01(d)).

Court File No.: CV-25-00738613-00CL

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 HUDSON'S BAY COMPANY ULC COMPAGNIE et. al.

APPLICANTS

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

Proceeding commenced at TORONTO

COMBINED FACTUM OF
MORGUARD INVESTMENTS LIMITED,
IVANHOÉ CAMBRIDGE AND
WESTCLIFF MANAGEMENT LTD.

(MOTION RETURNABLE AUGUST 28, 2025)

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