

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF **MONTREAL**

**SUPERIOR COURT**

Commercial Division

(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*, R.S.C.  
1985, c. C-36, as amended)

Nº: **500-11-058644-200**

**IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF:**

**THE ALDO GROUP INC. ET AL.**

Debtors

-and-

**ERNST & YOUNG INC.**

Monitor

-and-

**BROOKFIELD PROPERTIES RETAIL INC. ET  
AL.**

-and-

**TURNBERRY ASSOCIATES ET AL.**

-and-

**JONES LANG LASALLE AMERICAS, INC. ET  
AL.**

Applicants

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**CONTESTATION TO THE DEBTORS' APPLICATION FOR AN EXTENSION  
OF THE STAY OF PROCEEDINGS AND OTHER RELIEF**

(Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"))

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**TO THE HONOURABLE MICHEL A. PINSONNAULT OF THE SUPERIOR  
COURT SITTING IN COMMERCIAL DIVISION IN AND FOR THE DISTRICT OF  
MONTREAL, THE APPLICANTS RESPECTFULLY SUBMIT:**

## I. INTRODUCTION

1. By the present *Contestation to the Debtors' Application for an Extension of the Stay of Proceedings and Other Relief* (the "**Application**"), Brookfield Properties Retail Inc. ("**Brookfield**"), Turnberry Associates ("**Turnberry**"), Jones Lang Lasalle Americas Inc. ("**JLL**") and certain affiliates of each of the foregoing (collectively, the "**Landlords**") seek a shortened extension of the Stay of Proceedings until February 17, 2022 rather than April 30, 2022, which is the Debtors' current requested extension of the Stay of Proceedings.

## II. PROCEDURAL CONTEXT

2. On May 7, 2020, a first initial order was rendered by this Court pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in relation to the Debtors (the "**First Initial Order**"), as appears from the Court record.
3. On May 15, 2020, this Court issued an Amended and Restated Initial Order which, among other things, extended the Stay of Proceedings until July 15, 2020, as appears from the Court record.
4. On July 13, 2020, this Court issued a Second Amended and Restated Initial Order extending the Stay of Proceedings until September 30, 2020, as appears from the Court record.
5. On September 29, 2020, this Court issued a Third Amended and Restated Initial Order which, among other things, extended the Stay of Proceedings until December 15, 2020, as appears from the Court record.
6. On December 14, 2020, this Court issued a Fourth Amended and Restated Initial order which, among other things, extended the Stay of Proceedings to March 19, 2021, as appears from the Court record.
7. On March 19, 2021, this Court issued a Fifth Amended and Restated Initial order which, among other things, extended the Stay of Proceedings to July 16, 2021.
8. Finally, on July 16, 2021, this Court issued a Sixth Amended and Restated Initial order which, among other things, extended the Stay of Proceedings to December 17, 2021.
9. Ultimately then, this Court has extended the Stay of Proceedings six (6) times for a total period of 19 months. More specifically:
  - a. the May 15, 2020, extension was for a period of two (2) months;
  - b. the July 13, 2020, extension was for a period of two and half (2 1/2) months;

- c. the September 29, 2020, extension was for a period of two and half (2 1/2) months;
  - d. the December 14, 2020, extension was for a period of three (3) months;
  - e. the March 19, 2021, extension was for a period of four (4) months; and
  - f. the July 16, 2021, extension was for a period of five (5) months.
10. Should this Court grant the Debtors' *Application for an Extension of the Stay of Proceedings and Other Relief* (the "**Debtors' Application**"), the extensions of the Stay of Proceedings will total 23 months, which is one month shy from these CCAA proceedings' second anniversary.

### III. THE LANDLORDS' STATUS IN THESE CCAA PROCEEDINGS

11. The Debtors' commenced these CCAA proceedings in the wake of the COVID-19 pandemic to right-size their physical retail footprint and shift their focus to online sales. In connection with this restructuring strategy, Aldo terminated and disclaimed a number of real property leases and sought to reduce their obligations under retained leased pursuant to lease amendments.
12. The Landlords are the owners, or managing agents for the owners, of numerous shopping centers located throughout the United States. The Debtors lease retail space from the Landlords pursuant to approximately 50 written leases (including several storage license agreements) (the "**Leases**") for stores in approximately 30 American states.
13. JLL and Turnberry each have two Leases with the Debtors that have been modified pursuant to lease amendments during these proceedings. At the start of these proceedings, Brookfield had approximately 86 leases and storage license agreements with the Debtors, of which approximately 38 were disclaimed and approximately 47 were retained pursuant to an Omnibus Agreement which amended the terms of the retained leases.
14. As such, the Debtors' commercial relationship with the Landlords is of significant importance to all parties moving forward. The Debtors' successes and failures will directly impact the Landlords and the economic value they derive under the Leases, which has already been significantly reduced by the lease disclaimers (resulting in many vacant spaces) and reduced rents and other consideration under the amended leases. The Debtors' inability to propose a plan of arrangement and emerge from these proceedings has subjected the Landlords and other creditors to continuing uncertainty as to the Debtors' operations going forward.

15. Additionally, Brookfield holds a sizeable claim against the Debtors.
16. Indeed, Brookfield holds scheduled and filed claims that aggregate approximating USD\$10,400,000.00, which appear to have been accepted by the Monitor.
17. As of the date herein, the total value of the accepted proofs of claim amounts to USD\$489,881,000.00 (the “**Accepted Claims**”), as appears from the Report of the Monitor dated December 13, 2021 (the “**Monitor’s Report**”) and communicated for convenience herewith as **Exhibit A-1**.
18. Proportionally speaking, then, Brookfield’s claims represent approximately 2% of the Accepted Claims.

#### **IV. GROUNDS FOR THE EXTENSION OF THE STAY OF PROCEEDINGS**

19. The Debtors’ Application and the Monitor’s Report are both thin on reasons justifying the need for this latest extension of the Stay of Proceedings.
20. In the Monitor’s Report, only paragraph 42 could be used to justify a four-month extension of the Stay of Proceedings. In this paragraph, it is said that discussions between the Debtors and their banking syndicate to settle claims they may have are incomplete and still ongoing. Same goes for discussions between the Debtors and prospective lenders with a view of obtaining exit financing to finance the operations of the Debtors after emergence from the restructuring proceedings.
21. In the Debtors’ Application, save paragraphs 21 to 24 which touch upon ongoing discussions pertaining to the exit financing and settling the banking syndicate’s claims, only paragraphs 18 to 20, which discuss the review of the proofs of claim and Notices of Dispute filed by the creditors, could be used to justify a four-month extension of the Stay of Proceedings.
22. However, out of approximately 2,343 claims, only 21 are still under review, including nine (9) Additional Late Claims subject to the authorization of their filing, as appears from the Debtors’ *Application for an Extension of the Stay of Proceedings and Other Relief* and communicated for convenience herewith as **Exhibit A-2**.
23. The Landlords support the Debtors’ efforts to emerge from these proceedings a more financially healthy and viable company. While the Landlords understand that the Debtors require additional time to reach a deal with its lenders and propose a plan of arrangement, they should not be granted a protracted extension of the Stay of Proceedings – the second longest of the Debtors’ 7 extension requests – at this late stage in the restructuring. The delay in the proceedings is prejudicial to creditors and interested parties, including the Landlords, by saddling them with the

uncertainty of dealing with a business counterpart subject to CCAA proceedings and forcing them to wait for a distribution on their claims.

24. In light of the foregoing, the Applicants respectfully submit that a four-month extension of the Stay of Proceedings is unreasonable and unnecessary for the Debtors to complete the ongoing discussions with prospective lenders and the banking syndicate as well as for the Monitor to conduct the review of the 21 outstanding claims. As such, the extension period of the Stay of Proceedings should be reduced to two months ending on February 17, 2022.
25. The present Application is well-founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present *Contestation to the Debtors' Application for an Extension of the Stay of Proceedings and Other Relief*;

**ISSUE** an extension of the Stay of Proceedings until February 17, 2022;

**THE WHOLE** with costs.

Montreal, December 15, 2021

*Blake, Cassels & Graydon L.L.P.*

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**BLAKE, CASSELS & GRAYDON LLP**

Attorneys for the Applicants

(Court Code: BB-8098)

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Our reference: 23639-1

### AFFIDAVIT

I, the undersigned, Julie Minnick Bowden, duly authorized representative of Brookfield Properties Retail Inc., having its registered office at 350 N. Orleans Street, Suite 3000, Chicago, Illinois 60654, U.S.A., solemnly declare:

1. I am the National Bankruptcy Director of Brookfield Properties Retail, Inc. ("BPR").
2. I am responsible for tenant bankruptcy matters for BPR's entire retail portfolio of shopping centers across the United States, including those impacted by these proceedings, and am directly involved in all prospective and current retail leases in BPR's portfolio. As the National Bankruptcy Director, I am familiar with BPR's asset portfolio, documents, and business records.
3. All the facts set out in the Application are true.

**AND I HAVE SIGNED**

  
JULIE MINNICK BOWDEN

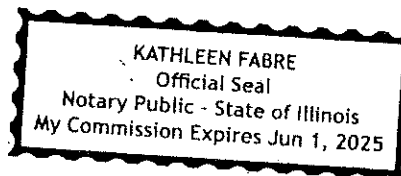
**SOLEMNLY DECLARED BEFORE ME**

In: Chicago, Illinois (U.S.A.)

This: 15<sup>th</sup> day of December 2021



**Notary Public**



N°: 500-11-058644-200

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**SUPERIOR COURT**  
(Commercial Division)  
**DISTRICT OF MONTRÉAL**

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**ORIGINAL**

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The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script.

**M<sup>tre</sup>. Bernard Boucher**

**BB-8098**

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Our File: 23639-1