

**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 RESPONDENT,
OXFORD PROPERTIES GROUP**

**(Response to Applicants' Motion Returnable July 13, 2017
re: Approval of SISP and Related Relief)**

July 12, 2017

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Lawyers for Oxford Properties Group

**TO: THIS HONOURABLE COURT
AND TO: THE SERVICE LIST**

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TAB 1

**ONTARIO
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**AFFIDAVIT OF GENEVIEVE WONG
(Sworn on July 12, 2017)**

I, **GENEVIEVE WONG**, of the Town of Richmond Hill, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

1. I am the Director, Retail Legal Services of Oxford Properties Group, and the Assistant Secretary of OPGI Management Limited Partnership (collectively, "**OPGI**") and as such, I have personal knowledge of the matters to which I hereinafter depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true.
2. This Affidavit is sworn in response to certain aspects of the following relief sought by the Applicants in their Notice of Motion dated July 5, 2017 (the "**Motion Record**"):

- (a) an order approving the terms for a comprehensive sale and investment solicitation process (the “SISP”) in respect of a portion or the entirety of the assets and business of the Applicants substantially in the form attached as Schedule “B” to the Motion Record, including the form of Order sought approving the SISP (the “SISP Approval Order”); and
- (b) an Amended and Restated Initial Order substantially in the form attached to the Applicants’ Motion Record as Schedule “C”.

OVERVIEW

- 3. On June 22, 2017, the Applicants sought and were granted protection under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”) pursuant to the Initial Order of Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “Initial Order”). Attached hereto as **Exhibit “A”** is a copy of the Initial Order.
- 4. In the Initial Order, among other things, the Court:
 - (a) granted a stay of proceedings in favour of the Applicants until and including July 22, 2017 (the “Stay”);
 - (b) appointed FTI Consulting Canada Inc. as Monitor in this CCAA proceeding (in such capacity, the “Monitor”) to oversee the affairs, assets and businesses of the Applicants; and
 - (c) approved the Applicant’s request to borrow under two debtor-in-possession credit facilities and granted a charge over all of the Applicants’ assets to secure such charge.

5. OPGI, the real estate investment arm of the Ontario Municipal Employees Retirement System, is a global real estate owner, investor, developer and property manager with a portfolio comprised of retail, office, industrial, multi-residential and hotel assets located in Canada, the United States and Europe.
6. OPGI or one of its affiliates, as owner or co-owner and/or property manager, operates certain shopping centres in Canada in which the Applicants are either tenants or adjacent land owners. Set out in **Exhibit "B"** hereto is a chart detailing the legal names of each of OPGI's and their co-owner's affiliates who hold the ownership interests in the properties in which the Applicants are either tenants or adjacent land owners. For the purposes of this Affidavit, OPGI will be referred to as the representative party for the owners of the properties listed on that chart.

BACKGROUND OF THE UPPER CANADA MALL

7. The Upper Canada Mall is the premiere shopping centre in the Town of Newmarket with 7.8 million visitors annually, 994,367 square feet of retail space and 190 current tenants. Sears Canada Inc. ("**Sears Canada**") owns two parcels of real property comprising part of the Upper Canada Mall: (i) Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 1 on Plan 65R-19397 (being PIN03554-0076) (the "**Sears Home Store Lands**"), and (ii) Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 3 on Reference Plan 65R-899 (being PIN03554-0077) (the "**Sears Department Store Lands**" and, together with the Sears Home Store Lands, the "**Sears Lands**"). The remaining real property comprising the Upper Canada Mall is

owned by OPGI, through Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc., as described in **Exhibit “B”** hereto.

8. The relationship between Sears Canada and OPGI with respect to the operation of their respective portions of the Upper Canada Mall as an integrated shopping centre is governed by a series of reciprocal obligations and covenants contained within an operating agreement dated July 25, 1973 registered as Instrument No. R719696 in the Land Registry Office for the Land Registry Division of York Region (No. 65) (as amended or supplemented from time to time and as currently in effect, the “**Operating Agreement**”).
9. The Operating Agreement includes certain critical provisions relating to the orderly operation of the Upper Canada Mall, including: the grant of rights of way and access to the Upper Canada Mall through the Sears department store, requiring Sears Canada to adhere to certain use restrictions with respect to the Sears Home Store Lands and providing for the management, maintenance, repair and upkeep of the Upper Canada Mall. The Operating Agreement also includes, in section 21 thereof, a right of first refusal in favour of OPGI, as referenced below. Attached hereto as **Exhibit “C”** is a copy of the Operating Agreement.
10. The Operating Agreement was supplemented by a supplementary agreement dated December 24, 1987 and registered on title on January 21, 1994 as Instrument No. 633096 (the “**First Supplement**”), a second supplementary agreement dated January 21, 1994 and registered on title on January 24, 1994 as Instrument No. 633169 (the “**Second Supplement**”) and a third supplementary agreement dated April 9, 1998 and registered

on title on April 9, 1998 as Instrument No. R719697 (the “**Third Supplement**”). Attached hereto as **Exhibits “D”, “E” and “F”** are copies of the First Supplement, the Second Supplement and the Third Supplement, respectively.

11. In addition, the Sears Home Store Lands are subject to a restrictive covenant agreement in favour of OPGI (the “**Restrictive Covenant**”) registered as Instrument No. R719695 in the Land Registry Office for the Registry Division of York Region (No. 65). The Restrictive Covenant provides that the Sears Home Store Lands shall not be used for any purpose other than the purpose of a retail furniture, appliances and home furnishings store, or, subject to certain consent and exclusivity requirements, for such other proposed uses as the parties may mutually agree. Attached hereto as **Exhibit “G”** is a copy of the Restrictive Covenant in favour of OPGI.
12. The Sears Department Store Lands and the Sears Home Store Lands are subject to a right of first refusal in favour of OPGI (the “**ROFR**”), contained in section 21 of the Operating Agreement (as subsequently amended by section 7 of the Second Supplement and section 12 of the Third Supplement).
13. Pursuant to the terms of the ROFR, if Sears Canada wishes to sell all or a portion of the Sears Lands, it must require that the terms and conditions of sale be embodied in a *bona fide* offer to purchase (the “**Offer**”) and must provide a copy of the Offer to OPGI. OPGI is granted an option to purchase the lands referenced in the Offer upon the same terms and conditions contained within the Offer. OPGI is entitled to exercise its option to purchase by written notice given within 15 days of receipt of the Offer.

14. Regardless of whether the right of first refusal is exercised or not, the ROFR explicitly states that the other terms of the Operating Agreement shall continue to apply to both the Sears Department Store Lands and the Sears Home Store Lands. The terms and covenants of the Operating Agreement continue to be binding on transferees, pursuant to section 20 of the Operating Agreement and section 6 of the Option to Purchase (defined below).

15. The Sears Department Store Lands are also subject to a separate Option to Purchase agreement in favour of OPGI, dated January 21, 1994 and registered on title on January 24, 1994 as Instrument 633159 (the “**Option to Purchase**”). The Option to Purchase provides that any purchaser who buys the Sears Lands is bound by the terms and covenants of the Operating Agreement relating to the Upper Canada Mall. Moreover, the Option to Purchase grants OPGI the option to purchase the Sears Department Store Lands at the current market value in the event that the Sears Department Store Lands are not operated by Sears Canada as a department store for a period of 91 consecutive days. In the event that OPGI decides to exercise its option to purchase the Sears Department Store Lands, the Option to Purchase contains comprehensive provisions regarding the process by which the Sears Department Store Lands may be sold and a mechanism for determining the current value of the Sears Department Store Lands. Attached hereto as **Exhibit “H”** is a copy of the Option to Purchase.

TENANTS OF THE UPPER CANADA MALL

16. The Upper Canada Mall is the premiere shopping centre in the region and currently has 190 tenants who stand to be affected by any major changes at the mall. There are four

major anchor tenants at the Upper Canada Mall: the Hudson's Bay Company, Sears, Toys "R" Us and Sport Check Supercenter. In the aggregate, the Upper Canada Mall employs over 3,100 residents in the Newmarket area.

17. The Operating Agreement, Restrictive Covenant, ROFR and Option to Purchase assist the Landlord in ensuring that, notwithstanding the separate ownership, the Upper Canada Mall is operated in accordance with best practices and tenant expectations. For example, the Operating Agreement and the Restrictive Covenant ensure that a direct competitor to an existing tenant's business cannot disrupt the balance and overall environment at the Upper Canada Mall. Further, the ROFR and Option to Purchase ensure that OPGI would be able to intervene in the event that Sears Canada attempted to sell the Sears Lands to a party whose operations might negatively impact the branding of the Upper Canada Mall and, accordingly, its tenants. The Option to Purchase also gives OPGI the right to exercise the option if the Sears store has not been operated as a department store for 91 days or more.
18. It is therefore critically important to OPGI and its 190 tenants (and, by extension, the wider community of stakeholders) at the Upper Canada Mall that all terms of the Operating Agreement, the Restrictive Covenant, the ROFR and the Option to Purchase are respected and upheld throughout this proceeding.
19. Recognizing the need to keep tenants of the Upper Canada Mall advised on the status of the Applicants' CCAA proceedings and any relief sought that may impact the shopping centre, the Upper Canada Mall General Manager, Bri-Ann Stuart and the Property Manager, Jocelyn McCloskey, have had verbal communications (the "**Tenant**

Communication") on behalf of OPGI with the managers or owner/operators of 184 tenants of the 190 tenants currently operating in the Upper Canada Mall.

20. I am advised by Bri-Ann Stuart and do verily believe that, of the 184 tenants that were canvassed by the Tenant Communication, all of them have confirmed their support for the steps OPGI is taking on this motion to ensure that the Operating Agreement, the Restrictive Covenant, the ROFR and the Option to Purchase are respected, and that no aspect of the SISP for which court approval is sought could have the direct or indirect effect of undermining those agreements.
21. I am also advised by Bri-Ann Stuart that, of the remaining 6 tenants that were not canvassed by the Tenant Communication, 3 are tenants related to the Applicants, 2 tenants occupy sites that are currently under construction, and 1 store manager was unavailable to respond.

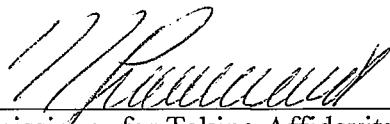
OPGI'S POSITION ON THE SISP TERMS

22. In taking a position on the terms governing the SISP process, OPGI is not seeking to obtain any additional rights or privileges beyond what it currently has by virtue of the agreements it negotiated with Sears Canada, which in some cases have been in place for more than 40 years, or what might be required to respond to the relief sought by the Applicants from the Court in this proceeding.
23. The SISP, as currently drafted, creates a number of serious concerns for OPGI. In particular, the SISP has the potential to undermine real property rights and contractual rights established in the Operating Agreement, the Restrictive Covenant, the ROFR and

the Option to Purchase if amendments are not made to the SISP terms, the SISP Approval Order and the Initial Order.

24. OPGI conveyed its concerns with respect to its contractual and property rights to the Applicants' counsel by confidential letter dated June 28, 2017, and also as part of an informal group of landlords appearing in this proceeding. OPGI's concerns remain unresolved and have led to the filing of this Affidavit.
25. I make this Affidavit in response and opposition to certain relief sought by the Applicants in their Motion Record dated July 7, 2017, and for no other or improper purpose.

SWORN before me at the City of Toronto,
in the Province of Ontario, this 12th day of
July, 2017.

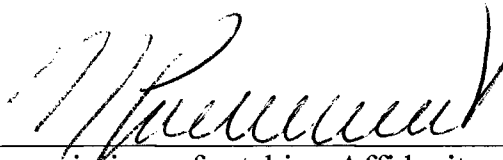


Commissioner for Taking Affidavits



GENEVIEVE WONG

This is **Exhibit "A"**, referred to in the
Affidavit of Genevieve Wong, sworn before me
this 12th day of July, 2017.

A handwritten signature in cursive script, appearing to read "M. [unclear]", written over a horizontal line.

A Commissioner for taking Affidavits, etc.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

THURSDAY, THE 22ND

JUSTICE HAINEY

)

DAY OF JUNE, 2017

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CANADA INC.

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

INITIAL ORDER

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

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

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

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

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

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

REAL PROPERTY LEASES

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

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

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

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

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

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

NON-DEROGATION OF RIGHTS

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

KEY EMPLOYEE RETENTION PLAN

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

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

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

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

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

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

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

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

APPOINTMENT OF MONITOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIP FINANCING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CORPORATE MATTERS

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

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

SERVICE AND NOTICE

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

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

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

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

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

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

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

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

COMEBACK MOTION

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

GENERAL

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

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

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

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

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

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

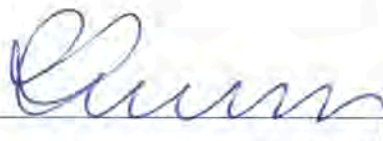
68. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

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

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

JUN 22 2017

PER / PAR: 



C. Irwin
Registrar

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

INITIAL ORDER

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)
Tel: 416.862.4908

Jeremy Dacks (LSUC #: 41851R)
Tel: 416.862.4923

Michael De Lellis (LSUC #: 48038U)
Tel: 416.862.5997

Lawyers for the Applicants

This is **Exhibit "B"**, referred to in the
Affidavit of Genevieve Wong, sworn before me

this 12th day of July, 2017.

A handwritten signature in black ink, appearing to read "M. [unclear]", written over a horizontal line.

A Commissioner for taking Affidavits, etc.

Exhibit “B”

Mall / Center	Name of Landlord	Location	Nature of Applicants’ Interest
Les Galeries de la Capitale (Sears Department Store)	Les Galeries de la Capitale Holdings Inc.	Quebec City, Quebec	Leasehold
Les Galeries de la Capitale (Sears Home Store)	Les Galeries de la Capitale Holdings Inc.	Quebec City, Quebec	Leasehold
Southcentre Mall	Oxford Properties Retail Holdings Inc. and Oxford Properties Retail Holdings II Inc.	Calgary, Alberta	Leasehold
Kingsway Mall (previously “Kingsway Garden Mall”)	Kingsway Garden Holdings Inc.	Edmonton, Alberta	Leasehold
Scarborough Town Centre	Scarborough Town Centre Holdings Inc.	Toronto, Ontario	Leasehold
Upper Canada Mall (Sears Home Store)	Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc.	Newmarket, Ontario	Freehold (adjacent property owner)
Upper Canada Mall (Sears Department Store)	Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc.	Newmarket, Ontario	Freehold (adjacent property owner)

This is **Exhibit "C"**, referred to in the
Affidavit of Genevieve Wong, sworn before me
this 12th day of July, 2017.


A Commissioner for taking Affidavits, etc.

PROPERTY REGISTRY OFFICE

R719696

OFFICE OF REGISTRATION

1998 APR -9 A 11:46



Land Registrar

(1) Registry Land Titles (2) Page 1 of 40 pages

(3) Property Identifier(s) **03554 0032 (R)** Block **03554-0033 (R)** Property Additional: See Schedule

(4) Nature of Document **AGREEMENT (OPERATING)**

(5) Consideration Dollars \$

(6) Description **Part of Lot 96, Concession 1, West of Yonge Street being in the Town of Newmarket, in the Regional Municipality of York (formerly in the Township of East Gwillimbury, in the County of York) being Parts 1, 2, 3 and 4 on Plan 65R-899.**

Land Registry Office for the Registry Division of York Region (No. 65)

New Property Identifiers Additional: See Schedule

Executions Additional: See Schedule


(7) This Document Contains: (a) Redescription New Easement Plan/Sketch (b) Schedule for: Description Additional Parties Other

(8) This Document provides as follows:
SEE OPERATING AGREEMENT ATTACHED.

When referencing "Schedule C" please see 65R-899, registered August 1, 1973.

Continued on Schedule

(9) This Document relates to instrument number(s) **161412**

(10) Party(ies) (Set out Status or Interest) Name(s)	Signature(s)	Date of Signature Y M D
REGIONAL SHOPPING CENTRES LIMITED by its solicitors, McLean & Kerr (OWNER)	Per:  Suzanne Johnston	1998 04 07

(11) Address for Service **Suite 300, 95 Wellington Street West, Toronto, Ontario M5J 2R2**

(12) Party(ies) (Set out Status or Interest) Name(s)	Signature(s)	Date of Signature Y M D
SIMPSONS-SEARS PROPERTIES LIMITED SIMPSONS-SEARS LIMITED (now known as SEARS CANADA INC.) (OWNER)		

(13) Address for Service **222 Jarvis Street, Toronto, Ontario M5B 2B8**

(14) Municipal Address of Property
Upper Canada Mall
17600 Yonge Street
Newmarket, Ontario
L3Y 4Z1

(15) Document Prepared by:
Suzanne J. Johnston
McLean & Kerr
Suite 2800
130 Adelaide Street West
Toronto, Ontario
M5H 3P5

Fees and Tax	
Registration Fee	50 -
<i>NO DUTY</i>	
Total	50 -

OPERATING AGREEMENT - NEWMARKET

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1

SCHEDULES

- A. Legal Description
- B. Site Plan
- C. Plan of Survey

OPERATING AGREEMENT

THIS AGREEMENT made the 25th day of July, A.D. 1973.

BETWEEN: REGIONAL SHOPPING CENTRES LIMITED,
a company incorporated under the laws
of Ontario,

hereinafter called "REGIONAL"

OF THE FIRST PART

- and -

SIMPSONS-SEARS PROPERTIES LIMITED,
a company incorporated under the laws
of Canada,

hereinafter called "SIMPSONS-SEARS"

OF THE SECOND PART

- and -

SIMPSONS-SEARS LIMITED,
a company incorporated under the laws
of Canada,

hereinafter called "SIMPSONS-SEARS LIMITED"

OF THE THIRD PART

WITNESSETH THAT:

WHEREAS Regional is the owner of approximately forty point five nine six (40.596) acres of land in the Town of Newmarket more particularly described as Parcels 1 and 2 in Schedule "A" attached hereto and as designated on the plan of survey annexed as Schedule "C" hereto. Parcel 1 in Schedule "A" contains approximately twenty-six point two three one (26.231) acres and is designated on Schedule "C" as the "Regional Lands", and Parcel 2 in Schedule "A" contains approximately fourteen point three six five (14.365) acres and is designated on Schedule "C" as the "Regional Reserved Lands";

AND WHEREAS Simpsons-Sears is the owner of approximately sixteen (16) acres of land more particularly described as Parcels 3 and 4 in Schedule "A" and designated on the plan of survey annexed as Schedule "C". Parcel 3 in Schedule "A" contains approximately eleven point one seven nine (11.179)

acres and is designated on Schedule "C" as the "Simpsons-Sears Lands", and Parcel 4 in Schedule "A" contains approximately four point eight two one (4.821) acres and is designated on Schedule "C" as the "Simpsons-Sears Reserved Lands";

AND WHEREAS the Simpsons-Sears Lands are to be occupied by Simpsons-Sears Limited or its approved transferee as herein provided for a department store and automotive centre;

AND WHEREAS the Regional Lands are to be developed in conjunction with the Simpsons-Sears Lands as a regional shopping centre to include a second department store and facilities for offices, service and other retail outlets;

AND WHEREAS the Simpsons-Sears Lands and the Regional Lands are together intended to comprise a regional shopping centre to be known as "Upper Canada Mall" (herein referred to as the "Shopping Centre");

AND WHEREAS the basic configuration of the Shopping Centre, including the location of buildings, parking areas and access to be constructed initially thereon is shown on the plan (herein referred to as the "Site Plan") attached as Schedule "B";

AND WHEREAS the parties hereto, in consideration of their respective covenants and agreements herein, have entered into this agreement, to be known as "this agreement" for the purpose of providing that the Simpsons-Sears Lands and the Regional Lands will be maintained and operated during the term of this agreement to the mutual advantage of the parties as one regional shopping centre;

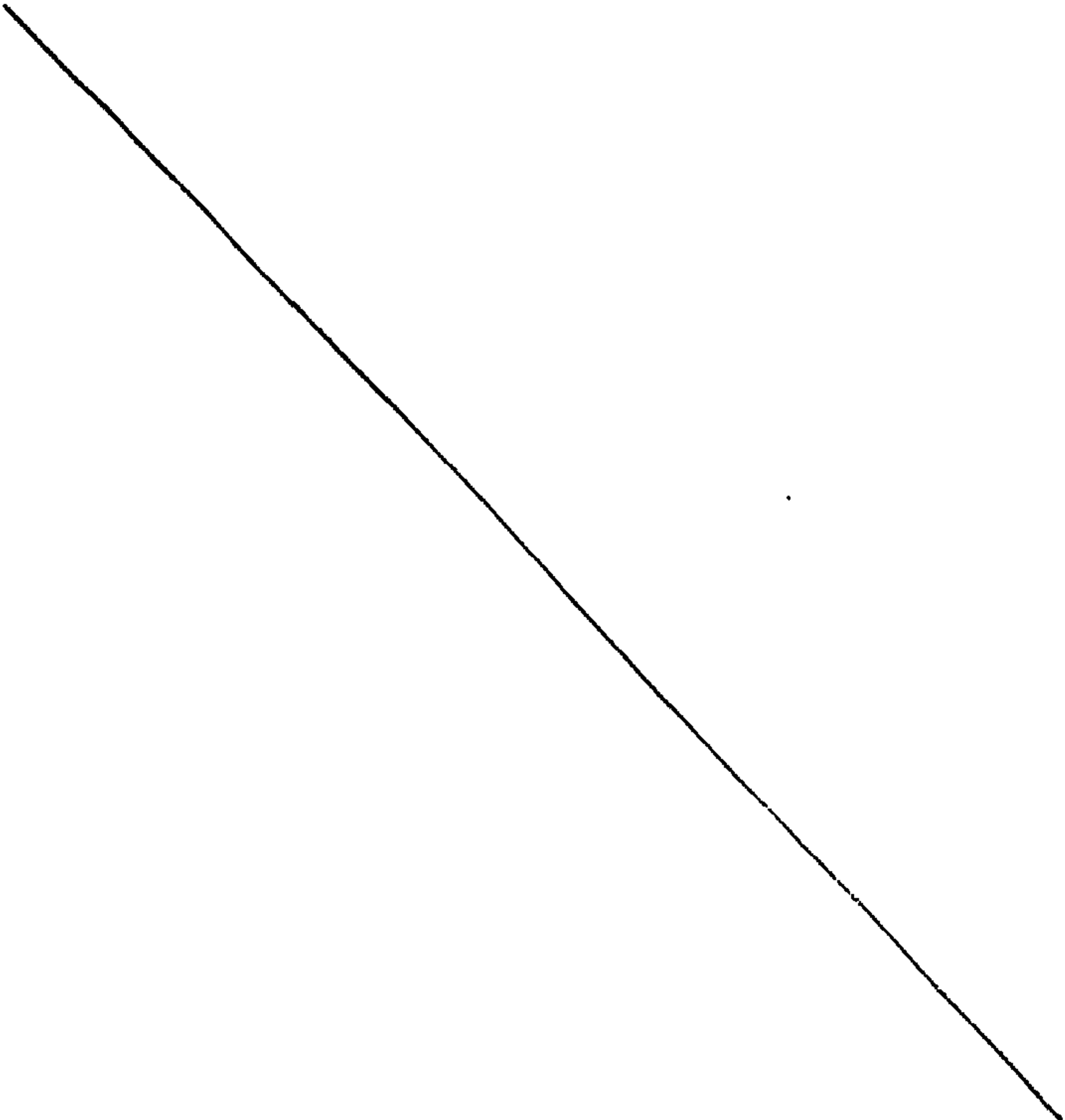
NOW THEREFORE the parties hereto have agreed as follows:

1. DEFINITIONS

1.01 "Gross Rentable Floor Area" means the size of such area measured from the outside surface of the exterior walls, doors and windows (including walls, doors and windows separating such premises from any mall) and from the centre line of all interior walls separating such premises from adjacent premises, but shall exclude the mall and other space intended for common use, area used exclusively for warehousing, loading docks and outdoor selling areas.

1.02 "Mall" means the enclosed Mall located on Regional Lands and as shown on the Site Plan attached hereto as Schedule "B".

1.03 "Official Opening Date" means the date selected by Regional with the approval of Simpsons-Sears, not to be unreasonably withheld, as the opening date of the Shopping Centre for business to the public.



2. EFFECTIVE DATE AND TERM OF AGREEMENT

2.01 This agreement shall become effective and binding upon the parties hereto and their successors and assigns on the date of this agreement, and all rights and benefits thereby created shall run from such date until terminated as herein provided except for those rights and benefits which are expressly provided to survive such termination pursuant to subclauses 7.02(d), 7.02(e) and clause 12.05.

2.02 This agreement may only be terminated:

(a) pursuant to the provisions of Clause 16; or

(b) by election of any of the parties hereto only by written notice of termination given by the party electing to terminate to each of the other parties to this agreement, stipulating a termination date (which shall be no sooner than two (2) years after the date upon which notice is given, nor sooner than thirty-five (35) years from the date of this agreement).

3. DEVELOPMENT SCHEDULE

3.01 Regional covenants that it will proceed expeditiously with the construction to be carried out by it on the Regional Lands and will use its best efforts to complete construction in order to open the Shopping Centre for business not later than the month of June, 1974.

3.02 Simpsons-Sears covenants to co-operate with Regional in the development of the Shopping Centre and to proceed expeditiously with the construction of the department store and automotive centre on the Simpsons-Sears Lands and will use its best efforts to complete construction in order to open the department store and automotive centre thereon for business not later than September 30, 1974.

4. CONSTRUCTION ON SIMPSONS-SEARS LANDS

4.01 Simpsons-Sears agrees to construct on the Simpsons-Sears Lands a department store and an automotive centre in accordance with the following:

(a) the said department store and the said automotive centre shall be located in the areas outlined in green on the Site Plan and one (1) wall of the department store shall be located upon the boundary line between the Regional Lands and the Simpsons-Sears Lands and shall be so constructed as to completely enclose and form one (1) wall of the Mall at each of the two (2) levels of such Mall;

(b) the said department store shall contain not less than one hundred thousand (100,000) square feet of Gross Rentable Floor Area comprising two (2) floors of approximately fifty thousand (50,000) square feet each. All structures on the Simpsons-Sears Lands shall comply in all respects with applicable zoning and building by-laws of the Town of Newmarket and with the plans and specifications therefore approved by the Town of Newmarket pursuant to the development agreement between Regional and the Town of Newmarket;

(c) the said department store and automotive centre shall be designed as part of a regional shopping centre and so as to be architecturally compatible with the buildings which Regional has agreed to erect on the Regional Lands pursuant to Clause 5 and shall be constructed in accordance with preliminary plans and

specifications which shall have been submitted to and approved by the said Town and by Regional (the approval of Regional not to be unreasonably withheld nor unduly delayed);

(d) Simpsons-Sears shall also construct all parking areas, aisles, sidewalks, access roads, entrances and exits, landscaped areas and other accommodation areas and lighting and other equipment therein, all as may be properly and reasonably required on the Simpsons-Sears Lands for the purposes of a regional shopping centre and in accordance with the Site Plan and the said approved preliminary plans and specifications;

(e) all construction by Simpsons-Sears shall be performed expeditiously and in a good and workmanlike manner.

5. CONSTRUCTION ON REGIONAL LANDS

5.01 Regional agrees to construct on the Regional Lands a regional shopping centre to include a second department store and facilities for offices, services and other retail outlets, and an enclosed Mall, in accordance with the following:

(a) the said buildings to be constructed initially shall be located in the area outlined in yellow on the Site Plan and shall include an enclosed, heated and air-conditioned two-level Mall, the principal portion of which shall be at least thirty-five (35) feet wide and shall abut one (1) wall of the Simpsons-Sears department store;

(b) the said buildings shall contain not less than two hundred thousand (200,000) square feet of Gross Rentable Floor Area. All structures on the Regional Lands shall in any event comply in all respects with the applicable zoning and building by-laws of the

Town of Newmarket and with the plans and specifications therefor approved by the Town of Newmarket pursuant to the development agreement between Regional and the Town of Newmarket;

(c) the said buildings shall be designed as a regional shopping centre and shall be constructed in accordance with preliminary plans and specifications which shall have been submitted to and approved by the said Town and by Simpsons-Sears (the approval of Simpsons-Sears not to be unreasonably withheld nor unduly delayed);

(d) Regional shall also construct all parking areas, aisles, sidewalks, access roads, entrances and exists, landscaped areas and other accommodation areas and lighting and other equipment therein, all as may be properly and reasonably required on the Regional Lands for the purpose of a regional shopping centre and in accordance with the Site Plan and the said approved preliminary plans and specifications;

(e) all construction by Regional shall be performed expeditiously and in a good and workmanlike manner.

6. RESTRICTIONS ON FUTURE CONSTRUCTION

6.01 Each of Regional and Simpsons-Sears may from time to time during the term of this agreement construct additional buildings and structures or alter, reconstruct or extend (including adding additional storeys to) the initial buildings or structures, provided always that all municipal by-laws shall be complied with and additional parking spaces shall be furnished where required in accordance with this agreement, that preliminary or outline plans and specifications shall be approved by the other of them (such approval being limited to approving exterior architecture and the general suitability of such buildings and structures for

a regional shopping centre and not to be unreasonably withheld nor unduly delayed), that no such buildings or structures shall be erected within any of the areas shown outlined in orange on the Site Plan, that Clause 7 and all other applicable provisions of this agreement shall be complied with and that the aggregate Gross Rentable Floor Area of the buildings initially constructed shall not be materially reduced.

7. PARKING

7.01 Construction

(a) Simpsons-Sears shall at all times during the term of this agreement provide and maintain on the Simpsons-Sears Lands a parking area with all necessary access thereto designed in accordance with plans approved by the Town of Newmarket, if necessary and Regional (the approval of Regional not to be unreasonably withheld nor unduly delayed) and having thereon a number of parking spaces equal to the greater of five and one-half (5½) parking spaces for each one thousand (1,000) square feet of Gross Rentable Floor Area or the number of parking spaces required by municipal by-laws for the construction on the Simpsons-Sears Lands.

(b) Regional shall at all times during the term of this agreement provide and maintain on the Regional Lands a parking area with all necessary access thereto designed in accordance with plans approved by the Town of Newmarket, if necessary and Simpsons-Sears (the approval of Simpsons-Sears not to be unreasonably withheld nor unduly delayed), and having thereon a number of parking spaces equal to the greater of five and one-half (5½) parking spaces for each one thousand (1,000) square feet of Gross Rentable Floor Area or the number of parking spaces required by municipal by-laws for the construction on the Regional Lands.

(c) If either of Simpsons-Sears or Regional shall increase the Gross Rentable Floor Area of the buildings situated on the Simpsons-Sears Lands or the Regional Lands respectively, it shall provide on such lands and/or on other contiguous lands owned by such party and reasonably satisfactory to the other party, any additional parking spaces necessary to comply with the foregoing requirements. Additional parking spaces may be provided in the form of automobile parking structures, provided such structures comply with the requirements of this agreement pertaining to future buildings.

(d) Nothing herein shall prevent either of Regional or Simpsons-Sears from altering the design or location of the parking areas (including the access roads thereto and the entrances and exits of the Shopping Centre) on the lands respectively owned or occupied by it where necessary to permit additional construction or otherwise deemed appropriate, subject to the provisions of this agreement, including as to the number of parking spaces to be provided and the approval of plans, being complied with, and subject further to sub-clause 7.02(d) hereof.

(e) The parking areas (including the access roads thereto and the entrances and exits of the Shopping Centre) on the Simpsons-Sears Lands and the Regional Lands shall be designed so as to form an integrated facility and there shall be open and free access between the Simpsons-Sears Lands and the Regional Lands upon access roads to be provided, and no barriers or other obstacles shall be erected between such respective parking areas.

(f) If either of Simpsons-Sears or Regional wishes to allocate spaces within the parking area on their respective lands for purposes of employee parking, then the party desiring to allocate such employee parking shall forward to the other party for its approval, a site plan indicating the area in which such employee parking is to be allocated. Each of Simpsons-Sears and Regional shall co-operate with the other in the enforcement of all reasonable rules and regulations

regarding parking imposed by either party with respect to the lands owned or occupied by it, and each shall furnish to the other from time to time upon request information to identify automobiles belonging to their respective employees and those of their tenants.

7.02 Easements

(a) Simpsons-Sears grants to Regional during the term of this agreement for itself, its successors and assigns and for the use of Regional and its tenants and their respective employees, customers, agents, officers, invitees and licencees, a non-exclusive mutual right and easement to use the parking areas on the Simpsons-Sears Lands (including the access roads thereto and the entrances and exits of the Shopping Centre) for the purpose of access and parking subject to the provisions of subclause 7.02(c).

(b) Regional grants to Simpsons-Sears and to Simpsons-Sears Limited for themselves, their successors and assigns during the term of this agreement for the use of Simpsons-Sears and their tenants and their respective employees, agents, officers, invitees, licencees and customers, a non-exclusive mutual right and easement to use the parking areas on the Regional Lands (including the access roads thereto, and the entrances and exits of the Shopping Centre) for the purpose of access to and parking, subject to the provisions of subclause 7.02(c).

(c) The mutual right and easement to use parking areas (including the access roads thereto and the entrances and exits of the Shopping Centre) granted by subclauses 7.02(a) and 7.02(b) shall be limited to the reasonable use thereof for their proper and intended purpose, and shall be subject to such reasonable regulations including security precautions as may be imposed by Simpsons-Sears with respect to the Simpsons-Sears Lands and by Regional with respect to the Regional Lands and to temporary and reasonable interruption necessary in connection with the installation or repair of services, pavement

and other facilities and improvements. No charge shall be made for the use of any parking spaces without the consent of both Simpsons-Sears and Regional.

(d) Simpsons-Sears grants to Regional, its successors and assigns and for the use of Regional and its tenants and their respective employees, customers, agents, officers, invitees and licencees, the free, unencumbered and unobstructed, non-exclusive and mutual right and easement in perpetuity over the Simpsons-Sears Lands for the purpose of access to Regional Lands from any entrances or exits to Simpsons-Sears Lands from and to Davis Drive. During the term of this agreement, this easement shall be provided by the use of parking areas on the Simpsons-Sears Lands, as described in subclause 7.02(a) hereof and for the period following termination of this agreement, such easement shall be provided by means of a paved roadway constructed at the expense of Regional and crossing Simpsons-Sears Lands. The exact location of such roadway shall be determined by Simpsons-Sears with the consent of Regional.

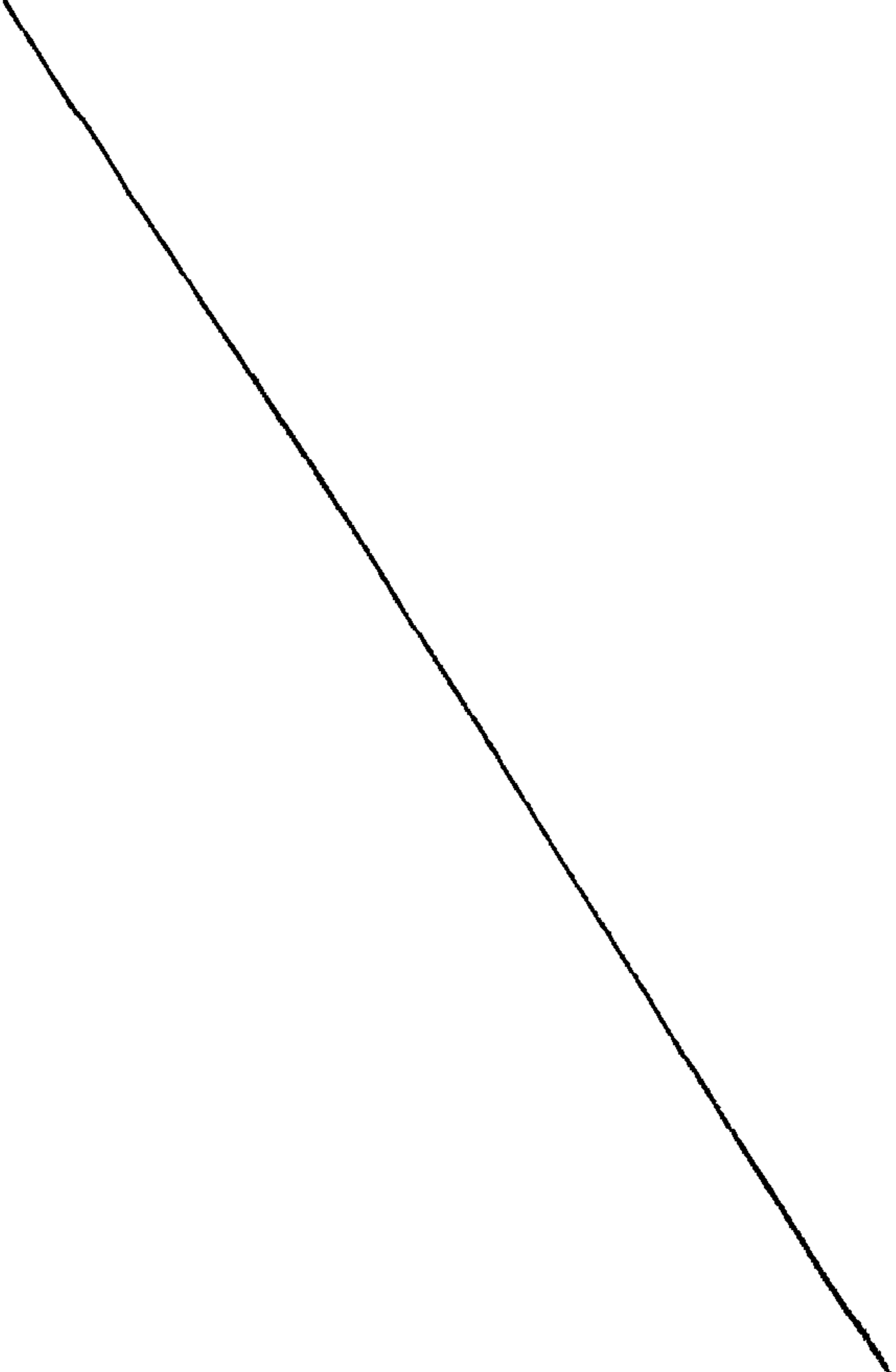
(e) Regional grants in perpetuity to Simpsons-Sears and Simpsons-Sears grants in perpetuity to Regional the right and easement to construct and maintain footings on their respective lands to support any structure or any party wall on the boundary between their respective lands.

7.03 Maintenance and Repair

(a) Regional shall keep all the parking areas on the Regional Lands and the Simpsons-Sears Lands in good order and repair (except for the making of major repairs including repaving and the replacement of electric light standards) and, without in any way limiting the generality of the foregoing, in particular shall:

- (i) maintain all entrances, access roads, lanes, parking spaces (other than those in parking structures and except for the said major repairs), and shall suitably mark all such parking spaces and except as aforesaid, maintain all paved surfaces in a reasonably smooth condition and repaired whenever necessary,
- (ii) remove or cause to be removed therefrom all papers, debris, snow, ice, filth and refuse when reasonably necessary,
- (iii) keep the surface of all exterior pavement sanded and salted when reasonably required, and
- (iv) keep the curbs, lighting equipment (except as aforesaid), lane dividers, adjacent landscaping, drains, direction signs and other installations made on or in connection with such parking facilities in good repair and condition and keep such parking facilities adequately lit when reasonably necessary and when required during night-time business hours.

(b) Regional and Simpsons-Sears shall make all major repairs to their respective parking facilities including repaving and the



replacement of electric light standards required to keep such facilities in good order and repair.

8. MALL

Regional grants to Simpsons-Sears and to Simpsons-Sears Limited during the term of this agreement for themselves, their successors and assigns, for the use of Simpsons-Sears, Simpsons-Sears Limited and their tenants and their respective employees, agents, officers, invitees, licencees and customers, a non-exclusive mutual right and easement of pedestrian passage throughout the Mall for the purpose of access to and from the Simpsons-Sears department store during normal business hours of the Shopping Centre, subject to such right being exercised in a reasonable and usual manner, to reasonable regulations imposed from time to time by Regional, and to such temporary interruption as may be necessary in connection with construction or repair; but the foregoing shall not prevent Regional from using parts of the Mall for kiosks or other uses provided that such access is not unreasonably interfered with.

8.02 Regional agrees to keep the Mall in good condition and repair and in a safe and sound condition, clear and free of rubbish, debris and other hazards to persons using the same, such maintenance to include, without in any way limiting the generality of the foregoing, adequately sweeping and removal of rubbish, trash, garbage and other refuse, adequate heating, air-conditioning and maintenance of all necessary electrical and other equipment and facilities in good operating condition including electrical lamps replacements, but shall have the right from time to time to alter, extend and change the location of the Mall, so long as it continues to provide equivalent access to the Simpsons-Sears department store and otherwise complies with the requirements of this agreement.

9. CONTRIBUTION TO MALL AND PARKING OPERATING COSTS

9.01 For the fiscal period adopted by Regional, Simpsons-Sears Limited shall pay to Regional by periodic payments as hereinafter provided:

(a) that proportion of the Mall operating cost (defined in Clause 9.02) incurred by Regional which the Gross Rentable Floor Area of the department store building on the Simpsons-Sears Lands is of the aggregate Gross Rentable Floor Area of all buildings on the Regional Lands and the Simpsons-Sears Lands excluding any automotive centres (with or without gasoline stations) and free-standing buildings not directly connected with or abutting the Mall; and

subject to clause 9.04,
(b) /that proportion of the parking area operating cost (defined in Clause 9.03) incurred by Regional which the Gross Rentable Floor Area of all buildings on the Simpsons-Sears Lands is of the aggregate Gross Rentable Floor Area of all buildings on the Regional Lands and the Simpsons-Sears Lands.

9.02 "Mall operating cost" means all the direct costs incurred by Regional in maintaining and operating the Mall, including performing all its obligations under subclause 8.02 calculated in accordance with generally accepted accounting principles, including without limitation costs incurred for fire, public liability and property damage insurance with respect to the Mall, all real property taxes (including local improvement rates, school taxes, business taxes and other taxes levied or imposed in lieu of or in substitution therefor) levied or assessed on or in respect of the Mall including the land upon which it is constructed, cleaning, repairing and maintaining the Mall, the operation of the heating and air-conditioning thereof, policing and supervising and remuneration of employees to the extent attributable to the maintenance and operation of the Mall, rental on equipment used in connection with the maintenance and operation of the Mall and ten per cent (10%) of the total of all of the foregoing costs (except real property taxes) as an agreed allowance in respect of overhead and indirect expenses but shall exclude other overhead and indirect expenses, depreciation on buildings and heating and air-conditioning equipment and costs of a capital nature (including the cost

of repairing defective work and materials) other than those which Regional is bound to incur in complying with its obligations under subclause 15.01. Nothing in this agreement contained shall be construed to require Simpsons-Sears Limited to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of Regional or any income, excess profits or revenue tax or any other tax or impost of a personal nature charged or levied upon Regional except to the extent hereinabove provided.

9.03 "Parking area operating cost" means all the direct costs incurred by Regional in maintaining and operating the parking areas and all installations made on or in connection therewith (except parking structures), including performing all its obligations under subclause 7.03 calculated in accordance with generally accepted accounting principles, including without limitation costs incurred for insurance premiums, gardening and landscaping, cleaning, repairing and maintaining the parking facilities (but excluding repaving), policing and supervising and remuneration of employees to the extent attributable to the maintenance and operation of the parking facilities, rental of equipment used in connection with the maintenance and operation of the parking areas, and ten per cent (10%) of the total of all of the foregoing costs as an agreed allowance in respect of overhead and indirect expenses, but shall exclude other overhead and indirect expenses and costs of a capital nature other than those which Regional is bound to incur in complying with its obligations under subclause 15.01.

9.04 If Simpsons-Sears Limited presents to Regional reasonable evidence that:

- (a) the work performed by Regional on the Simpsons-Sears Lands under subclause 7.03(a) is of a quality inferior to that which Simpsons-Sears Limited could perform itself or obtain from any other person with respect to its parking facilities, or

(b) the cost incurred by Regional in performing such work exceeds by 10% or more the cost for which such work could be performed or obtained by Simpsons-Sears Limited, then Simpsons-Sears Limited may terminate the provisions of subclauses 7.03(a) and 9.01(b) to the extent they apply to its parking facilities, upon giving to Regional at least six (6) months' prior written notice. After such termination, Simpsons-Sears Limited shall keep its said parking facilities in good order and repair as stipulated in said subclause 7.03(a).

9.05 During the first fiscal period adopted by Regional and until the first audited statements of actual Mall operating cost and parking area operating cost have been delivered to Simpsons-Sears Limited, as hereinafter provided, Simpsons-Sears Limited shall pay to Regional on the first day of each and every month:

(a) an amount equal to two and one-half cents (2 1/2¢) per square foot of Gross Rentable Floor Area of the Simpsons-Sears department store, being the estimated proportionate part of the said Mall operating cost for such first fiscal period; and

(b) an amount equal to one cent (1¢) per square foot of Gross Rentable Floor Area of all the buildings on the Simpsons-Sears Lands, being the estimated proportionate part of the parking area operating cost for such first fiscal period.

9.06 Thereafter, the estimated proportion part of such annual costs shall be the amount set forth as such in the most recent audited statements of costs (adjusted to an annual basis if necessary) and such estimated proportionate costs shall be paid to Regional by Simpsons-Sears Limited in equal monthly installments on the first day of each and every month.

9.07 Within ninety (90) days after the end of each fiscal period, Regional shall furnish to Simpsons-Sears Limited audited statements of the actual Mall operating cost and parking area operating cost incurred by Regional during such fiscal period and stipulating the amount of the proportionate part thereof payable by Simpsons-Sears Limited. If the aggregate of the monthly instalments paid in respect of the fiscal period to which the audited statements relate is less than the amount shown by such statement to be payable, Simpsons-Sears Limited shall pay the deficiency to Regional with thirty (30) days of delivery of the said audited statements. If the aggregate of the monthly instalments paid in respect of the fiscal period to which the audited statements relate is more than the amount shown by such statements to be payable, Regional shall refund the amount of the excess to Simpsons-Sears Limited, upon delivery of such statements.

9.08 Simpsons-Sears Limited shall have the right at any time within one (1) year after delivery of the said audited statements and during normal business hours to examine the books of Regional with respect to such costs and to have its own audit made of such costs, and Regional shall co-operate in any such examination or audit and shall furnish on request all relevant documents and information. The cost of each such examination shall be borne by Simpsons-Sears Limited unless such examination discloses a variation in excess of three per cent (3%) of the Mall Operating Cost and Parking Area Operating Cost for the period with respect to which such examination is conducted in which event such cost shall be borne solely by Regional.

10. MALL KIOSK

10.01 Regional hereby leases to Simpsons-Sears Limited and Simpsons-Sears Limited agrees to take from Regional for a term to commence upon the conveyance

of the Simpsons-Sears Lands to Simpsons-Sears or its nominee (but subject to the right of occupation thereunder being deferred until the Mall is constructed) and to end upon the expiration of twenty (20) years thereafter, subject to the sooner termination of this agreement, the floor space in the Mall designated on the Site Plan as the location of Simpsons-Sears kiosk and containing approximately three hundred and twenty (320) square feet, for the purpose of Simpsons-Sears Limited, erecting, maintaining and operating thereon a kiosk for the sale of any merchandise which Simpsons-Sears Limited may lawfully sell in its department store and to be operated as an adjunct of the business required to be carried on by Simpsons-Sears Limited upon the Simpsons-Sears Lands and subject to any restrictions contained in this agreement pertaining thereto. Simpsons-Sears Limited shall pay all business taxes assessed upon it in respect of the said kiosk, but otherwise all realty taxes thereon shall be paid by Regional. Except during such parts of the term as Simpsons-Sears Limited shall elect not to maintain and operate a kiosk and shall have removed the same (and Simpsons-Sears Limited shall not be deemed to have abandoned its rights under this clause merely because during any period or periods of time it shall not maintain and operate a kiosk) Simpsons-Sears Limited shall maintain a kiosk of a design compatible with the architecture of the Mall and shall keep the same in good repair, neat and tidy. In its occupancy of the kiosk, Simpsons-Sears Limited shall be subject to such reasonable rules and regulations as Regional may from time to time promulgate pertaining to the Mall and the operation of the kiosks therein. As prepaid rental for the said kiosk area, Simpsons-Sears Limited agrees to pay to Regional the sum of Seventy-Five Thousand Dollars (\$75,000.00) to be payable upon the substantial completion by Regional of the construction of the Mall as established by the joint certification of the architects of both Simpsons-Sears Limited and Regional.

11. CONTRIBUTIONS TO MAJOR IMPROVEMENTS

11.01 For the purposes of this Clause 11, the term 'major improvements' shall mean major on-site and off-site utilities works of mutual benefit in connection with the Shopping -----

Centre and whether occurring before or after the opening of the Shopping Centre, including, for example, the construction and if required by the municipality the subsequent removal of sanitary sewer disposal facilities and the relocation and improvement of storm sewer and drain facilities and contributions, fees or levies assessed or required by the Town of Newmarket, the County of York or the Province of Ontario for road, illumination and traffic lights and service improvements.

11.02 Simpsons-Sears agrees to pay to Regional from time to time, its proportionate share of the cost of major improvements incurred by Regional, that is, that proportion of such cost which the Gross Rentable Floor Area of all buildings on the Simpsons-Sears Lands is of the gross aggregate rentable area of all buildings on the Regional Lands and Simpsons-Sears Lands.

11.03 Simpsons-Sears Proportionate Share shall be paid by Simpsons-Sears to Regional at the time that Regional incurs the cost of the major improvements or some part thereof, upon presentation to Simpsons-Sears of an invoice or other evidence approved by the chief architect of Simpsons-Sears, such approval not to be unreasonably withheld or unduly delayed, that Regional has incurred the particular cost for which contribution is being requested.

11.04 The amount to be paid by Simpsons-Sears under the provisions of this Clause 11 is dependent upon:

- (a) Regional using its best efforts to keep the cost of major improvements to a reasonable minimum;
- (b) such major improvements for which contribution is requested being a direct benefit to the Shopping Centre including the development on the Simpsons-Sears Lands.

12. UTILITIES AND SERVICES

12.01 Each of Simpsons-Sears and Regional shall permit the other to construct, enlarge or replace underground sanitary and storm sewer services and gas, water, hydro and other utilities across its land, as may be reasonable and necessary to permit the development and use of its lands as contemplated by this agreement, but subject to the following:

(a) The location of such services and utilities shall not interfere with existing or contemplated buildings.

(b) The party so constructing, enlarging and replacing such services and utilities shall make good all and any damage to lands, buildings and improvements including making good the surface of the lands and replacing pavement disturbed.

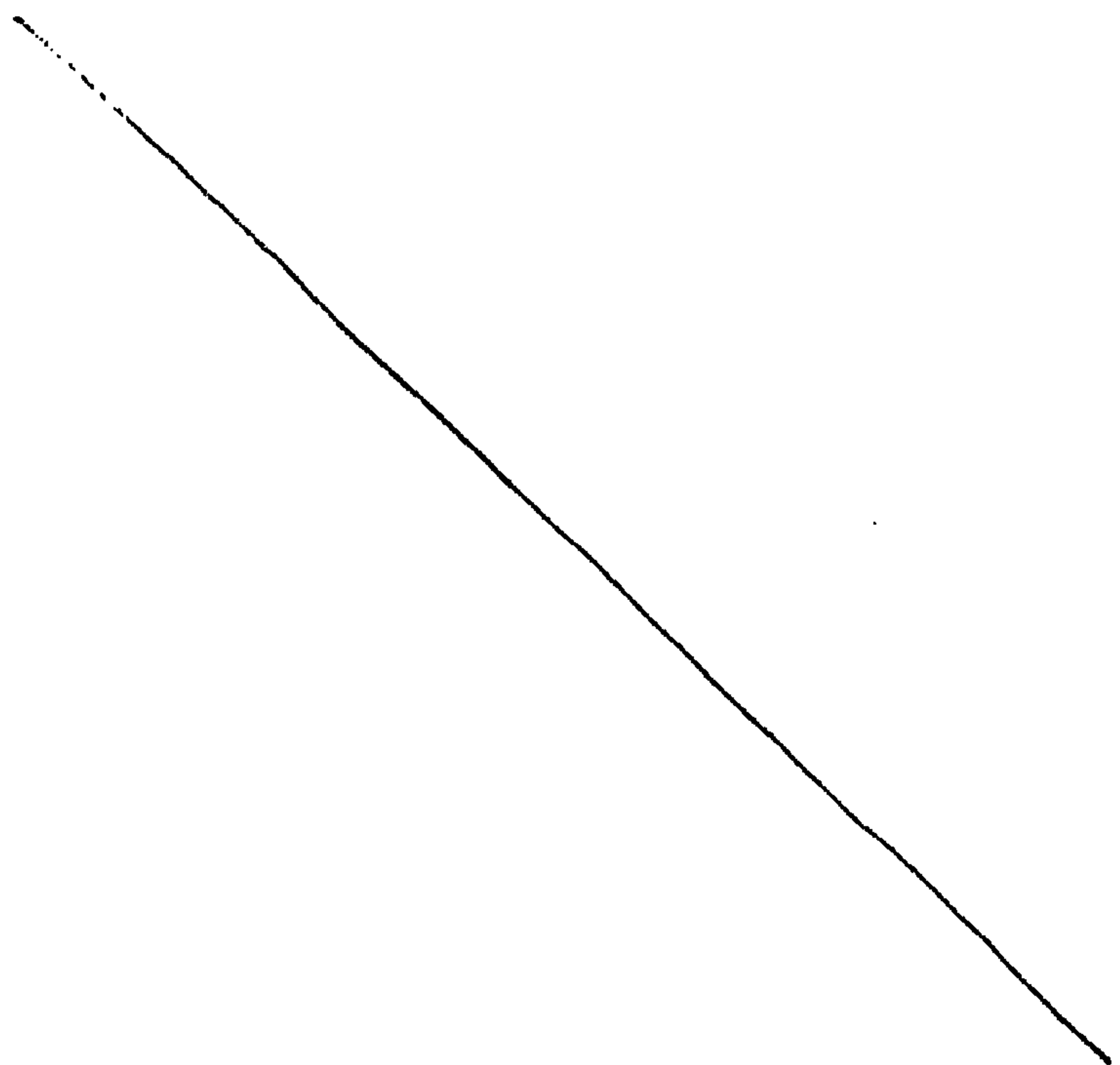
12.02 The owner of the lands across which any service or utility passes covenants that it will not suffer or permit anything to be done on its lands that will adversely affect the operation of any such service or utility and provided such utility or service is not adversely affected, the owner shall have the right to use the surface of its lands for any reasonable purpose permitted by this agreement, including the right to pave and construct parking areas or access roads thereon, and shall also have the right at any time and at its own expense to relocate such service and utility so as to permit the construction of any future buildings or structures permitted hereunder, provided that in relocating such service and utility, an equal or comparable facility shall be provided by such owner.

12.02 Each of Simpsons-Sears and Regional shall maintain or cause to be maintained in good repair and condition the utilities and services on its lands and the cost of such maintenance and repair shall be borne by each of the parties hereto in proportion to their respective use and benefit of the utility and service to be repaired unless such maintenance and repair is necessitated by the negligence of the owner of the lands

across which the utilities and services pass, in which event the cost of such maintenance and repair shall be borne by the negligent party.

12.04 If any portion of any service or utility is shared by Regional and Simpsons-Sears, neither of them shall impose a greater use thereon than represents their respective reasonable proportions of the design capacity thereof, based upon original design criteria.

12.05 The parties hereto covenant and agree that upon the termination of this agreement, to the extent that alternate services or utilities are not obtainable at reasonable expense, they will not deal with their respective lands so as to prevent the continuing use of the services and utilities. Provided, however, that the owner of the lands over which such services and utilities pass shall have the right at its expense to relocate the services or utilities on condition that the service not be interrupted.



13. USE OF PREMISES

13.01 Simpsons-Sears Limited covenants that throughout the term of this agreement, it will actively and in accordance with good merchandising practice carry on in all of the buildings and structures on the Simpsons-Sears Lands the operation of a department store (which may include, as part of such department store, key cutting, the sale of insurance, a beauty salon, optical and hearing aid departments, a watch repair shop and a coffee shop or restaurant, but shall not include any business generally carried on as a discount operation and in no event shall the buildings or structures on the Simpsons-Sears Lands be used for or with respect to or in connection with the operation of a food supermarket/ and an automotive service centre (which may include a gasoline station) and parking structure under the name of "Simpsons-Sears" or such other trade name adopted for use in a majority of stores operated by Simpsons-Sears Limited in the Province of Ontario; and Simpsons-Sears Limited covenants that it will not use or permit to be used any part of the Simpsons-Sears Lands or the buildings and structures erected thereon for any purpose other than those for which it has covenanted to use the Simpsons-Sears Lands as aforesaid.

13.02 Regional covenants that throughout the term of this agreement all of the buildings and structures constructed on the Regional Lands shall be used for the operation of a regional retail shopping centre, which shall include one large department store in addition to any junior department and variety stores, and may include other retail stores, offices and service facilities, parking structures and other such uses as are generally found in conjunction with regional shopping centres and are permitted by municipal by-laws from time to time; provided that no department, junior department or variety store (with the exception of the department store designated on the Site Plan as "Zeller's Department Store") shall contain more than fifty thousand (50,000) square feet of Gross Rentable Floor Area and further, provided that in no event shall such regional shopping centre contain more than one motion picture theatre (but which may have a dual auditorium) or

any store dealing principally or substantially in used or surplus merchandise, pawn shop, business of an auctioneer, used car lot or manufacturing operation, or any public auditorium and/or office structure having a combined total floor area in excess of twenty per cent (20%) of the Gross Rentable Floor Area of all buildings on the Regional Lands; and Regional covenants that it will not use or permit to be used any part of the Regional Lands or the buildings and structures erected thereon for any purpose other than those for which it has covenanted to use the Regional Lands as aforesaid.

13.03 Neither Simpsons-Sears nor Regional shall use or permit to be used any portion of the Simpsons-Sears Lands or the Regional Lands respectively or the buildings or structures thereon for fire sales (except of merchandise actually damaged by fire on the premises), auction sales, fraudulent or misleading merchandising or other uses which are likely to damage the reputation or business of the Shopping Centre, or are incompatible with a regional shopping of a high standard or constitute a nuisance or hazard.

13.04 No merchandise shall be sold or other commercial activity, including advertising or sales promotion, shall be conducted outside any buildings, except within the outdoor selling areas adjacent to the department stores upon the Simpsons-Sears Lands and Regional Lands as shown on the Site Plan or except as mutually agreed upon by the parties from time to time.

13.05 Except with the consents of both Regional and Simpsons-Sears, no advertising or promotional signs shall be permitted in the parking areas or elsewhere other than upon or affixed or on top of buildings and structures or store fronts, and other than a pylon sign upon the Simpsons-Sears Lands to identify or advertise the Simpsons-Sears automotive centre and a pylon sign upon the Regional Lands to identify or advertise the Shopping Centre, to comply with subclauses 4.01(c) and 5.01(c), respectively. All signs shall be reasonable and compatible with the usual practice of regional shopping centres.

14. INSURANCE

14.01 Regional and Simpsons-Sears shall each at its own expense insure and keep insured the buildings and structures on the Regional Lands and the Simpsons-Sears Lands, respectively (including, in the case of Regional, the enclosed Mall but excluding pipes or conduits in any easement existing exclusively for the benefit of other lands and equipment or improvements which are the property of occupants) with insurers acceptable to the other of them (such acceptance not to be unreasonably withheld nor unduly delayed) against loss by fire and other perils normally included under policies and supplemental or extended coverage insurance contracts customarily taken out by owners of similar properties and in amounts equal to not less than eighty per cent (80%) of the replacement cost of the insured buildings subject to reasonable deductions. Each of the said parties shall furnish to the other whenever requested from time to time proof of its insurance in effect. Nothing herein shall give any party any insurable interest or right to the proceeds of any other party's insurance or prevent a party from including within the coverage of its insurance other persons having an interest in the insured property, including mortgagees, or from assigning all or any part of the proceeds of any policy to any person, including including mortgagees having such interest.

Each of Regional and Simpsons-Sears hereby releases and waives any and all claims for damages against each of the others with respect to occurrences which are required under this clause 14.01 to be insured against, to the extent that each of the such parties receives compensation under such policies of insurance and each party agrees to obtain a waiver of subrogation rights against the other from its insurers under such policies of insurance.

15. REPAIR OF BUILDINGS

15.01 Subject to clause 7.03 hereof, each of Regional and Simpsons-Sears shall maintain or cause to be maintained the buildings and structures

on the Regional Lands and the Simpsons-Sears Lands respectively (including services thereto and both the interior and exterior thereof) in good repair and condition and to the standards generally observed by prudent owners of similar buildings and structures, with all visible portions of such buildings to be kept presentable, properly painted and otherwise of good appearance and shall promptly repair or cause to be repaired all damage or destruction or want of repair thereto however caused unless this agreement shall be terminated pursuant to Clause 16, provided always that if any building or structure (other than the Mall or a parking structure or other common facility necessary to the continuance of the Shopping Centre as a regional shopping centre) shall at any time after the expiration of thirty (30) years from the date that this agreement becomes effective, be destroyed or damaged by fire or any other cause to the extent that the repair of the same is, in the reasonable judgment of the party bound to repair the same shall not be feasible or practical, the party bound to repair the same may instead elect to demolish such building or structure and do such other work as may be necessary to put the parking areas and the remaining buildings or structures in a sightly, safe and useable condition. This provision for repair shall not prevent either of Regional or Simpsons-Sears from altering or reconstructing any buildings or structures (whether or not in the course of repairing them) or from erecting new buildings and structures, whether in addition to or as a replacement for existing buildings and structures, provided that the provisions of Clause 6 are complied with.

16. TERMINATION FOR NON-INSURED DAMAGE

16.01 If any buildings or structures shall be destroyed or damaged and the uninsured portion of the damage which Simpsons-Sears or Regional, as the case may be, is bound to repair pursuant to Clause 15 (based upon the estimated cost of repairing the damage and assuming that all insurance which such party is bound to effect under Clause 14 has been effected) shall exceed, in the case of damage or destruction to buildings or structures

on the Simpsons-Sears Lands, sixty per cent (60%) of the estimated replacement cost of the buildings and structures on the Simpsons-Sears Lands, and in the case of damage or destruction to buildings or structures on the Regional Lands, thirty per cent (30%) of the estimated replacement cost of the buildings and structures on the Regional Lands, then the party bound to repair shall have the option exercisable within sixty (60) days of the occurrence of the destruction or damage to terminate this agreement by written notice to the other party to this agreement, in which event, if such option shall be exercised, this agreement shall terminate except as to certain rights and subclauses 7.02(d) and 7.02(e) which by the express terms of clause 12.05/hereof are intended to survive such termination, and except as to certain demolition requirements of clause 15 hereof, it being intended that the site be left in a safe, useable and reasonably sightly condition if it is not immediately rebuilt or redeveloped.

17. MERCHANTS' ASSOCIATION

17.01 Simpsons-Sears Limited agrees to become and remain a member of the Merchants' Association supported by Regional, to support it actively and to contribute annually in dues and assessments a maximum of ten cents (10¢) per square foot of Gross Rentable Floor Area of its department store excluding the automotive centre and any outdoor selling area. Provided, however, that Simpsons-Sears Limited shall not be required to be and remain a member of, participate in and support the activities of the Merchants' Association and pay a contribution to the Merchants' Association as herein provided if it does not approve of the policies, by-laws and activities of the Merchants' Association.

17.02 Regional agrees to pay to the Merchants' Association minimum annual dues and assessments equal to one-third of the total annual dues and assessments paid to the Merchants' Association by Simpsons-Sears Limited and tenants in the shopping centre in their capacity as members thereof; provided, however, that the obligation of Regional to pay such annual dues and assessments shall not in any way bind any mortgagee of the Regional Lands, whether or not such mortgagee has taken possession and the successors and assigns of Regional acquiring Regional's obligations under any arms' length transaction shall not be bound to pay annual dues and assessments in excess of Fifteen Thousand Dollars (\$15,000.00) in any one year.

18. TAXES AND LIENS

18.01 Each of Regional and Simpsons-Sears shall cause all real property taxes and other governmental and municipal assessments against the Regional Lands and the Simpsons-Sears Lands respectively to be paid, and shall take all such steps as may be requisite to prevent any sale or seizure arising which may affect such lands or any part thereof, including those pursuant to tax sales, receiverships, executions, mechanics' liens and other like processes.

19. REMEDIES FOR BREACH

19.01 In the event that either party to this agreement shall default in the performance of any of its obligations hereunder, the other party may, on not less than ten (10) days' notice, unless within the time stipulated in the notice the default has been remedied or the party in default is diligently proceeding to remedy such default, remedy such default at the expense and risk of the defaulting party, and shall have the right of entry upon all parts of the lands subject to this agreement for the purpose subject only to the rights of tenants of parts of buildings under their leases, and the party in default shall promptly reimburse to the party remedying such default all its reasonable costs and expenses in so doing. In the event of any default hereunder the parties shall have all customary remedies available at law and equity, including damages and mandamus or injunction, but no party shall be entitled to terminate this agreement on account of any such default.

19.02 If either party shall mortgage its interest, the mortgagee shall be entitled to exercise the rights of such party under subclause 19.01 and such mortgagee may, by notice in writing to the other party hereto, require that written notice be given to it by such party whenever such party contemplates taking any action based upon any default under this agreement, and in every such case such notice shall be given and such mortgagee shall be given reasonable opportunity to remedy such default prior to the taking of any such action.

20. TRANSFERS AND OTHER DEALINGS AND ASSUMPTION BY TRANSFEREES

20.01 Upon any sale or transfer of the whole or any part of the interest of either of the parties hereto (or of any nominee of Simpsons-Sears having an interest in the Simpsons-Sears Lands) the party transferring shall exact from and have executed by the transferee (and so on, in the case of succeeding transfers) covenants as herein contained in favour of the other party hereto to perform and observe all the covenants of the transferor, with the intent that every such transferee shall be bound to observe the terms and covenants of this agreement; but this shall not apply to tenants of parts of any buildings under leases made in the ordinary course of business, or to mortgagees, who shall become bound by such covenants only in the event of a foreclosure or entry into possession, but who shall be bound in the event of the exercise of a power of sale to exact such covenants from the purchaser at such sale.

20.02 Except as herein expressly provided, no party hereto shall be limited or prohibited in transferring or otherwise dealing with its lands or interest, provided that without the consent of all the parties hereto no further subdivision of the lands described in Schedule "A" shall be effected other than by leases to tenants of parts of buildings and easements required or permitted to be granted hereunder.

20.03 The covenants herein contained shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns, and insofar as such covenants may run with and bind the lands shall run with and bind the Regional Lands and the Simpsons-Sears Lands, respectively.

21. FIRST RIGHT OF REFUSAL

21.01 If Regional or Simpsons-Sears (including any nominee of Simpsons-Sears) shall at any time during the term of this agreement desire to sell the whole of its interest in any of the lands described in Schedule "A" or any substantial part thereof, it shall require that the terms of sale be embodied in a bona fide offer to purchase, and if the party receiving such offer is willing to accept the same, then prior to accepting such offer, such party shall give written notice in the case of an offer received by Simpsons-Sears or its nominee, to Regional and in the case of an offer received by Regional, to Simpsons-Sears, that such an acceptable offer has been received, and shall furnish a true copy thereof. Upon receipt of such notice and copy, the party to whom the same has been given and furnished shall have the option to purchase the lands or interest therein to be sold at the price and upon the terms and conditions contained in such offer, and such option may be exercised by a written notice of exercise given within, but not after fifteen (15) days of receipt of such notice and copy, and thereupon a binding agreement of purchase and sale shall be constituted upon the terms of such offer. If such option is not exercised, the party in receipt of such offer to purchase may accept and perform the same without further notice being required hereunder unless the said offer shall be amended, prior to or after its acceptance, in any substantial respect, but provided always that subclause 20.01 shall be complied with. If less than an entire interest of a party is sold, this provision shall continue to apply to the remaining portions of such party's entire interest as from time to time sold, but shall not apply to successive sales after the whole of such interest has been disposed of or after twenty-one (21) years from the date hereof. The option rights hereunder shall be subject and subordinate to any mortgage upon any lands or interest to which any option relates, but nevertheless the option shall be exercisable subject to and subject to the assumption by the party exercising the option of, any such mortgage. For the purposes of this provision, leases to tenants of parts of the

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or other forms of financing, buildings, mortgages/and transfers not at "arms' length" (as that expression is defined by The Income Tax Act) shall not be deemed to be a sale, but in the latter case the provisions of this clause shall remain applicable to any succeeding arms' length transfer.

22. RESERVED LANDS

22.01 The Regional Reserved Lands shall be held by Regional and its successors and assigns in common ownership with the Regional Lands until the expiration of five (5) years from the date upon which this agreement shall come into effect, but thereafter may be sold at arms' length or developed in whole or part for a use separate and distinct from that of the Shopping Centre, provided such use is one that is not harmful or a nuisance to the continued operation of the Shopping Centre and provided also that the part of such land so sold or developed has not then been developed as part of the Shopping Centre and is not then required to comply with the requirements of subclause 7.01(b).

22.02 The Simpsons-Sears Reserved Lands shall be held by Simpsons-Sears and its successors and assigns in common ownership with the Simpsons-Sears Lands until the expiration of five (5) years from the date upon which this agreement shall come into effect, but thereafter may be sold at arms' length or developed in whole or part for a use separate and distinct from that of the Shopping Centre provided such use is one that is not harmful or a nuisance to the continued operation of the Shopping Centre and provided also that the part of such land so sold or developed has not then been developed as part of the Shopping Centre and is not then required to comply with the requirements of subclause 7.01(a).

22.03 In the event that the Regional Reserved Lands or Simpsons-Sears Reserved Lands are sold at arms' length or developed pursuant to this clause, such lands shall be released from all covenants of this agreement.

22.04 If either of Regional or Simpsons-Sears shall desire or become obligated under this agreement to provide additional parking, such party shall have the election, in the case of Regional, to add all or from time to time parts of the Regional Reserved Lands to the Regional Lands and, in the case of Simpsons-Sears to add all, or from time to time parts of the Simpsons-Sears Reserved Lands to the Simpsons-Sears Lands and in either such event Simpsons-Sears and Regional and their respective successors and assigns shall enter into an agreement to amend this agreement to so provide and this agreement shall take effect as to the Regional Lands or Simpsons-Sears Lands, as the case may be as so amended.

23. PLANNING CONSENT

23.01 Any party may apply and each of the other parties shall co-operate to obtain any requisite consent under The Planning Act to this agreement. In the event that any requisite consent shall be refused, the parties shall enter into an agreement in the same form as the within agreement except that the term thereof shall be expressed as being twenty-one (21) years less a day and all other appropriate changes therein shall be made.

24. REGISTRATION

24.01 No party shall register this agreement in full, but each party whenever requested by either of the others shall execute and deliver a form of agreement for registration in which shall be contained all of the covenants and obligations herein which are intended to run with and bind the Regional Lands and the Simpsons-Sears Lands respectively and such other provisions as any party may reasonably require to be contained in such registerable document or which third parties having an interest in the lands of such party (including mortgagees from time to time of either the Regional Lands or the Simpsons-Sears Lands) shall require to have embodied in a registered document for the reasonable and proper protection of their interests. Any party may require each of the others from time to time to execute

and deliver such documents in registerable form as may be necessary to meet the foregoing requirements, including those of such third parties or mortgagees as aforesaid. The provision whereby covenants which are merely personal are not to be included in a registered agreement unless reasonably necessary or unless a third party or mortgagee shall so require as aforesaid is intended to avoid any unnecessary encumbrance of the title of the parties to their respective lands, but shall not prevent any party disclosing the full terms of this agreement to third parties having or proposing to acquire any interest in any part of the lands of such party (including actual and prospective mortgagees and tenants) or when otherwise required in the reasonable conduct of such party's business.

25. NOTICES

25.01 Any notice which is required or permitted to be given hereunder shall be deemed to have been duly given if in writing by registered mail, if intended for Regional, addressed to Regional at 18 King Street East, Toronto, Ontario and if intended for Simpsons-Sears, addressed to Simpsons-Sears at 222 Jarvis Street, Toronto, Ontario (attention of the Secretary) and if intended for Simpsons-Sears Limited, addressed to Simpsons-Sears Limited at 222 Jarvis Street, Toronto, Ontario (attention of the Secretary). Any party may by written notice to the others specify a successor or assign to whom such notice is to be addressed instead, and the address to which such notice is to be sent, and may in addition specify mortgagees to whom copies of every such notice are to be sent.

26. AMENDMENTS, BOUNDARY ADJUSTMENTS AND FURTHER ASSURANCES

26.01 This agreement may be amended only by written agreement between Regional, Simpsons-Sears and Simpsons-Sears Limited or their successors and assigns, as the case may be. The parties agree to enter into amendments necessary to reflect minor boundary adjustments in the Regional Lands and the Simpsons-Sears Lands which may be necessary or advisable as the result of actual survey or to authorize reasonable encroachments of buildings or structures following construction. The parties shall also

execute any further assurances which may be requisite to perfect any easements or rights herein contained, or to give full effect to any of the covenants herein contained.

27. WAIVERS

27.01 No waiver by any party of any breach by any of the other parties of any of their covenants or obligations under this agreement shall be a waiver of any subsequent breach or of any other covenant or agreement, nor shall any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

28. SEVERABILITY

28.01 If any covenant or obligation of this agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such covenant or obligation to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each covenant or obligation of this agreement shall be separately valid and enforceable to the fullest extent permitted.

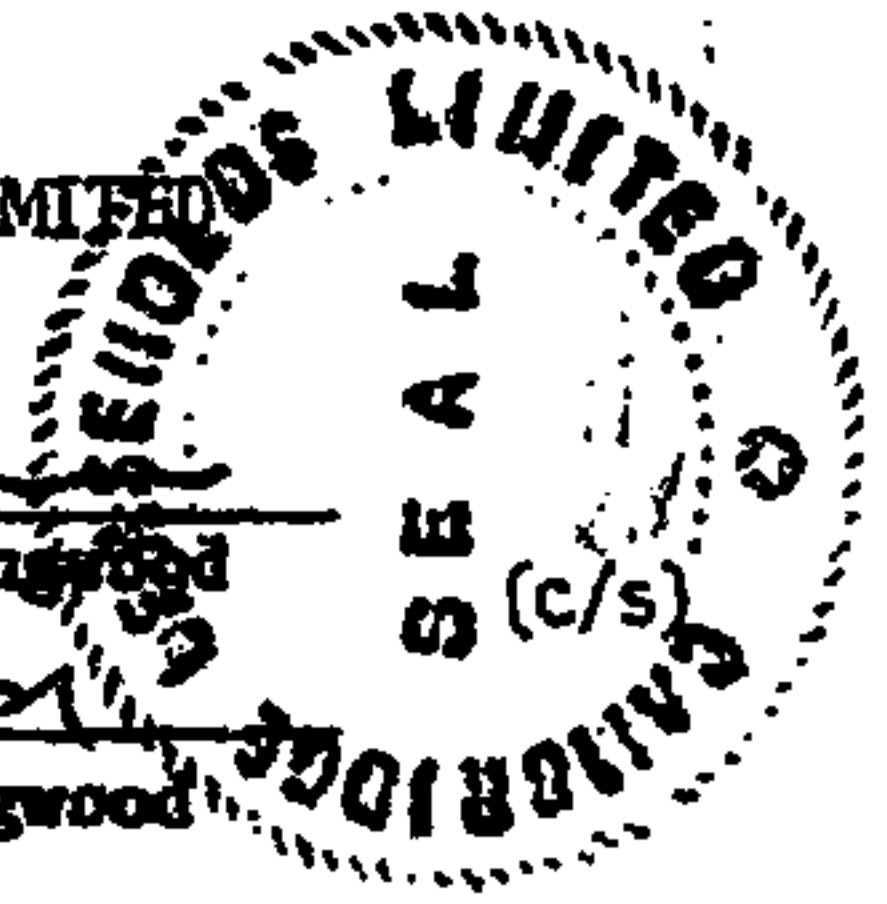
29. HEADINGS

29.01 The article headings and section headings in this agreement have been inserted for convenience of reference only and do not form part of this agreement. Such headings shall not be referred to in the interpretation of this agreement.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

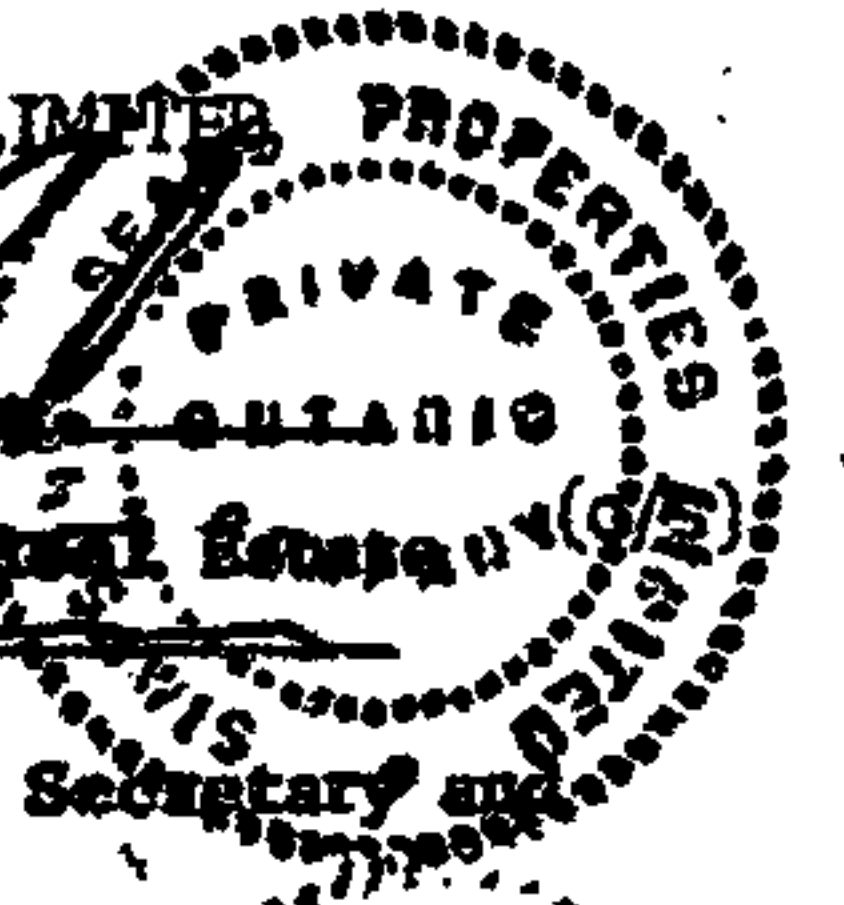
REGIONAL SHOPPING CENTRES LIMITED

Per: [Signature]
Treasurer - R. Eltingford
[Signature]
Secretary - C.J. Magwood



SIMPSONS-SEARS PROPERTIES LIMITED

Per: [Signature]
Morgan Reid
Vice-President Real Estate
[Signature]
J.R. O'Kell
Vice-President, Secretary and
General Counsel



SIMPSONS-SEARS LIMITED

Per: [Signature]
Morgan Reid
Vice-President Real Estate
[Signature]
J.R. O'Kell
Vice-President, Secretary and
General Counsel



SCHEDULE "A"

PARCEL 1 - REGIONAL LANDS

ALL AND SINGULAR that certain parcel of land and premises situate in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York).

AND being composed of Part of Lot 96 in the first Concession West of Yonge Street and being more particularly described as all of Part 1 according to a Plan of Survey registered in the Land Registry Office for York North on the 1st day of August, 1973, as Plan Number 65R-899.

PARCEL 2 - REGIONAL RESERVED LANDS

ALL AND SINGULAR that certain parcel of land and premises situate in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York).

AND being composed of Part of Lot 96 in the first Concession West of Yonge Street and being more particularly described as all of Part 2 according to a Plan of Survey registered in the Land Registry Office for York North on the 1st day of August, 1973, as Plan Number 65R-899.

PARCEL 3 - SIMPSONS-SEARS LANDS

ALL AND SINGULAR that certain parcel of land and premises situate in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York).

AND being composed of Part of Lot 96 in the first Concession West of Yonge Street and being more particularly described as all of Part 3 according to a Plan of Survey registered in the Land Registry Office for York North on the 1st day of August, 1973, as Plan Number 65R-899.

PARCEL 4 - SIMPSONS-SEARS RESERVED LANDS

ALL AND SINGULAR that certain parcel of land and premises situate in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York).

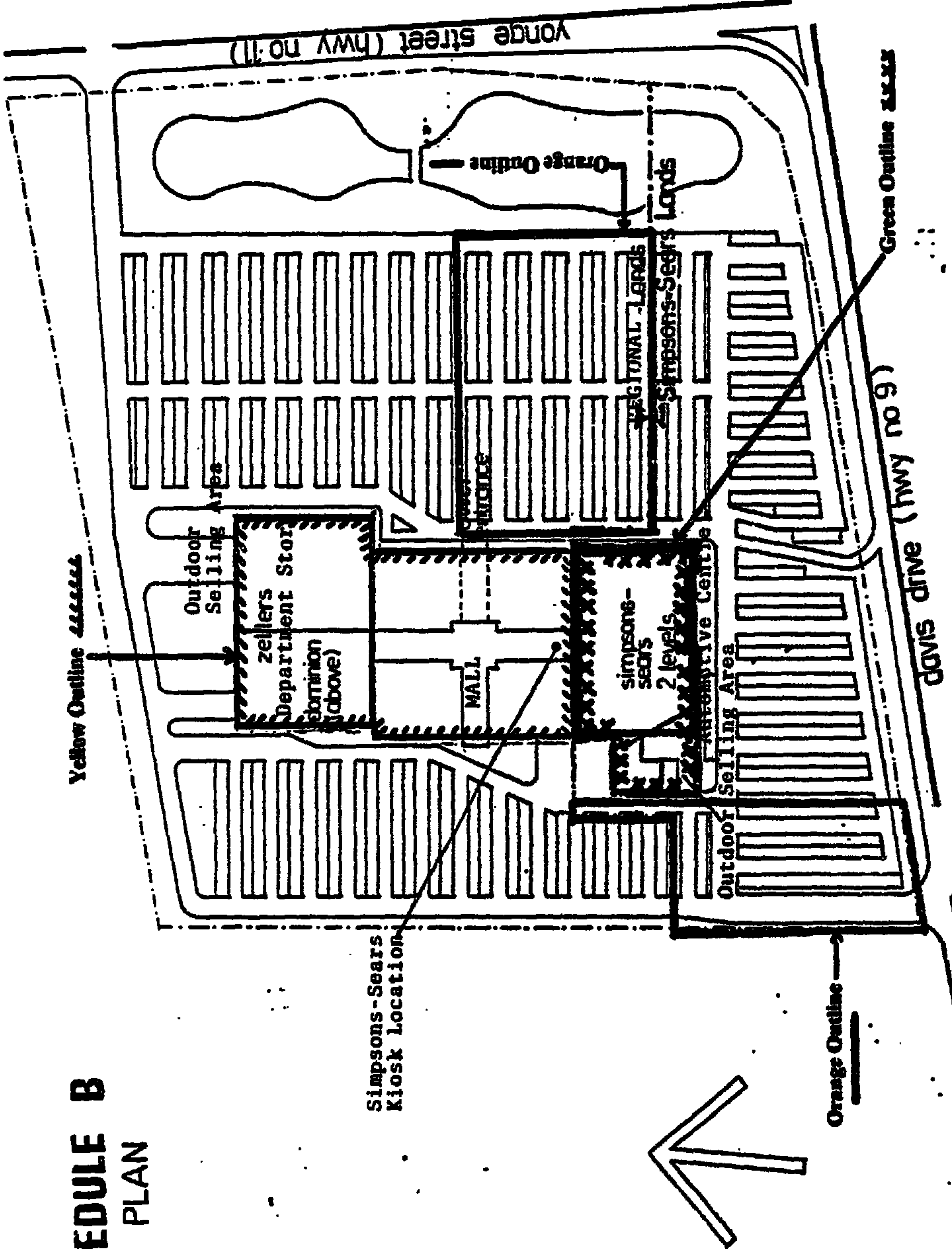
AND being composed of Part of Lot 96 in the first Concession West of Yonge Street and being more particularly described as all of Part 4 according to a Plan of Survey registered in the Land Registry Office for York North on the 1st day of August, 1973, as Plan Number 65R-899.

SCHEDULE B SITE PLAN

UPPER
CANADA
MALL

A
CAMBRIDGE
LEASEHOLDS
DEVELOPMENT

scale 1" = 200' 0"



TOWN OF NEWMARKET
 REGIONAL MUNICIPALITY OF YORK
 FORMERLY TOWNSHIP OF EAST GWILLIMBURY
 COUNTY OF YORK

SCHEDULE
 Part of Lot 97, Concession I of W.Y.S.
 Town of Newmarket, Regional Municipality of York,
 County of York, Ontario.
 Submitted 1981/8

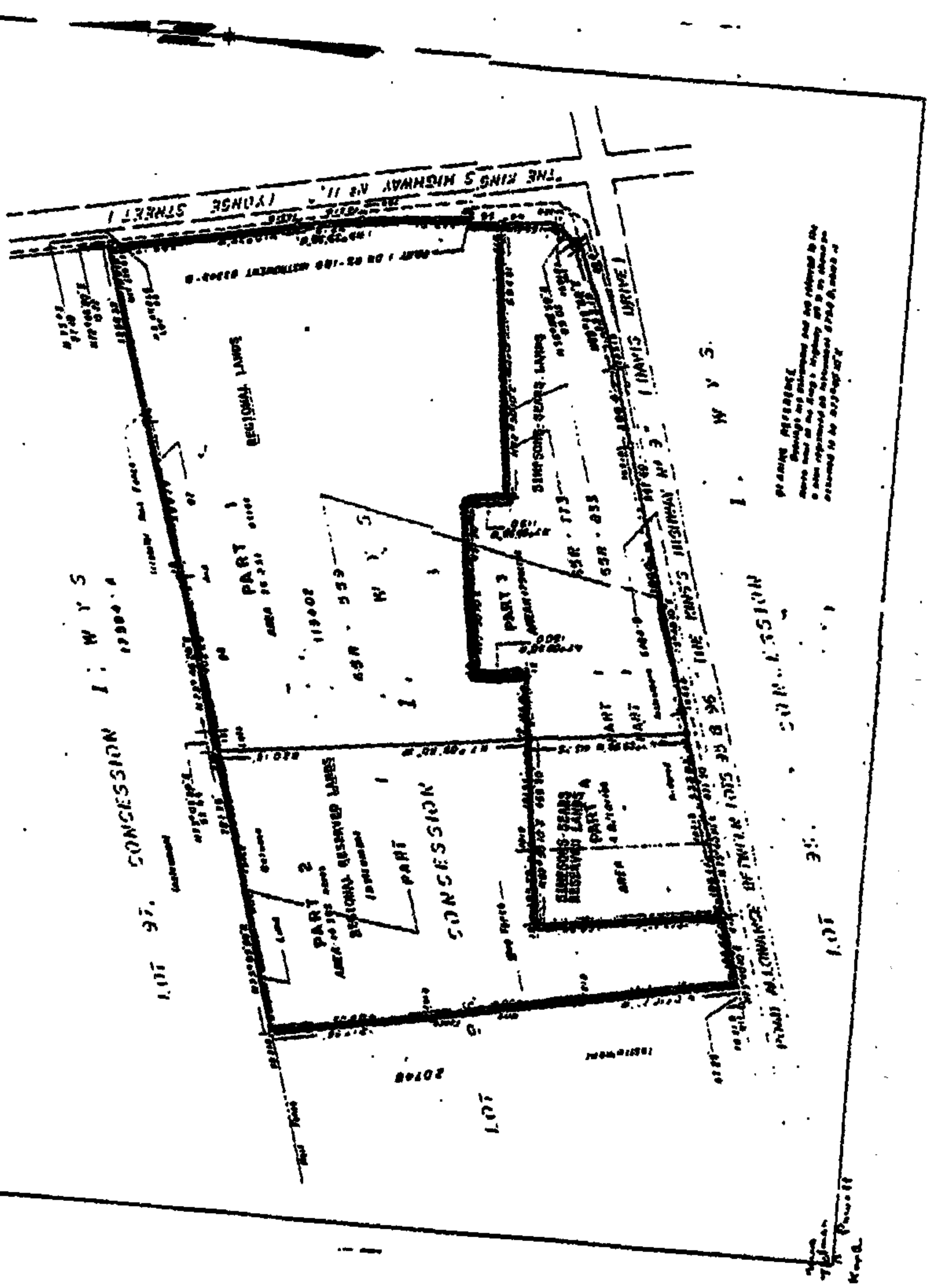
C. W. LLOYD, O.L.S.
 JULY 18, 1982
 SCALE 1" = 200'

CAUTION: THIS PLAN IS NOT A PLAN OF
 SUBDIVISION WITHIN THE MEANING OF SECTION
 29, 30 OR 35 OF THE PLANNING ACT

PLAN 65R-899

1820 029 - 1023
 Lloyd & Purcell
 1000 SHEPPARD AVENUE EAST
 SCARBOROUGH, ONTARIO
 M1S 1S7

LLOYD AND PURCELL
 ENGINEERS
 1000 SHEPPARD AVENUE EAST
 SCARBOROUGH, ONTARIO
 M1S 1S7




87

As shown on this plan, the boundaries of the lots are shown as they exist at the date of this plan. The boundaries of the lots are shown as they exist at the date of this plan. The boundaries of the lots are shown as they exist at the date of this plan.

C. W. Lloyd
 O.L.S.

This is **Exhibit "D"**, referred to in the
Affidavit of Genevieve Wong, sworn before me
this 12th day of July, 2017.



A Commissioner for taking Affidavits, etc.



Document General

Form 4 - Land Registration Reform Act, 1984

D

FOR OFFICE USE ONLY

633096

Number
CERTIFICATE OF REGISTRATION

1994 JAN 21 P 1:55

YORK REGION
No. 65
NEWMARKET

John L. Remus
Land Registrar

New Property Identifiers

Additional:
See
Schedule

Executions

Additional:
See
Schedule

(1) Registry Land Titles (2) Page 1 of 10 pages

(3) Property Identifier(s) Block Property Additional:
See Schedule

(4) Nature of Document
SUPPLEMENT TO THE OPERATING AGREEMENT

(5) Consideration
Dollars \$

(6) Description
FIRSTLY: Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Parts 1 and 2, Plan 65R-899, and Part 1, Plan 65R-7420 (formerly in the Township of East Gwillimbury, County of York).
SECONDLY: Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, in the Regional Municipality of York, and designated as Parts 3 and 4, on Reference Plan 65R-899 (formerly in the Township of East Gwillimbury, County of York).

(7) This Document Contains: (a) Redescription New Easement Plan/Sketch (b) Schedule for: Description Additional Parties Other

(8) This Document provides as follows:

See Schedule for Supplement to the Operating Agreement.

Continued on Schedule

(9) This Document relates to instrument number(s) 161412

(10) Party(ies) (Set out Status or Interest)
Name(s) Signature(s) Date of Signature
SEARS CANADA INC. Per: *Bill L. Remus* 1994 01 20
by its solicitors HOOBY REMUS Bill L. Remus

(11) Address for Service 222 Jarvis Street, Toronto, Ontario M5B 2B8

(12) Party(ies) (Set out Status or Interest)
Name(s) Signature(s) Date of Signature
Y M D

(13) Address for Service 300 - 95 Wellington Street, Toronto, Ontario M5J 2R2

(14) Municipal Address of Property (15) Document Prepared by:
HOOBY REMUS
Barristers & Solicitors
One University Avenue
P.O. Box 40, Suite 400
Toronto, Ontario
M5J 2P1
Attention: Bill L. Remus

Fees and Tax	
Registration Fee	
Total	

SCHEDULE FOR DESCRIPTION

Box (6) continued:

ALL AND SINGULAR that certain parcel of land and premises situate, lying and being in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York),

And being composed of Part of Lot 96 in the First Concession West of Yonge Street and more particularly described as Part 1 according to a Plan of Survey registered in the Land Registry Office for the Registry Division of York Region on the 25th day of January, 1991, as Plan Number 65R - 14993.

SUPPLEMENT TO THE OPERATING AGREEMENT

This Agreement made as of the 24th day of December, 1987.

BETWEEN:

SEARS CANADA INC. a corporation
incorporated under the laws of Canada,
(formerly known as Simpsons-Sears Limited)

(hereinafter called "Sears")

OF THE FIRST PART

- and -

SEARS PROPERTIES INC. a corporation
incorporated under the laws of Ontario,
(formerly known as Simpsons-Sears
Properties Limited)

(hereinafter called "Sears Properties")

OF THE SECOND PART

- and -

REGIONAL SHOPPING CENTRES LIMITED a
corporation incorporated under the
laws of Ontario,

(hereinafter called "Regional")

OF THE THIRD PART

WHEREAS Sears, Sears Properties and Regional entered into an operating agreement dated the 25th day of July, 1973 registered in the Land Registry Office for York North as instrument No. 161412 on the 18th day of July, 1974 (the "Operating Agreement") relative to the operation of their respective portions of the lands comprising the Shopping Centre known as Upper Canada Mall, (legally described in Schedule "A" attached hereto), as an integrated shopping centre, subject to the terms and conditions set forth in the Operating Agreement;

AND WHEREAS Regional has acquired additional lands for the Shopping Centre effective as of the 21st day of December, 1984, (the "Additional Lands") as more particularly described in Schedule "C" attached hereto, which lands shall be subject to the provisions of the Operating Agreement;

AND WHEREAS Sears Properties has leased to Regional by a lease dated the 24th day of December, 1987, (the "Lease") registered in the Land Registry Office for York North as instrument No. 633095 portions of the Simpsons-Sears Reserved Lands and the Simpsons-Sears Lands, as more particularly described as Part 1 Plan 65R-14993 ~~and outlined in heavy black on the attached "Schedule B"~~, (the "Leased Lands");

AND WHEREAS Regional, Sears, and Sears Properties have agreed to a two (2) phase expansion of the Shopping Centre on the terms and conditions contained herein.

NOW THEREFORE in consideration of the covenants and agreements hereinafter contained the parties hereto agree as follows:

1. Unless otherwise noted herein or the context otherwise requires, all capitalized terms referred to in this Agreement shall have the same meanings as in the Operating Agreement.

- 2 -

- 4
2. Unless otherwise noted herein all of the amendments and covenants contained hereunder are effective as of the date of this Agreement.
 3. The definition "Regional Lands" is amended so as to include the Additional Lands.
 4. For the purposes of determining the respective obligations of the parties under the Operating Agreement, it is agreed that the definition "Regional Lands" shall be further amended so as to include the Leased Lands, and the definition "Simpsons-Sears Reserved Lands" shall be amended so as to exclude the Leased Lands.
 5. Clause 4 of the Operating Agreement is amended by adding the following clauses to the end thereof:
 - 4.02 Sears shall be entitled to erect a free-standing outdoor sales area (the "OSA"), not to exceed 7,500 square feet on the Sears Lands, at a location to be designated by Sears and approved by Regional, (such approval not to be unreasonably withheld). Upon completion of construction of the OSA, Regional shall reimburse Sears for the costs incurred by Sears for the construction of the OSA, to a maximum of Seventy-five Thousand Dollars (\$75,000). Sears will be responsible for obtaining all building permits and municipal approvals that may be required for the construction and operation of the OSA, and agrees that it shall be responsible for any increase in realty and/or business taxes directly attributable to the OSA.
 - 4.03 Sears shall be entitled to construct, at its own expense, a storage area of approximately 12,000 square feet, to be located on the roof of, or adjacent to the Sears department store, as well as a customer parcel pick-up area. Sears shall be responsible for obtaining all building permits and municipal approvals that may be required for the construction and operation of the storage and customer parcel pick-up areas, and for the replacement of any parking spaces eliminated as a result of such construction. In addition, Sears shall be responsible for any increase in realty and/or business taxes directly attributable to the storage and customer parcel pick-up areas.
 - 4.04 Regional will provide, at its sole expense, additional parking within the vicinity of the Sears department store as may be required to satisfy municipal requirements should Sears wish to expand and in fact does expand its store, or as a result of the construction of the OSA. Such additional parking will be up to a maximum number of parking spaces that would have been available to Sears on the Leased Lands but for the lease to Regional dated the 24th day of December, 1987.
 6. Clause 6 of the Operating Agreement shall be amended by adding the following clauses to the end thereof:
 - 6.02 Subject to the provisions of subclause 6.01, the parties hereto agree that the Shopping Centre shall be expanded (the "Phase I Expansion") by a maximum of 500,000 sq. ft. of Gross Rentable Floor Area ("GRFA"), as shown by crosshatching on the site plan attached hereto as Schedule "D" (the "Site Plan"). The Phase I Expansion shall include an Eaton's department store ("Eaton's"), a Pascals store ("Pascals") and ancillary commercial retail units ("CRU").

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6.03 Subject to the provisions of subclause 6.01, the parties hereto agree that a further expansion of the Shopping Centre may be constructed by Regional on the Regional Lands and the Regional Reserved Lands (the "Phase II Expansion"), as outlined by single hatching on the Site Plan. The Phase II Expansion shall not exceed 300,000 sq. ft. of GRFA, and shall include a full-line department store and CRU. Unless otherwise agreed by the parties, the Phase II Expansion will not open for business prior to April 1, 1995.

6.04 In consideration of Sears approval of the Phase II Expansion, Regional agrees to pay to Sears the sum of Five Hundred Thousand Dollars (\$500,000) plus applicable Goods & Services Tax ("G.S.T.") payable on the date on which any portion of the Phase II Expansion is open for business to the public.

6.05 The timing, extent and standard of any work that may be carried out by Regional in the construction of the Phase I and Phase II Expansions shall be subject to the reasonable approval of Sears and Sears Properties.

7. Subclauses 7.01(a) and (b) of the Operating Agreement are amended by replacing the references to "five and one half (5½)", with "five (5.0)".

8. Clause 7.03 of the Operating Agreement is amended by adding the following to the end thereof:

7.03(c) Notwithstanding the provisions of subclause 7.03(b), Regional will assume all of the obligations of Sears Properties pursuant to subclause 7.03(b) to make major repairs to the Leased Lands.

9. Clause 9.01 of the Operating Agreement is amended by adding the following subclause at the end thereof:

9.01(c) Notwithstanding the provisions of subclauses 9.01(a) and (b), the parties hereto agree that for the period commencing April 1, 1990 and ending March 31, 1991 (the "Base Year"), Sears' share of Mall operating cost and Parking area operating cost (including any increase in interior common area taxes), will be limited to \$1.50 per sq. ft. per annum of GRFA of the Sears department store, (excluding the storage area referred to in clause 4.03 above). Commencing April 1, 1991, such costs will be increased annually by the lesser of:

(i) the actual percentage change in the Mall operating cost and the Parking area operating cost from the Base Year; or

(ii) the annual percentage change in the Consumer Price Index (CPI) for the City of Toronto (all items included) utilizing the following formula:

$$\frac{\text{Sears department store GRFA} \times \$1.50/\text{sq. ft.} \times \frac{\text{CPI April 1, current year}}{\text{CPI April 1, immediately preceding year}}}{1}$$

10. Clause 13.02 of the Operating Agreement is amended by adding at the end thereof:

Notwithstanding the foregoing and only in connection with the Phase I and Phase II Expansions, Sears and Sears Properties shall have the right of approval, acting reasonably, over the leasing of space by Regional to any user occupying any single premises in excess of 10,000 square feet of GRFA (excluding Eatons's and Pascals), or any other department store in excess of 40,000 sq. ft.

Cambridge made this change to reflect S. 13 of Dec 24/87 letter

newmark11/leaser

6

- 4 -

11. Clause 14 of the Operating Agreement is amended by adding the following to the end thereof:

14.02 Regional will indemnify and hold harmless Sears Properties and Sears against any and all claims, expenses, suits, liabilities or demands arising from or in connection with the construction of the Phase I and Phase II Expansions (excluding construction of the Sears storage area, customer parcel pick-up area and OSA), except for and to the extent that such claims, liabilities, suits or demands arise out of the negligence or omission of Sears Properties, Sears and those for whom in law it is responsible, regardless of whether such construction is for the benefit of Sears. Such indemnity shall include, without limitation, the following:

- (a) satisfying any applicable municipal requirements for upgrading the fire protection system of the Sears department store, except where the upgrading or adjustment to the fire protection system is a direct result of the construction of the storage area and/or customer parcel pick-up area and/or OSA.
- (b) third party claims directly related to the Phase I and Phase II Expansions (excluding the storage area, customer parcel pick-up area, and OSA); and
- (c) any loss of profits, together with reasonable overhead at the store operating level incurred by Sears as a result of the negligence of Regional or those for whom Regional is in law responsible, directly or indirectly caused or arising from such construction.

12. Clause 18 of the Operating Agreement is amended by adding to the end thereof:

18.02 Regional will assume full responsibility for all increases in realty taxes and/or local improvement levies that are approved, installed or assessed and are directly attributable to the Phase I and Phase II Expansions. Notwithstanding the provisions of Clause 18.01, and in addition to the provisions of Clauses 4.03 and 4.04, Sears Properties is responsible for any increase in realty taxes attributable to a general reassessment and for local improvement levies that are approved, installed or assessed after the respective opening dates of the Phase I and Phase II Expansions, provided such taxes and/or local improvements levies are directly attributable to the Simpsons-Sears Lands and the Simpsons-Sears Reserved Lands. Regional and Sears Properties will co-operate, at no cost to Sears Properties, in appealing any assessment that could result in any such increase being payable by Regional, provided, however, that such appeal will not adversely affect taxes payable by Sears Properties.

13. Regional will ensure that any development on the Leased Lands will allow free and easy access and use of the Leased Lands in accordance with the Operating Agreement.
14. Except as otherwise provided herein, Sears Properties may deal with the balance of its lands to the fullest extent permitted under the Operating Agreement.

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- 15. Notwithstanding the provisions of subclause 7.02(d) of the Operating Agreement which provides that certain easements are granted to Regional in perpetuity, for purposes of the Lease those easements shall expire with the termination of the Lease.
- 16. The Operating Agreement and this Agreement shall be read together and have effect, so far as practicable, as though all the provisions hereof and thereof were contained in one instrument. Except as otherwise expressly amended hereby, the terms and provisions of the Operating Agreement are hereby ratified, confirmed and continued in full force and effect.
- 17. The Operating Agreement as supplemented by this Agreement contains the entire agreement between the parties and cannot be changed or terminated orally, but only by an instrument in writing executed by the parties.
- 18. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

SEARS CANADA INC.

Per: _____

LARRY MOORE - VICE PRESIDENT

Per: _____

ANDREW R. VEZEZOS - VICE PRESIDENT

SEARS PROPERTIES

Per: _____

P. A. ...

Per: _____

ANDREW R. VEZEZOS

REGIONAL SHOPPING CENTRES LIMITED

Per: _____

...

Per: _____

...

Schedules:

- Legal Description
- Leased Lands
- Additional Lands
- Site Plan

8

SCHEDULE "A"

To the Supplement to the Operating Agreement, dated the 24th day of December, 1987.

PARCEL 1 - REGIONAL LANDS

ALL AND SINGULAR that certain parcel of land and premises situate in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York).

AND being composed of Part of Lot 96 in the first Concession West of Yonge Street and being more particularly described as all of Part 1 according to a Plan of Survey registered in the Land Registry Office for York North on the 1st day of August, 1973, as Plan Number 65R-899.

PARCEL 2 - REGIONAL RESERVED LANDS

ALL AND SINGULAR that certain parcel of land and premises situate in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York).

AND being composed of Part of Lot 96 in the first Concession West of Yonge Street and being more particularly described as all of Part 2 according to a Plan of Survey registered in the Land Registry Office for York North on the 1st day of August, 1973, as Plan Number 65R-899.

PARCEL 3 - SIMPSONS-SEARS LANDS

ALL AND SINGULAR that certain parcel of land and premises situate in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York).

AND being composed of Part of Lot 96 in the first Concession West of Yonge Street and being more particularly described as all of Part 3 according to a Plan of Survey registered in the Land Registry Office for York North on the 1st day of August, 1973, as Plan Number 65R-899.

PARCEL 4 - SIMPSONS-SEARS RESERVED LANDS

ALL AND SINGULAR that certain parcel of land and premises situate in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York).

AND being composed of Part of Lot 96 in the first Concession West of Yonge Street and being more particularly described as all of Part 4 according to a Plan of Survey registered in the Land Registry Office for York North on the 1st day of August, 1973, as Plan Number 65R-899.

4


SCHEDULE "C"

To the Supplement to the
Operating Agreement, dated
the 24th day of December, 1987.

ADDITIONAL LANDS

Part of Lot 97,
Concession 1 W.Y.S.,
Town of Newmarket
being Part 1 on Reference Plan 65R-7420

This is **Exhibit "E"**, referred to in the
Affidavit of Genevieve Wong, sworn before me
this 12th day of July, 2017.



A Commissioner for taking Affidavits, etc.

FOR OFFICE USE ONLY

12

633169
Jan. 24, 94

New Property Identifiers Additional: See Schedule

Executions Additional: See Schedule

(1) Registry Land Titles (2) Page 1 of 13 pages

(3) Property Identifier(s) Block Property Additional: See Schedule

(4) Nature of Document
SECOND SUPPLEMENT TO OPERATING AGREEMENT

(5) Consideration
Dollars \$

(6) Description
FIRSTLY: Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Parts 1 and 2 on Plan 65R-899 and Part 1 on Plan 65R-7420 (Geographic Township of East Gwillimbury, County of York).

SECONDLY: Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Parts 3 and 4, on Plan 65R-899 (Geographic Township of East Gwillimbury, County of York);

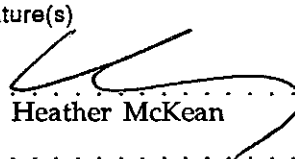
(7) This Document Contains: (a) Redescription New Easement Plan/Sketch (b) Schedule for: Description Additional Parties Other

(8) This Document provides as follows:

See Second Supplement to Operating Agreement attached.

Continued on Schedule

(9) This Document relates to instrument number(s)

(10) Party(ies) (Set out Status or Interest)
Name(s) Signature(s) Date of Signature
Y M D
REGIONAL SHOPPING CENTRES LIMITED and
OMERS REALTY CORPORATION Per:  1994 01 21
by OSLER, HOSKIN & HARCOURT
solicitors for OMERS REALTY CORPORATION

(11) Address for Service c/o Suite 2220, 161 Bay Street, Toronto, Ontario M5J 2S1

(12) Party(ies) (Set out Status or Interest)
Name(s) Signature(s) Date of Signature
Y M D

(13) Address for Service

(14) Municipal Address of Property
Upper Canada Mall
Newmarket, Ontario

(15) Document Prepared by:
B. McGregor / A. Bistolas
Osler, Hoskin & Harcourt
P. O. Box 50
1 First Canadian Place
Toronto, Ontario
M5X 1B8
(UCM12) Matter #: 1438602

Fees and Tax	
Registration Fee	
Total	

UPPER CANADA MALL

SECOND SUPPLEMENT TO THE OPERATING AGREEMENT

This Agreement is made as of the 20th day of January, 1994.

BETWEEN:

REGIONAL SHOPPING CENTRES LIMITED

a corporation incorporated under the laws of Ontario

(herein called "Regional")

of the First Part

- and -

OMERS REALTY CORPORATION

a corporation governed by the laws of Canada

(herein called "ORC")

of the Second Part

- and -

SEARS CANADA INC.

a corporation incorporated under the laws of Canada (formerly known as Simpsons-Sears Limited)

(herein called "Sears")

of the Third Part

- and -

CAMBRIDGE LEASEHOLDS LIMITED

a corporation governed by the laws of Ontario

(herein called "Cambridge")

of the Fourth Part

- and -

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

a body corporate under the laws of the State of New Jersey, one of the United States of America

THE CANADA LIFE ASSURANCE COMPANY

a corporation incorporated under the laws of Canada

LONDON LIFE INSURANCE COMPANY

a corporation incorporated under the laws of Canada

(collectively herein called the "Lenders")

of the Fifth Part

WHEREAS:

- A. Regional, Sears and Simpsons-Sears Properties Limited (subsequently known as Sears Properties Inc., and hereinafter referred to as "Properties") entered into an operating agreement (the "Operating Agreement") dated the 25th day of July, 1973, notice of which was registered on title on July 19, 1974 as Instrument No. 161412, relative to the operation of their respective portions of Upper Canada Mall, Newmarket, Ontario, as an integrated shopping centre, subject to the

terms and conditions and with payments in the amounts and at the times set forth in the Operating Agreement;

- B. By assignment dated the 6th day of September, 1988 Regional assigned its interest in the Operating Agreement by way of security to the Lenders, which assignment was registered on title on September 7, 1988 as Instrument No. 481350;
- C. The Operating Agreement was supplemented by an agreement (the "Supplementary Agreement") made the 24th day of December, 1987 between Sears, Properties and Regional, which agreement was registered on title on January 21, 1994 as Instrument No. 633096;
- D. Sears has leased to Regional by a lease dated the 24th day of December, 1987 (the "Land Lease"), which lease was registered on title on January 21, 1994 as Instrument No. 633095, a portion of the Sears Lands more particularly described in Part III of Schedule "B", (the "Leased Lands");
- E. By Transfer/Deed dated January 21 and registered January 24, 1994 as Instrument No. 633167 Regional granted to ORC an undivided 50% interest in the title to the Regional Lands, as described in Schedule "A", and Regional has agreed to assign to ORC an undivided 50% of Regional's interest in the Operating Agreement;
- F. Sears is the amalgamated successor to Properties;
- G. Sears is a party to the Operating Agreement with respect to the Sears Lands (referred to as the Simpsons-Sears Lands in the Operating Agreement) as described in Part I of Schedule "B", the Sears Reserved Lands (referred to as the Simpsons-Sears Reserved Lands in the Operating Agreement), as described in Part II of Schedule "B", and the Sears Store and related matters;
- H. Cambridge is the manager of Upper Canada Mall.

NOW THEREFORE THIS AGREEMENT witnesses that, in consideration of the covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. The Operating Agreement as supplemented and amended previous to this Agreement by the documentation referred to above is herein referred to as the "Consolidated Operating Agreement", and words and expressions defined therein shall have the same meanings in this Agreement, unless this or the context otherwise requires.
2. The parties acknowledge that improvements made to the Leased Lands by Regional pursuant to the Land Lease shall not be considered to be

"developed", as that word is used in Section 22.02 of the Consolidated Operating Agreement.

3. For purposes of clarifying the requirements of Clause 4.04 of the Consolidated Operating Agreement, Sears hereby agrees that in the event of an expansion of its store Sears shall use any available Sears Lands and Sears Reserved Lands first in order to satisfy municipal parking requirements prior to requiring Regional and ORC to provide additional parking to Sears pursuant to the aforesaid Clause 4.04. Clause 4.04 is amended in that to the extent that Regional and ORC have provided lands for parking pursuant to Clause 4.04, it is agreed that Sears shall pay the cost of paving such lands.
4. (a) Regional hereby grants, transfers and assigns to ORC and its successors and assigns, an undivided 50% of Regional's 100% interest in and to the Consolidated Operating Agreement and all rights, benefits and obligations whatsoever existing thereunder from and after the date hereof;
- (b) Regional hereby agrees to indemnify and save harmless ORC from and against any and all liabilities, damages, costs, expenses, causes of action, suits, claims and judgments arising from or in connection with or resulting from any negligent or wrongful act or negligent or wrongful omission of Regional or those for whom it is at law responsible occurring prior to the date hereof with respect to the Consolidated Operating Agreement;
- (c) ORC hereby accepts from Regional the assignment of the interest set forth in Section 4(a) above, and hereby assumes and agrees to perform, observe and carry out all the covenants and obligations of Regional under the Consolidated Operating Agreement arising from and after the date hereof to the extent of the said 50% interest .
- (d) ORC hereby agrees to indemnify and save harmless Regional from and against any and all liabilities, damages, costs, expenses, causes of action, suits, claims and judgments arising from or in connection with or resulting from any negligent or wrongful act or negligent or wrongful omission of ORC or those for whom ORC is at law responsible occurring on or after the date hereof with respect to ORC's undivided 50% interest in the Consolidated Operating Agreement;
- (e) Regional hereby agrees to indemnify and save harmless ORC from and against any and all liabilities, damages, costs, expenses, causes of action, suits, claims and judgments arising from or in connection with or resulting from any negligent or wrongful act or negligent or wrongful omission of Regional or those for whom it is at law responsible occurring on or after the date hereof with

respect to Regional's remaining undivided 50% interest in the Consolidated Operating Agreement;

5. All of the parties hereto, hereby expressly consent to the assignment and transfer referred to in Section 4 hereof.
6. Clause 21.01 of the Consolidated Operating Agreement is hereby amended to provide that the first refusal rights in favour of Sears thereunder shall not apply to sales or transfers of the Regional Lands or any portion thereof, now or in the future, between the co-owners of the Regional Lands. It is also agreed that Clause 21.01 of the Operating Agreement shall not apply to the transfer of the 50% interest in the Regional Lands from Regional to ORC, pursuant to Section 4(a) hereof.
7. (a) The "Simpsons-Sears Lands" and the "Simpsons-Sears Reserved Lands" referred to in the Consolidated Operating Agreement shall hereafter be referred to, respectively, as the "Sears Lands" and the "Sears Reserved Lands".

(b) Sears as owner of the Sears Lands and the Sears Reserved Lands and Regional and ORC, as co-owners of the Regional Lands, hereby each acknowledge and agree that they are entitled to the mutual first right of refusal (as between Sears and such co-owners) as contained in Section 21.01 of the Consolidated Operating Agreement, as amended by Section 6 hereof, for the period from the date hereof to July 24, 2018 notwithstanding any prior termination of the Consolidated Operating Agreement and that such mutual first right of refusal applies to all of the Sears Lands and the Sears Reserved Lands provided that Sears shall have the right at any time to mortgage or finance all or part of the Sears Lands and the Sears Reserved Lands to a maximum of 75% of the then current fair market value provided that the provisions of such mortgage or financing permit a discharge or partial discharge of the Sears Lands and the Sears Reserved Lands upon request by Sears, or upon payment of an amount equal to the principal and interest reasonably allocable to such lands and improvements in compliance with such aforesaid 75% maximum, and on any purchase by the said co-owners, the co-owners shall take title subject to such mortgage or financing.

(c) If Sears accepts a bona fide third party offer to purchase the Sears Reserved Lands and the said rights of first refusal are not exercised, and the option pursuant to the Option Agreement between Sears and Regional of even date herewith (the "Option Agreement") has not been exercised with respect to the Sears Reserved Lands and the Sears Reserved Lands are sold to such third party in accordance with the Consolidated Operating Agreement, then Regional and ORC as co-owners of the Regional Lands shall execute and register on title to the Sears Reserved Lands a release and discharge of the Sears Reserved Lands from the said rights of first

refusal, the Consolidated Operating Agreement and the Land Lease insofar as those documents affect the lands being sold. Similarly, if Regional and ORC as co-owners of the Regional Lands accept a bona fide third party offer to purchase all or part of the Regional Lands and the said rights of first refusal are not exercised and the Regional Lands or part thereof are sold to such third party in accordance with the Consolidated Operating Agreement, then Sears shall execute and register on title to the Regional Lands or applicable part thereof so sold a release and discharge of the Regional Lands from the said rights of first refusal.

- (d) If Sears accepts a bona fide third party offer to purchase the Sears Lands and the said rights of first refusal are not exercised, and the option pursuant to the Option Agreement has not been exercised with respect to the Sears Lands, and the Sears Lands are sold to such third party in accordance with the Consolidated Operating Agreement, then the Sears Lands shall continue to be subject to the Consolidated Operating Agreement (including the mutual right of first refusal contained in Section 21.01 therein), and to the Option Agreement, until the expiry or other termination of such agreements.
 - (e) Clause 21.01 of the Consolidated Operating Agreement is hereby amended to reflect the foregoing.
8. (a) Regional, Sears and Cambridge hereby represent and warrant to each other and to ORC that to the best of its knowledge the Consolidated Operating Agreement is in full force and effect and in good standing.
- (b) Sears (with respect to the Sears Lands and the Sears Reserved Lands) hereby waives and releases any and all claims or rights against ORC and against ORC's undivided 50% interest in the Regional Lands for the remedying of any defaults or omissions under the Operating Agreement occurring prior to the date hereof.
9. Each of Regional, ORC, Cambridge and Sears agree that it shall not take or suffer any action to terminate the Consolidated Operating Agreement with an effective termination date which is earlier than July 24, 2013, subject to Section 11 hereof.
10. Subject to all other provisions of the Consolidated Operating Agreement, Clause 13.01 of the Operating Agreement shall be deemed to continue in full force and effect until, and shall terminate and become null and void, on July 24, 2008.
11. (a) Effective and commencing July 25, 2008, and provided that the Consolidated Operating Agreement has not been terminated by Regional or ORC other than by reason of a default by Sears

thereunder, Sears covenants that, until the date described in paragraph (b) below, it will actively and in accordance with good merchandising practice carry on in the buildings and structures on the Sears Lands the operation of a department store (which may include, as part of such department store, key cutting, the sale of insurance, the sale of investment funds, the provision of financial services, a beauty salon, optical and hearing aid departments, a watch repair shop and a coffee shop or restaurant, automotive service centre and/or gasoline station, but shall not include any business generally carried on as a discount operation and in no event shall the buildings or structures on the Sears Lands be used for or with respect to or in connection with the operation of a food supermarket or retail grocery store) and parking structures (to the extent they exist) under the name of Sears or such other trade name adopted for use in a majority of stores operated by Sears in the Province of Ontario; and Sears covenants that it will not use or permit to be used any part of the Sears Lands or the buildings and structures erected thereon for any purpose other than as aforesaid.

(b) The covenant contained in sub-paragraph (a) above shall terminate on the date which is the earliest of:

(i) July 24, 2013;

(ii) the date after July 24, 2008 on which Eaton's (or its replacement provided such replacement is a full-line department store of similar stature and merchandising ability in the shopping centre industry in Canada) ceases to operate and be open to the public for business at Upper Canada Mall for a period in excess of six months (excluding non-operation due to Force Majeure provided the department store is proceeding diligently to correct the events of Force Majeure and in any event the cessation of operations is for a period not exceeding twelve months). For purposes hereof, Force Majeure shall mean acts of God, acts or laws of any civil or military authority, strikes or other labour disturbances, floods, epidemics, war, civil commotion, accidents or disruptions including fires and breakdowns to utilities, plant or machinery, inability on account of causes beyond the reasonable control of the party affected to obtain necessary labour, materials, services or facilities, or any other reason beyond the reasonable control of the party affected, provided that shortage of funds shall not by itself constitute Force Majeure; and

(iii) the date after July 24, 2008 on which 35% or more (in

number or square footage) of all tenants in Upper Canada Mall excluding Sears and Eaton's or the replacement of Eaton's described in subsection 11(b)(ii) cease to operate and be open to the public for business at Upper Canada Mall for a period in excess of six months (excluding non-operation due to damage or destruction of a substantial portion of the Upper Canada Mall building, provided the co-owners of the Regional Lands are proceeding diligently to repair the damage and in any event the non-operation by the said 35% or more (in number or square footage) of tenants is for a period not exceeding twelve months).

12. Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication (hereinafter referred to as a "Notice") to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery or by telecopier or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

(a) Regional Shopping Centres Limited
Suite 300
95 Wellington Street West
Toronto, Ontario
M5J 2R2

Attention: Office of the Corporate Secretary
Telecopy: 416 - 369 1328

(b) OMERS Realty Corporation
Suite 2220
161 Bay Street
Toronto, Ontario
M5J 2S1

Attention: President
Telecopy: 416 - 369-1847

(c) Sears Canada Inc.
222 Jarvis Street
Toronto, Ontario
M5B 2B8

Attention: Office of the Secretary
Telecopy: 416 - 941-2321

(d) Cambridge Leaseholds Limited
Suite 300
95 Wellington Street West
Toronto, Ontario
M5J 2R2

Attention: Office of the Corporate Secretary
Telecopy: 416 - 369-1328

(e) The Prudential Insurance Company of America
Mortgage Investment Office
200 Consilium Place
4th Floor
Scarborough, Ontario

MIH 3E8

Attention: General Manager, Mortgage Investments
Telecopy: 416 - 296-3285

(f) The Canada Life Assurance Company
330 University Avenue
6th Floor
Toronto, Ontario

Attention:
Telecopy:

(g) London Life Insurance Company
One London Place
255 Queens Avenue
Suite 800
London, Ontario
N6A 5R8

Attention:
Telecopy:


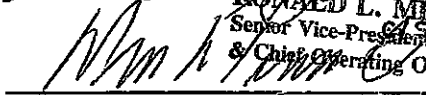
Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by telecopier or other electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the business day next following the day it was received.

13. The parties acknowledge that this Agreement or a short form thereof, may be registered on title to any of the lands referred to in the Agreement.
14. The Consolidated Operating Agreement and this Agreement shall be read together and have effect, so far as practicable, as though all the provisions hereof and thereof were contained in one instrument. Except as otherwise expressly amended hereby, the terms and provisions of the Consolidated Operating Agreement are hereby ratified, confirmed and continued in full force and effect. In the event of any inconsistency or difference between this Agreement and the Consolidated Operating Agreement, this Agreement shall govern. Section 7 hereof and the provisions of Section 21.01 of the Consolidated Operating Agreement applicable thereto shall survive termination of the Consolidated Operating Agreement as amended hereby.
15. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.
16. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties hereto in the same manner as the execution of this Agreement.
17. Time shall be of the essence of this Agreement.

- 18. Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
- 19. All of the covenants and agreements in this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.
- 20. The Lenders hereby consent to this Agreement.
- 21. This Agreement may be executed in counterparts, which shall be read and construed together as one instrument.



IN WITNESS WHEREOF the parties hereto have executed this Agreement under seal as evidenced by their properly authorized officers in that behalf as of the day and year first above written.

REGIONAL SHOPPING CENTRES LIMITED

Per: 
 Per: 
 RONALD L. MEIERS
 Senior Vice-President
 & Chief Operating Officer
 WILLIAM W. TINMOUTH
 Senior Vice-President
 Corporate Planning

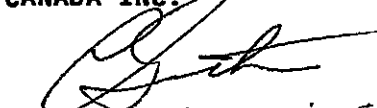
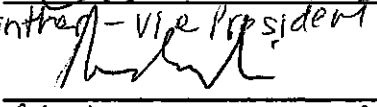
We have authority to bind the Corporation.

OMERS REALTY CORPORATION

Per: 
 Per: 
 Charles J. Macwood
 President & CEO
 Paul D. Colangelo
 Executive Vice-President

We have authority to bind the Corporation.

SEARS CANADA INC.

Per: 
 Per: 
 L.E. Gintz - Vice President, Chief Financial Officer & Treasurer
 Ronald B. Vezer - Vice President, Secretary & General Counsel
 We have authority to bind the Corporation.

CAMBRIDGE LEASEHOLDS LIMITED

Per: [Signature]
RONALD L. MEIERS
Senior Vice-President
& Chief Operating Officer

Per: [Signature]
WILLIAM W. TINMOUTH
Senior Vice-President
Capital Planning

We have authority to bind the Corporation.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

Per: [Signature] c/s
G. Boychuck - Vice President

I have authority to bind the Corporation.

THE CANADA LIFE ASSURANCE COMPANY

Per: [Signature]
R. L. FIDLEY ASSOCIATE TREASURER

Per: [Signature]
D. K. RAYBURN ASSOCIATE TREASURER

We have authority to bind the Corporation.

LONDON LIFE INSURANCE COMPANY

Per: [Signature]
DAVID SCOTT
MANAGER, COMMERCIAL LENDING c/s

Per: [Signature]
A. F. Martens
Regional Vice President

We have authority to bind the Corporation.

SCHEDULE "A"

Regional Lands

Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Parts 1 and 2 on Reference Plan 65R-899 and Part 1 on Reference Plan 65R-7420.

SCHEDULE "B"

Part I Sears Lands

Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 3 on Reference Plan 65R-899.

Part II Sears Reserved Lands

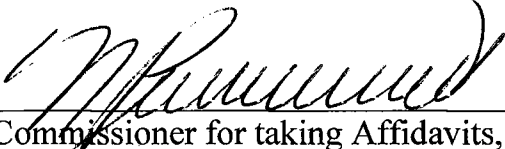
Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 3 on Reference Plan 65R-899.

Part III - Leased Lands

ALL AND SINGULAR that certain parcel of land and premises situate, lying and being in the Town of Newmarket in the Regional Municipality of York (formerly in the Township of East Gwillimbury in the County of York),

And being composed of Part of Lot 96 in the First Concession West of Yonge Street and more particularly described as Part I according to a Plan of Survey registered in the Land Registry Office for the Registry Division of York Region on the 25th day of January, 1991, as Plan Number 65R - 14993.

This is **Exhibit "F"**, referred to in the
Affidavit of Genevieve Wong, sworn before me
this 12th day of July, 2017.


A Commissioner for taking Affidavits, etc.

R719697

Number of Registrations

1998 APR -9 A 11: 4

REGISTRY

[Signature]

(1) Registry Land Titles (2) Page 1 of 24 pages

(3) Property Identifier(s) **03554 0032 (R)** Block Property **03554 0033 (R)** Additional: See Schedule

(4) Nature of Document **AGREEMENT (THIRD SUPPLEMENT TO THE OPERATING AGREEMENT)**

(5) Consideration Dollars \$

(6) Description **Part of Lot 96 and Part of the south half of Lot 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York)**

Land Registry Office for the Registry Division of York Region (No. 65).

See Schedule.

(7) This Document Contains: (a) Redescription New Easement Plan/Sketch (b) Schedule for: Description Additional Parties Other

New Property Identifiers Additional: See Schedule

Executions Additional: See Schedule

This Document provides as follows:
SEE THIRD SUPPLEMENT TO THE OPERATING AGREEMENT ATTACHED.

The originals for "Schedule E", "Schedule A-1", "Schedule A-2" and "Schedule A-3" can be viewed at the offices of Sears Canada Inc., 222 Jarvis Street, Toronto, Ontario M5B 2B8.

The original for "Schedule G" can be viewed at the offices of Regional Shopping Centres Limited, c/o Cambridge Leaseholds Limited, Suite 300, 95 Wellington Street West, Toronto, Ontario M5J 2R2.

Continued on Schedule

(9) This Document relates to instrument number(s) **AGREEMENT NOS. 161412, 633096, 633169 and R719696**

1) Party(ies) (Set out Status or Interest)

Name(s)	Signature(s)	Date of Signature Y M D
REGIONAL SHOPPING CENTRES LIMITED its solicitors, McLean & Kerr (OWNER)	Per: <i>[Signature]</i> Suzanne Johnston	1998 04 06

Address for Service **Suite 300, 95 Wellington Street West, Toronto, Ontario M5J 2R2**

(12) Party(ies) (Set out Status or Interest)

Name(s)	Signature(s)	Date of Signature Y M D
OMERS REALTY CORPORATION (OWNER)		

(13) Address for Service **Suite 2220, 161 Bay Street, Toronto, Ontario M5J 2S1**

(14) Municipal Address of Property Upper Canada Mall 17600 Yonge Street Newmarket, Ontario L3Y 4Z1	(15) Document Prepared by: Suzanne J. Johnston McLean & Kerr Suite 2800 130 Adelaide Street West Toronto, Ontario M5H 3P5	Fees and Tax	
		Registration Fee	
		Total	

Additional Property Identifier(s) and/or Other Information

LEGAL DESCRIPTION (Box 6)

FIRSTLY: Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York) designated as Parts 1, 2, 3 and 4 on Plan 65R-899.

SECONDLY: Part of the south half of Lot 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York) designated as Part 1 on Reference Plan 65R-7420.

Save and except Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, (Geographic Township of East Gwillimbury, County of York) designated as Parts 6 and 7 on Plan 65R-18177.

Land Registry Office for the Registry Division of York Region (No. 65).

ADDITIONAL PARTIES (Box 12)

SEARS CANADA INC.(OWNER)
222 Jarvis Street, Toronto, Ontario M5B 2B8

CAMBRIDGE LEASEHOLDS LIMITED (MANAGER)
Suite 300, 95 Wellington Street West, Toronto, Ontario M5J 2R2

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
THE CANADA LIFE ASSURANCE COMPANY
LONDON LIFE INSURANCE COMPANY
(CHARGEES)
c/o Osler, Hoskin & Harcourt, P.O. Box 50
1 First Canadian Place, Toronto, Ontario M5X 1B8

UPPER CANADA MALL

THIRD SUPPLEMENT TO THE OPERATING AGREEMENT

This Agreement made as of the 9th day of April, 1998,

A M O N G:

REGIONAL SHOPPING CENTRES LIMITED
a corporation incorporated under the laws of Ontario
(hereinafter called "Regional")

- and -

OMERS REALTY CORPORATION
a corporation incorporated under the laws of Canada
(hereinafter called "ORC")

- and -

SEARS CANADA INC.
a corporation incorporated under the laws of Canada
(formerly known as Simpsons-Sears Limited)
(hereinafter called "Sears")

- and -

CAMBRIDGE LEASEHOLDS LIMITED
a corporation incorporated under the laws of Ontario
(hereinafter called "Cambridge")

- and -

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
a body corporate under the laws of the State of New Jersey,
one of the United States of America;
THE CANADA LIFE ASSURANCE COMPANY
a corporation incorporated under the laws of Canada;
LONDON LIFE INSURANCE COMPANY
a corporation incorporated under the laws of Canada;
(collectively hereinafter called the "Lenders")

WHEREAS:

- A. Regional, Sears and Simpsons-Sears Properties Limited (subsequently known as Sears Properties Inc. and hereinafter referred to as "Properties") entered into an operating agreement (hereinafter called the "Operating Agreement") dated the 25th day of July, 1973, a short-form notice of which was registered on title on July 18, 1974 as Instrument No. 161412, relative to the operation of their respective portions of Upper Canada Mall, Newmarket, Ontario (sometimes called herein the "shopping centre"), as an integrated shopping centre, subject to the terms and conditions set forth in the Operating Agreement;
- B. The portion of the shopping centre owned by Regional as described in the Operating Agreement was then comprised of the Regional Lands and the Regional Reserved Lands as described therein, and the portions of the shopping centre then owned by Properties as set out in the Operating Agreement were the Simpsons-Sears Lands and the Simpsons-Sears Reserved Lands, as described therein.
- C. By assignment dated the 6th day of September, 1988, registered on title on September 7, 1988 as Instrument No. 481350, Regional assigned its interest in the Operating Agreement by way of security to the Lenders, as collateral security for the obligations of Regional under the Charge registered as Instrument No. 481347;
- D. The Operating Agreement was supplemented by an agreement (hereinafter called the

"Supplementary Agreement") made the 24th day of December, 1987 among Sears, Properties and Regional, which Agreement was registered on title on January 21, 1994 as Instrument No. 633096, and which added certain additional lands, being Part of Lot 97, Concession 1 West of Yonge Street, Town of Newmarket, designated as Part 1, Plan 65R-7420 (hereinafter called the "Additional Lands") as part of the Regional Lands;

E. Sears leased to Regional by a lease dated the 24th day of December, 1987 (the "Land Lease") which lease was registered on title on January 21, 1994 as Instrument No. 633095, a portion of the Simpsons-Sears Reserved Lands and the Simpsons-Sears Lands more particularly described as Part of Lot 96, Concession 1, West of Yonge Street, designated as Part 1 on Reference Plan 65R-14993. The Land Lease will be partially surrendered by a Partial Surrender and Lease Amending Agreement among the parties hereto following the transfers referred to in Recitals O and P hereof;

F. By Transfer/Deed of Land dated the 18th day of January, 1994 and registered January 24, 1994 as Instrument No. 633167, Regional granted to ORC an undivided 50% interest in the title to the Regional Lands including the Regional Reserved Lands and the Additional Lands, as described in Schedule "A" attached hereto;

G. The Operating Agreement was further supplemented by an agreement (hereinafter called the "Second Supplementary Agreement") made the 21st day of January, 1994 among Regional, ORC, Sears, Cambridge and the Lenders, which Agreement was registered on title on January 24, 1994 as Instrument No. 633169, and which included an assignment by Regional to ORC of an undivided 50% interest in Regional's interest in the Operating Agreement;

H. The Lenders partially re-assigned over unto ORC a 50% undivided interest in the Operating Agreement assigned to the Lenders as security under Assignment registered as Instrument No. 481350, which partial re-assignment was registered on January 24, 1994 as Instrument No. 633186;

I. By an Assignment of the Operating Agreement registered on January 24, 1994 as Instrument No. 633164, Regional assigned its interest in the Operating Agreement as amended to the Lenders as collateral security for the obligations of Regional under the Charge registered on January 24, 1994 as Instrument No. 633162. By Partial Re-assignment of the Operating Agreement registered on January 24, 1994 as Instrument No. 633191, the Lenders re-assigned over unto Regional a 50% undivided interest in the Operating Agreement and released and discharged Regional and Regional's 50% undivided interest in the lands and the Operating Agreement from the Assignment registered as Instrument No. 633164, such that this Assignment now relates only to ORC's 50% interest in the Operating Agreement;

J. Sears is the amalgamated successor to Properties;

K. Sears is currently a party to the Consolidated Operating Agreement (as hereinafter defined) with respect to,

- (i) the lands described in the Operating Agreement as the "Simpsons-Sears Lands", which are referred to in the Second Supplementary Agreement, and hereinafter in this Agreement, as the "Sears Lands"; and
- (ii) the lands which were described in the Operating Agreement as the "Simpsons-Sears Reserved Lands", which are referred to in the Second Supplementary Agreement as the "Sears Reserved Lands" and which have been transferred to Regional and ORC as referred to in Recital O hereof, and are hereinafter described as the "Regional/ORC Additional Lands", more particularly described in Schedule "B" attached hereto;

L. By an Option Agreement made the 21st day of January, 1994 between Sears and Regional (the "Option Agreement"), which was registered on January 24, 1994 as Instrument No. 633159, Sears granted to Regional a conditional option to purchase certain lands being the Sears Lands and the Regional/ORC Additional Lands, and a 50% interest in the Option Agreement was assigned by Regional to ORC on January 24, 1994 by registered Instrument No. 633172, and

a security interest in the Option Agreement was assigned to the Lenders by registered Instrument No. 633161 and by registered Instrument No. 633166. The Option Agreement will be partially surrendered by Partial Release of Option to Purchase registered on the date hereof in connection with the transfers referred to in Recitals O and P, and partial releases from assignments No. 633161 and No. 633166 will be registered on the date hereof;

M. Cambridge is the manager of Upper Canada Mall;

N. Sears has agreed to sell to ORC and Regional the Regional/ORC Additional Lands in exchange for the sale by ORC and Regional to Sears of a portion of the Regional Lands and of the Additional Lands more particularly described in Schedule "C" attached hereto (the "Sears Additional Lands");

O. By Transfer/Deed of Land registered on April 9, 1998 as Instrument No. R719692, Sears conveyed to Regional an undivided 50% interest in the Regional/ORC Additional Lands; by Transfer/Deed of Land registered on April 9, 1998 as Instrument No. R719693, Sears conveyed to ORC the remaining undivided 50% interest in the Regional/ORC Additional Lands;

P. By Transfer/Deed of Land registered on April 9, 1998 as Instrument No. R719694, ORC and Regional conveyed to Sears the Sears Additional Lands;

Q. Regional and ORC intend to transfer to the government for sidewalk purposes on the west side of Yonge Street a portion of the Regional Lands and the Additional Lands more particularly described as Part of Lots 96 and 97, Concession 1, West of Yonge Street, designated as Parts 6 and 7 on Plan 65R-18177, with the result that the entire shopping centre, being the lands affected by this Agreement, shall be as described in Schedule "D" hereto.

NOW THEREFORE THIS AGREEMENT witnesses that, in consideration of the covenants and agreements hereinafter contained, the parties hereto agree as follows, effective from and after the latest of the registration dates referred to in Recitals O and P hereof:

1. The Operating Agreement as supplemented, assigned and amended previous to this Agreement by the documentation referred to above, is herein sometimes collectively referred to as the "Consolidated Operating Agreement", and words and expressions defined therein shall have the same meaning in this Agreement except as changed by this Agreement and unless this Agreement or the context otherwise requires. References in this Agreement to the "Operating Agreement" are references to the Operating Agreement dated July 25, 1973 excluding the Supplementary Agreement and the Second Supplementary Agreement unless specifically provided. References to clause numbers in the Operating Agreement refer to the clauses in the original version registered on title on April 9, 1998 as Instrument No. R719696 not those in registered Instrument No. 161412.

2. The Regional/ORC Additional Lands comprise the whole of those lands which are described as the "Simpsons-Sears Reserved Lands" in the Operating Agreement and were re-named the "Sears Reserved Lands" in the Second Supplementary Agreement, together with a right-of-way over Part 6 on Plan 65R-19397.

3. The parties hereby waive the first right of refusal provided for in Clause 21.01 of the Operating Agreement as amended by Clause 7 of the Second Supplementary Agreement with respect to the Transfers/Deeds of Land referred to in recitals O and P of this Agreement, and agree that such rights of first refusal do not apply to the said Transfers/Deeds of Land. The parties further agree that the option rights provided for under the Option Agreement shall terminate and be of no further force or effect with respect to the Regional/ORC Additional Lands, and do not apply to and have no force or effect with respect to the Sears Additional Lands, but shall continue with respect to all other lands which are the subject of the Option Agreement.

4. Sub-clause 4.01 of Clause 4 of the Operating Agreement, together with sub-clauses 4.02 and 4.03 of such Clause 4 as contained in the Supplementary Agreement, shall remain in force in their existing form with respect to the Sears Lands including the Sears department store and automotive centre, but shall not apply to or for the benefit of the Sears Additional Lands. Clause 4.04 of the Consolidated Operating Agreement (as contained in the Supplementary Agreement and amended by the Second Supplementary Agreement) is deleted and shall have no further force or effect for any purpose. The following shall be added as the new sub-clause 4.04 of Clause 4 of the Operating Agreement, but shall apply with respect to and for the benefit of the Sears Additional Lands only:

- "4.04 (a) Sears agrees to construct on the Sears Additional Lands a free standing retail furniture, appliance and home furnishings store containing approximately 35,000 square feet of Gross Rentable Floor Area, which shall be located approximately as shown on Schedule "E" attached hereto;
- (b) The said retail furniture and appliance store shall comply in all respects with applicable zoning and building by-laws of the Town of Newmarket and with the plans and specifications therefor approved by the Town of Newmarket pursuant to the Site Plan Amending Agreement between Regional, ORC and the Town of Newmarket and assumed by Sears pursuant to an assumption agreement between Sears, Regional and ORC;
- (c) The exterior design of the said furniture and appliance store shall be architecturally compatible with the balance of the shopping centre, as evidenced by the prior approval of such store design by Regional and ORC (which approval shall not be unreasonably withheld or unduly delayed). Regional and ORC hereby approve of the exterior design of the said furniture and appliance store in its completed state as at January 1, 1998;
- (d) Regional and ORC hereby consent to and approve of all signs being utilized by Sears on the Sears Additional Lands as at January 1, 1998;
- (e) Sears shall also construct all parking areas, aisles, sidewalks, access roads, entrances and exits, landscaped areas and other accommodation areas and lighting and other equipment thereon, all as may be properly and reasonably required on the Sears Additional Lands for the purposes of such store and in accordance with the plans and specifications approved by the Town of Newmarket and applicable planning authorities. The parking layout and landscaping on the Sears Additional Lands shall be substantially as shown on Schedule "E" attached hereto;
- (f) All construction by Sears on the Sears Additional Lands shall be performed expeditiously and in a good and workmanlike manner."

5. (a) Sub-clauses 7.03(a) and 7.03(b) of the Operating Agreement shall, with respect only to the Sears Additional Lands, be deleted and of no further force or effect, but shall remain in full force in their present form with respect to both the Sears Lands and the balance of the shopping centre owned by Regional and ORC including the remaining lands which are subject to the Land Lease.

(b) The following shall be added as sub-clause 7.03(d) of the Operating Agreement but shall apply with respect to and for the benefit of the Sears Additional Lands only:

- "7.03 (d) Regional and ORC shall keep all the parking areas on the Sears Additional Lands and on the balance of the shopping centre owned by Regional and ORC in good order and repair (including repaving and the replacement of electric light standards but excluding major repairs) and, without in any way limiting the generality of the foregoing, in particular shall:
- (i) maintain all entrances, access roads, lanes, parking spaces (other than those in parking structures and except for the said major repairs), and shall suitably mark all such parking spaces and except as aforesaid,

maintain all paved surfaces in a reasonably smooth condition and repaired whenever necessary;

- (ii) remove or cause to be removed therefrom all papers, debris, snow, ice, filth and refuse when reasonably necessary;
- (iii) keep the surface of all exterior pavement sanded and salted when reasonably required; and
- (iv) keep the curbs, lighting equipment, lane dividers, adjacent landscaping, drains, direction signs and other installations made on or in connection with such parking facilities in good repair and condition and keep such parking facilities adequately lit when reasonably necessary and when required during night-time business hours."

6. In addition to any payments required to be made by Sears under the Consolidated Operating Agreement in respect of the Sears Lands, Sears shall pay to Regional and ORC annually with respect to the Sears Additional Lands a contribution to the exterior common area costs for the shopping centre, being the parking area operating costs described in Clause 9.03 of the Operating Agreement and the utilities maintenance, repairs and/or replacement costs described in Clause 11.01 of the Operating Agreement (together the "Sears Additional Lands CAM"). For clarification and notwithstanding anything to the contrary in this Agreement, Sears shall have no obligation to pay mall operating costs defined in Clause 9.02 of the Operating Agreement with respect to the Sears Additional Lands. For the year commencing December 1, 1997 (the "Base Year"), the Sears Additional Lands CAM shall be in the amount of \$.68 per square foot of Gross Rentable Floor Area of the Sears furniture store on the Sears Additional Lands. For purposes of this Agreement, "Gross Rentable Floor Area" with respect to the buildings on the Sears Additional Lands means the size of such area measured from the outside surface of the exterior walls, doors and windows. Commencing December 1, 1998, the amount of the Sears Additional Lands CAM for future years shall be escalated annually by the lesser of:

- (i) the actual percentage increase in the costs properly included in the Sears Additional Lands CAM from the Base Year; or
- (ii) the annual percentage change in the Consumer Price Index ("CPI") for the City of Toronto (all items included) utilizing the following formula:

$$\frac{\text{Sears furniture store-Gross Rentable Floor Area X } \$0.68 \text{ sq. ft X}}{\text{CPI December 1, current year}} \\ \text{CPI December 1, immediately preceding year}$$

(provided that in no event shall any change in the Consumer Price Index result in a reduction in Sears Additional Lands CAM payable in any year).

7. Sears covenants that the Sears Additional Lands when in use shall be used only for the purpose of a retail furniture, appliance and home furnishings store, or for the sale of other merchandise and services typically sold in a Sears department store (subject to the restrictions referred to below in this Clause 7), and related ingress, egress and parking, and for no other purposes, without the prior written approval of Regional and ORC which shall not be unreasonably delayed or withheld. The Sears Additional Lands may not be used for the uses which are prohibited by the terms of leases in existence at the date of this Agreement to tenants of the shopping centre as long as those current tenants of the shopping centre continue to hold the right to legally enforce those exclusive rights as against Regional and ORC as landlords of the shopping centre. A list of all prior exclusive or prohibited uses binding on Sears is set out in Schedule "F" attached hereto. Notwithstanding anything to the contrary, this covenant shall not impart or imply any obligation of Sears to continuously operate its business on the Sears Additional Lands.

8. Each of Sears, Regional and ORC acknowledges that Regional and ORC intend to utilize the Regional/ORC Additional Lands for the construction and operation of office and/or retail components comprising up to 300,000 square feet of gross rentable floor area (provided that the

said office component may be constructed in part on lands adjacent to the Regional/ORC Additional Lands, including the second office tower to be attached to the shopping centre in the location shown in heavy black outline on Schedule "G" attached hereto), all as generally shown on Schedule "G" attached hereto, which may be constructed in one or more phases at such time or times as may be determined by Regional and ORC. Sears agrees, subject to the other provisions of this Clause 8, that Regional and ORC may construct and operate the said office towers and/or retail components without any further approvals from Sears being required therefor, provided that for any construction of such office and/or retail components to be commenced prior to the expiry of the Consolidated Operating Agreement, the following restrictions shall apply:

- (a) Regional and ORC shall, before commencing any construction, submit the exterior architectural drawings for the construction to Sears, and before any construction commences, Sears shall have approved the exterior architectural drawings as being architecturally compatible with the balance of the shopping centre, such approval not to be unreasonably withheld or unduly delayed;
- (b) The parking ratio required under Clause 7.01(b) of the Consolidated Operating Agreement for retail space shall be maintained;
- (c) Any office or other non-retail space shall comply with municipal parking requirements or a parking ratio of 3:1,000 of office Gross Rentable Floor Area, whichever is greater;
- (d) The terms and conditions nos. 1 to 6 (except 5) in the letter agreement dated March 17, 1994 (a copy of which is attached as Schedule "H" attached hereto) between Cambridge and Sears shall apply to and be binding on Regional and ORC with respect to the construction of the office tower referred to in such letter agreement; and
- (e) Notwithstanding any prior agreement between Sears and Regional/ORC to the contrary, there shall be no time limit applicable for commencement of construction of the office towers described in this Clause 8.

9. Sears shall be entitled and permitted to connect its facilities on the Sears Additional lands to all existing utilities currently servicing the shopping centre at the sole cost and expense of Sears, and each of Sears, Regional and ORC shall co-operate in such arrangement. Sears agrees with Regional and ORC that following such connection, Sears shall assume the costs of its consumption of such utilities so long as Sears continues to be connected to such utilities. During the term of the Consolidated Operating Agreement, and any extension thereof, Sears' contribution to the cost of any maintenance, repair and/or replacement of any such utilities shall be included in and discharged by its payment of its Sears Additional Lands CAM for the shopping centre pursuant to Clause 6 of this Agreement, and there shall be no extra cost therefor to Sears in respect of the Sears Additional Lands in any way - for example, if the actual costs of maintenance, repair and/or replacement which might otherwise be allocable to the Sears Additional Lands are in excess of the contribution for which Sears is obligated pursuant to Clause 6, no part of such excess shall be charged to Sears in respect of the Sears Additional Lands pursuant to the Consolidated Operating Agreement.

After the expiry or termination of the Consolidated Operating Agreement and so long as Sears continues to be connected to such utilities, in addition to its consumption, Sears shall pay in respect of the Sears Additional Lands its pro rata share of the cost of any maintenance, repair and/or replacement of any such utilities from time to time, which shall be that proportion of the cost of such maintenance, repair and/or replacement of such utilities which the Gross Rentable Floor Area of the furniture store building on the Sears Additional Lands is of the aggregate gross rentable floor area of all buildings on the balance of the shopping centre without exception, including the Sears department store on the Sears Lands provided its owner is then contributing its pro rata share in respect of such store. Sears pro rata share shall be paid by Sears to Regional/ORC at the time that Regional incurs the cost of the maintenance, repair and/or replacement of the utilities or some part thereof, upon presentation to Sears of an invoice together with such other evidence as is reasonably required by the chief architect of Sears or

other Sears delegee, that Regional/ORC have incurred the particular cost for which contribution is being requested. Any dispute may be referred to arbitration by either party. The amount to be paid by Sears under the foregoing provisions of this Clause 9 is dependent upon:

- (a) Regional and ORC using their reasonable efforts to keep the cost of maintenance, repair and/or replacement of such utilities to a reasonable minimum;
- (b) such maintenance, repair and/or replacement of such utilities for which contribution is requested being a direct benefit to the shopping centre including the development on the Sears Additional Lands.

10. Subject to Clauses 3, 4, 5, 6, 7, 8, 9, 10 and 15 of this Agreement, only the following provisions of the Consolidated Operating Agreement shall apply to and for the benefit of the Sears Additional Lands, and references to "Simpsons-Sears Limited" or "Sears" therein shall be deemed to also apply to and for the benefit of Sears in its capacity as the owner of the Sears Additional Lands, and references to "Regional" therein shall be deemed to be references to Regional and ORC in their capacity as the owners of the balance of the shopping centre not owned by Sears:

- (a) Clause 2 of the Operating Agreement;
- (b) Clause 5 of the Operating Agreement;
- (c) Clause 6 of the Operating Agreement;
- (d) Clause 7 of the Operating Agreement except and excluding therefrom the provisions of sub-clauses 7.03(a) and 7.03(b) as more particularly provided in Clause 5 of this Agreement;
- (e) Clause 9 of the Operating Agreement except and excluding therefrom:
 - (i) the provisions of sub-clauses 9.01(a), 9.01(b) and 9.01(c);
 - (ii) the provisions of sub-clause 9.02, except for the last sentence of sub-clause 9.02 which shall apply to and for the benefit of the Sears Additional Lands;
 - (iii) the provisions of sub-clause 9.05;
 - (iv) the references in sub-clauses 9.07 and 9.08 to Mall Operating Costs, which shall not apply to or for the benefit of the Sears Additional Lands;
- (f) Clause 12 of the Operating Agreement;
- (g) Clause 13 of the Operating Agreement, except and excluding therefrom the provisions of sub-clauses 13.01 and 13.02 which shall not apply to or for the benefit of the Sears Additional Lands;
- (h) Clauses 14, 15 and 16 of the Operating Agreement;
- (i) Clauses 18, 19 and 20 of the Operating Agreement;
- (j) Clause 21 of the Operating Agreement, but subject to Clause 12 of this Agreement;
- (k) Clauses 23 to 29 inclusive of the Operating Agreement;
- (l) The clauses of the Supplementary Agreement which specifically amend or amplify the clauses of the Operating Agreement referred to in the foregoing sub-paragraphs (a) to (k) of this Clause 11;
- (m) Clause 7 of the Second Supplementary Agreement, except and excluding therefrom the references to the option pursuant to the Option Agreement, and all subject to Clause 12 of this Agreement. The reference in such Clause 7 to the Sears Reserved Lands shall, for purposes of this Agreement, be deemed instead a reference to the Sears Additional Lands, and such Clause 7 shall survive termination of the Consolidated Operating Agreement until July 24, 2018.

Subject to Clauses 3 to 10 inclusive and Clause 15 of this Agreement, no provisions of the Consolidated Operating Agreement which are not stated as applying to the Sears Additional Lands in the foregoing sub-paragraphs (a) to (m) of this Clause 11 shall apply to or for the benefit of the Sears Additional Lands.

11. Except as set out herein, the Consolidated Operating Agreement shall continue to apply unamended and in its entirety to and for the benefit of the Regional/ORC Additional Lands and the Sears Lands, and the balance of the lands in the shopping centre owned by Regional and ORC.

12. (a) In the event that Sears desires to sell the whole or any part of its interest in the Sears Additional Lands, Regional and ORC shall have a right of first refusal to purchase that interest; the said right of first refusal to be on the same terms as contained in Clause 21 of the Operating Agreement and Clause 7 of the Second Supplementary Agreement, excluding references in such Clause 7 to the option pursuant to the Option Agreement; such Clause 7 shall survive termination of the Consolidated Operating Agreement until July 24, 2018.

(b) If Sears accepts a bona fide third party offer to purchase the Sears Additional Lands and the said right of first refusal is not exercised, and the Sears Additional Lands are sold to such third party in accordance with Clause 21 of the Operating Agreement, then Clause 21 of the Operating Agreement shall cease to apply with respect to or for the benefit of the Sears Additional Lands or to or for the benefit of such third party and its successors, and Regional and ORC as co-owners of the Regional Lands and the Regional Reserved Lands and the Regional/ORC Additional Lands shall execute and register on title to the Sears Additional Lands a release and discharge of the Sears Additional Lands from the said right of first refusal, but the other provisions of this Agreement shall continue to apply with respect to and for the benefit of the Sears Additional Lands subject to its terms.


13. This Agreement shall be construed and in force in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.


14. Each of the parties will, from time to time, hereafter and upon reasonable request of the other party make or cause to be made all such further acts, deeds, assurances and things as may be required to more effectually implement the true intent of this Agreement.

15. All of the provisions of this Agreement shall be binding upon and enure to the benefit of and be enforceable by the parties and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as evidenced by their properly authorized officers in that behalf as of the day and year first above written.

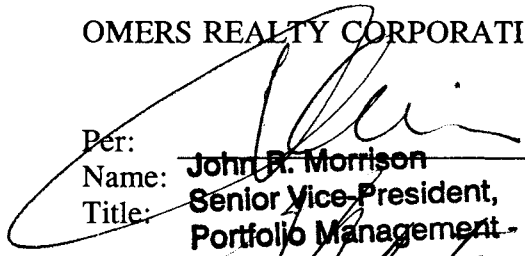
REGIONAL SHOPPING CENTRES LIMITED

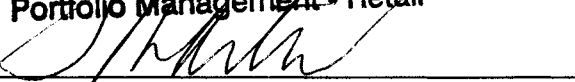
Per: 
Name: **Ronald L. Meiers**
Title: **Senior Vice President and Chief Operating Officer
Asset Management Group**

Per: 
Name: **Michael G. Cogliano**
Title: **Vice President, Legal
Asset Management Group**

I/We have authority to bind the Corporation.

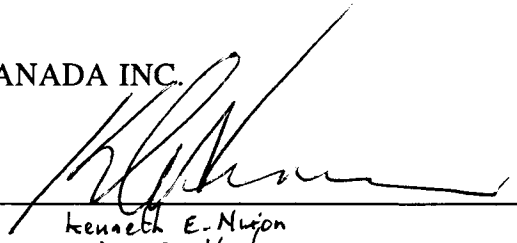
OMERS REALTY CORPORATION

Per: 
Name: **John R. Morrison**
Title: **Senior Vice President,
Portfolio Management - Retail**

Per: 
Name: **Tracy L. Martin**
Title: **Director of Finance,
Properties**

I/We have authority to bind the Corporation.

SEARS CANADA INC.

Per: 

Name: Kenneth E. Nixon

Title: Vice-President
Real Estate

Per: _____

Name: Rudolph R. Vezar

Title: Sr. Vice-President, Secretary
and General Counsel

I/We have authority to bind the Corporation.

CAMBRIDGE LEASEHOLDS LIMITED

Per: 

Name: _____

Title: Ronald L. Meiers
Senior Vice President and Chief Operating Officer
Asset Management Group

Per: _____

Name: Michael G. Cogliano

Title: Vice President, Legal
Asset Management Group

I/We have authority to bind the Corporation.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA

Per: 

Name: ROBERT I. PAULUS, VICE PRESIDENT

Title: _____

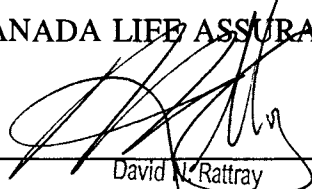
Per: _____

Name: _____

Title: _____

I/We have authority to bind the Corporation.

THE CANADA LIFE ASSURANCE COMPANY

Per: 

Name: David R. Rattray

Title: Associate Treasurer

Per: 

Name: JOE H. MAZUR

Title: ASSISTANT TREASURER

I/We have authority to bind the Corporation.

LONDON LIFE INSURANCE COMPANY

Per: 

Name: **DEREK W. D. HULL**

Title: **Commercial Mortgage Specialist**

Per: 
Paula Schotz

Name: **Manager,**

Title: **Commercial Real Estate Lending**

I/We have authority to bind the Corporation.

SCHEDULE "A"

(Legal Description of Regional Lands)

Firstly: Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York) designated as Parts 1 and 2 on Plan 65R-899 deposited in the Land Registry Division of York Region (No. 65).

Secondly: Part of the south half of Lot 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York) designated as Part 1 on Reference Plan 65R-7420 deposited in the Land Registry Division of York Region (No. 65).

SCHEDULE "B"

**(Legal Description of Regional/ORC Additional Lands,
formerly Simpsons-Sears Reserved Lands)**

Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 5, Plan 65R-19397 (the "Part 5 Lands") (Geographic Township of East Gwillimbury, County of York).

Together with a non-exclusive easement in perpetuity in favour of the owners, from time to time of the Part 5 Lands as dominant lands, and their successors, assigns, agents, employees, contractors, customers and invitees for the purposes of pedestrian and vehicular traffic for efficient ingress, egress and traffic flow over that part of said Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 6, Plan 65R-19397 (the "Part 6 Lands") (Geographic Township of East Gwillimbury, County of York) as servient lands.

SCHEDULE "C"

(Legal Description of Sears Additional Lands)

Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 1 on Plan 65R-19397 (the "Part 1 Lands") (Geographic Township of East Gwillimbury, County of York).

Access Easement

Together with a non-exclusive easement in perpetuity in favour of the owners, from time to time of the Part 1 Lands as dominant lands and their successors, assigns, agents, employees, contractors, customers and invitees for the purposes of pedestrian and vehicular traffic for efficient ingress, egress and traffic flow over that part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 4 on Plan 65R-19397 (Geographic Township of East Gwillimbury, County of York) as servient lands.

Maintenance Easement

Together with an easement in perpetuity in favour of the owners from time to time of the Part 1 Lands as dominant lands and their successors, assigns, agents, employees and contractors, over the lands described as part of Lot 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 2 on Plan 65R-19397 (Geographic Township of East Gwillimbury, County of York) as servient lands (the "Part 2 Lands") for the purposes of accessing, constructing, maintaining, servicing, repairing, replacing and reconstructing the building to be constructed on the Part 1 Lands by the owners thereof who will, at their expense, forthwith repair any damage and restore the surface of the Part 2 Lands to the same condition as existed prior to the commencement of any such accessing or work, the easement and rights to be appurtenant to and for the benefit of the Part 1 Lands. The employees, agents and contractors of the owners, their successors and assigns may enter upon the Part 2 Lands with or without vehicles, machinery and equipment for purposes of the easement and rights granted hereby provided that any costs incurred to accommodate vehicular or other access over the Part 2 Lands will be at the sole expense of the owners.

SCHEDULE "D"

(Legal Description of Shopping Centre)

Firstly: Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York) designated as Parts 1, 2, 3 and 4 on Plan 65R-899.

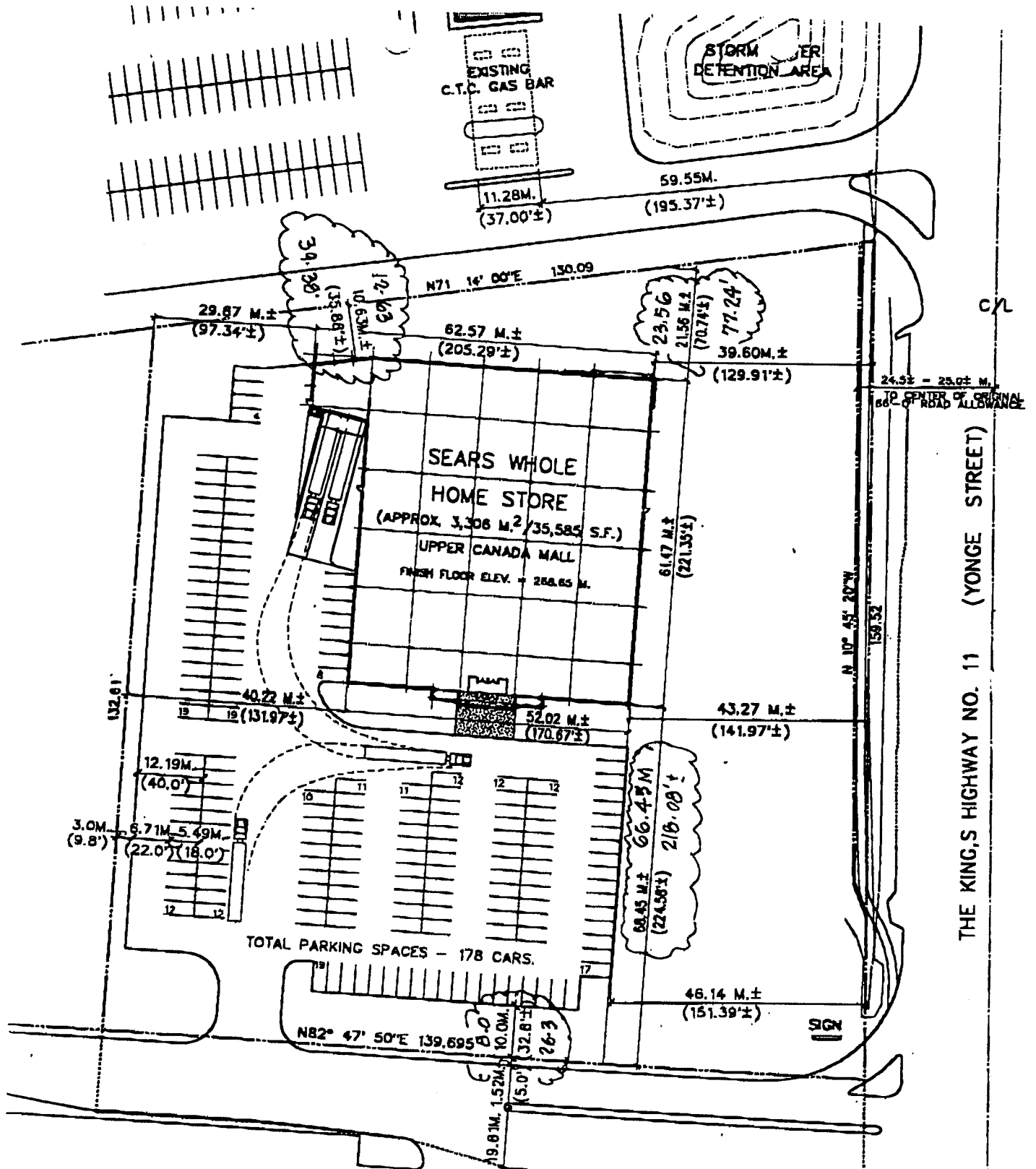
Secondly: Part of the south half of Lot 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York) designated as Part 1 on Reference Plan 65R-7420.

Save and except Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, (Geographic Township of East Gwillimbury, County of York) designated as Parts 6 and 7 on Plan 65R-18177.

Land Registry Office for the Registry Division of York Region (No. 65).

SCHEDULE "E"

(Location of Sears retail furniture store
on Sears Additional Lands)



PRELIMINARY SITE PLAN
SCALE - 1:1000 (METRIC).
NEW SEARS HOMELIFE STORE
NEWMARKET, ONTARIO

BRIESTENSKY ARCHITECTS LTD.
PROJECT NO. 9613
DATE: 10.02.97

SITE STATISTICS

TOTAL SITE AREA WITHOUT
ROAD WIDENING - 19,426 M² ±
4.80 ACRES ±

PARKING REQUIREMENTS

PARKING REQ'D. - (35,585/1000)X5 = 178

SCHEDULE "F"

(Exclusive or Prohibited Uses pursuant to Existing Leases to Tenants of Upper Canada Mall)

Eatons:

The lease provides that no part of the Centre shall be used for the following:

1. A store conducted principally or in part for the sale of second hand goods (other than antiques), re-sale of trade-ins, war surplus articles, insurance salvage or fire sale stock ...
2. An auction (except fine art or antique auction).
3. A pawn shop or flea market for an operation in any line of merchandise where the operator makes or follows a practice of fraudulent advertising or selling procedures; or
4. An entertainment arcade, the nature of which is detrimental to the orderly merchandising activities of the Centre.

Zellers:

Landlord has agreed that:

1. it will not occupy or use, or permit to be occupied or used, any store premises in the shopping centre for any discount department store over 20,000 square feet without the Tenant's written consent except for those premises occupied by Simpsons-Sears Limited.
2. it will not directly or indirectly erect store premises or building improvements on any land owned or controlled by the Landlord within two thousand (2,000) feet of the shopping centre which would in any way be in competition with the business carried on by the Tenant on the Demised Premises and without limiting the generality of the foregoing shall not permit a department store, junior department store, or a discount department store to be erected on any such land.

Toys R Us:

The Landlord has granted a restrictive covenant to the tenant prohibiting:

- (i) any other premises within the Project to contain an area in excess of 2,500 feet of the Gross Leaseable Area used for the purposes of the sale of toys.
- (ii) any portion of the Project to be used for the purpose of a flea market or bingo hall....
- (iv) any other premises within the Project containing an area in excess of 13,000 square feet of gross leaseable area used for the principle business of a pharmacy or drug store, to display for sale more than 12 linear feet of diapers.

The restrictive covenant does not apply to "department stores or junior promotional department stores now or hereafter to be erected in the Project ..." Further the provision makes the restrictive covenant run with the Land and the Landlord has covenanted that if it conveys any part of the Project "it shall extract from any such purchaser or assignee the covenant contained in this clause and for the covenantor to extract such covenant from any subsequent purchaser or assignee.

Pacific Linen:

The terms of the lease prohibit the Landlord from leasing space in the shopping centre "to competitors" of the Tenant. For the purposes of the lease, a tenant is a competitor of or competes with the Tenant if more than 15% of its gross sales is derived from retail sales of any one or more of the following: linens, domestics, bedding, mattresses, futons, futon frames, pillows, decorative home goods or closet accessories.

The covenant does not apply to any department store, junior department store or promotional department store.

Black's Camera:

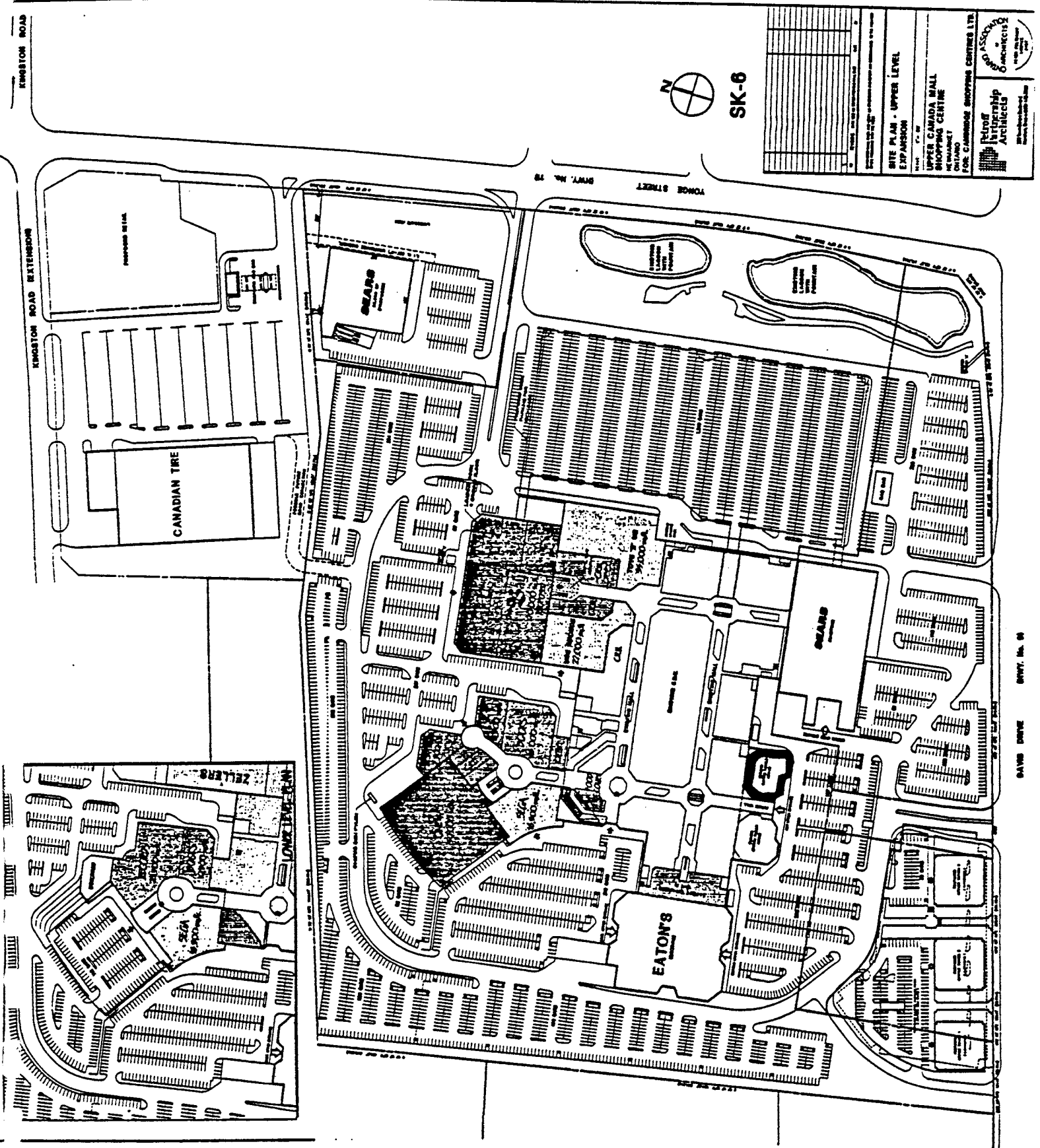
No photo-finishing kiosks shall be permitted other than in a department store or supermarket

Toronto Dominion Bank:

The Regional Lands shall not be used for any bank, trust company or automated banking machine

SCHEDULE "G"

(Office Towers and/or Retail Components;
Second Office Tower in heavy black outline)



SCHEDULE "H"

(Letter Agreement between Cambridge
and Sears dated March 17, 1994)



CAMBRIDGE

March 17, 1994

**Cambridge
Leaseholds Limited**

95 Wellington Street West
Suite 500
Toronto, Ontario
Canada M5J 2R2

Telephone
(416) 569 1200
Facsimile
(416) 569 1327

SEARS CANADA INC.
222 Jarvis Street
Department 702D
9th Floor
Toronto, Ontario
M5B 2B8

VIA COURIER

Attention: Mr. Ken Nixon
Vice-President, Real Estate

Dear Ken:

**RE: OFFICE TOWER
UPPER CANADA MALL
NEWMARKET, ONTARIO**

I am writing to document our mutual agreement concerning the construction of an office tower at Upper Canada Mall, Newmarket, Ontario by the owners of said mall. Cambridge Leaseholds as manager for the centre is representing both the owners by way of this letter. If Cambridge's partner in Regional does not wish to proceed with the construction of the office building, then Cambridge may construct same and Cambridge shall assume the obligations of Regional as set out in this letter as are applicable to the office building.

An operating agreement dated July 25, 1973 between Regional Shopping Centres Limited ("Regional"), Simpsons-Sears Properties Limited and Simpsons-Sears Limited (the latter two corporations we understand are succeeded by Sears Canada Inc.), provides that Regional may construct additional buildings on the lands owned by Regional provided that certain conditions are satisfied. This letter elaborates on these conditions and confirms the most recent understanding of the parties.

In particular, Sears approves the preliminary or outline plans and specifications which are attached hereto as Schedules A-1, A-2 and A-3 being the Site Plan, South Elevation and Floor Plan respectively. It is understood that the building will be limited to a maximum height of 10 floors and contain no more than 115,000 sq. ft. of gross leaseable area.

Regional agrees to comply with the following terms and conditions in the development of said office building:

1. Regional agrees to indemnify Sears for any and all damage to the Sears' store and property as well as hold Sears harmless for any claims of personal liability attributable to the construction of the office building and will provide occurrence type builders risk and occurrence type public liability insurance at its expense with limits and coverage acceptable to Sears acting reasonably;
2. Regional will expeditiously make good all damage which results from the construction of the Office Building and its connection to the Shopping Centre;
3. Regional agrees that the building structure and cladding will be finished between the months of January and October inclusive. At all times during construction, Regional agrees to use its reasonable best efforts not to interfere with the smooth workings of the shopping centre and its retailers.
4. Regional will be responsible for any reasonable legal or other costs which Sears may incur as a result of efforts it may be requested by Regional to make to expedite the development of the office building;
5. Regional shall provide at its expense a shopping centre parking ratio of 5.0 parking stalls per 1,000 square feet of retail GLA as well as a ratio of 3.0 cars per 1,000 sq. ft. of office GLA;
6. Regional warrants that there shall be no increase in realty taxes or Common Area Maintenance Costs to Sears as a result of the development of the Office Building; and

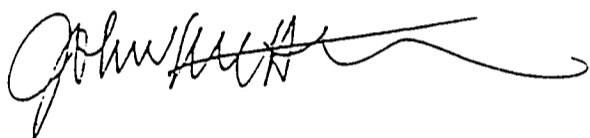
7. Sears' approval as set out herein shall remain in full force and effect for a period of three (3) years from the date of execution of this letter by Sears. An integral part of Sears' approval is that Regional will commence construction of the Office Building within the said three (3) year period and proceed diligently and continuously to the point where the building architect can issue a Certificate of Substantial Completion. If construction is not started and continued as described above, this approval shall be null and void (subject to force majeure).

Sears acknowledges that certain other approvals are necessary before the commencement of construction of the Office Building including approval from our partner in Regional and Cambridge's Board of Directors. We will not act upon your approval until the other approvals have been obtained.

If you are in agreement with the foregoing, I would ask that you please sign the duplicate copy of this letter and return same to my attention.

Sincerely yours,

CAMBRIDGE LEASEHOLDS LIMITED



John E. McArthur
Vice-President, Development
Urban Group

cc: Martin McColl, Director, Development, Urban Group
Stephen Raynor, Senior Vice-President & Chief Operating Officer, Urban Group.

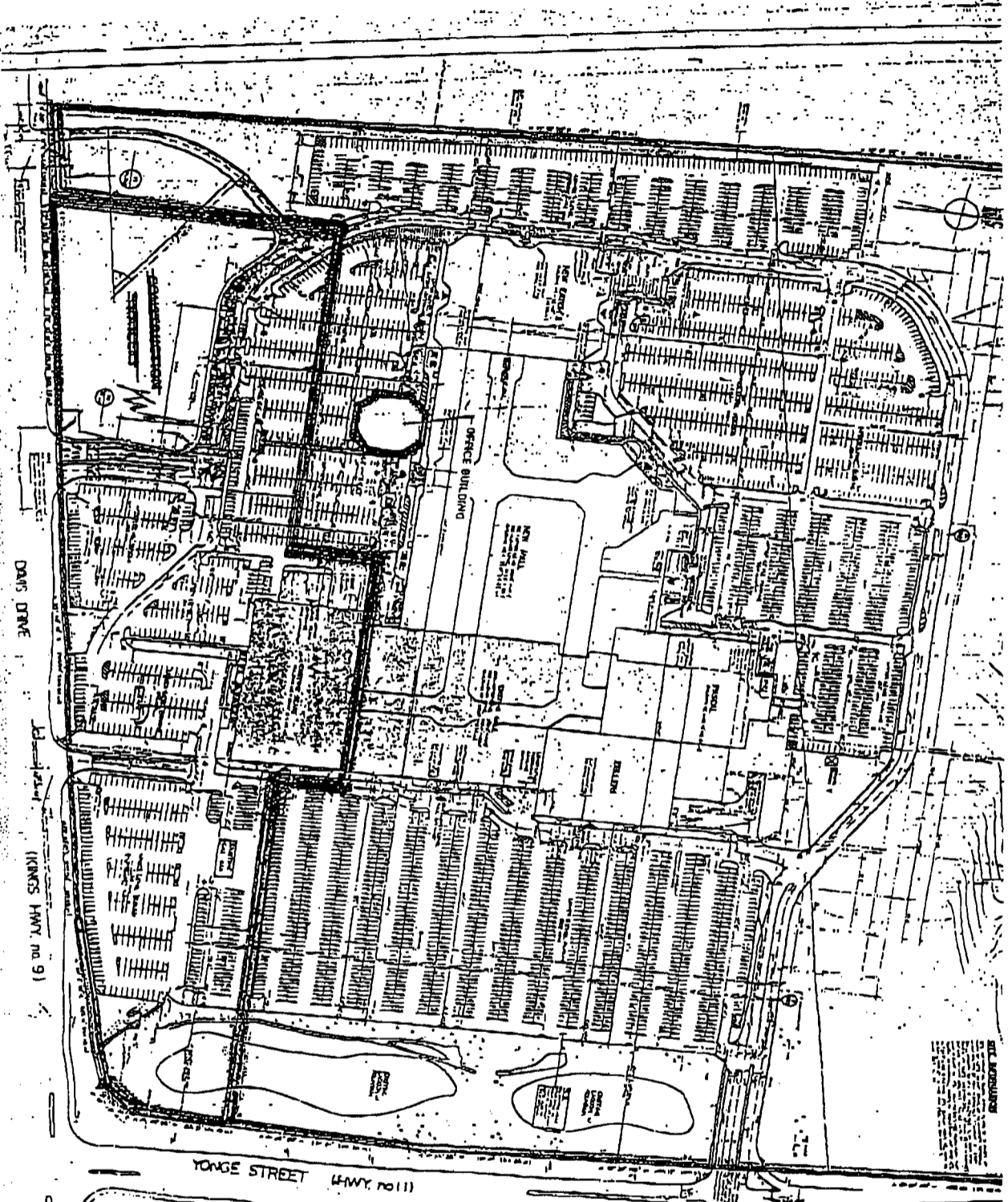
AGREED and ACCEPTED this 18th day of March, 1994.

SEARS CANADA INC.

Per: 

031894B

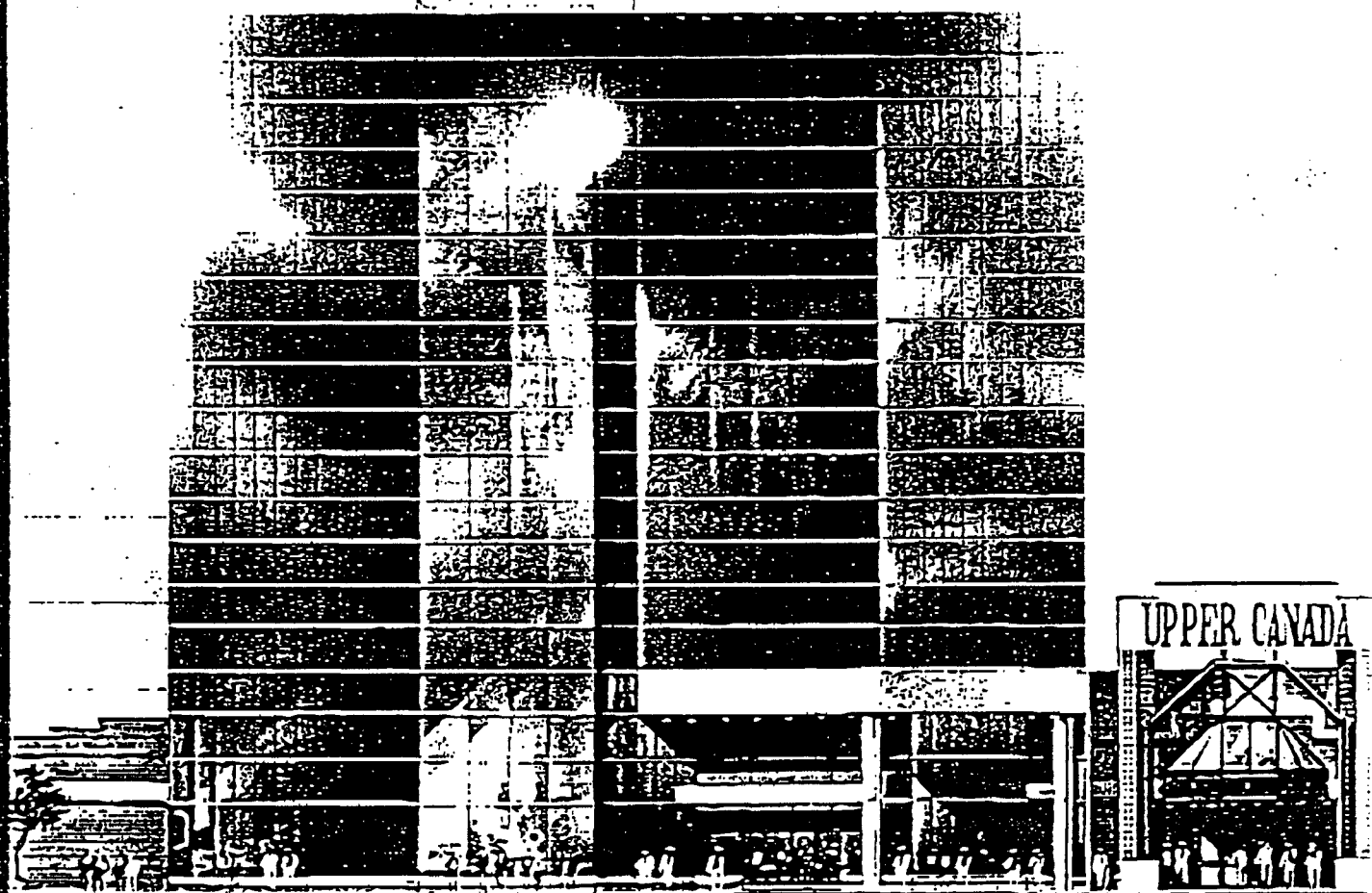
Schedule A-1 (Site Plan) to Letter Agreement



		UPPER CANADA MALL 100 DUNS DRIVE TORONTO, ONT. M5G 1C5 Tel: (416) 392-3333
PREPARED BY: ARCHITECTURAL FIRM	DATE: 1998	SCALE: AS SHOWN
PROJECT NO.: 100 DUNS DRIVE	CLIENT: UPPER CANADA MALL	DESIGNER: ARCHITECTURAL FIRM
ARCHITECT: ARCHITECTURAL FIRM	ENGINEER: ENGINEERING FIRM	LANDSCAPE ARCHITECT: LANDSCAPE ARCHITECTURE FIRM
PLANNING: PLANNING FIRM	ENVIRONMENTAL: ENVIRONMENTAL FIRM	TRAVEL: TRAVEL FIRM
LEGAL: LEGAL FIRM	MARKETING: MARKETING FIRM	CONSTRUCTION: CONSTRUCTION FIRM

Schedule A-2 (South Elevation) to Letter Agreement

SOUTH ELEVATION



ML

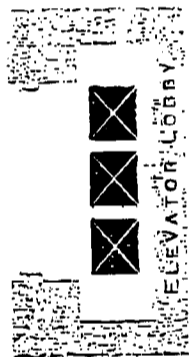
Schedule A-3 (Floor Plan) to Letter Agreement



5'-6" →

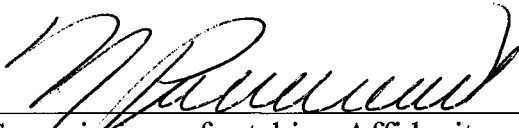
MEN

W.M.



Handwritten signature or initials.

This is **Exhibit "G"**, referred to in the
Affidavit of Genevieve Wong, sworn before me
this 12th day of July, 2017.


A Commissioner for taking Affidavits, etc.

R719695

1998 APR -9 A 11:45

(1) Registry Land Titles (2) Page 1 of 8 pages

(3) Property Identifier(s) Block 03554 03554 Property 0032(R) 0033(R) Additional: See Schedule

(4) Nature of Document Agreement

(5) Consideration Dollars \$

(6) Description Parts of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York)

Land Registry Office for the Registry Division of York Region (No. 65)

(See Schedule)

New Property Identifiers

Additional: See Schedule

Executions

Additional: See Schedule

(7) This Document Contains: (a) Redescription New Easement Plan/Sketch (b) Schedule for: Description Additional Parties Other

This Document provides as follows:
See Restrictive Covenant Agreement attached.

Continued on Schedule

(9) This Document relates to instrument number(s)

(10) Party(ies) (Set out Status or Interest)

Name(s)

Signature(s)

Date of Signature Y M D

REGIONAL SHOPPING CENTRES LIMITED

Per: [Signature] 1998 12 19

I/We have authority to bind the Corporation

Name: Norman W. Pandachuck
Title: Vice-President, Finance
Asset Management Group

Per: [Signature] 1998 12 19

Name: Michael G. Cogliano
Title: Vice President, Legal
Asset Management Group

1) Address for Service c/o 95 Wellington Street West, Suite 300, Toronto, Ontario, M5H 2B2
Attention: Corporate Secretary

(12) Party(ies) (Set out Status or Interest)

Name(s)

Signature(s)

Date of Signature Y M D

OMERS REALTY CORPORATION

Per: [Signature] 1998 02 10

Name: John R. Morrison
Title: Senior Vice-President
Properties

Per: [Signature] 1998 02 10

Name: Tracy L. Martin
Title: Director of Finance,
Properties

(13) Address for Service Suite 2220, 161 Bay Street, Toronto, Ontario, M5J 2S1

4) Municipal Address of Property

(15) Document Prepared by:

Upper Canada Mall
7600 Yonge Street
Newmarket, Ontario
L3Y 4Z1

Suzanne J. Johnston
McLean & Kerr
Suite 2800
130 Adelaide Street West
Toronto, Ontario
M5H 3P5

FEES AND TAX	
Registration Fee	
Total	

FOR OFFICE USE ONLY

R719695
Apr. 9, 1998

(1) Registry Land Titles (2) Page 1 of 8 pages

(3) Property Identifier(s) Block 03554 Property 0032(R) 0033(R) Additional: See Schedule

(4) Nature of Document
Agreement

(5) Consideration
Dollars \$

(6) Description
Parts of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York)

Land Registry Office for the Registry Division of York Region (No. 65)

(See Schedule)
Additional: See Schedule

(7) This Document Contains: (a) Redescription New Easement Plan/Sketch (b) Schedule for: Description Additional Parties Other

New Property Identifiers
Additional: See Schedule

Executions
Additional: See Schedule

(8) This Document provides as follows:
See Restrictive Covenant Agreement attached.

Continued on Schedule

(9) This Document relates to instrument number(s)

(10) Party(ies) (Set out Status or Interest)
Name(s) Signature(s) Date of Signature Y M D

REGIONAL SHOPPING CENTRES LIMITED
Per: *[Signature]* Norman W. Pandachuck 1998 12 19
Name: Vice-President, Finance
I/We have authority to bind the Corporation Title: Asset Management Group

Per: *[Signature]* Michael G. Cogliano 1998 12 19
Name: Vice President, Legal
Title: Asset Management Group

(11) Address for Service c/o 95 Wellington Street West, Suite 300, Toronto, Ontario, M5J 2R2
Attention: Corporate Secretary

(12) Party(ies) (Set out Status or Interest)
Name(s) Signature(s) Date of Signature Y M D

OMERS REALTY CORPORATION
Per: *[Signature]* John R. Morrison 1998 02 10
Name: Senior Vice-President
Title: Properties

Per: *[Signature]* Tracy L. Martin 1998 02 10
Name: Director of Finance,
Title: Properties

(13) Address for Service Suite 2220, 161 Bay Street, Toronto, Ontario, M5J 2S1

(14) Municipal Address of Property
**Upper Canada Mall
17600 Yonge Street
Newmarket, Ontario
L3Y 4Z1**

(15) Document Prepared by:
**Suzanne J. Johnston
McLean & Kerr
Suite 2800
130 Adelaide Street West
Toronto, Ontario
M5H 3P5**

Fees and Tax	
Registration Fee	
Total	

Rest. Cov. Agr.

Additional Property Identifier(s) and/or Other Information

Box (6) Description (Continued)

Firstly:

Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York), designated as Parts 1 and 2 on plan 65R-899 and Part 1 on plan 65R-7420, save and except Part 1 on plan 65R-19397.

SUBJECT TO AN EASEMENT over Parts 2 and 4 on plan 65R-19397.

Secondly:

Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York), designated as Part 5 on 65R-19397.

TOGETHER WITH AN EASEMENT over Part 6 on plan 65R-19397.

Thirdly:


Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York), designated as Part 1 on plan 65R-19397, together with an easement over Part 2 on plan 65R-19397 and an easement over Part 4 on 65R-19397.

Additional Parties (continued)

SEARS CANADA INC.

Per: 
Name: **KENNETH E. NIXON**
Title: **Vice-President
Real Estate**

1998 02 10

Per: 
Name: **RUDOLPH R. VEBER**
Title: **Sr. Vice-President, Secretary
and General Counsel**

1998 02 10

I/We have authority to bind the Corporation

FOR OFFICE USE ONLY

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT made as of the 9th day of April, 1998.

B E T W E E N:

REGIONAL SHOPPING CENTRES LIMITED and
OMERS REALTY CORPORATION

(the "Centre Owners")

- and -

SEARS CANADA INC.

("Sears")

WHEREAS:

A. The Centre Owners are the owners, each as to an undivided 50% interest, of the lands and premises described in Schedule "A" (the "Centre Lands");

B. Sears is the owner of the lands and premises described in Schedule B" (the "Sears Home Store Lands");

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants herein contained and other good and valuable consideration and the sum of Two Dollars (\$2.00) (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties to this agreement hereby agree as follows:

1. The Centre Owners on behalf of themselves and their successors and assigns jointly and severally covenant in favour of Sears (being the registered owner of the Sears Home Store Lands) and its successors and assigns that:

- (a) no portion of the Centre Lands described as part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York) designated as Parts 2 and 3 on 65R-19397 (the "Green Space Lands") shall be developed save for landscaping, and save for surface parking to the extent surface parking is permitted by applicable municipal authorities, and no man-made structures of any kind will be constructed within the Green Space Lands which extend more than two (2) feet above grade unless otherwise approved by Sears or its successors or assigns acting reasonably;
- (b) the Centre Owners will, at their expense, retain a landscape architect to design the landscaping and drainage of the Green Space Lands and will, at their expense, install, construct and maintain such landscaping and drainage, and to the extent required, irrigation,

with the intent that the burden of these covenants shall run with and bind the Green Space Lands as subservient tenement, and bind and be enforceable against the Centre Owners and their successors and assigns, and benefit and run with the Sears Home Store Lands as the dominant

tenement and benefit and be enforceable by Sears and its successors and assigns for a period of ninety-five (95) years from the date of this agreement.

2. Sears on behalf of itself and its successors and assigns covenants in favour of the Centre Owners and their successors and assigns that it will not use or occupy the Sears Home Store Lands for any purpose other than the purpose of a retail furniture, appliances and home furnishings store, or, subject to the provisions of paragraph 3, for the sale of other merchandise and services typically sold in a Sears' department store, and for related parking for such permitted uses, and for no other purpose without the prior written consent of the Centre Owners, with the intent that the burden of these covenants shall run with and bind the Sears Home Store Lands as subservient tenement, and bind and be enforceable against Sears and its successors and assigns, and benefit and run with the Centre Lands as the dominant tenement, and benefit and be enforceable by the Centre Owners and their successors and assigns for a period of ninety-five (95) years from the date of this agreement.

3. Notwithstanding paragraph 2, Sears may use the Sears Home Store Lands for a purpose other than that permitted in paragraph 2, provided that Sears has obtained the prior written consent of the Centre Owners to such proposed purpose, which consent may not be unreasonably withheld or unduly delayed. It is agreed that such consent shall be deemed to have been reasonably withheld if such proposed use would conflict with any of the exclusives listed in Schedule "C".

4. The restrictive covenants set out in this agreement shall be effective and remain in effect for the periods expressed and shall run with the lands and be subject to compliance with the provisions of any statute relating to the severance of land or granting of interests in land by conveyance or otherwise as such may from time to time be amended. The Centre Owners and Sears hereby agree that if consent is requisite to the validity of this agreement, either party may apply for such consent and until a final consent is obtained, the term of this agreement shall be the maximum period permitted by statute without consent.

5. Provided that if any one or more of the foregoing covenants and restrictions or the application thereof to any person, corporation or circumstance shall to any extent be invalid or unenforceable, the remainder of the foregoing covenants and restrictions and the application thereof shall not be affected thereby and each covenant and restriction shall be separately valid and enforceable to the fullest extent permitted by law.

6. Any notice required or permitted to be given or delivered hereunder shall be delivered:

in the case of the Centre Owners to

Regional Shopping Centres Limited
95 Wellington Street West
Suite 300
Toronto, Ontario
M5J 2R2

Attention: Corporate Secretary

- and -

OMERS Realty Corporation
Suite 2220
161 Bay Street
Toronto, Ontario
M5J 2S1


and in the case of Sears to:


222 Jarvis Street
Toronto, Ontario
M5B 2B8

Any notice or document so delivered shall be deemed to have been received on the date of such delivery.

7. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

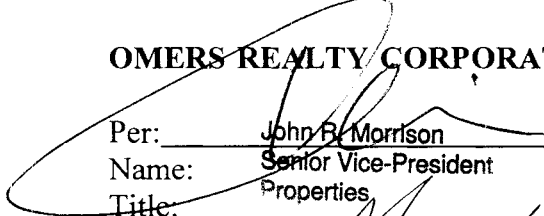
REGIONAL SHOPPING CENTRES LIMITED


Per: 
Name: **Norman W. Pandachuck**
Title: **Vice-President, Finance**
Asset Management Group

Per: 
Name: **Michael G. Cogliano**
Title: **Vice President, Legal**
Asset Management Group

I/We have authority to bind the Corporation

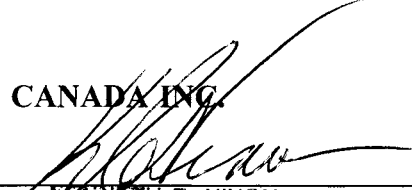
OMERS REALTY CORPORATION

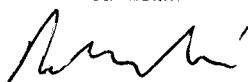
Per: 
Name: **John B. Morrison**
Title: **Senior Vice-President**
Properties

Per: 
Name: **Tracy L. Martin**
Title: **Director of Finance,**
Properties

I/We have authority to bind the Corporation

SEARS CANADA INC.

Per: 
Name: **KENNETH E. NIXON**
Title: **Vice-President**
Real Estate

Per: 
Name: **RUDOLPH R. VEZER**
Title: **St. Vice-President, Secretary**
and General Counsel

SCHEDULE "A"

Firstly:

Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York), designated as Parts 1 and 2 on plan 65R-899 and Part 1 on plan 65R-7420, save and except Part 1 on plan 65R-19397.

SUBJECT TO AN EASEMENT over Parts 2 and 4 on plan 65R-19397.

Secondly:

Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York), designated as Part 5 on 65R-19397.

TOGETHER WITH AN EASEMENT over Part 6 on plan 65R-19397.

SCHEDULE "B"

Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York (Geographic Township of East Gwillimbury, County of York), designated as Part 1 on plan 65R-19397, together with an easement over Part 2 on plan 65R-19397 and an easement over Part 4 on 65R-19397.

Eatons:

SCHEDULE "C"

The lease provides that no part of the Centre shall be used for the following:

1. A store conducted principally or in part for the sale of second hand goods (other than antiques), re-sale of trade-ins, war surplus articles, insurance salvage or fire sale stock ...
2. An auction (except fine art or antique auction).
3. A pawn shop or flea market for an operation in any line of merchandise where the operator makes or follows a practice of fraudulent advertising or selling procedures; or
4. An entertainment arcade, the nature of which is detrimental to the orderly merchandising activities of the Centre.

Zellers:

Landlord has agreed that:

1. it will not occupy or use, or permit to be occupied or used, any store premises in the shopping centre for any discount department store over 20,000 square feet without the Tenant's written consent except for those premises occupied by Simpsons-Sears Limited.
2. it will not directly or indirectly erect store premises or building improvements on any land owned or controlled by the Landlord within two thousand (2,000) feet of the shopping centre which would in any way be in competition with the business carried on by the Tenant on the Demised Premises and without limiting the generality of the foregoing shall not permit a department store, junior department store, or a discount department store to be erected on any such land.

Toys R Us:

The Landlord has granted a restrictive covenant to the tenant prohibiting:

- (i) any other premises within the Project to contain an area in excess of 2,500 feet of the Gross Leaseable Area used for the purposes of the sale of toys.
- (ii) any portion of the Project to be used for the purpose of a flea market or bingo hall....
- (iv) any other premises within the Project containing an area in excess of 13,000 square feet of gross leaseable area used for the principle business of a pharmacy or drug store, to display for sale more than 12 linear feet of diapers.

The restrictive covenant does not apply to "department stores or junior promotional department stores now or hereafter to be erected in the Project ..." Further the provision makes the restrictive covenant run with the Land and the Landlord has covenanted that if it conveys any part of the Project "it shall extract from any such purchaser or assignee the covenant contained in this clause and for the covenantor to extract such covenant from any subsequent purchaser or assignee.

Pacific Linen:

The terms of the lease prohibit the Landlord from leasing space in the shopping centre "to competitors" of the Tenant. For the purposes of the lease, a tenant is a competitor of or competes with the Tenant if more than 15% of its gross sales is derived from retail sales of any one or more of the following: linens, domestics, bedding, mattresses, futons, futon frames, pillows, decorative home goods or closet accessories.

The covenant does not apply to any department store, junior department store or promotional department store.

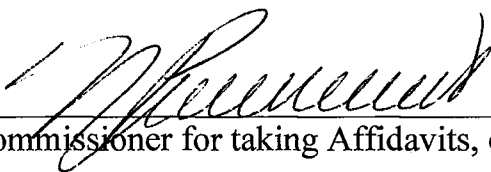
Black's Camera:

No photo-finishing kiosks shall be permitted other than in a department store or supermarket

Toronto Dominion Bank:

The Regional Lands shall not be used for any bank, trust company or automated banking machine

This is **Exhibit "H"**, referred to in the
Affidavit of Genevieve Wong, sworn before me
this 12th day of July, 2017.


A Commissioner for taking Affidavits, etc.

FOR OFFICE USE ONLY

2

633159
Jan. 24, 94

(1) Registry <input checked="" type="checkbox"/>	Land Titles <input type="checkbox"/>	(2) Page 1 of 14 pages
(3) Property Identifier(s)	Block	Property
Additional: See Schedule <input type="checkbox"/>		
(4) Nature of Document OPTION TO PURCHASE (Subsection 22(8) of the Act)		
(5) Consideration		
Dollars \$		
(6) Description		
<p>FIRSTLY: Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Parts 3 and 4, on Plan 65R-899 (Geographic Township of East Gwillimbury, County of York);</p> <p>SECONDLY: Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Parts 1 and 2 on Plan 65R-899 and Part 1 on Plan 65R-7420 (Geographic Township of East Gwillimbury, County of York).</p>		
(7) This Document Contains:		
(a) Redescription New Easement Plan/Sketch <input type="checkbox"/>	(b) Schedule for:	
	Description <input type="checkbox"/>	Additional Parties <input type="checkbox"/>
	Other <input checked="" type="checkbox"/>	

New Property Identifiers Additional: See Schedule

Executions Additional: See Schedule

(8) This Document provides as follows:

See Option to Purchase attached.

Continued on Schedule

(9) This Document relates to instrument number(s)

(10) Party(ies) (Set out Status or Interest)	Signature(s)	Date of Signature
Name(s)		Y M D
SEARS CANADA INC. (Grantor of Option) by its solicitors HOOEY * REMUS	Per: THOMAS G. JAMIESON	1994

(11) Address for Service: 222 Jarvis Street, Toronto, Ontario M5B 2B8

(12) Party(ies) (Set out Status or Interest)	Signature(s)	Date of Signature
Name(s)		Y M D
REGIONAL SHOPPING CENTRES LIMITED (Grantee of Option)		

(13) Address for Service: Suite 600, 95 Wellington Street West, Toronto, Ontario M5J 2R2

(14) Municipal Address of Property Upper Canada Mall Newmarket, Ontario	(15) Document Prepared by: B. McGregor / A. Bistolas Osler, Hoskin & Harcourt P. O. Box 50 1 First Canadian Place Toronto, Ontario M5X 1B8 (UCM2)	Matter #: 1438602
		Fees and Tax
		Registration Fee
		Total

Amended by S. Mathew Authorized by Anna Bistolas

FOR OFFICE USE ONLY

Sears/ORC/
FOR REGISTRATION PURPOSES

UPPER CANADA MALL OPTION TO PURCHASE

THIS OPTION AGREEMENT made as of the 21st day of January, 1994,

B E T W E E N:

SEARS CANADA INC., a corporation
existing under the laws of Canada

(hereinafter called "Sears")

- and -

REGIONAL SHOPPING CENTRES LIMITED,
a corporation incorporated under the laws
of the Province of Ontario

(hereinafter called "RSCL" or the "Owner")

In consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration now paid by the Owner to Sears, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

Definitions

1. The following terms shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:
 - (a) "Upper Canada Operating Agreement" means the Operating Agreement dated July 25, 1973 between RSCL, Simpsons-Sears Properties Limited (subsequently Sears Properties Inc., now Sears Canada Inc.) and Simpsons-Sears Limited (now Sears Canada Inc.), as amended and supplemented to date, which Operating Agreement provides for the integrated operation of the Upper Canada Property and lands now referred to as the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands;
 - (b) "Sears (Upper Canada) Lands" means the lands and all buildings, structures and fixed improvements (including the Sears store) located on, in or under the lands described in Part I of Schedule "A" hereto;
 - (c) "Sears (Upper Canada) Reserved Lands" means the lands and all buildings, structures and fixed improvements located on, in or under the lands described in Part II of Schedule "A" hereto;
 - (d) "Sears Lands" means the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands together, or the remaining balance thereof which Sears (or a third party pursuant to Section 6 hereof) owns at the relevant time;

- (e) "Upper Canada Property" means the lands, and all buildings, structures and fixed improvements located on, in or under the lands owned by the Owner and described in Schedule "B" hereto;
- (f) "Force Majeure" means acts of God, acts or laws of any civil or military authority, strikes, or other labour disturbances, floods, epidemics, war, civil commotion, accidents or disruptions including fires and breakdowns to utilities, plant or machinery, inability on account of causes beyond the reasonable control of the party affected to obtain necessary labour, materials, services or facilities, or any other reason beyond the reasonable control of the party affected, provided that the party affected is using its reasonable efforts to correct the event or events of Force Majeure, and provided that shortage of funds shall not by itself constitute Force Majeure;
- (g) "Current Value" means the most probable price for each of the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands valued separately (in each case net after deduction of the outstanding principal and interest allocable to each of such parcels pursuant to any mortgages or other financings secured by or encumbering such lands and improvements), which the relevant lands and improvements or interest therein should bring in the current market at the time of the determination, if exposed for sale in the open market, allowing for a reasonable period of time to find a buyer, under conditions requisite to a fair and equitable sale between a willing seller and willing buyer, on the basis that each of the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands is capable of independent use provided that such independent use is then viable, and without taking into account any diminution in the value of the Sears Lands caused by the existence of any Sears lease to the Owner of any part of the Sears Lands, all as determined by a qualified Accredited Appraiser of the Appraisal Institute of Canada;
- (h) "Owner" includes any and all owners of the Upper Canada Property at the relevant time, and if there are co-owners from time to time, shall include all such co-owners, and their rights and obligations under this Agreement shall be several (not joint and several) in the same proportionate shares in which such co-owners own the Upper Canada Property; provided however that any Option Notice or other notice or act by co-owners hereunder in order to be valid shall be executed by and on behalf of all co-owners and shall be binding on all of them.

Grant of Option

2. Sears hereby grants to the Owner, subject to the terms and conditions hereinafter set out, an option to purchase both the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands (the "Option") for the purchase price calculated in accordance with Section 11 herein. Subject to Section 6 hereof, the Option may only be exercised with respect to all of the Sears Lands then owned by Sears.

Term and Limitations

3. The Option shall have a term commencing on the date hereof and expiring on July 24, 2018 (the "Option Period"), subject to the specific limitations and provisions contained in this Agreement. Upon the expiry date of the Option Period, in the event the Option has not been validly exercised, the Option shall forthwith expire and terminate and be of no further force or effect whatsoever as to any of the Sears Lands.

4. The Owner shall have the right to exercise the Option in the event that at any time during the Option Period the Sears store on the Sears (Upper Canada) Lands is not operated as a department store for a period of ninety-one (91) consecutive days, excluding non-operation due to Force Majeure, and such non-operation has occurred without the prior written consent of the Owner and is continuing at the time of the exercise of the Option, but the Owner shall have no other right to exercise the Option.

5. The Owner shall not be entitled to exercise the Option if,
 - (a) at the time that the Sears store on the Sears (Upper Canada) Lands is not operated as a department store, Upper Canada Mall has also ceased to be operated as a regional shopping centre or;
 - (b) during the period from July 24, 2008 to July 24, 2013, the Sears operating covenant in favour of the Owner as provided for in Section 9 of the Second Supplement to the Upper Canada Operating Agreement dated as of even date herewith has been terminated in accordance with Section 9(b)(ii) or (iii) thereof.

6. During the Option Period, so long as the Option has not been exercised, Sears shall have the right to transfer the Sears (Upper Canada) Lands or any portion thereof to a bona fide third party purchaser if the Owner does not exercise the first right of refusal contained in Section 21.01 of the Upper Canada Operating Agreement, provided that the Sears (Upper Canada) Lands shall continue to be subject to this Option and to the Upper Canada Operating Agreement (including the mutual right of first refusal contained in Section 21.01 therein) in accordance with the terms thereof. Upon the expiration of the Option Period, the Owner shall execute and register on title to the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands, a release and discharge of such lands from any purchase option rights under this Agreement.

7. During the Option Period, so long as the Option has not been exercised, and subject to Section 22 of the Upper Canada Operating Agreement so long as such section of such agreement is still in force, Sears shall have the right to transfer the Sears (Upper Canada) Reserved Lands or any portion thereof to a bona fide third party purchaser if the Owner does not exercise the first right of refusal contained in Section 21.01 of the Upper Canada Operating Agreement and, upon such transfer, this Option and the Upper Canada Operating Agreement (including the first

right of refusal contained in Section 21.01 therein) shall terminate and be of no further force or effect with respect only to the Sears (Upper Canada) Reserved Lands or the portion thereof so transferred, and the Owner shall promptly execute and deliver to Sears and its successors in title upon request a discharge and release of this Option in form required for registration on title to the Sears (Upper Canada) Reserved Lands.

8. Sears shall have the right at any time during the Option Period to mortgage or finance all or part of the Sears Lands to a maximum of 75% of the then current fair market value, provided that the provisions of such mortgage or financing permit a discharge or partial discharge of the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands upon request by Sears, or upon payment of an amount equal to the principal and interest reasonably allocable to such lands and improvements subject to such aforesaid 75% maximum and, on any purchase by the Owner pursuant to exercise of the Option, the Owner shall take title subject to such mortgage or financing.

9. The Option is subject to any rights in favour of the Owner of the Upper Canada Property then contained in the Upper Canada Operating Agreement and other agreements pertaining to and registered on title to the Upper Canada Property.

Exercise of Option

10. Subject to compliance with the conditions and limitations in this Agreement and so long as the Option is still in full force and effect hereunder, the Option may be exercised by the Owner by giving notice in writing (the "Option Notice") to Sears signed by the Owner, or if there are co-owners, signed by all co-owners, at any time during the Option Period. The deposit payable by the Owner shall be Fifty Thousand (\$50,000) Dollars payable by certified cheque to a mutually acceptable depository as a deposit to be held by such depository in interest-bearing form with interest to follow the deposit, pending completion or other termination of the purchase agreement arising out of the exercise of the Option, and to be applied against the purchase price on closing. If there are co-owners, such co-owners will pay a proportionate share of such deposit. The deposit shall be returned to the Owner or co-owner who paid it in the event that the purchase fails to close for any reason whatsoever other than default by such Owner or co-owner, without prejudice to any other rights or remedies such Owner or co-owner may have. If the Option is not exercised within the period specified and in accordance with the provisions of this Agreement, the Option shall be null and void and no longer binding on any parties hereto.

Agreement of Purchase

11. Upon the valid giving of notice of exercise of the Option by the Owner pursuant to clause 10, a binding agreement of purchase and sale of the Sears Lands shall be constituted, at a purchase price equal to the Current Value thereof payable in cash, on the basis that the Owner

shall assume the existing mortgage or other financing secured by or encumbering the Sears Lands upon the closing of the purchase of the Sears Lands, subject to all usual and appropriate adjustments, and less the amount of any other liens, financial encumbrances and work orders which will not be removed on the closing, less the amount outstanding under any permitted mortgage or financing being assumed by the Owner under clause 8.

Determination of Current Value

12.(a) Whenever notice exercising the Option has been given and the Current Value of the Sears Lands is to be determined pursuant to this Agreement, Sears and the Owner shall attempt, for a period of seven (7) days after delivery of the Option Notice by the Owner to Sears, to reach agreement as to Current Value of the Sears Lands. If such an agreement cannot be reached within such time period, each of Sears and the Owner shall appoint an appraiser within fourteen (14) days after delivery of the Option Notice. Each appraiser shall be fully accredited under the Appraisal Institute of Canada (or its successor or failing either another equivalent national Canadian real estate appraisal organization) and shall be at arm's length from the party appointing him and shall be generally recognized as a person experienced in appraising and qualified to appraise regional shopping centres in Canada. If only one appraiser is appointed within the aforesaid period, the decision of such appraiser shall be binding on both Sears and the Owner.

(b) The appraiser or appraisers shall have access to all books of account, records, papers and documents of Sears and of the Manager of the Upper Canada Property which relate to the Sears Lands and upon request, the Manager of the Upper Canada Property shall provide to such appraiser on a confidential basis the sales reports and profit and loss statements of the Owner for the Upper Canada Property (as prepared by the Manager) for the then current and preceding two fiscal years. Sears and the Owner shall co-operate with the appraiser or appraisers for such purpose and provide all material information and documents requested by him or them acting reasonably, excluding any internal confidential information of OMERS Realty Corporation. In the determination of Current Value, the appraiser or appraisers shall have regard to all relevant considerations including historic and potential performance and shall make all proper and necessary allowances for contingent or other liabilities but shall make no allowance for goodwill. The outstanding principal and interest under any mortgage or other financing encumbrances allocable to the Sears Lands shall be stated separately by such appraisers.

(c) The appraiser or appraisers shall report his or their determination of Current Value of the Sears Lands, identifying the value for each of the Sears (Upper Canada) Lands and the Sears (Upper Canada) Reserved Lands separately, in writing to both Sears and the Owner within thirty (30) days after his or their appointment. If an appraiser fails to issue his report within such thirty-day period, the report of the other appraiser shall determine the Current Value of the Sears Lands.

(d) If there is more than one appraiser and if, in their reports, they do not agree on the Current Value of either the Sears (Upper Canada) Lands or the Sears (Upper Canada) Reserved Lands, Sears and the Owner shall, acting in good faith, attempt to agree on the Current Value of such lands over which there is disagreement within ten (10) days after receipt of the reports. If Sears and the Owner are unable to so agree on the Current Value of such lands over which there is disagreement, then the following provisions shall apply:

- (i) if the lower appraisal is within 5% of the higher appraisal, the Current Value shall be the average of the two appraisals;
- (ii) if sub-paragraph (i) is not applicable, then the Current Value shall be determined by arbitration and Sears and the Owner shall appoint a single arbitrator who, acting reasonably in accordance with the provisions hereof and in his sole discretion, shall determine the Current Value of the lands over which there is disagreement which shall in any event be not less than the lower appraisal nor greater than the higher appraisal but need not be an average of them and if Sears and the Owner are unable to agree upon the arbitrator within fifteen (15) days after receipt of the reports, such arbitrator shall be appointed by a judge of the Ontario Court (General Division) upon the application of either Sears or the Owner, and the arbitrator shall render his or her decision no later than twenty (20) days after his or her appointment.

(e) The determination of Current Value pursuant to this clause shall, in the absence of fraud, be final and binding upon Sears and the Owner and all other persons affected thereby and there shall be no appeal therefrom.

(f) The appraiser or appraisers, as the case may be, and the arbitrator, if any, shall be deemed to be acting as experts and not as arbitrators.

(g) Each of Sears and the Owner shall pay the fees and expenses of the appraiser appointed by it and shall each pay one-half of the cost of an arbitrator.

Closing

13.(a) The closing (the "Closing") of any sale of the Sears Lands to the Owner pursuant to this Agreement shall be held at 10:00 a.m. (local time) thirty (30) days after the determination of the Current Value of the Sears Lands, or such earlier or later date as may be mutually agreed upon by the parties to the transaction.

(b) At the Closing a transfer from Sears or its successor in title, if applicable, to the Owner of the Sears Lands, together with such instruments and documents (to be reasonably satisfactory to counsel for the Owner) as may be necessary or desirable to give effect to the sale and transfer of the Sears Lands (the "Transfer Documents") shall be delivered to the Owner. At the Closing,

where the same has been determined in accordance with the provisions hereof, the purchase price in an amount equal to the Current Value, subject to usual adjustments, and less the amount of any other liens, financial encumbrances and work orders which will not be removed on the Closing, less the amount outstanding under any permitted mortgage or financing being assumed by the Owner under clause 8, shall be paid to Sears by the Owner.

(c) The Transfer Documents shall be legally sufficient to convey the Sears Lands to the Owner, and shall be in registerable form. Sears shall take all necessary steps to comply with the Planning Act of Ontario. Sears shall provide to the Owner all title documents in its possession relating to the Sears Lands and shall co-operate reasonably with the Owner in its title investigations and due diligence. If, prior to Closing, the Owner makes any valid objection to title or to any outstanding work order or deficiency notice or to the fact that the present use may not lawfully be continued or to the presence of environmental contamination which Sears is unable or unwilling to remove, remedy or satisfy, the Owner shall have the right to revoke the Option Notice as if such Option Notice had never been given. At the Closing, the Owner shall assume, from and after the Closing, all liabilities and obligations of Sears in connection with the Sears Lands being acquired, and shall indemnify and hereby agree to indemnify Sears in connection therewith. At the Closing, the purchase price shall be subject to the adjustments as described in Section 13(b) hereof and all amounts due by Sears to the co-owners or by the co-owners to Sears in respect of Upper Canada Mall and the Sears Lands shall be settled and set-off or paid in full.

Notice

14. Any notice or other communication (a "Notice") to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery or by telecopier or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

- (a) Sears Canada Inc.
222 Jarvis Street
Toronto, Ontario, M5B 2B8
Attention: Office of the Corporate Secretary
Telecopy: 416 - 941-2321
- (b) Regional Shopping Centres Limited
c/o Cambridge Leaseholds Limited
95 Wellington Street West, Suite 300
Toronto, Ontario, M5J 2R2
Attention: Office of the Corporate Secretary
Telecopy: 416 - 369-1328

Any Notice, if personally delivered between the hours of 9:00 a.m. and 5:00 p.m. on any business day, shall be deemed to have been validly and effectively given and received on the

date of such delivery and if sent by telecopier or other electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the business day next following the day it was received.

Applicable Law

15. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

Invalidity

16. If any immaterial covenant, obligation or agreement or part thereof or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement or part thereof to any person or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

Amendment of Agreement

17. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

Successors and Assigns

18. All of the provisions of this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

Time

19. Time shall be of the essence of this Agreement.

Non-Waiver

20. No consent to or waiver of any breach by any party in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach in the performance by such party of the same or any other obligations of such party hereunder.

Further Assurances



21. Upon written request from the Owner after July 24, 1997, Sears shall execute and deliver to the Owner, for execution and registration by the Owner, a further grant of option for a term expiring on July 24, 2018 on the same terms and conditions as this Agreement, bearing the then current date, and duly authorized by Sears, whereupon this Agreement shall be cancelled, null and void. Each of the parties shall execute and do all such further deeds, assurances and things as may be required to more effectually implement the true intent of this Agreement.

Calculation of Time


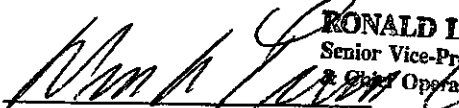
22. If any date occurs or any time period ends on a date which is a Saturday, Sunday or statutory holiday in the Province of Ontario, such date or time period shall be extended to 5:00 p.m. on the next business day.

IN WITNESS WHEREOF the parties hereto have executed this Agreement under seal as evidenced by their properly authorized officers in that behalf as of the day and year first above written.

SEARS CANADA INC.

Per:  c/s
Larry E. Ginther - Vice President, Chief Financial Officer and Treasurer
Per:  c/s
Ronald R. Nezer - Vice President, Secretary and General Counsel
We have authority to bind the Corporation.

REGIONAL SHOPPING CENTRES LIMITED

Per:  c/s
Per:  c/s
RONALD L. MEIERS
Senior Vice-President
& Chief Operating Officer
We have authority to bind the Corporation.
WILLIAM W. TIMMONS
Senior Vice-President
Corporate Planning

THE REGISTRY ACT

AFFIDAVIT OF BONA FIDES UNDER SECTION 22(11) OF THE ACT

In the matter of the registration of an Option to
Purchase under Subsection 22(8) of the Registry Act

I, Chris Pinnington, of the City of Toronto, in the Municipality of Metropolitan Toronto, make oath and say as follows:

1. I am the solicitor for the grantee of the attached Option to Purchase and as such have knowledge of the matters hereinafter deposed to.
2. I verily believe that the agreement under which the Grantor granted to the Grantee the option to purchase was duly executed by the parties thereto and I verily believe that the grantee has not knowingly done anything to cause it to become unenforceable as at the date hereof.
3. The terms and particulars of the Option to Purchase are as set out therein.
4. The Option to Purchase is not being registered for any fraudulent or improper purpose.

SWORN BEFORE ME at the City of)
Toronto, in the Municipality of)
Metropolitan Toronto, this 21)
day of January, 1994)


A Commissioner, etc.)


Chris Pinnington

SCHEDULE "A"

LEGAL DESCRIPTION

PART I

Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 3 on Reference Plan 65R-899 (Geographic Township of East Gwillimbury, County of York).

PART II

Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 4 on Reference Plan 65R-399 (Geographic Township of East Gwillimbury, County of York).

SCHEDULE "B"

LEGAL DESCRIPTION

Part of Lots 96 and 97, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Parts 1 and 2 on Reference Plan 65R-899 and Part 1 on Plan 65R-7420 (Geographic Township of East Gwillimbury, County of York).

Refer to all instructions on reverse side. IN THE MATTER OF THE CONVEYANCE OF (insert brief description of land) Part of Lot 96, Concession 1, West of Yonge Street, former Township of East Gwillimbury, County of York, now in the Town of Newmarket, Regional Municipality of York, designated as Parts 3 and 4, Plan 65R-899

BY (print names of all transferors in full) SEARS CANADA INC.

TO (see instruction 1 and print names of all transferees in full) REGIONAL SHOPPING CENTRES LIMITED

I, (see instruction 2 and print name(s) in full) CHRIS PINNINGTON

MAKE OATH AND SAY THAT:

- 1. I am (place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent(s)): (see instruction 2)
(a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
(b) A trustee named in the above-described conveyance to whom the land is being conveyed;
(c) A transferee named in the above-described conveyance;
(d) The solicitor acting in this transaction for (insert name(s) of principal(s)) REGIONAL SHOPPING CENTRES LIMITED

(e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for (insert name(s) of corporation(s))

(f) A transferee described in paragraph () (insert only one of paragraph (a), (b) or (c) above, as applicable) and am making this affidavit on my own behalf and on behalf of (insert name of spouse) who is my spouse described in paragraph () (insert only one of paragraph (a), (b) or (c) above, as applicable) and as such, I have personal knowledge of the facts herein deposed to.

2. (To be completed where the value of the consideration for the conveyance exceeds \$400,000). I have read and considered the definition of "single family residence" set out in clause 1(1)(j) of the Act. The land conveyed in the above-described conveyance

- (a) contains at least one and not more than two single family residences.
(b) does not contain a single family residence.
(c) contains more than two single family residences. (see instruction 3)

Note: Clause 2(1)(d) imposes an additional tax at the rate of one-half of one per cent upon the value of consideration in excess of \$400,000 where the conveyance contains at least one and not more than two single family residences.

3. I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses 1(1)(f) and (g) of the Act and each of the following persons to whom or in trust for whom the land is being conveyed in the above-described conveyance is a "non-resident corporation" or a "non-resident person" as set out in the Act. (see instructions 4 and 5) None

4. THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:

Table with 2 columns: Description and Amount. Rows include: (a) Monies paid or to be paid in cash, (b) Mortgages, (c) Property transferred in exchange, (d) Securities transferred, (e) Liens, legacies, annuities and maintenance charges, (f) Other valuable consideration, (g) VALUE OF LAND, BUILDING, FIXTURES AND GOODWILL SUBJECT TO LAND TRANSFER TAX, (h) VALUE OF ALL CHATTELS, (i) Other consideration for transaction not included in (g) or (h) above, (j) TOTAL CONSIDERATION.

All Blanks Must Be Filled In. Insert "Nil" Where Applicable.

5. If consideration is nominal, describe relationship between transferor and transferee and state purpose of conveyance. (see instruction 6) See No. 7 below

6. If the consideration is nominal, is the land subject to any encumbrance? No

7. Other remarks and explanations, if necessary. No consideration passing either directly or indirectly.

Sworn before me at the City of Toronto in the Municipality of Metropolitan Toronto this 11 day of January 1994

A Commissioner for taking Affidavits, etc.

Signature of Chris Pinnington, CHRIS PINNINGTON

Property Information Record
A. Describe nature of instrument: Option to Purchase
B. (i) Address of property being conveyed (if available)
(ii) Assessment Roll No. (if available)
C. Mailing address(es) for future Notices of Assessment under the Assessment Act for property being conveyed (see instruction 7) Suite 600, 95 Wellington Street West, Toronto, Ontario M5J 2R2
D. (i) Registration number for last conveyance of property being conveyed (if available)
(ii) Legal description of property conveyed: Same as in D.(i) above. Yes [X] No [] Not known []
E. Name(s) and address(es) of each transferee's solicitor
Chris Pinnington
FRASER & BEATTY, P.O. Box 100, 1 First Canadian Place, Toronto, Ontario M5X 1B2

For Land Registry Office Use Only
Registration No.
Registration Date
Land Registry Office No.

School Tax Support (Voluntary Election) See reverse for explanation

- (a) Are all individual transferees Roman Catholic? Yes [] No []
(b) If Yes, do all individual transferees wish to be Roman Catholic Separate School Supporters? Yes [] No []
(c) Do all individual transferees have French Language Education Rights? Yes [] No []
(d) If Yes, do all individual transferees wish to support the French Language School Board (where established)? Yes [] No []
NOTE: As to (c) and (d) the land being transferred will be assigned to the French Public School Board or Sector unless otherwise directed in (a) and (b).

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

Proceedings commenced at Toronto

**AFFIDAVIT OF GENEVIEVE WONG
(Sworn on July 12, 2017)**

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Lawyers for Oxford Properties Group

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

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

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

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Representative Counsel for Active Employees and
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component of the Sears Pension Plan, the
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benefits

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DIP Term Loan Lenders

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

(Applicants)

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

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

Proceedings commenced at Toronto

**MOTION RECORD OF THE RESPONDENT
OXFORD PROPERTIES GROUP
(Response to Applicants' Motion Returnable July 13, 2017
re: Approval of SISP and Related Relief)**

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