

**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**

B E T W E E N:

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

Applicants

**MOTION RECORD OF THE RESPONDENT,
REMINGTON PROPERTIES INC.**

**ROSS BARRISTERS
PROFESSIONAL CORPORATION**
123 John Street
Toronto ON M5V 2E2

Mark A. Ross LSUC# 50872U

Tel: 416-593-7107

MRoss@rossbarristers.com

Sarah Walker LSUC# 62427H

Tel: 416-572-4904

SWalker@rossbarristers.com

Tel: 416-572-4910

Fax: 416-551-8808

Lawyers for the Respondent
Remington Properties Inc.

TO: **SERVICE LIST**

**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**

B E T W E E N:

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

Applicants

INDEX

Tab	Description	Page No.
1	Notice of Motion	1 - 7
2	Affidavit of Randy Remington sworn November 16, 2017	8 - 11
A	Exhibit "A" – Lease Agreement between Remington Properties Inc. and Sears Canada Inc.	12 - 80
B	Exhibit "B" – 2017 Property Tax Bill	81 - 82
C	Exhibit "C" – Remington Invoice No. 620 to Sears dated June 21, 2017	83 - 84
D	Exhibit "D" – Letter from N. Wood to Sears Canada dated July 25, 2017	85 - 87
E	Exhibit "E" – Letter from M. Ritchie to Remington dated July 25, 2017	88 - 91

**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**

B E T W E E N:

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

Applicants

NOTICE OF MOTION

The Respondent, Remington Properties Inc., will make a Motion to a Judge presiding over the Commercial List on January 22, 2018 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

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

THE MOTION IS FOR

- (a) An Order providing advice and directions of the Court regarding whether Remington's invoice dated June 21, 2017 that was due and payable by Sears Canada Inc. on June 30, 2017 in the amount of \$191,651.71 for real property taxes

is properly considered an amount owing under a real property lease for the period of time commencing from and including the date of the Order of the Honourable Justice Hainey of the Superior Court of Justice dated June 22, 2017 (as amended and restated, the “**Initial Order**”) or whether it should otherwise be payable;

- (b) the costs of this Motion; and
- (c) such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

The Lease

- (a) In 1998, Remington Properties Inc. (“**Remington**”) entered into a lease agreement with Sears Canada Inc. (“**Sears**”) for a portion of the property at 70 Glendeer Circle SE Calgary, Alberta (the “**Lease**”);
- (b) In accordance with section 8.1(a) of the Lease, Sears is required to:
 - pay and discharge on or before the date when the same or the installments for the same become due:
 - (a) All real property taxes, rates, local improvement levies, except local improvement levies excluded by Section 8.6, duties and assessments levied, rated, charged or assessed against the Demised Premises and the land thereunder and under the portion of the Lands dedicated to Tenant parking as described in Section 7(h), by the relevant taxing authority or determined pursuant to Section 8.4;

Sears paid property taxes once annually, per terms of Lease

- (c) From the outset of the Lease, the practice of the parties has been as follows with respect to the annual property taxes for 70 Glendeer Circle;
- (d) At the end of May every year, Remington receives its annual property tax bill for 70 Glendeer Circle from the City of Calgary;

-3-

- (e) In accordance with section 8.1(a) of the Lease, Remington then issues an invoice to Sears for Sears' portion of the property tax bill for the entire year;
- (f) Remington requires that Sears pay its portion of the annual property tax bill by June 30th of the year in which it is sent, as the bill is due and payable to the City of Calgary by June 30th every year;
- (g) It is a requirement of the Lease per section 8.1(a) that Sears pay and discharge all real property taxes on or before the date when the real property taxes are due, and in fact it has been the usual practice of the parties over the past twenty years for Sears to pay its portion of the annual property tax in one payment when the taxes are due to the City of Calgary;
- (h) At no point in time since the Lease was signed has Sears ever paid its portion of the annual property tax bill in monthly installments;
- (i) This is the manner in which property taxes are collected in the City of Calgary. The entire year's property taxes are due and owing on June 30th;

Sears failed to pay 2017 property taxes

- (j) In 2017, Remington received the property tax bill from the City of Calgary at the end of May;
- (k) Remington issued an invoice to Sears on June 21, 2017 in respect of Sears' portion of the real property taxes, which was due and owing June 30, 2017 in the amount of \$191,651.71;
- (l) Remington calculated Sears' portion of the property tax bill by multiplying the percentage of space that Sears occupies at 70 Glendeer Circle by the amount of the property tax bill;

Sears enters CCAA protection

- (m) On June 22, 2017, Sears was granted protection under the *Companies' Creditors Arrangement Act* by the Initial Order;
- (n) Per paragraph 11 of the Initial Order, Sears is required to pay amounts owing under real property leases, including realty taxes, for the period of time commencing from and including the date of the Initial Order;
- (o) Sears must thus pay the 2017 property tax bill, as it is an amount owing under the Lease and it was due and owing after the date of the Initial Order;

Remington requests payment of Sears' portion of the annual property taxes

- (p) On July 25, 2017, counsel for Remington wrote to counsel for Sears requesting payment of Sears' portion of the 2017 real property taxes, which were due June 30, 2017 in the amount of \$191,651.71, on the basis that it is an amount owing under a real property lease for the period of time commencing from and including the date of the Initial Order;
- (q) Counsel for Sears responded that Remington should make a claim through the Court-appointed Monitor, FTI Consulting;
- (r) Typically, a landlord's property taxes are included as a portion of additional rent which is payable monthly. Accordingly, other Sears landlords collected the property tax portions of their additional rent from January to June 2017. If the additional rent was not paid, the landlords had their usual remedies;
- (s) Had Remington's lease been like other landlord leases with property taxes paid in monthly additional rent installments, Remington would have had its remedies during the first half of 2017 in the event that Sears did not pay its property taxes;

-5-

- (t) Because of the particularities of this lease and Calgary's property tax collection system, Sears' property tax payment for the entire 2017 year was due all at once;
- (u) Accordingly, in the class of landlords, if the January to June 2017 portion of property taxes is not paid, Remington will have been treated differently from the others;
- (v) It would be manifestly unfair if Remington was not able to recover the property tax owing by Sears for the January to June 2017 period while all other landlords were paid in full for the same item;
- (w) To date, Sears has not paid its portion of the 2017 real property taxes;
- (x) The Initial Order;
- (y) The provisions of the CCAA and the equitable and inherent jurisdiction of the Court;
- (z) Rules 37.01 and 57.03 of the *Rules of Civil Procedure*; and
- (aa) Such further and other grounds as the lawyers may advise.

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

- (a) The affidavit of Randy Remington, sworn November 16, 2017; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

-6-

November 20, 2017

**ROSS BARRISTERS
PROFESSIONAL CORPORATION**
123 John Street
Toronto ON M5V 2E2

Mark A. Ross LSUC# 50872U

Tel: 416-593-7107

MRoss@rossbarristers.com

Sarah Walker LSUC# 62427H

Tel: 416-572-4904

SWalker@rossbarristers.com

Tel: 416-572-4910

Fax: 416-551-8808

Lawyers for the Respondent
Remington Properties Inc.

TO: SERVICE LIST

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

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

**ROSS BARRISTERS
PROFESSIONAL CORPORATION**

123 John Street
Toronto ON M5V 2E2

Mark A. Ross (50872U)

MRoss@rossbarristers.com

Tel: 416-593-7107

Sarah Walker (62427H)

SWalker@rossbarristers.com

Tel: 416-572-4904

Tel: 416-572-4910

Fax: 416-551-8808

Lawyers for the Respondent
Remington Properties Inc.

7

**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,**

Applicants

AFFIDAVIT OF RANDY REMINGTON

I, Randy Remington, of the City of Calgary, in the Province of Alberta, MAKE OATH
AND SAY:

1. I am President and Chairman for Remington Properties Inc., and, as such, have knowledge
of the matters contained in this affidavit.

The Lease

2. In 1998, Remington Properties Inc. ("**Remington**") entered into a lease agreement with
Sears Canada Inc. ("**Sears**") for a portion of the property at 70 Glendeer Circle SE, Calgary,
Alberta (the "**Lease**"). A copy of the lease is attached as **Exhibit A**.

3. In accordance with section 8.1(a) of the Lease, Sears is required to:

pay and discharge on or before the date when the same or the installments for the same become due:

(a) All real property taxes, rates, local improvement levies, except local improvement levies excluded by Section 8.6, duties and assessments levied, rated, charged or assessed against the Demised Premises and the land thereunder and under the portion of the Lands dedicated to Tenant parking as described in Section 7(h), by the relevant taxing authority or determined pursuant to Section 8.4.

Sears paid property taxes once annually, per terms of Lease

4. From the outset of the Lease, the practice of the parties has been as follows with respect to the annual property taxes for 70 Glendeer Circle. At the end of May every year, Remington receives its annual property tax bill for 70 Glendeer Circle from the City of Calgary. In accordance with section 8.1(a) of the Lease, Remington then issues an invoice to Sears for Sears' portion of the property tax bill for the entire year. Remington requires that Sears pay its portion of the annual property tax bill by June 30th of the year in which it is sent, as the bill is due and payable to the City of Calgary by June 30th every year. It is a requirement of the Lease per section 8.1(a) that Sears pay and discharge all real property taxes on or before the date when the real property taxes are due, and in fact it has been the usual practice of the parties over the past twenty years for Sears to pay its portion of the annual property tax in one payment when the taxes are due to the City of Calgary. At no point in time since the Lease was signed has Sears ever paid its portion of the annual property tax bill in monthly installments.

5. This is how property taxes are collected in the City of Calgary. The entire year's property taxes are due and owing on June 30th.

Sears failed to pay 2017 property taxes

6. In 2017, Remington received the property tax bill from the City of Calgary at the end of May. I know this and believe it to be true because the bookkeeping department at Remington has a practice of stamping incoming mail with the date of receipt, and the 2017 property tax bill is stamped "RECEIVED MAY 29 2017". A copy of the 2017 property tax bill is attached as **Exhibit B**. Remington issued an invoice to Sears on June 21, 2017 in respect of Sears' portion of the real property taxes, which was due and owing June 30, 2017 in the amount of \$191,651.71. A copy of Remington's invoice to Sears is attached as **Exhibit C**. Remington calculated Sears' portion of the property tax bill by multiplying the percentage of space that Sears occupies at 70 Glendeer Circle by the amount of the property tax bill.

Sears enters CCAA protection

7. On June 22, 2017, Sears was granted protection under the *Companies' Creditors Arrangement Act* by Order of the Honourable Justice Haaney of the Superior Court of Justice (as amended and restated, the "**Initial Order**").

8. Per paragraph 11 of the Initial Order, Sears is required to pay amounts owing under real property leases, including realty taxes, for the period of time commencing from and including the date of the Initial Order. I understand this to mean that Sears must pay the 2017 property tax bill, as it is an amount owing under the Lease, and it was due and owing after the date of the Initial Order.

Remington requests payment of Sears' portion of the annual property taxes

9. On July 25, 2017, counsel for Remington wrote to counsel for Sears requesting payment of Sears' portion of the 2017 real property taxes, which were due June 30, 2017 in the amount of \$191,651.71, on the basis that it is an amount owing under a real property lease for the period of

time commencing from and including the date of the Initial Order. A copy of this letter to counsel for Sears dated July 25, 2017 is attached as **Exhibit D**.

10. Counsel for Sears responded that Remington should make a claim through the Court-appointed Monitor, FTI Consulting. A copy of the letter from Sears' counsel dated July 25, 2017 is attached as **Exhibit E**.

11. To date, Sears has not paid its portion of the 2017 real property taxes.

12. Typically, a landlord's property taxes are included as a portion of additional rent which is payable monthly. Accordingly, other Sears landlords collected the property tax portions of their additional rent from January to June 2017. If the additional rent was not paid, the landlords had their usual remedies.

13. Because of the peculiarities of this lease and Calgary's property tax collection system, Sears' property tax payment for the entire 2017 year was due all at once. It would be manifestly unfair if Remington was not able to recover the property tax owing by Sears for the January to June 2017 period while all other landlords were paid in full for the same item.

SWORN BEFORE ME at the City of Calgary, in the Province of Alberta on November 16, 2017

Commissioner for Taking Affidavits
(or as may be)

}

RANDY REMINGTON

Colleen Barbara-Mae Webb
My Commission expires
November 19, 2018

This is Exhibit "A" referred to in the
Affidavit of Randy Remington
sworn November 16, 2017



Commissioner for Taking Affidavits (or as may be)

Colleen Barbara-Mae Webb
My Commission expires
November 19, 2018

TABLE OF CONTENTS

	Page
1. Premises	1
2. Use	2
3. Term	2
4. Rent	4
5. Construction of Demised Premises	7
6. Termination in Event of Late Delivery	8
7. Landlord's Warranties	8
8. Taxes and Local Improvement Charges:	11
9. Tenant's Improvements	15
10. Repairs and Maintenance	17
11. Adjustments	19
12. Insurance	21
13. Indemnity	24
14. Release	25
15. Damage or Destruction	25
16. Expropriation	27
17. Tenant's Defaults	28
18. Subordination, Non-Disturbance and Attornment	29
19. Dispositions	30
20. Notices	32
21. Time of Essence	33
22. Entire Agreement	33

	Page
23. Choice of Law	34
24. Binding Effect	34
25. Rules and Regulations	34
26. Broker	34
27. Partnership	34
28. Third Party Beneficiaries	35
29. Partial Invalidity	35
30. Registration	35
31. Headings	35
32. Rights Cumulative	35
33. Environmental Matters	36
34. Prime Rate	39
35. Failure of Tenant to Operate	40
36. Limitation on Tenant's Right of Offset	40
37. General	40
38. Force Majeure	40
39. Acceptance	42

SCHEDULES:

- A - Site Plan
- B - Base Building Specifications and Landlord's Improvements
- C - Permitted Encumbrances

Section	Defined Term
4(e)	Adjustments
5(a)	Base Building
27	Broker
1(a)	Building
10(a)(i)	Building Fabric
1(a)	Centre
1(c)	Centre GLA
3(b)	Commencement Date
1(b)	Common Areas
1(a)	Demised Premises
4(e)	Demised Premises GLA
3(c)	Extension Term
11(a)	Exterior Maintenance Costs
3(a)	Fixturing Term
38	Force Majeure
8.1(c)	GST
34(d)	Hazardous Material
3(b)	Initial Term
1(a)	Land
cover page	Landlord
5(a)	Landlord's Improvements
8.2	Landlord's Taxes
3(g)	Lease Year
19(a)	Mortgagee
7(b)	Permitted Encumbrances
34	Prime Rate
11(d)	Proportionate Share
4(b)	Rent
1(a)	Site Plan
cover page	Tenant
9(a)	Tenant's Improvements
3(c)	Term

WHEREAS Landlord and Tenant have agreed to enter into this Lease.

In consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties do hereby agree and covenant each with the other as follows:

1. Premises

(a) Landlord leases to Tenant and Tenant leases from Landlord the following premises (the "Demised Premises") situated in the City of Calgary, Province of Alberta, located on the land (the "Lands") more particularly described as:

Plan 9111439
Block 3
Lots 4 and 5
Excepting thereout all mines and minerals

outlined in red on the Site Plan attached hereto as Schedule "B" (the "Site Plan") being the building comprised of approximately 42,891 square feet located thereon (the "Building") and known municipally as Glendeer Circle S.E., Calgary, Alberta, as shown outlined in blue on the Site Plan. The Demised Premises is one of the buildings located upon the Lands and all of the buildings and the Lands shown on the Site Plan are collectively called the "Centre".

(b) The gross leasable area of the Demised Premises is approximately 42,891 square feet (the "Demised Premises GLA"), the actual area to be established pursuant to the provisions of Sections 4(e), 4(f) and 4(g). Common Areas means the Centre other than the Demised Premises and areas intended for lease to others.

(c) The gross leasable area of the Centre is approximately 64,424 square feet (the "Centre GLA"), the actual area to be established pursuant to Sections 4(e), (f) and (g).

2. Use

The Demised Premises may be used by Tenant for the sale, servicing of and storing of merchandise, all other items or services normally sold in Sears stores and all other lawful uses other than an autobody repair shop, auto paint shop, automobile rental or leasing and a used car or truck dealership. Tenant agrees to comply with all federal, provincial and governmental laws, rules, regulations and ordinances applicable to Tenant's use of the Demised Premises. Tenant will set its hours and days of operation, in its sole and absolute discretion.

3. Term

(a) Fixturing Term

Landlord agrees to grant Tenant access to the Demised Premises, twelve (12) weeks prior to the Commencement Date, for the purpose of fixturing, decorating and otherwise preparing the Demised Premises for Tenant's retail operations (the "Fixturing Term"). Neither the entry of Tenant, nor the start of Tenant's retail selling operations shall be deemed an acceptance of completion of the Landlord's work in constructing the Landlord's Improvements or delivery of the Demised Premises or a waiver of Tenant's rights for failure of Landlord's completion of the Landlord's Improvements or delivery of the Demised Premises. In the event Tenant occupies the Demised Premises prior to its final completion by Landlord and acceptance thereof by Tenant, the risk of loss or damage to Tenant's merchandise and fixtures caused by fire or other casualty shall be insured against under an endorsement to a policy of builders all risk insurance, and Landlord will indemnify Tenant against any and all losses and protect, defend and hold Tenant harmless from all liability arising from such losses, and will obtain, or cause to be obtained, insurance against such losses, damages, liabilities, costs and expenses. The Tenant represents to the Landlord the total replacement cost insurable values of Tenant's fixtures and furniture are \$1,125,000, and inventory is \$250,000 for a total of \$1,375,000. The parties intend to begin the Fixturing Term on or before July 1, 1998 and in any event, subject to Section 6, no later than September 1, 1998.

(b) Initial Term

The initial term of this Lease shall commence on the Commencement Date (as hereinafter defined) and terminate ten (10) years thereafter (the "Initial Term"). The Commencement Date shall be the earlier of: (i) the date the Tenant opens for business with the public in the Demised Premises; and (ii) twelve (12) weeks after the date on which the Landlord has substantially completed the Demised Premises (and provided Tenant with an architects certificate confirming same), subject to Section 5 (herein called the "Commencement Date"). The parties shall specify the Commencement Date by supplemental agreement.

Notwithstanding the date set for the commencement of the Initial Term, all provisions of this Lease shall be effective as of the date of the commencement of the Fixturing Term, save and except that no Rent, additional charges or taxes shall be payable by Tenant, other than the cost of utilities consumed by Tenant on the Demised Premises.

(c) Renewal Terms

Landlord grants to Tenant two (2) consecutive five (5) year options to extend the Initial Term, (each five year term called an "Extension Term" and collectively called the "Extension Terms") on the same terms and conditions as this Lease, except as to: (i) Rent, which shall be as set out in Sections 4(c) and 4(d); and (ii) there shall be no Fixturing Term, and no free Rent period during such Extension Terms. Such options shall be exercisable by written notice by Tenant to Landlord no later than six (6) months prior to the expiration of the Initial Term, or the first Extension Term, as the case may be. Landlord agrees to remind the Tenant, in writing, ninety (90) days prior to the last date for the Tenant to give notice, of the upcoming option to extend the Term. During any extension, all provisions of this Lease will be effective.

The Fixturing Term, the Initial Term and any Extension Terms or such shorter period provided for in this Lease shall be collectively called the "Term".

- (d) Upon the expiration of this Lease, or its earlier termination, Tenant will surrender to Landlord possession of the Demised Premises in broom-clean condition, at the end of the Term or earlier termination thereof.
- (e) If Tenant remains in possession of the Demised Premises after expiration of this Lease or termination of this Lease as provided herein, Tenant's holding over shall constitute a month-to-month tenancy at the same Rent rate as the Tenant paid in the month immediately prior to such expiration or termination.
- (f) Notwithstanding anything contained in this Lease to the contrary, Tenant does not expressly or impliedly, directly or indirectly, agree to open or to operate a business in the Demised Premises.
- (g) The term "Lease Year" as used in this Lease shall mean each consecutive twelve (12) calendar month period during the Term with the first Lease Year commencing on the first day of the Initial Term if the Initial Term begins on the first day of a calendar month, or the first day of the first full calendar month after the first day of the Initial Term if the first day of the Initial Term is not the first day of a calendar month, and each successive Lease Year shall commence on the anniversary of the first day of the first Lease Year. Any Rent or other charges or payments for any months which are less than a full calendar month shall be prorated on a per diem basis.

4. Rent

- (a) Rent shall begin to accrue from, and the initial Rent payment shall be due to Landlord on the Commencement Date. Landlord will designate one person, firm or corporation to receive Rent payments. The Rent shall be made payable to Landlord and mailed to Landlord's address as outlined in Section 20 of this Lease until the payee or address is changed by written notice from Landlord or other person legally entitled to do so to Tenant. The Landlord's G.S.T. Registration Number is 897 430 898. The parties agree that no overage or percentage rent shall be paid under this Lease.

- (b) Tenant agrees to pay to the Landlord base rent ("Rent") under the following schedule as of the Commencement Date:

Fixturing Term	NIL
Lease Years 1 - 10	\$11.00/square foot of Demised Premises GLA per year

or a proportionate sum during partial months in advance, on the first day of each month.

- (c) If Tenant exercises its first option to extend this Lease, Tenant agrees to pay as Rent during the first Extension Term, the sum of \$12.00/square foot of Demised Premises GLA per Lease Year under the same conditions as set forth in Subsection 4(b) above.
- (d) If Tenant exercises its second option to extend this Lease, Tenant agrees to pay as Rent during the second Extension Term, the sum of \$13.00/square foot of Demised Premises GLA per Lease Year under the same conditions as set forth on Subsection 4(b) above.
- (e) Upon completion of the construction required of Landlord under Section 5 and acceptance of the Demised Premises by Tenant, Landlord shall provide Tenant with a certificate from a licensed architect in the province in which the Demised Premises is located certifying the number of square feet of gross leasable area in the Building (the "Demised Premises GLA"). The Rent shall be adjusted based upon such certificate, subject to Tenant's right to challenge such numbers as provided in Section 4(f). After such certificate is delivered, Landlord and Tenant agree to enter into an agreement specifying the monthly Rent due hereunder. Notwithstanding the foregoing, Tenant shall not be required to pay Rent based upon Demised Premises GLA in excess of 43,500 square feet, without the prior written consent of Tenant, which written consent must specifically provide that Tenant agrees to pay such additional Rent for space in excess of 43,500 square feet of gross leasable area.
- (f) Notwithstanding Section 4(e) above, the Demised Premises GLA is subject to verification by Tenant. If Tenant's architect certifies that there are fewer gross leasable square feet in the Demised Premises than set forth in the certificate delivered by Landlord pursuant to Subsection 4(e) above, then the Rent payable by Tenant under Section 4 shall be

reduced accordingly. If Tenant challenges said figures, Landlord and Tenant agree to enter into a new agreement specifying the Rent. In the event Landlord challenges any such certification from Tenant's architect, then unless Landlord and Tenant reach an agreement within thirty (30) days of such challenge, the dispute shall be resolved by Landlord's architect and Tenant's architect, who, after making such surveys or measurements as either consider to be appropriate, shall submit their joint determination and resolution of the Demised Premises GLA; provided that if such architects reach different conclusions and for that reason do not agree on the amount of the Demised Premises GLA within thirty (30) days of their first meeting on the issue (which shall be scheduled, if possible, within ten (10) days after the parties have determined that they cannot reach an agreement and that the issue should be decided by the architects), the two architects shall select a third and independent architect to resolve such lack of agreement either by agreeing with the conclusions of Tenant's architect or with those of Landlord's architect, or by such third architect's own determination. If the two architects cannot agree on the selection of a third architect, each shall designate two independent architects, and the third architect then shall be chosen at random by lot from the four names. Each party shall be responsible for the fees and charges of its architect, and shall equally share in and be responsible for those of the third architect if one is appointed. The resultant square footage figure and changes, if any, in the Rent shall be confirmed by a written supplement to this Lease.

- (g) For the purposes of this Lease, the Demised Premises GLA shall be calculated by measuring to the exterior of ground floor exterior walls and to the centre of interior walls or walls shared with other premises and shall exclude mezzanines not open to the public.
- (h) For greater clarity it is agreed that except as specifically provided otherwise in this Lease, this is a net lease wherein the Rent payable hereunder by the Tenant is absolutely net to the Landlord and that all operating costs other than as specifically provided herein and specifically excluding Landlords' Taxes and structural repairs, shall be paid by the Tenant.

5. Construction of Demised Premises

- (a) Landlord shall construct a base building with the basic attributes set out in Schedule "B" attached hereto (the "Base Building") and shall perform the work listed on Schedule "B" attached hereto (collectively, the "Landlord's Improvements")
- (b) Landlord shall diligently pursue and complete construction of the Landlord's Improvements as set out in Schedule "B". Landlord agrees to use its best efforts to complete the Landlord's Improvements and deliver the Demised Premises to Tenant on or before July 1, 1998. Landlord shall provide Tenant with periodic progress reports no less frequently than monthly.
- (c) During Landlord's construction period, and prior to Tenant's occupancy, Tenant shall have the right to place signs, subject to compliance with applicable laws, on and adjacent to the Demised Premises announcing Tenant's forthcoming occupancy and intentions.
- (d) Promptly after Tenant commences retail selling operations on the Demised Premises, Landlord agrees to obtain from its architect and to deliver to Tenant, a complete set of "as built" plans for the Demised Premises and specifications for the construction thereof, incorporating all changes made during the course of construction.
- (e) Notwithstanding anything to the contrary contained herein, Tenant shall have no obligation to pay Rent or other charges hereunder until the parking area, exterior areas on the Demised Premises (other than landscaping which will be completed by Landlord when weather permits) and means of ingress and egress as indicated in pink on the Site Plan, all as shown in Schedule "A", are substantially completed by Landlord, or until the Tenant opens for business with the public in the Demised Premises.
- (f) Tenant reserves the right to approve any changes to the improvements to be constructed on the Demised Premises from those shown on the Site Plan, such approval not to be unreasonably withheld.

- (g) All site engineering data available to Landlord shall be delivered to Tenant as and when the same is available to Landlord.

6. Termination in Event of Late Delivery

Notwithstanding anything to the contrary set forth herein, and subject to Force Majeure, if Landlord does not deliver the Demised Premises to Tenant with the Landlord's Improvements substantially completed all as provided in Schedule "B" of this Lease, and means of ingress and egress on or before September 1, 1998; then Tenant shall have the option to terminate this Lease upon written notice to Landlord, delivered to the Landlord prior to September 30, 1998, without cost or penalty to Tenant. Provided however, that if Landlord delivers the Demised Premises to Tenant and means of ingress and egress as hereinbefore provided before Tenant exercises its option to terminate this Lease, Tenant shall not be entitled to terminate this Lease.

7. Landlord's Warranties

Landlord warrants and represents that presently, and during the Term:

- (a) Landlord has the full power and authority to execute and deliver this Lease and to perform its obligations under this Lease.
- (b) Landlord holds good and marketable title to the Demised Premises and to all improvements, equipment, fixtures and all other personal property appertaining thereto, free and clear of all restrictions, covenants, easements, mortgages, tenants and occupancies in the Demised Premises and any other encumbrances, other than those set forth on Schedule "C" attached hereto and made a part hereof ("Permitted Encumbrances")
- (c) The execution and delivery of this Lease shall not be precluded by or cause a breach of any agreement, mortgage, contract or other instrument or document to which Landlord is a party or to which the Demised Premises is subject.

(d) The Demised Premises are, and after completion of the construction of the Base Building and Landlord's Improvements, will be in good condition and repair, and in full compliance with all applicable laws, regulations, environmental laws and building and health codes. Landlord shall obtain all necessary governmental consents, permits, approvals and zoning approvals for the construction and operation of Tenant's store as described in Section 2 above, on the Demised Premises, and shall provide Tenant with evidence of satisfactory zoning for the use described in Section 2 above. Landlord is not aware of any change of zoning as of the Commencement Date and will do no acts which would change the zoning of the Demised Premises to render the initial use thereof as a retail store illegal or unlawful during the Term.

Landlord agrees, at Landlord's expense, to remove any Hazardous Materials or toxic materials from the Demised Premises other than such materials as may have been brought on to the Demised Premises by the Tenant. Landlord having delivered to Tenant a Phase 3 Environmental Audit Report dated November 10, 1997 from EBA Engineering Consultants Ltd. (the "Environmental Report") (In accordance with industry standards) warrants and represents that to the best of its knowledge based upon the Environmental Report, to the date of such Report and thereafter to the best of its knowledge, after due enquiry, any use, storage, treatment or transportation of Hazardous Material, if any, that has occurred in or on the Demised Premises prior to the Term, has been remediated and the condition of the Centre is now in compliance with all applicable federal, provincial and local laws, regulations and ordinances except as may be disclosed in such Environmental Audit Report. Landlord additionally warrants and represents that, to the best of its knowledge based upon the Environmental Report, to the date of such Report and thereafter to the best of its knowledge, after due enquiry, no release, leak, discharge, spill, disposal or emission of Hazardous Material has occurred in, on, or under the Demised Premises other than as referred to in the said Environmental Audit Report and that the Demised Premises are free of Hazardous Material as of the commencement of the Term, and that there are no underground storage tanks under the Demised Premises.

(e) Tenant, upon paying the Rent and performing its obligations as herein provided, shall and may peaceably and quietly have, hold and enjoy the Demised Premises.

- (f) All utilities, including gas, electric, telephone, water, sanitary sewer and other utilities sufficient to meet Tenant's requirements for the use as disclosed in Section 2 above, shall be available in the Demised Premises as part of the Demised Premises at Landlord's cost. Landlord shall supply, install and maintain at its sole cost, adequate separate meters for the purpose of measuring all utilities payable by Tenant and consumed by Tenant in the Demised Premises (except water which may be allocated in a manner to be agreed upon between the parties and except for electricity for the exterior Building lighting and signage which shall be bulk metered and for which the Tenant shall pay its Proportionate Share). Tenant agrees to pay charges for utility services furnished and used by Tenant in the Demised Premises during the Term, excluding any and all connection fees, hook-up charges, impact fees and other similar costs related to the initial start-up expenses for providing such services to the Demised Premises. Tenant shall also pay its Proportionate Share of landscaping and snow removal costs.

- (g) The Land and exterior areas, including the paved areas, any parking and sidewalks, shall be maintained by Landlord in first-class condition and repair, and usable for the purposes intended.

- (h) Landlord shall not reduce the ratio of parking spaces to the number of square feet of Demised Premises GLA, which ratio is at least four cars per 1,000 square feet of Demised Premises GLA, nor charge for any of the parking spaces, nor relocate or reconfigure the parking spaces in, on or serving the Demised Premises, nor lessen the total number of parking spaces, without the prior written consent of Tenant, such consent not to be unreasonably withheld.

- (i) The Demised Premises will be equipped with a heating and air conditioning plant and with a distribution system and controls sufficient to maintain temperature and ventilation levels as set out in Schedule "B".

- (j) Landlord shall construct the Demised Premises in accordance with Schedule "B" in a first class manner and maintain the Demised Premises in a first-class manner.

- (k) Landlord shall develop the Demised Premises in accordance with the Site Plan. Subject to: (i) extensions as set out elsewhere in this Lease; (ii) future development as indicated on the Site Plan; and (iii) landscaping being completed at a later date (weather permitting), Landlord agrees to substantially complete the construction of the Demised Premises, in accordance with the Site Plan, on or before September 1, 1998 subject to Force Majeure. Landlord warrants that Landlord shall make no changes to the Demised Premises which affect Tenant's sight lines, visibility, parking, access, ingress or egress, without Tenant's prior written consent, such consent not to be unreasonably withheld.
- (l) Landlord estimates that insurance costs for the insurance specified under Section 11, for the first Lease Year will be \$3,000.00.
- (m) Landlord estimates that real estate taxes levied against the Demised Premises for the first Lease Year will be \$75,000.00.
- (n) Landlord estimates that Exterior Maintenance Costs for the first Lease Year will be \$12,000.00.
- (o) Landlord has delivered to Tenant all engineering data available to Landlord for the Demised Premises and will continue to do so throughout the Term.
- (p) Landlord has clear title to the Demised Premises except as set out herein, and there shall be no encumbrances (other than Permitted Encumbrances) that will substantially affect the interest of the Tenant.

8. Taxes and Local Improvement Charges:

8.1 Tenant's Taxes: Subject to Tenant's rights of contestation from and after the commencement of the Fixturing Term and thereafter during the Initial Term and any Extension Term, Tenant will pay and discharge on or before the date when the same or the instalments for the same become due:

- (a) All real property taxes, rates, local improvement levies, except local improvement levies excluded by Section 8.6, duties and assessments levied, rated, charged or assessed against the Demised Premises and the land thereunder and under the portion of the Lands dedicated to Tenant parking as described in Section 7(h), by the relevant taxing authority or determined pursuant to Section 8.4.
- (b) All taxes and licence fees in respect of the business conducted in or from the Demised Premises and the portion of the Lands used for Tenant's parking, or in respect of the occupancy thereof by Tenant, including without limitation, all business taxes (or any tax imposed in lieu thereof), water and garbage taxes, and licences.
- (c) In addition to the Rent payable hereunder, Tenant will pay to Landlord (acting as agent for the taxing authority if applicable) or directly to the taxing authority (if required by the applicable legislation), the full amount of all goods and services tax, sales taxes, value-added taxes, multi-stage taxes, business transfer taxes and any other taxes (collectively and individually, "GST") imposed on Tenant in respect of the Rent and other amounts payable by Tenant under this Lease, or in respect of the rental of space by Tenant under this Lease. GST so payable by Tenant (i) will be calculated and paid in accordance with the applicable legislation; and (ii) notwithstanding anything else contained in this Lease, will be considered not to be Rent, but Landlord will have all of the same remedies for and rights of recovery with respect to such amount as it has for non-payment of Rent under this Lease or at law. To avoid duplication, Tenant will not reimburse Landlord, in whole or in part, for any GST paid or payable by Landlord in respect of goods or services supplied to Landlord or any manager of the Demised Premises in connection with the maintenance, operation, repair, insurance or administration of the Demised Premises.

8.2 Landlord's Taxes Excepted: Notwithstanding Section 4(h), nothing in this Lease shall be construed to require Tenant to pay any franchise, estate, inheritance, succession, capital or transfer tax of Landlord, or any income, excess profits, revenue tax or any other tax, impost or levy of a personal nature, charged or levied upon Landlord (all of which are collectively called "Landlord's Taxes").

8.3 Property Taxes: Landlord will pay or cause to be paid, on or before the date when the same or the instalments for the same become due, all real property taxes charged or assessed against the Centre, except those payable by Tenant pursuant to Section 8.1. Landlord will be solely liable for any penalties levied as a result of breach of its covenant in this Section 8.3. Tenant shall be solely liable for any penalties levied as a result of breach of its covenants in Section 8.1.

8.4

- (a) **Determination of Assessments:** Landlord will obtain, if reasonably possible, a separate assessment and tax bill in respect of the Demised Premises (including the portion of the Lands dedicated to Tenant parking pursuant to Section 7(h)) pursuant to Section 8.1(a) as if the Tenant were the owner thereof, and provide to Tenant a copy of such assessment and tax bill.
- (b) Landlord will provide or cause the assessment authority to provide Tenant with all detail and data applied by the assessment authorities to determine the assessment referred to in Section 8.4(a), as Tenant may request, acting reasonably.
- (c) Subject to the provisions of Section 8.4(a) and Section 8.4(e) herein, in the absence of such a separate assessment, a separate assessment for the Demised Premises (including the portion of the Lands dedicated to Tenant parking pursuant to Section 7(h)) will be determined by Landlord and Tenant in accordance with the current method of assessment applied by the assessment authorities to arrive at the assessment for the Demised Premises and any apportioning thereof.
- (d) In the event that separate business tax assessments are no longer utilized, and business taxes are eliminated by the taxing authority in favour of additional real property taxes on the whole of the Centre, Landlord and Tenant, acting reasonably, shall review and make adjustments, as necessary, to Tenant's obligation to pay taxes under Section 8 herein.

- (e) In the event that the method of assessment is amended or changed by the assessment authorities, then Landlord and Tenant will review and make any necessary adjustment to the assessment attributable to the Demised Premises in accordance with Section 8.4(c) of this Lease.
- (f) In addition to any other rights of appeal contained in this Lease, and at its sole cost, Tenant shall be permitted the right to appeal any assessment resulting in taxes to be paid by Tenant pursuant to Sections 8.4(c) and 8.4(d) herein, and Landlord agrees to cooperate and assist Tenant at no expense to Landlord in pursuing such right of appeal.

8.5 Apportionment: All taxes, rates, duties, assessments, licence fees and operating charges payable by Tenant will be apportioned for the first and last years of the Initial Term and any Extension Term on a per diem basis.

8.6 Local Improvements: Tenant will not be liable for the payment of any public or local improvement levies or assessments for services approved, installed or assessed (or that have been approved but not installed) prior to the Commencement Date. In the event that Landlord receives notice that services are proposed to be installed which will or might result in a local improvement levy being imposed against the Demised Premises, Landlord will provide Tenant with the opportunity to present a submission to the appropriate authorities with respect to the proposed local improvement and the imposition of such levy and Tenant may enjoy all rights that Landlord may have with respect to opposing the local improvement and the imposition of such levy, insofar as they relate to the Demised Premises.

8.7 If any local improvement levy is imposed by the relevant municipal taxing authority against the Demised Premises and is payable by Tenant as provided in Section 8.1(a), Tenant will have the option:

- (a) In the event the municipal taxing authority permits the payment of the local improvement levy by a lump sum prepayment, to pay such lump sum prepayment as imposed and as permitted by the municipal taxing authority:

- (b) In the event that the municipal taxing authority amortized the local improvement levy over a period of time of ten (10) years or more, to pay such annual local improvement levy as imposed and as permitted by the municipal taxing authority; or
- (c) In the event that the local improvement levy is amortized by the municipal taxing authority over a period of less than ten (10) years, and the balance of the then existing Initial Term or Extension Term is less than the said amortization period, to require Landlord to pay such local improvement levy either by way of lump sum prepayment or as permitted by the municipal taxing authority, and Tenant shall pay to Landlord monthly during the balance of the then existing Initial Term or Extension Term an amount sufficient to amortize the local improvement levy over a period of ten (10) years calculated at the Prime Rate.

In no event however, will Tenant's obligation to pay the annual amount referred to Sections 8.7(b) and 8.7(c) above continue beyond the Term, or applicable Extension Terms, if any.

8.8 Landlord To Pay In Instalments: Unless otherwise required by Tenant under Section 8.6 and Section 8.7 of this Lease, or in case the Landlord has been unable to collect from the Tenant the full amount of taxes then due, Landlord is deemed to pay by instalments every tax, rate, duty and assessment which may be paid by instalments.

8.9 Mode of Payment: Tenant at its option, will pay the amounts owing, subject to Section 8, to Landlord, in equal monthly instalments based on Landlord's estimate of taxes for the year, to be adjusted at year end, or directly to the appropriate taxing authority when such amounts owing are due. Tenant shall advise Landlord in writing, in a timely fashion of its election in this regard.

9. Tenant's Improvements

- (a) Tenant shall have the right, at its sole cost, at any time, to make non-structural alterations, additions, improvements or, replacements, including, but not limited to,

lighting, electrical wiring and Tenant's usual and customary signage (collectively, "Tenant's Improvements")

Tenant shall be entitled to erect (i) a sign on the facade over the entrance to the Building and (ii) a sign on the side and/or the rear of the Building, subject to necessary government approvals and permits being obtained by Tenant. "Sears" shall appear on all Landlord's pylon signs associated with the Centre in a position that is more prominent than any occupant, if any, of such pylon sign.

- (b) As part of Tenant's Improvements, Tenant has the right, subject to the approval of all governmental authorities having jurisdiction, to install or require Landlord to install, at Tenant's sole cost, a receiving and/or transmitting satellite dish on the roof of the Building or elsewhere on the Centre in the immediate vicinity of the Building. Such location shall be reasonably determined and mutually agreeable to Landlord and Tenant. Tenant shall be responsible for obtaining all the necessary permits to install such satellite dish, but Landlord agrees to cooperate with Tenant in obtaining such permits, if necessary.
- (c) Landlord, at Tenant's cost, shall assist Tenant in securing building and other permits or authorizations required for Tenant's Improvements.
- (d) All of Tenant's Improvements which are so permanently attached or affixed to the Demised Premises that their removal would cause substantial damage to the Demised Premises shall become the property of Landlord upon the expiration of this Lease, unless Tenant, in its sole discretion, prior to the expiration of this Lease, removes them and repairs the damage caused by their removal. All trade fixtures, machinery, equipment and personal property shall be the property of Tenant upon the expiration of this Lease, and Tenant shall be entitled to remove them prior to the expiration of this Lease, making good all damage caused by such removal.

10. Repairs and Maintenance

(a) Subject to Section 11, below, Landlord shall, at its cost, during the Term:

(i) Maintain, repair and/or replace when necessary all Building Fabric. "Building Fabric" means the permanent building structural elements, including without limitation, exterior walls, bearing walls, concrete floor slab, windows and door frames damaged due to building settlement, roofs (except for repairs and maintenance thereto which shall be Tenant's cost), trusses, columns, beams, structural slabs, foundations and electrical wires, pipes and conduits buried within the Building Fabric of the Demised Premises, plate glass damaged by building settlement, and floor and ceiling tiles, to the extent such tiles are damaged due to structural defects or weaknesses in the Demised Premises or due to faulty construction of or improper materials or workmanship in the construction of the Demised Premises.

(ii)

1) Maintain, repair and/or replace when necessary, all storm, sewage and drainage systems, other utility facilities, parking lot areas, lighting and other exterior areas which affect, relate to or benefit the Demised Premises;

2) Notwithstanding the foregoing, the cost of maintenance and repairs to the parking lot areas, lighting and other exterior areas shall be paid by the Tenant.

(iii) Make all repairs or replacements necessary due to or arising out of the negligence of Landlord, its agents or employees, or by reason of the breach of this Lease by Landlord.

(iv) Perform all required work not expressly identified in Subsection 10(b).

- (v) Intentionally deleted.
 - (vi) Use its best efforts to enforce all warranties and guarantees received in connection with the Demised Premises. Notwithstanding such efforts, Landlord shall not be relieved from any obligations herein. At Tenant's option, Tenant may require Landlord to assign Tenant any or all guaranties and warranties with respect to the equipment forming part of the Demised Premises and for which the Tenant is responsible to maintain pursuant to Section 10(b), to the extent that such guarantees and warranties are assignable.
 - (vii) Subject to Section 11 and subject to Section 10(a)(ii)(2), perform all required off-site work, including the capital cost for construction or renovation of, to, or improvements on, the Land, and the Demised Premises facilities, including, but not limited to, perimeter streets, access roads, landscaped parking lots, lighting, curbs around building areas and utilities, electrical, water, sewer, storm drain and telephone, but excluding the initial costs of construction of the Demised Premises, the Common Areas or the Centre.
- (b) Tenant shall, at its cost, during the Term:
- (i) Make all repairs and/or replacements (except such repairs or replacements that are Landlord's responsibility, or become necessary as a result of the negligence of Landlord or its agents or employees or due to any loss by fire or other casualty) within the interior of the Demised Premises, which become necessary during Tenant's occupancy of the Demised Premises, reasonable wear and tear excepted, including repair and replacement of all new and fully functional heating and air-conditioning equipment and other Base Building systems used exclusively for the Demised Premises (except wires, pipes and conduits buried within the Building Fabric of the Demised Premises, which shall be Landlord's responsibility), and repair or replacement of plate glass damaged other than by building settlement, except as otherwise provided in Section 10(a)(i).

- (ii) Keep the Demised Premises in a clean condition, including interior painting of the Building as required after Landlord's initial painting of interior walls, meeting applicable city ordinances.
- (c) After making an attempt to contact Landlord, Tenant shall have the right at all times, acting reasonably, without prior notice to Landlord, to make emergency repairs or replacements as Tenant deems necessary, acting reasonably, for such repairs or replacements which are Landlord's responsibility pursuant to Section 10(a). Within 30 days of demand by Tenant, Landlord shall pay Tenant an amount equal to the reasonable cost of the repair.
- (d) Landlord shall, upon prior notice to Tenant, have access to the Demised Premises, at reasonable intervals during normal business hours, for examining or repairing the Demised Premises, and Landlord may enter at any time for emergency repairs. Notwithstanding the foregoing, Landlord shall not unreasonably interfere with the conduct of Tenant's business and shall observe the Tenant's reasonable security rules, except in case of emergency.
- (e) If Landlord fails to promptly perform the obligations in Section 10(a) hereof after being given reasonable written notice by Tenant, Tenant shall have the right to make any repairs or cure any defaults thereunder and to recover Tenant's reasonable costs in respect thereof from Landlord. Landlord shall pay Tenant such costs forthwith upon written demand by Tenant.

11. Adjustments



Tenant agrees, from and after the Commencement Date and during the remainder of the Term, and any Extension Terms, to reimburse Landlord without duplication for its Proportionate Share (as defined in Section 11(d)) of:

- (a) Exterior Maintenance Costs, which shall be defined as: (i) insurance costs pursuant to Section 12.1(d), (f) and (g), (ii) routine maintenance expenditures limited to actual cash expenditures pursuant to Section 10(a)(ii)(2) undertaken to repair and preserve and

operate the exterior Common Areas of the Centre including the resurfacing of the parking lot, when necessary, provided the original installation meets current industry standards, and the cost of which shall be amortized on a straight line basis over the expected life of the resurfacing, (iii) snow removal, grading and landscaping, and (iv) electricity for the exterior Building lighting and signage which shall be bulk metered and for which Tenant shall pay its Proportionate Share. For greater certainty, exterior maintenance costs and the exterior areas of the Centre shall not include the underground parking serving the office building which forms part of the Centre. Notwithstanding the foregoing and anything to the contrary in this Lease, any Exterior Maintenance Costs pursuant to Subsection 11(a)(ii) which are capital in nature shall be amortized on a straight line basis over the expected life of the repair or replacement. Tenant shall pay interest calculated at the aggregate of The Toronto Dominion Bank's prime rate for commercial loans to its best commercial customers plus 2% per annum, on the unamortized portion of the costs so incurred.

- (b) On the first day of each month, Tenant shall pay Landlord one-twelfth (1/12th) of estimated annual Exterior Maintenance Costs for that month based on the prior Lease Year's costs for the same period, except for the first Lease Year, which will be based on the estimate provided by the Landlord in Section 7(l) and (n). At the end of each Lease Year, Landlord shall adjust these charges to reflect actual costs, and reimburse Tenant for any overpayments, or Tenant shall reimburse Landlord for any deficiencies within thirty (30) days of receipt of such notice and statement evidencing such overpayment or deficiency, as the case may be. Landlord shall permit Tenant or Tenant's auditors, with reasonable notice, to inspect all records for Exterior Maintenance Costs, insurance costs, real estate taxes or any other expenses passed on to Tenant under this Lease. Landlord shall promptly repay Tenant for any overpayments or unsupported costs which Tenant or its auditors identify. Landlord shall pay the reasonable cost of Tenant's audit if overpayments or unsupported costs exceed actual costs of such component (i.e. Exterior Maintenance Costs, insurance and real estate taxes shall each be different components) by four percent (4%) or more.

- (c) An administration fee being 2% of the annual net Rent (exclusive of GST) payable under this Lease, such fee to be payable monthly, in advance at the same time as Exterior Maintenance Costs.
- (d) Proportionate Share means the ratio that the Demised Premises GLA bears to the Centre GLA.

12. Insurance

12.1 Landlords Insurance

Landlord hereby agrees and covenants that it will, at its sole expense, subject to Section 11 hereof, obtain and maintain, from the date of commencement of the construction of the Demised Premises throughout the Initial Term (and any Extension Term) the following policies of insurance covering the Centre, including the Demised Premises, from a company or companies satisfactory to Tenant, and adequate to fully protect Tenant and Landlord from and against all expenses claims, actions, liabilities and losses arising out of subjects covered by said policies of insurance:

- (a) Workers' Compensation coverage with the applicable provincial Workers' Compensation Board and/or contingent Employer's Liability Insurance covering all persons employed or working on or in the Demised Premises;
- (b) Comprehensive General Liability Insurance, containing a Contractual Liability Endorsement specifically covering Landlord's indemnification of Tenant under this Lease, with a limit of liability of not less than Two Million Dollars (\$2,000,000.00) for bodily injury, death and property damage. The policy must contain a Cross Liability clause. The policy must also provide for Non-Owned Automobile Liability coverage;
- (c) Motor Vehicle Liability Insurance covering all vehicles used by Landlord in connection with the Centre with limits of not less than Two Million Dollars (\$2,000,000.00), combined single limit for bodily injury, death and property damage per accident;

- (d) All Risk Property Insurance upon the Demised Premises, including building equipment and merchandise utilized in the operation of the Demised Premises in an amount not less than the Full Replacement Cost thereof;
- (e) Builder's All Risk Insurance upon the Centre, during its construction covering the Landlord's contractor's, subcontractor's and Tenant's equipment and improvements, and during the Fixturing Term, Tenant's fixtures and merchandise used in the operation of the Demised Premises in an amount not less than the Full Replacement Cost thereof;
- (f) loss of rental income insurance in respect of the Demised Premises; and
- (g) such other forms of insurance in respect of the Demised Premises that the Landlord or the Mortgagee acting reasonably consider advisable.

All policies of insurance mentioned above will name Tenant as Additional Insured. Such policies shall not be subject to material change or cancellation except upon at least thirty (30) days prior written notice addressed to Sears Canada Inc., 222 Jarvis Street, Department 765, Risk and Insurance, Toronto, Ontario, M5B 2B8. The Landlord's insurance will be in those reasonable amounts and with those reasonable deductibles with deductibles being at the Landlord's risk, that a prudent owner of a similar Centre would maintain, having regard to size, age and location.

Landlord shall furnish Tenant with copies of all such policies or certificates of insurance as evidence of such insurance prior to the commencement of the construction of the Demised Premises. Upon request by Tenant, Landlord will furnish Tenant with certificates of insurance upon the anniversary date(s) of all applicable policies described herein, including, but not limited to, confirmation of Workers' Compensation coverage. If in the Tenant's reasonable opinion, such policies do not afford adequate protection for Tenant, Tenant will so advise Landlord in writing and if Landlord does not furnish evidence of such additional coverage within thirty (30) days, Tenant shall have the right, at its option, to obtain such additional insurance and exclude the same from the reimbursement of the Landlord pursuant to Section 12.2.

Any approval by Tenant of any of Landlord's insurance policies or additional insurance obtained by Tenant on Landlord's behalf shall not relieve Landlord of any responsibility hereunder.

12.2 Tenant's Insurance

- (a) Tenant hereby agrees and covenants that it will, at its sole expense, obtain and maintain throughout the Initial Term (and any Extension Term) plate glass insurance and Comprehensive General Liability Insurance, containing a Contractual Liability Endorsement specifically covering Tenant's indemnification of Landlord under this Lease with a limit of liability of not less than Two Million Dollars (\$2,000,000.00) for bodily injury, death and property damage. The insurance will include an endorsement to the policy containing an undertaking to provide at least thirty (30) days prior notice to the Landlord in writing of any material changes, cancellation and/or terminations and will include Landlord as Additional Insured but only with respect to the operations of the Tenant. The policy shall also contain a Cross Liability clause. The Tenant agrees to provide Landlord with a certificated copy of such insurance policy and endorsements prior to the Commencement Date.
- (b) Prior to taking possession of the Demised Premises and on every renewal date, upon request by Landlord, the Tenant will deliver certificates of insurance executed by the Tenant's insurers. No review or approval of any insurance policy or certificate by the Landlord will in any way alter the Landlord's rights under this Lease.
- (c) The Tenant will not allow anything to occur that results in (i) an increase in premiums for any insurance carried by the Landlord or (ii) the cancellation or threatened cancellation or a reduction of coverage under any of the Landlord's insurance policies on any part of the Centre.

12.3 Waiver of Subrogation

Every policy of insurance maintained or required to be maintained by Landlord or Tenant herein shall contain a waiver of subrogation clause in favour of the other party.

13. Indemnity

(a) Tenant will indemnify and save Landlord harmless from any and all liabilities, damages, costs, claims, suits or actions arising out of:

- (i) any breach, violation or non-performance of any covenant, condition or agreement, representation or warranty of Tenant under this Lease;**
- (ii) any damage to third parties property, however occasioned, by Tenant's use, occupation or operation of the Demised Premises and the Tenants use of the common areas, and any injury to any third party person or persons, including death resulting at any time therefrom, occurring in or on the Demised Premises or any part thereof, arising from or occasioned by any act, omission default or negligence of Tenant or anyone for whom in law Tenant is responsible, except where such damage or injury is due to the act, omission, default or negligence of Landlord or anyone for whom in law Landlord is responsible; and**
- (iii) any and all penalties, judgements or fines of any nature or kind which may be sought to be enforced by reason of the alleged or actual violation by Tenant, its employees, contractors, sub-contractors or agents, of any federal, provincial, or municipal law or regulation;**

and notwithstanding anything to the contrary contained in this Lease, such indemnification in respect of any breach, violation or non-performance, damage to third parties property, injury or death occurring during the Term and any extensions thereof will survive the termination of this Lease.

(b) Landlord will indemnify and save Tenant harmless from any and all liabilities, damages, costs, claims, suits or actions arising out of:

- (i) any breach, violation or non-performance of any covenant, condition or agreement, representation or warranty of the Landlord under this Lease;**

- (ii) any damage to third parties property, however occasioned, by Landlord's use, occupation or operation of the Centre and any injury to any third party person or persons, including death resulting at any time therefrom, occurring in or on the Centre, any expansion thereof, or any part thereof, arising from or occasioned by any act, omission, default or negligence of Landlord or anyone for whom in law Landlord is responsible, except where such damage or injury is due to the act, omission, default or negligence of Tenant, or anyone for whom in law the Tenant is responsible; and
- (iii) any and all penalties, judgements or fines of any nature or kind which may be sought to be enforced by reason of the alleged or actual violation by Landlord, its employees, contractors, sub-contractors or agents, of any federal, provincial, or municipal law or regulation;

and notwithstanding anything to the contrary contained in this Lease, such indemnification in respect of any breach, violation or non-performance, damage to third parties property, injury or death occurring during the Term and any extensions thereof will survive the termination of this Lease.

14. Release

Tenant and Landlord agree to release and hold harmless each other, including their respective employees, officers and directors and all other companies owned, operated, controlled by or affiliated with Tenant and/or the Landlord, for any and all insured or uninsured property damages or property losses to each other caused by the other.

15. Damage or Destruction

- (a) If during the Initial Term or the Extension Term, the Demised Premises are partially damaged or destroyed by fire or any other casualty, and such damages can be repaired within two hundred and forty (240) days from the date of such damage or destruction, as determined by Landlord's architect, acting reasonably, such determination to be given by such architect within thirty (30) days following such date of damage or destruction,

Landlord shall, at Landlord's expense, promptly, and with due diligence, and in a good and workmanlike manner, rebuild, repair and restore the Demised Premises to the extent of the Landlord's Improvements only, to substantially the same condition existing just prior to the damage or destruction within such two hundred and forty (240) days excluding all Tenant Improvements. If Landlord fails to do so, subject to Force Majeure, Tenant may terminate this Lease at any time thereafter by giving written notice to Landlord (which remedy shall be in addition to Tenant's other rights hereunder). From the date of the damage or destruction, Rent and all other charges payable by Tenant shall abate in the proportion that the square footage of the part of the Demised Premises destroyed or rendered unfit for Tenant's use bears to the total square footage of the Demised Premises, until 12 weeks after the Base Building has been restored, the Landlord's Improvements have been completed and is ready for installation of the Tenant's Improvements.

- (b) If Landlord fails to repair or restore the Demised Premises to the condition and within the time periods required in Section 15.1(a), Tenant shall have the right upon 60 days written notice to Landlord, to terminate this Lease, or upon 15 days written notice, to repair and restore the Demised Premises, and the Landlord will pay the Tenant, upon demand, all of the Tenant's reasonable expenses incurred in so repairing or restoring the Demised Premises, plus interest thereon at the Prime Rate.
- (c) If during the Initial Term or the Extension Term the Demised Premises are totally destroyed by fire or other casualty, or the Demised Premises are rendered unfit for Tenant's use and cannot be repaired within two hundred and forty (240) days from the date of such destruction, in Landlord's architect's reasonable determination, such determination to be given within thirty (30) days of such destruction, by fire or other casualty:
 - (i) Rent and all other charges payable by Tenant shall abate from the date of the destruction, until the Demised Premises have been restored as herein provided;

- (ii) Landlord shall promptly pay to Tenant any unearned Rent and additional charges paid by Tenant to Landlord, or Tenant shall promptly pay to Landlord any Rent and additional charges then earned and unpaid and owing to the Landlord;
- (iii) Either party may by 15 days written notice to the other (given following the Architect's determination described in this subsection (c)) terminate this Lease.
- (iv) If neither Landlord nor Tenant terminates this Lease, Landlord shall, at Landlord's sole cost, promptly and with due diligence, and in a good and workmanlike manner, rebuild, repair and restore the Demised Premises to substantially the same condition required of the Landlord under Article 5 hereof, subject however to the requirements of all authorities having jurisdiction.

16. Expropriation

- (a) If any part or all of the Demised Premises are involved in an expropriation, a taking or condemnation, the rights of Landlord and Tenant to share in the proceeds of any award shall be determined as follows:
 - (i) The court in the condemnation proceedings shall, if not prohibited by law, be requested by both Landlord and Tenant to make separate awards to Landlord and Tenant.
 - (ii) If the court is unwilling or unable to make separate awards, the award shall be divided between Landlord and Tenant in proportion to the fair market value of their respective interests. If Landlord and Tenant are unable to agree upon the division, it shall be resolved by appraisal conducted by a mutually acceptable neutral appraiser.

- (b) Tenant shall have, at its option, the right to terminate this Lease upon an expropriation, a taking or condemnation of any of the following: any part or all of the Demised Premises, fifteen percent (15%) or more of the parking area located on the Lands, or points of ingress and egress to the public roadways as depicted in green on the Site Plan.
- (c) If Tenant elects to terminate this Lease under this Section, Tenant shall notify Landlord in writing of this election within sixty (60) days after the expropriation, taking or condemnation, effective on the date title vests in the condemnor. Tenant's rental obligation shall cease as of the date title vests in the condemnor, and Landlord shall promptly refund Rent and other charges paid by Tenant for periods beyond that date.
- (d) If Tenant does not elect to terminate this Lease, Landlord, provided it is able to, shall, at its sole cost, promptly and diligently repair, alter, raze and restore the remaining part of the Demised Premises, as the case may be, replace the parking area taken and/or replace the points of ingress and egress taken, so the improvements are made into a complete architectural unit, and the Demised Premises, parking areas and points of ingress and egress are returned to, as nearly as reasonably possible, the condition existing prior to the taking or condemnation. Tenant shall not be obligated to make any payment or contribution toward the repair or restoration work. Tenant's obligations to pay Rent and other charges pursuant to this Lease shall be proportionately reduced by the percentage of the Demised Premises taken.

17. Tenant's Defaults

Landlord may re-enter the Demised Premises, recover possession and dispossess Tenant in the manner prescribed by statute or by law if, after receiving written notice from Landlord, Tenant fails: (i) to make payment within thirty (30) days of receipt of such written notice that any Rent payment is past due hereunder; or (ii) to start performance within thirty (30) days of receipt of such written notice or within such additional time as may be reasonably necessary, of any other covenant or agreement to be performed by Tenant herein. If Tenant, after receiving written notice, proceeds to cure the default diligently, then no default shall be deemed continuing.

In the event that (a) Tenant in good faith takes the position that Landlord has failed to perform its obligations under this Lease; (b) Tenant undertakes to cure such failure on the part of Landlord to perform such obligations; and (c) Tenant withholds Rent and/or other charges to the extent permitted under the terms of this Lease after Tenant cures a default of Landlord in order to receive reimbursement for the funds expended in curing the default of Landlord, then, in such event, Landlord shall not have the right to terminate this Lease or to evict Tenant for the non-payment of Rent or other charges nor shall Landlord have the right to re-enter the Demised Premises or commence a proceeding to recover possession of the Demised Premises from Tenant until such dispute is resolved. In the event that a court of competent jurisdiction rules that Tenant did not have the right to withhold Rent or other payments to Landlord under the terms of this Lease, then, upon the issuance of such a judgment, Tenant shall pay to Landlord the amount so withheld plus interest at the Prime Rate and reasonable legal costs on a solicitor and his own client basis.

If the Tenant defaults in the payment of money that it is required under this Lease to pay to a third party, the Landlord may, after five (5) days' notice to the Tenant, pay all or part of the amount payable. If the Tenant otherwise defaults under this Lease the Landlord may give the Tenant at least thirty (30) days' prior notice (except that no notice of any default will be required in an emergency) and if the Tenant does not, within such period, commence diligently and then proceed diligently to cure the default, the Landlord may perform or cause to be performed all or part of what the Tenant failed to perform. The Tenant will pay to the Landlord on demand, the Landlord's reasonable expenses incurred under this Section (including amounts, if any, paid by the Landlord on behalf of the Tenant to cure the default as set out above), plus interest thereon at the Prime Rate.

18. Subordination, Non-Disturbance and Attornment

If at the commencement of this Lease, or during the Term, the Demised Premises shall be, or becomes, subject to one or more mortgages, debentures or other encumbrances (the "Mortgage" or "Mortgages") which have registered interests in priority to this Lease:

- (a) Landlord shall use reasonable commercial efforts to cause its mortgagee, debenture holder or encumbrancer (the "Mortgagee") to execute a Non-Disturbance Agreement to

the effect that should Landlord default under the terms of the Mortgage, that such Mortgagee will, if and for so long as the Mortgagee takes and retains possession of the Demised Premises, assume and perform all of the covenants of Landlord in this Lease as if such Mortgagee were the original Landlord, except that such Mortgagee will only be required to agree to be liable for defaults that continue or occur while it is in possession of the Demised Premises. Landlord will continue to be liable for all defaults under this Lease whether or not a Mortgagee is liable for them. If received from the Mortgagee, Landlord shall deliver such executed Non-Disturbance Agreement to Tenant within thirty (30) days of execution of this Lease with respect to an existing Mortgage, and within thirty (30) days after execution of a Mortgage, with respect to a Mortgage entered into after the execution of this Lease.

- (b) Tenant shall, at all reasonable times, upon fifteen (15) days prior written request from Landlord, provide an estoppel certificate for the exclusive use of the Mortgagee or a prospective purchaser of the Demised Premises, or the Centre.

19. Dispositions

- (a) **Intercorporate Transactions:** Notwithstanding Section 19(b), Tenant shall have the right at any time without the consent of Landlord, to assign this Lease or sublease the Demised Premises or any part thereof: 1) to a corporation which is a subsidiary of Tenant or to an affiliate of Tenant, as defined in the *Canada Business Corporations Act*, as amended; and 2) to any corporation with which Tenant amalgamates or merges and to which it sells all or substantially all of its assets in the Province of Alberta; provided Tenant shall remain responsible for the payment of Rent and the performance of its other obligations hereunder, and the Tenant shall promptly notify the Landlord in writing of all such assignments or subleases.

- (b) **Assignment or Sublease to Third Party:** Tenant shall have the right, with Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed, to assign this Lease or sublease all or part of the Demised Premises. In such event, Tenant shall remain responsible for the payment of Rent and the performance of its other obligations hereunder.

- (c) **Transfers:** Landlord, at any time and from time to time subsequent to the execution of this Lease, may sell, transfer, lease, assign or otherwise dispose of the whole or any part of its interest in the Demised Premises, provided that, except where this Lease has priority of registration, the party acquiring such interest, as a condition precedent to such dealing, will execute a registerable undertaking in a form reasonably satisfactory to Tenant wherein it agrees with Tenant to assume, and, so long as it holds such interest, to perform each of the covenants, obligations and agreements of Landlord under this Lease in the same manner and to the same extent as if originally named as Landlord in this Lease, except that the party acquiring the interest will only be required to agree to be liable for defaults that continue or occur after the party acquires its interest. Landlord will not otherwise sell, transfer, lease, assign or in any way dispose of the whole or any part of its interest in the Demised Premises. Landlord's dealings with its interest in the Demised Premises shall not extend to the granting of any rights of way, easements or other interest of such nature which materially and adversely affects Tenant's ability to operate its business (excluding utility easements to governmental authorities) in the Demised Premises, to third parties, without Tenant's consent, which consent shall not be unreasonably withheld. Similarly, where Landlord's consent is required if and whenever the Tenant assigns its interest in this Lease it shall require its assignee to execute an undertaking in a form reasonably satisfactory to the Landlord wherein the assignee agrees with the Landlord to assume and so long as it holds such interest to perform each of the covenants, obligations and agreements of the Tenant under this Lease in the same manner and to the same extent as if originally named as Tenant in this Lease, except that the assignee will only be required to agree to be liable for defaults that continue or occur after the assignee acquires its interest.
- (d) **Subordination:** Upon request of Landlord at any time and from time to time, subject to the second sentence of this paragraph, Tenant will subordinate its rights under this Lease to any Mortgage now or hereafter affecting the Demised Premises in whole or in part, and whether or not such Mortgage affects only the Demised Premises or will be a blanket mortgage affecting other premises as well. Tenant agrees to subordinate this Lease to any Mortgagee of Landlord provided the Mortgagee provides to Tenant the Subordination, Non-Disturbance and Attornment Agreement referred to in Section 18(a) above. No subordination by Tenant will have the effect of disturbing Tenant's occupation

and possession of the Demised Premises as long as Tenant complies with all of the terms, covenants, conditions, agreements, and provisos of this Lease.

(e) **Rights of Landlord's Mortgagees:** If at any time during the currency of a Mortgage, notice of which Mortgage has been given to Tenant, any default occurs in the performance of any of the covenants, obligations, or agreements of Landlord which would give rise to a right of Tenant to terminate this Lease, then Tenant, before becoming entitled as against the Mortgagee to exercise any right to terminate this Lease, will give to the Mortgagee notice in writing of such default. The Mortgagee will have thirty (30) days after the giving of such notice (or such longer period as may be reasonable in the circumstances) within which to remedy such default as agent of Landlord (or by such other means as will avoid such Mortgagee becoming Mortgagee in possession of the Demised Premises by reason of effecting such remedy), and if such default is remedied within such time, Tenant will not by reason thereof terminate this Lease. The rights and privileges granted to the Mortgagee by virtue of this Section will not in any way be deemed to alter, affect or prejudice any of the rights and remedies available to Tenant against Landlord. Any notice to be given to the Mortgagee will be deemed to have been properly given if mailed by registered mail to its most recent address of which the Tenant has notice.

20. Notices

Notices shall be in writing and shall be deemed properly served: (a) two (2) business days after being deposited with Canada Post, as registered mail, return receipt requested, bearing adequate postage, or (b) one (1) business day after being deposited with a reputable overnight express carrier (e.g. Federal Express, Purolator) for guaranteed next business day delivery with a request that the addressee sign a receipt evidencing delivery, or (c) upon receipt if personally delivered, or (d) on the business day of transmission, if sent by telecopier (with original to follow by registered mail) . Notices shall be addressed as follows:

Tenant:

Sears Canada Inc.
222 Jarvis Street
Department 766
Toronto, Ontario M5B 2B8

Attention: The Secretary
Fax No.: (416) 941-2321

with a copy to:

Sears Canada Inc.
222 Jarvis Street
Department 702D
Toronto, Ontario M5B 2B8

Attention: Real Estate Department
Fax No.: (416) 362-9738

Landlord:

Remington Properties Inc.
Suite 150, 1209 - 59th Avenue S.E.
Calgary, Alberta T2H 2P6

Attention: Mr. Randy Remington
Fax No.: (403) 255-7530

or to any other address furnished in writing by any of the parties to the other. However, any change of addresses furnished shall comply with the notice requirements of this Section and shall include a complete outline of all current addresses to be used for all parties.

21. Time of Essence

Time is of the essence in this Lease.

22. Entire Agreement

This Lease and the attached exhibits constitute the entire agreement between Landlord and Tenant with respect to the Demised Premises. Neither this Lease nor any of its

provisions may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the parties.

23. Choice of Law

This Lease shall be construed in accordance with and be governed by the laws of Canada and the province in which the Demised Premises is located.

24. Binding Effect

This Lease shall enure to the benefit of and be binding upon Landlord and Tenant and their respective heirs, executors, legal representatives and successors and assigns.

25. Rules and Regulations

Tenant will, only to the extent consistent with the terms of this Lease, comply with the rules and regulations for the Centre issued by Landlord, a copy of which will be provided to Tenant, which rules and regulations shall not be changed without Tenant's prior written approval.

26. Broker

Landlord shall be solely responsible for any brokerage fees and or commissions payable on account of this Lease, except for any commissions or fees which Tenant may have contracted to pay.

27. Partnership

Nothing contained in this Lease shall be construed to make Landlord and Tenant partners or joint venturers, or to render either party liable for the debts or the obligations of the other.

28. Third Party Beneficiaries

Except as herein specifically provided, no other person, subtenant, customer, employee or invitee of Tenant or any other third party shall be deemed to be a third-party beneficiary of any of the provisions herein.

29. Partial Invalidity

If any section, paragraph, subparagraph, sentence, clause or phrase of this Lease shall be declared or judged invalid or unconstitutional, such adjudication shall not affect the other sections, paragraphs, subparagraphs, sentences, clauses or phrases which shall remain in full force and effect. This Lease shall be read and construed as if both parties had drafted it.

30. Registration

The Tenant shall be at liberty to register a caveat in respect of this Lease provided the same does not disclose any financial details of this Lease and the Tenant agrees to discharge such caveat within 30 days after the end of the Initial Term of this Lease or any applicable Extension Term, if Tenant has not extended this Lease.

31. Headings

The Section headings contained herein are for convenience and are not a part of this Lease and shall not restrict the contents of any Section hereof, being merely descriptive aids to identify the Sections to which they refer.

32. Rights Cumulative

All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative and not restrictive of any other remedies available to said parties hereunder or at law or in equity.

33. Environmental Matters

(a) Landlord hereby represents and warrants to Tenant, that to the best of Landlord's knowledge after obtaining the Environmental Report, to the date of such Report and thereafter to the best of the Landlord's knowledge, after due enquiry, that no Hazardous Material (as hereinafter defined) has been used, disposed of or is located on or in either the Demised Premises or the Centre, or in soil and ground water on or under the Centre, other than as set out in the Environmental Report.

(b) Landlord hereby covenants to Tenant as follows:

(i) Landlord shall be responsible for and shall promptly pay all costs incurred in complying with any order, ruling or other requirement of any court or governmental body or agency having jurisdiction over the Centre requiring Landlord to comply with any laws which relate to Hazardous Material in general, or which relate to Hazardous Material created, handled, placed, stored, used, transported or disposed of by Landlord, its agents, employees or contractors including, without limitation, the cost of any required or necessary repair, cleanup, remediation or detoxification and the preparation of any closure or other required plans, and Landlord shall diligently pursue to completion all such work required in connection with the same (excluding, however, any such costs relating to Hazardous Material on the Centre by reason of the negligence or fault of Tenant, its employees, agents, or contractors)

(ii) Landlord shall indemnify, defend and hold harmless Tenant, its directors, officers, employees, and agents and any successor to Tenant's interest in the Demised Premises, from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, reasonable attorneys fees, consultant fees and expert fees) and all foreseeable reasonable consequential damages, whether known or unknown (including environmental and natural resource damages and punitive damages), which might directly

or indirectly, or in whole or part, be caused by, arise out of, or be related to: (a) Hazardous Material which was created, handled, placed, stored, used, transported or disposed of by Landlord or its employees, agents or contractors; or (b) Hazardous Material with respect to which any court, governmental body or agency having jurisdiction over the Centre holds Landlord responsible or otherwise requires Landlord to undertake any repair, cleanup, detoxification or other remedial action (excluding Tenant's Hazardous Material, unless Tenant's Hazardous Material was released onto the Demised Premises or the remainder of the Centre by reason of the negligence or fault of Landlord, its employees, agents or contractors); or (c) the breach of any representation, warranty or covenant of Landlord contained herein. In the event of any such breach of any representation, warranty or covenant contained herein, or in the event of the presence of Hazardous Material (excluding Tenant's Hazardous Material unless Tenant's Hazardous Material was released onto the Demised Premises or the remainder of the Centre by reason of the negligence or fault of Landlord, its employees, agents or contractors), if such breach is of a material nature, and the Landlord is not proceeding diligently in remedying such breach, then Tenant has the right (without waiving any of its other remedies) to terminate this Lease at its sole election by written notice to Landlord, such termination to be effective as of the date of Tenant's notice. In the event such breach is of a material nature, then the Rent and any other charges payable by Tenant hereunder shall be abated in proportion to the extent of interference with Tenant's business until such time as the Demised Premises and the Centre comply with all laws and Landlord has cured its breach of any representation, warranty or covenant contained herein in a manner satisfactory to Tenant. If the Landlord fails to comply or commence to comply and diligently thereafter comply, with the provisions hereof for 15 days following written notice, Tenant shall also have the right to perform any necessary repair, cleanup, detoxification or other remedial action with respect to Hazardous Material to which either Landlord has no obligation or has failed to perform its obligation to repair, cleanup, detoxify or take remedial action, in which case, the Landlord shall promptly reimburse the Tenant for the reasonable amount so expended by Tenant,

plus interest at the Prime Rate, except for amounts expended toward Tenant's Hazardous Material, unless said Tenant's Hazardous Materials was released by reason of the negligence or fault of Landlord, its employees, agents or contractors.

- (iii) Landlord shall diligently pursue any responsible parties in connection with the performance of any cleanup, repair, detoxification or other remedial action with respect to Hazardous Material on or adjacent to the Centre, and which Landlord is not obligated to take any action.
- (iv) Landlord has delivered to Tenant all reports and studies on the environmental condition of the Demised Premises and the Centre, including, without limitation, all drafts of such reports or studies which were reviewed by Landlord or its agents. Landlord agrees to deliver to Tenant, immediately upon receipt thereof by Landlord or Landlord's agents, all reports and studies on the environmental condition of the Demised Premises or the Centre (including all drafts) which are prepared during the Term.

(c) Tenant hereby covenants to Landlord as follows:

- (i) Tenant shall be responsible for and shall promptly pay all costs incurred in complying with any order, ruling or other requirement of any court or governmental body having jurisdiction over the Centre requiring Tenant to comply with any laws which relate to Tenant's Hazardous Material including, without limitation, the cost of any required or necessary repair, cleanup, remediation or detoxification and the preparation of any closure or other required plans, and Tenant shall diligently pursue to completion all such work required in connection with the same, excluding however any such costs relating to Hazardous Material on the Centre established to have been caused directly either by use of the Centre by the Landlord or Landlord's acts or omissions relating to the Centre or use of the Centre by any other third party or the acts or omissions of such third party.

(ii) Tenant shall indemnify, defend and hold harmless Landlord, its directors, officers, employees and agents and any successor to Landlord's interest in the Demised Premises from and against any and all claims, judgements, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, reasonable attorneys fees, consultant fees and expert fees) and all foreseeable reasonable consequential damages, whether known or unknown (including environmental and natural resource damages and punitive damages), which might directly or indirectly, or in whole or in part, be caused by, arise out of, or be related to Tenant's Hazardous Material, or Hazardous Material with respect to which any court, governmental body or agency having jurisdiction over the Demised Premises holds Tenant responsible or otherwise requires Tenant to undertake any repair, cleanup, detoxification or other remedial action, excluding however, Hazardous Material on the Centre established to have been caused directly either by Landlord's use of the Centre or by the acts or omissions of Landlord or its employees, agents or contractors, or by the use of the Centre by any co-tenant or third party, or the breach by Landlord of any representation, warranty or covenant contained herein.

(d) As used herein, the term, "Hazardous Material" means petroleum products, asbestos, and any other hazardous or toxic substance, material or waste, which is or becomes regulated by any local governmental authority having jurisdiction over the Centre the Province in which the Centre is located, or the federal government (including any agency thereof), whether originating from the Demised Premises or, as to Landlord, migrating, flowing, percolating, diffusing or in any way moving onto or under the Centre in quantities or concentrations above the legally allowable limits from time to time.

34. Prime Rate

The term "Prime Rate" as used herein shall mean the rate of interest announced from time to time by the Royal Bank of Canada as its "prime rate" for commercial demand loans.

35. Failure of Tenant to Operate

If Tenant or any subtenant or assignee of Tenant fails to operate a business in the Demised Premises in accordance with Section 2 for three (3) consecutive calendar months, then Landlord shall have the right to terminate this Lease upon one hundred twenty (120) days written notice to Tenant, unless Tenant or its subtenant or assignee shall commence to operate a business permitted by Section 2 in the Demised Premises within such one hundred twenty (120) day period, in which case, this Lease shall remain in full force and effect. If this Lease is terminated pursuant to this Section 35, then Tenant shall have no further obligations hereunder effective as of the date of such termination.

36. Limitation on Tenant's Right of Offset

Intentionally deleted.

37. General

The parties acknowledge and agree that Landlord shall have the same remedies for default of payment by Tenant of any amounts owing to Landlord hereunder including amounts referred to in Section 8 and Section 11 of this Lease as it has for default of payment of Rent.

38. Force Majeure

Whenever, and to the extent that any party to this Lease will be unable to fulfil or will be delayed or restricted in the fulfilment of any obligation under any provision of this Lease by reason of:

- (a) strikes;
- (b) lock-outs;
- (c) war or acts of military authority;

- (d) rebellion or civil commotion;
- (e) material or labour shortage not within the control of either party;
- (f) fire or explosion;
- (g) flood, wind, water, earthquake, or other casualty;
- (h) any event or matter not wholly or mainly within the control of the party having the obligation (other than lack of funds or any financial condition of the parties hereto); or
- (i) acts of God

not caused by the default or act of or omission by such party and not avoidable by the exercise of reasonable effort or foresight by it ("Force Majeure"), then, so long as any such impediment exists, such party will be relieved from the fulfilment of such obligation and the other party will not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned. The party so delayed will be required and is entitled to perform such obligation within a period of time immediately following the discontinuance of such impediment that is equal to the period of time that such impediment existed. Each party shall promptly notify the other of the occurrence of any Force Majeure which might prevent or delay the doing or performance of acts or things required to be done or performed by such party. The party relying on Force Majeure will use its reasonable best efforts to remedy the occurrence and abridge the period of Force Majeure.

39. Acceptance

The Tenant hereby accepts this Lease of the Demised Premises to be held by it as Tenant, subject to the terms set out in this Lease.

IN WITNESS WHEREOF, Landlord and Tenant hereunto affixed their corporate seals duly attested by the hands of their respective signing officers duly authorized in that behalf as of the date above-written.

LANDLORD:

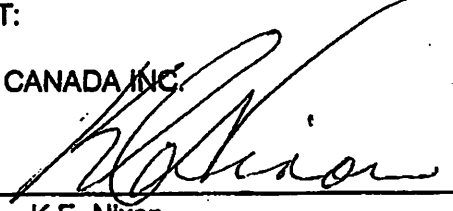
REMINGTON PROPERTIES INC.


Per: 

Per: _____ c/s

TENANT:

SEARS CANADA INC.

Per: 
K.E. Nixon
Vice President, Real Estate

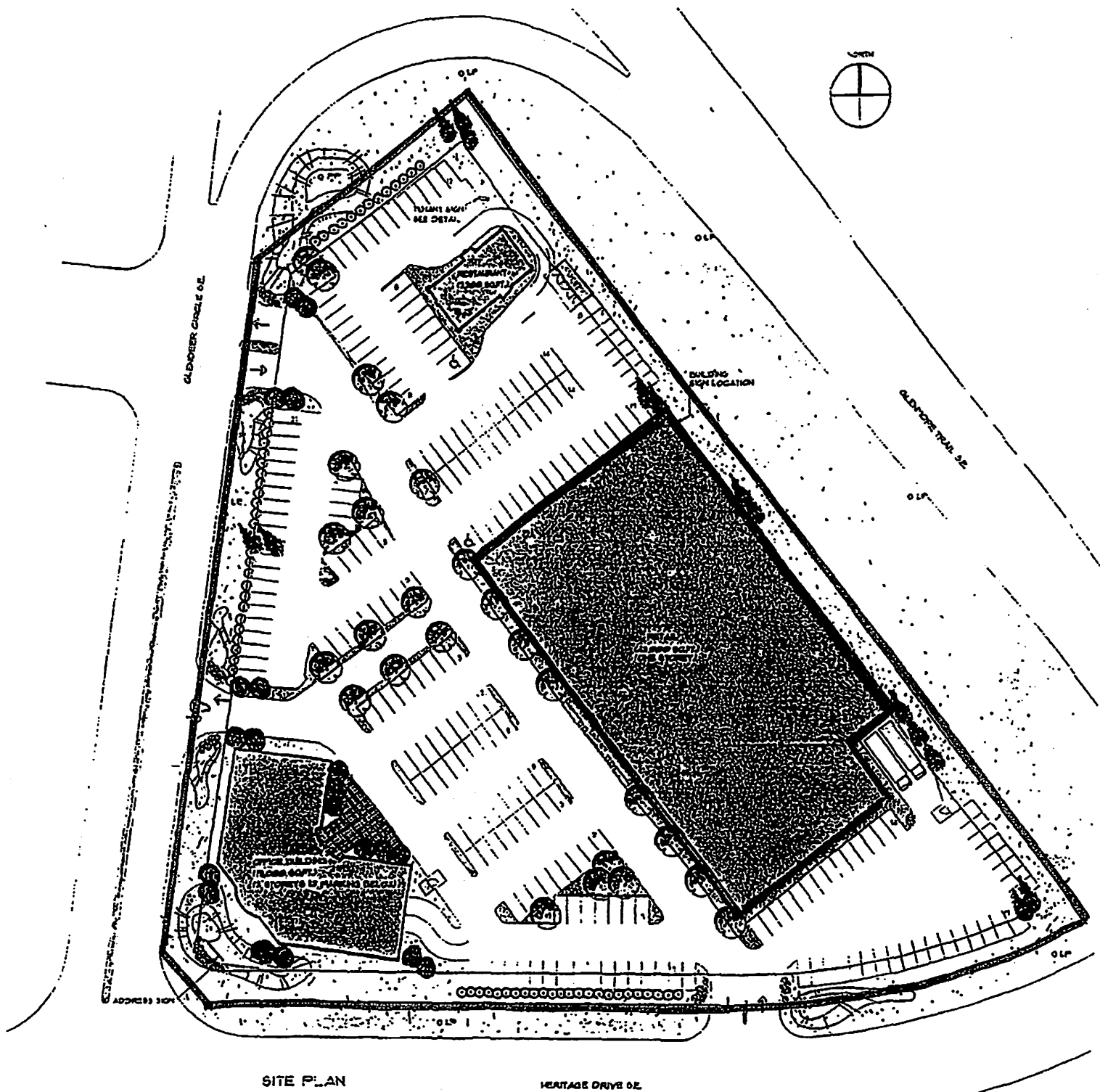
Per:  c/s
R.R. Vezer
Secretary

Schedules:

- A - Site Plan
- B - Base Building Specifications and Landlord's Improvements
- C - Permitted Encumbrances

SCHEDULE "A"

SITE PLAN



SITE PLAN

HERITAGE DRIVE O.E.

GLENDEER JUNCTION

SCHEDULE "B"
BASE BUILDING SPECIFICATIONS AND
LANDLORD'S IMPROVEMENTS

CONSTRUCTION STANDARD WH962D FOR
WHOLE HOME STORE
PREMISES

FOR

SEARS CANADA INC.
DEPARTMENT #24 STORE PLANNING, TORONTO

NOTE: This is an abbreviated version of SEARS Construction Standard #WH962 specifically prepared for use by Developers and building Owners.

Revised JANUARY 1997

WH962D.sam

WH962D

This Standard WH962D remains the property of SEARS Canada Inc. All rights reserved. No part of this Standard may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of SEARS D 824.

All copies of Standard WH962D issued by SEARS shall be returned after use.

TABLE OF CONTENTS

	PAGE
1) Contract Documents	4
2) Construction Drawings	5
3) Floor Plans	5
4) Site Plans.	6
5) Progress Drawings & Photographs	6
6) Time Schedules	6
7) Proscribed Locations	7
8) Building Design.	7
9) Electrical Services	7
10) Signs on Site	7
11) Insurance	7
12) Construction Administration	7
13) SEARS Supplied Materials	8
14) Site Work	8
15) Concrete	8
16) Masonry	8
17) Metal Fabrications	9
18) Roofing and Flashing	9
19) Doors and Windows	10
20) Interior Finishes.	11
21) Specialties	11
22) Mechanical.	11
23) Fire Protection.	13
24) Interior Electrical	14
25) Lighting Fixtures	14
26) Fire Alarm System	14
27) Exterior Signs	17
28) Data Room & Communication Room	17
29) Summary of Responsibilities	18

CONSTRUCTION STANDARD WH962D
SEARS CANADA INC.
(Hereinafter called "SEARS")
SEARS DEPARTMENT 824, TORONTO

JOB NO. _____

DATE _____

This standard establishes base construction requirements for SEARS' Whole Home Store premises located in _____

Construction period from:		19__
	to:	19__
Opening date:		19__
Owner:		
Gross Area:		Sq. Ft.
Gross Leasable Area:		Sq. Ft.
Site (designated area):		Sq. Ft.
Future Expansion Area (if any):		Sq. Ft.

1) CONTRACT DOCUMENTS

- .1 Licensed architects (appointed by the owner) will prepare contract documents consisting of designs, drawings, working drawing and specifications based on these requirements. Consultant engineers shall conform to and integrate their work accordingly.
- .2 The documents will be prepared by competent Architects and Engineers licensed under Provincial Statute. Imperial measure is to be used throughout.
- .3 The whole of the work shall be reviewed in the field by the design architects and engineers, and shall be done in accordance with all current governing City, Provincial and National Codes. The electrical work shall conform to the Canadian Electrical Code of the C.S.A., fire protection as required by SEARS brokers, the National Fire Code of Canada and the N.F.P.A.
- .4 The contract documents shall be submitted to SEARS D.824 by the Owner for approval, and after being stamped as approved, they shall form part of SEARS Lease Agreement and construction contracts to be arranged by the Owner. This Construction Standard WH962D shall stand amended by the specifications and the scope of work shall be as shown on the drawings.

2. CONSTRUCTION DRAWINGS

- .1 Drawings will be based on schematic plans to be provided by SEARS showing specific details including electrical service requirements. These plans will also show interior partitions, sales area demising walls, floorcoverings as well as other built-in items to be supplied and installed by SEARS.
- .2 Drawings showing the facades of the building in elevation shall be approved for design by SEARS D.824 before issuing for tender. In addition to the normal information to be shown on the sheets, care should be taken to include all re-entrant angles, walls below grade, and any interior courts. For approval the drawings shall indicate the building exterior in every detail.
- .3 On each elevation show all elements on the building and those related closely to the plane of the wall, such as: exterior glass vestibules; exterior light fixtures; wall louvers; roof vents; roof equipment such as cooling towers, all signs whether on the building or adjacent to it; and perimeter landscaping especially adjacent to signs.
- .4 All materials without exception are to be covered by multiple references to eliminate any guess work.
- .5 The colour of all applied finishes or the indication of a colour where a choice is normally available shall be included by note and shall be consistent with the colour schedule in every case.

3. FLOOR PLANS

- .1 The following information shall be shown:
 - a) Location of all walls accurately dimensioned.
 - b) Grid lines to faces of exterior walls and centre of interior columns.
 - c) Dimensions between grid and overall dimensions.
 - d) All base building interior partitions dimensioned to grid lines.

4) SITE PLANS

- .1 The following information shall be shown:
 - a) The survey drawing number and date from which the site plan information was taken, and the Surveyor's name and address.
 - b) Levels referred to a permanent bench mark or monument: existing and new contours.
 - c) Dimensions locating the building on the site and if a shopping centre, relating to the mall.
 - d) Extent of normal and heavy duty paving, Parking lot lighting and location of poles accurately dimensioned.
 - e) Easements for sewers, hydro lines, etc.
 - f) Location of free standing signs.
 - g) Location and description of all utilities such as steam, water, gas and fire hydrants.
 - h) Parking lot layout accurately dimensioned with enlarged detail of typical condition.
 - i) Location of pylons and traffic signs.

5) PROGRESS DRAWINGS & PHOTOGRAPHS

- .1 Three copies of all final design drawings and two copies of all working drawings and specifications shall be submitted by the Owner for approval before confirming lease arrangements.
- .2 The Owner will supply electrical schematics and base building plans for use by SEARS electrical consultants.
- .3 The Owner will supply SEARS D:824 with progress photographs every three weeks from the date of commencement of the work until the building exterior is complete.

6. TIME SCHEDULES

- .1 Construction schedules including the following information shall be made available to SEARS from time to time.
 - a) Substantial completion date of project.
 - b) Occupation date for store fixturing.
 - c) Dates when truck docks can be used for receiving merchandise and store fixtures.
- .2 At the occupation date for interior finishing the building shall be closed in and all doors and hardware installed complete and capable of being locked. If the above requirements are not met, temporary doors, hoardings and security forces shall be provided to SEARS direction at the contractor's expense. SEARS occupancy for interior finishing is required 12 weeks prior to opening.

7. PROSCRIBED LOCATIONS

- .1 Retail premises shall not be built within 500 ft. of any high pressure oil pipeline or natural gas pipeline.

8. BUILDING DESIGN

- .1 The exterior design of the building shall match SEARS Whole Home typical design. Exterior finishes shall be vinyl stucco on block or drywall with exterior insulation. Colours shall be to SEARS typical. A portico is standard and shall be part of the approved design.
- .2 The optimum structural grid is 32'-0" x 32'-0". Structure shall be steel or reinforced concrete providing a minimum 125 pound live load capacity for storage and selling areas and constructed to provide the required fire resistant ratings or accepted equivalencies.
- .3 Column sizes shall be kept minimal, with a maximum rurred size of 18" x 18".
- .4 Roofing systems shall satisfy Mutual Class i requirements for fire and wind uplifts and where wind uplift is above normal conditions in Prairie and Coastal Regions, a Class 1-60 or 1-90 standard shall apply.
- 5 Steel roof decks shall have maximum 6" between flutes.

9. ELECTRICAL SERVICES

- .1 Arrange permanent service or provide temporary power to provide adequate lighting and power for SEARS interior finishing contractor to carry out the interior work.

10. SIGNS ON SITE

- i Any site sign which bears the name of SEARS as the dominant lettering shall be submitted for approval by SEARS.

11. INSURANCE

- .1 The Owner shall maintain fire insurance with standard extended coverage endorsement, insuring the value of his work.

12. CONSTRUCTION ADMINISTRATION

- .1 For the purpose of clarity and to avoid misunderstandings all construction documents and written or verbal instructions to or from SEARS shall be only addressed to SEARS D/824 Project Manager in charge of the job at Department 824, 222 Jarvis Street, TORONTO, Ontario M4B-2B8 (416)-941-2404.

13. SEARS SUPPLIED MATERIALS

- .1 DELETED

14. SITE WORK

- .1 Landlord shall provide traffic and parking areas adjacent to the Demised Premises, in accordance with local zoning requirements. Parking ratio is to be established in the Lease and will at least meet local zoning requirements. Access to loading dock from off site roads shall be designed and built for heavy duty traffic.
- .2 Parking area shall be free of depressions, potholes, and debris. Prior to the opening of the Demised Premises to the public, the Landlord shall take all necessary corrective action to bring the parking areas to first class and like new condition (patch, seal, striping, etc.).

15. CONCRETE

- .1 Slabs on grade shall be a minimum of 4" thick concrete reinforced with polypropylene fibres or 6x6 wire mesh, constructed without expansion joints. Construction joints shall be cut cleanly and filled, and the whole surface left smooth and finished by steel trowelling to receive carpet, vinyl composition or ceramic floor tile. Slabs shall be laid on 6 mil polyvinyl perforated sheeting.
- .2 Exposed concrete slabs for interior floors shall be wet cured.
- .3 All floors in the interior of the building shall be perfectly leveled, steel troweled finish ready to accept tile, carpet or sealer without additional levelling required. The surface shall not vary in a vertical direction more than 1/16" per foot for a maximum deviation of 1/4" in 16'-0". All areas turned over for SEARS interior finishing to have floors finished and dry.

16. MASONRY

- .1 Brickwork shall conform to the latest C.S.A. standards using insulated cavity walls stretcher bond and Duro-wall reinforcing throughout. Submit samples of masonry to SEARS D:824 for approval. All concrete block shall conform to ASTM C90-50 Grade A. Blocks shall have a minimum compression strength of 1600 lbs. per square inch gross area after a minimum of 30 days curing with a maximum absorption of 15 lbs. of water per cubic foot of concrete. Provide reinforcement in earthquake zones as required by code.
- .2 Masonry walls or any walls to the exterior of heated spaces shall use closed cell polystyrene insulation embedded in a combination air barrier and adhesive trowel on liquid and sheet membrane NBC required effective air barrier to provide an assembly value of R 10.

16. MASONRY (continued)

- .3 At the intersection of exterior walls with structural members and roof decks, and at any penetrations of the air or vapour barrier in exterior walls or roofs, install an expanded polyurethane foam air barrier material to effectively complete the air barrier requirements noted in the two paragraphs above.

17. METAL FABRICATIONS

- .1 Clear height above floor to underside of structural steel shall be 18'-0" and shall be sloped to suit minimum roof falls.
- .2 Dock edges shall have steel angles minimum of 3"x3"x1/4" at all leading edges and returns. Rubber dock bumpers are to be provided at each truck position.
- .3 Two dock levelers are required. Dock levelers shall be Serco series W 6'-0" wide x-10" long, 20,000 LB. capacity automatic type. Blue Giant, Pentalift or similar capacity with weather seals. Compressible door seals are to be provided at the exterior overhead truck doors. The head shall be adjustable.
- .4 Roof and wall openings to have 3/4" diameter burglar bars at 6" on centres both ways, in 2" steel angle frame.
- .5 All trenches and floor openings shall have angle frames and covers.

18. ROOFING & FLASHING

- .1 Roofing systems shall satisfy ULC S126M and ULC S107, Class A requirements for fire resistance. Where wind uplifts and where wind uplift is above normal conditions in Prairie and Coastal Regions, a FM Class 1-90 standard shall apply; other regions shall have FM 1-60 requirements.
- .2 Provide a two year warranty from the roofer for the roofing assembly installation, and a guarantee from the roofing membrane manufacturer to cover remedial work for defects due to material and or workmanship in the roofing membrane which shall run from the end of year two to the end of year ten.
- .3 The base roofing assembly shall be single ply membrane, with insulation, and vapour barrier as follows: Membrane roof to be single ply, non-woven glassfibre mat reinforced, polyvinyl chloride (PVC), ultra violet light resistant, dirt repellent, 0.0% shrinkage (ASTM D1204-71), 250% elongation at break (ASTM D412) 3 g/m² in 24 h water vapour transmission minimum (ASTM E96A), 85 Shore A hardness minimum (ASTM D2240-75), (ASTM E108), 75% lap joint minimum of membrane breaking strength, colour grey/black 1.2 mm thick (47 mils), Sarnafil G-442 as supplied by Sarnafil Canada Ltd. Vapour Barrier shall be 10 mil polyethylene Sarnavap 10 as supplied by Sarnafil Canada Ltd.
- .4 Membrane coated sheet metal shall be Sarnaclad 24 ga. sheet with G21 - 410.

18. ROOFING & FLASHING (continued)

- .5 All adhesives, caulking and tape including flashings shall be part of the roofing system supplied by Sarnafil Canada Ltd. Ensure that environmental and site conditions are suitable for installation and that all work exceeds or meets every requirement of the roofing manufacturer's written instructions.
- .6 Insulation, vapour barriers, and adhesives shall be incombustible except if one is combustible, the roof assembly shall meet the requirements of ULC S126M "Standard method of Test for Fire Spread Under Roof-Deck Assemblies". Insulation shall meet R15 requirements.
- .7 Other single ply roofing systems, provided they meet the requirements of the ULC Class A and FM1-90 and the ULC S126M & R value requirements noted in items 21, 23 and 24.5 above, could be mechanically fastened, reinforced minimum 45 mil thick PVC, or Hypalon or EPDM, by Prospex, Good Year Carlisle or Lexcan; and minimum 45 mil thick ballasted EPDM with reinforced EPDM flashing, by Firestone, Carlisle or Lexcan.
- .8 A protected roofing system consisting of an approved single ply membrane, Celfortec's "Foamular 350" closed cell insulation, Dupont's Fabrene scrim sheet, and river washed 3/4" to 1 1/2" stone ballast, provided it satisfies code and manufacturers' requirements, may be used.
- .9 Before acceptance of the proposed roofing assembly, the contractor shall present, for approval purposes, the proposed materials to be used, including the fastener(s), and the design to be used in order to obtain the FM1-90, or I-60, design requirements.
- 10 Galvanized iron flashing shall be 26 gauge galvanized steel sheet conforming to ASTM A361-58T with commercial zinc coating or factory applied paint finish.
- 11 Existing roofs shall be inspected by a qualified roofing specialist and all defects (leaks, drippers, standing water, damaged flashings, wall caps, etc.) shall be corrected prior to the occupancy of the Demised Premises.

19. DOORS & WINDOWS

- .1 Door heights in the same wall or adjacent to one another should all be the same height. Particular attention to be paid to openings and doors at the corners of buildings or intersection of walls.
- .2 Sectional overhead aluminum doors at truck dock shall be Thermanite manufactured by Richards-Wilcox of Canada Ltd., or approved equal. Doors will be equipped with insulated vision lite at eye level, joint seals between sections, perimeter jamb seals on the ends of the exterior surface of each panel, a top seal and an astragal on the bottom section. Doors shall be 7'-0" wide and 8'-0" high.

19. DOORS & WINDOWS (continued)

- 3 Storefronts shall consist of aluminum section by Kawneer or Zimcor Company and finished to a Permacolor or Kalcolour hard colour finish of an approved colour.
- .4 Glazing for doors and sidelights shall be 6mm polished tempered plate glass thermopanes.
- .5 All door hardware shall be capable of accepting Best lock cores.
- .6 In existing buildings, SEARS D/824 will inspect and give specific direction for alterations and accepted alternatives.
- .7 Should the existing building exterior skin and entrance not be acceptable to SEARS, the Owner shall clean and/or paint as required. This cleaning or repair is to restore the exterior facade of the premises as close as possible to its original condition.

20. INTERIOR FINISHES

- .1 All demising walls shall be filled with acoustical insulation.
- .2 SEARS will install a suspended ceiling at 11'-6" AFF throughout the Sales Floor. Other area ceiling heights shall be:
 Offices: 10'-0" suspended ceiling
 Washrooms: 8'-0" drywall ceiling
 Receiving and Loading: no ceiling
- .3 Dividing partitions (constructed by SEARS) between male & female washrooms shall be taken up to the w/s structure and the partitions around the perimeter of the receiving area shall be taken to the w/s of the structure in order to prevent exterior air entry into the return air plenum over the ceiling.

21. SPECIALTIES

DELETED

22. MECHANICAL

- .1 If domestic water pressure exceeds 75 p.s.i., provide a pressure reducing valve assembly complete with pressure relief valve, isolating valves, by-pass and pressure gauges on inlet and outlet side of assembly. When water hardness exceeds 8 g.p.g. furnish and install an automatic water softener system sized for all domestic hot water requirements.
- .2 Provide 140°F domestic hot water heater to supply hot water for all equipment, a minimum of 60 gal. capacity either:
 a) A multiple electric glass lined domestic water tank with upper and lower heating elements or.

22. MECHANICAL (continued)

- b) A domestic hot water heater, oil or gas fired. If prime heating fuel is oil, the owner shall consult with SEARS before providing oil fired system.
- .3 If prime heating fuel is gas, provide RUD/RHEEM, gas-fired water heaters with all standard accessories.
- .4 Gas mains shall be brought to the interior space, roughed-in for all requirements. Provide gas cocks, lever handle with check, to all points using gas.
- .5 Copper pipe is to be type K underground and type L interior. Hot water pipes shall have standard fibreglass insulation with 6 oz. canvas finish. Cold shall have dual temperature fibreglass insulation with 6 oz. canvas finish. Insulation shall be 1/2" thickness for lines less than 1 1/2" and 1" thickness for larger lines.
- .6 Provide a drain at each air-conditioning unit for removal of the condensate from the unit and at each intake plenum.
- .7 The heating system shall be capable of safely maintaining a minimum of 70°F dry-bulb throughout the store when the outside design temperature is as listed in the latest issue of ASHRAE Guide. Provide non-programmable heating and cooling thermostats. (For Ontario follow ASHRAE Guide 90.1)
- .8 The heating system shall be installed in accordance with all authorities having jurisdiction including N.B.F.L., C.S.A., Smoke Abatement, C.G.A., etc.
- .9 Provide and install gas fired unit heaters at each receiving dock door of sufficient capacity to ensure that they eliminate cold drafts and which direct heated air vertically down in order to prevent air stratification.
- 10 When designing the incoming electrical service, a summer/winter switch shall be installed to use the same power for either heating or cooling as the summer refrigeration load and winter heating load are similar if electric heating is used.
- .11 The rooftop air-conditioning system shall be capable of safely maintaining 78°F & 50% R.H. maximum throughout the air-conditioned area, when outside conditions are as listed for the locality concerned in the latest issue of the ASHRAE guide 2 1/2% design but not less than 8°F difference. Rooftop air conditioners shall have an EER of no less than 10.0.
- .12 All areas in the store, including the data and communication rooms shall be air-conditioned with the exception of the following:
 - a) Washrooms
 - b) Truck docks
 - c) Warehouse area
 - d) Janitor's closets
 - e) Electrical rooms and equipment rooms.

22. MECHANICAL (continued)

- .13 The main electrical service shall be 800 amps, 600 volt, 3 phase, 4 wire. Main disconnect and splitter trough shall be provided based on a total load of 10.0 watts per square foot.
- .14 Ventilation load shall be calculated on supplying not less than 0.10 c.f.m. fresh air per sq. ft. of building area. The minimum outside air supplied to the system shall be greater than the total of all exhaust systems in the building ensuring positive pressure will be maintained in the building.
- .15 Minimum c.f.m. circulated by the supply fans shall be 0.75 c.f.m. per square foot of air-conditioned space.
- .16 Insulation shall be selected, applied, adhered and covered in strict accordance with authorities governing combustibility and fireproofing.
- .17
 - a) During summer operation, the cooling cycle should be interlocked with the fan cycle. The fans will stop when the store is not open for business, except it might be necessary to operate the fans and cooling cycle the odd evening or weekend during a prolonged heat spell.
 - b) Air filters are to be changed the day before store opening.
 - c) The roof-top air conditioning units shall have economizers for free cooling during winter operation.
 - d) In buildings with existing HVAC systems, the Owner shall have the system refurbished by an air conditioning contractor who shall provide a two year warranty.

23. FIRE PROTECTION

- .1 Install an automatic sprinkler system to design criteria established by SEARS brokers: M & M Protection Consultants, BCE Place, 161 Bay St., P.O. Box 502, Toronto, Ontario, M5J-2S4, Telephone: (416)-868-2778, Fax: (416)-868-2692 Attn: Mr. Ted Epp and to their approval. The system shall be hydraulically designed to provide over the most remote 3000 sq. ft. of the floor a density of 0.17 USgpm/sq. ft. plus 250 US gpm hose stream.
- .2 All sprinkler lines shall be run concealed in sales areas, office areas and other finished areas, avoiding interference with lights, ducts, pipes, etc. Balance to be run exposed. Sprinkler piping shall be installed at the maximum height above floor in all locations throughout entire building.
- .3 Provide sprinkler heads approved by M & M Protection. Where heads are located close to heating coils, unit heaters, etc. heads of high temperature type are to be used, to suit M & M Protection's regulations. Fully recessed or partially recessed heads painted to match the ceiling tiles shall be used in all suspended ceiling areas whether acoustic tile or drywall. Care should be taken to locate the heads in a symmetrical pattern to suit the ceiling pattern, lighting fixtures, diffusers and/or return air grilles. For areas without ceiling, sprinkler heads shall be upright heads with standard brass finish.

23. FIRE PROTECTION (continued)

- .4 Sprinkler main drain connections shall terminate through exterior walls with 2" diameter stainless steel downspout nozzles, Ancor Model #RD940-3-SS. No other alternative or method will be accepted.
- .5 All fire protection equipment utilized in the installation should be Underwriters Laboratories listed, labelled and approved for its intended use.

24. INTERIOR ELECTRICAL

- .1 Provide for approximately eighty-five (85) 110 volt underfloor outlets to be located and dimensioned by SEARS. Conduit and fishline for underfloor outlets shall be installed by the Owner to SEARS account.
- .2 Provide duplex wall outlets on 8'-0" centres on all demising walls.
- .3 Provide 2" diameter conduit for Bell and CN/CP or Unitel entrance cables to Data Room. Arrange with telephone company to bring SEARS required telephone service cable to the telephone board in the Data room.

25. LIGHTING FIXTURES

- .1 Exit signs shall be light emitting diode type by Hubbell Freedom Series and shall be fed from a separate circuit breaker and fused disconnect as close as possible to the incoming service.
- .2 Provide nightlight lighting over each exterior entrance. Fixtures shall be Metal Halide or High Pressure Sodium units and provide a minimum of 5 F.C. within 5' of building walls. Owners architect to provide special illumination for main entrance.
- .3 Emergency battery backup light units as required by code, must provide enough light to allow safe evacuation of the building from any place within the building. The design shall be based on the completed fixtured and merchandised store. Use ceiling mounted type with Halogen lamps. All units to be painted cream in the Sales area and Vestibule. All emergency units and exit light are to be mounted at a height of 9'-6" AFF.

26. FIRE ALARM SYSTEM

- .1 Supply and install non-coded, zoned, two stage, Class 'B' electrically supervised ULC/CSA approved system, complete with all equipment and accessories.
- .2 Actuation of any alarm initiating device shall cause the following to occur:
 - All audible signals to sound at a rate of 20 strokes per minute for the mandatory period before they can be manually or automatically silenced.
 - The type and location of the alarm to be indicated on the control panel and the remote annunciator.
 - Transmit an alarm to the central station with indication on the annunciator.

26. FIRE ALARM SYSTEM (continued)

- Operation of auxiliary contacts for control of auxiliary functions.
 - Operation of auxiliary relays to cause a common system trouble signal and indication of the alarm condition in the control panel.
- .3 If the first stage alarm is not acknowledged at the control panel or if the evacuation switch or any of the key switches in the manual pull stations are operated, an alarm shall cause the following to occur:
- All audible signals to sound at a rate of 120 strokes per minute for the mandatory period.
 - The evacuation alarm operation shall be indicated on the control panel and the remote annunciator.
- .4 Actuation of any supervisory device shall cause the following to occur:
- The common trouble alarm signal shall sound in the control panel annunciator.
 - The type and location of the alarm to be indicated on the control panel annunciator.
- .5 Any malfunction on the system shall sound a trouble alarm signal and illuminate a trouble indicator in the control panel annunciator.
- .6 The trouble alarm signal shall be suppressed during an alarm.
- .7 The combination panel annunciator shall be a wall mounted cabinet of code gauge steel finished in bronze enamel with a hinged lockable door with full viewing window through which the indications, controls and operating instructions shall be clearly visible. It shall contain the following:
- All necessary circuit modules, circuit area protection devices, etc. in order to provide an approved functioning system.
 - Protection against shorts and grounds by automatic self-restoring circuitry fuses or breaker.
 - Necessary number of detection supervisory and signal zones.
 - Relays of twin contact type with individual dust covers.
 - Alarm lights for detection, supervisory and signal zones.
 - Zone designations on individually replaceable nameplates.
 - Auxiliary relays for transmission and reception of signals from the remote fire alarm control panels.
 - Two stage automatic evacuation control with acknowledgement pushbutton and LED.
 - Electronic supervision of wiring between control panel and detection supervisory and signal devices and annunciators.
 - Subsequent alarm operation.
 - Signal silence push button and LED.

26. FIRE ALARM SYSTEM (Continued)

A combination automatic battery charger-power supply, which shall automatically maintain the sealed no maintenance battery in a fully charged condition. On AC power failure, the panel shall automatically switch to the standby battery without causing a false alarm. The leads to, and the state of charge of, the battery shall be electronically supervised. The charger shall protect itself from battery polarity reversal. The battery shall be properly sized per U.L.C. requirements.

- .8 Manual pull stations shall be two stage type with clearly visible breakglass and a tool-operated test feature. The first and second stage contacts shall be normally open.
- .9 Automatic rate of rise thermal detectors shall be rated at 135°F and 15°F per minute rate of rise.
- 10 Automatic fixed temperature thermal detectors shall be rated at 200°F. The area products of combustion detectors shall operate on the ionization principle and shall be activated by the presence of combustion products. The detector shall be listed by Underwriter's Laboratories of Canada. The detector shall be a plug-in unit containing two ionization chambers, an amplifier-switching circuit and indicator lamp. The duct product of combustion detectors shall be the same as the area detectors but shall include a duct mounting assembly, sampling tubes and remote indicating unit. The sprinkler flow switches and supervisory switches shall be alarm devices which shall have normally open contacts which close on alarm.
- .11 The loss of power devices shall be provided.
- .12 End of line resistors shall be provided for the complete system.
- .13 The alarm sounding devices shall be surface mounted 10" vibrating bells unless otherwise noted. Bells in selling areas shall be flush mounted and shall be provided with an appropriate back box with prime painted steel grille.
- .14 The equipment shall be installed strictly in accordance with the manufacturer's requirements and recommendations and the requirements of the Authorities having jurisdiction.
- .15 Wiring installation shall conform with the requirements of the Canadian Electrical Code. Size wiring in accordance with Class 2 requirements, except for A.C. Signal Circuits where the wiring shall be sized in accordance with Class 1 requirements, but be protected from mechanical injury or other injurious conditions such as moisture, excessive heat or corrosive action in conduit. Connect wiring to the screw terminals in the devices. All wiring shall be supervised. Fire alarm system shall be installed in accordance with ELC Standard S524-M1980.
- 16 Provide wiring components etc. for the sprinkler system alarm and supervisory devices including auxillary contacts and conduit to telephone terminal.

26. FIRE ALARM SYSTEM (continued)

- .17 Terminals for tie-in with monitoring agency are to be provided.
- .18 Provide all necessary wiring conduit work relays programmer etc. as required for the necessary tie-in with the shopping centre fire alarm system.
- .19 The inspection, testing, commissioning and certification report shall be submitted for review by SEARS.
- .20 Prior to energizing or commissioning the system, it shall be fully inspected, tested, checked and adjusted to include, but not limited to, the following:
 - That the type of equipment installed is that designated by the specifications.
 - That the wiring connections to all equipment components show that the installer has complied with ULC and CSA requirements.
 - That the equipment has been installed in accordance with the manufacturer's recommendations and that all devices have been operated and tested to verify their operation and that the system operates in accordance with requirements of the Specification.
 - That the supervisory wiring of those items of equipment connected to a supervisory circuit is operated as specified.
 - That Governmental regulations will be met to the satisfaction of inspection office. The inspection, testing, commissioning and certification report shall be submitted for review by SEARS.

27. EXTERIOR SIGNS

- .1 SEARS will contract for the supply and installation of SEARS logo, 'Whole Home' and 'Furniture Store' signs. There shall be one sign at the entrance, and if necessary one on each exposed exterior wall of the premises. The signs shall all be separate letters, neon illuminated, with acrylic faces in accordance with SEARS standards and as detailed in shop drawings prepared by the sign company and approved by SEARS. There shall also be an illuminated box sign 'Merchandise Pickup' on the exterior wall adjacent to the receiving area. The purchase and installation of the signs shall be by SEARS. Control switches, circuits and transformers to be mounted inside on the walls remotely from the letters.
- .2 Where the site allows, a pylon sign will be required. The pylon sign will be ordered and installed by the Owner.

28. DATA & COMMUNICATIONS ROOM

- .1 Provide a 2" telephone conduit from the main Telephone Room of the premises to SEARS Data & Communications Room.

29. SUMMARY OF RESPONSIBILITIES

	Supplied & installed by SEARS' CONTRACTOR	Supplied by SEARS. installed by SEARS' CONTRACTOR	Supplied & installed by OWNER
#1 - PAINTING			
primer	X		
finish paint	X		
wallcoverings	X		
wallcovering adhesive	X		
washroom painting	X		
exterior painting			X
#2 - ELECTRICAL			
2x4 fixtures	X		
stockroom striplighting	X		
fluorescent lamps	X		
tracklighting		X	
tracklight lamps		X	
potlights		X	
potlight lamps		X	
electrostrip		X	
wall outlets	X		
emergency lighting	X		
column outlets	X		
110V floor outlets		BY OWNER to SEARS account	
underslab data outlets		"	
underslab telephone outlets		"	
wall data outlets	X		
wall telephone outlets	X		
training room outlets	X		
coffee shop outlets	X		
construction telephones	X		
main telephone conduit			X
main telephone cable		BY SEARS under separate contract	
telephones		BY SEARS under separate contract	
docklights	X		
exterior lighting			X
parking lot lighting			X

29. SUMMARY OF RESPONSIBILITIES (continued)

	Supplied & installed by SEARS' CONTRACTOR	Supplied by SEARS. installed by SEARS' CONTRACTOR	Supplied & installed by OWNER
<u>#3 - WALLS, DOORS, CEILINGS and FIXTURE WALL</u>			
interior partitions	X		
column furring	X		
interior doors/frames	X		
interior hardware	X		
traffic door/frame		X	
exterior doors/frames			
-store front			X
-interior vestibule		BY OWNER to SEARS account	
-receiving doors			X
-merch. pick-up door			X
suspended ceilings		X	
drywall ceilings	X		
bulkheads	X		
<u>#6 - STORE MERCHANDISE FIXTURES</u>			
store fixturing		X	
E'walls		X	
rug gallery		X	
<u>#8 - COUNTERS and CUSTOM BUILTS</u>			
sales counter		X	
SASO counter		X	
merch. pick-up counter		X	
employee training room			
cupboards/countertops	X		
coffee shop cupboard and countertop	X		
platform railings	X		
backwall base platforms	X		
moveable display platforms	X		

29. SUMMARY OF RESPONSIBILITIES (continued)

	Supplied & installed by SEARS' CONTRACTOR	Supplied by SEARS, installed by SEARS' CONTRACTOR	Supplied & installed by OWNER
<u>#10 - FLOORCOVERING</u>			
carpet	X		
vinyl composition tile	X		
wood flooring	X		
carpet edging	X		
carpet adhesive	X		
vinyl comp. adhesive	X		
wood flooring adhesive	X		
carpet seam sealer	X		
ceramic tile	X		
ceramic adhesive & grout	X		
ceramic metal edging	X		
stockroom urethane	X		
carpet base	X		
vinyl base	X		
wood base	X		
<u>#11 - ILLUMINATED SIGNS</u>			
exterior building signs		BY SEARS	
power for signs	X		
pylon signing			X
<u>#14 - SITE OFFICE</u>			
base building permit			X
interior finishes permit	BY SEARS		
other permits	X		
site office/supervision	X		
<u>#21 - CABLE TV</u>			
		NOT REQUIRED	
<u>#23 - STOCKBINNING</u>			
		BY SEARS	
<u>#24 - DATA EQUIPMENT & DATA WIRING</u>			
data wiring, relocations & terminations		BY SEARS under separate contract	
data equipment hardware		BY SEARS	
<u>#25 - OFFICE FURNITURE</u>			
furniture		X	
cash safe		X	

29. SUMMARY OF RESPONSIBILITIES (continued)

	Supplied & installed by SEARS' CONTRACTOR	Supplied by SEARS. installed by SEARS' CONTRACTOR	Supplied & installed by OWNER
<u>#27 - RECEIVING</u>			
dock bumpers			X
dock seals			X
dock levellers			X
receiving equipment		BY SEARS	
<u>#30 - PUBLIC ADDRESS & MUSIC SYSTEM</u>			
speakers		X	
speaker wiring	X		
main console		X	
<u>#56 - FIRE & SECURITY</u>			
perimeter security/CCTV		BY SEARS	
fire extinguishers		X	
fire alarm system			X
<u>#60 - DISPLAY</u>			
display equipment	X		
<u>#61 - ARTWORK and SIGNING</u>			
artwork	X		
<u>#62 - SIGNHOLDERS</u>			
signholders	X		
<u>#63 - BACKWALL and HANGING SIGNS</u>			
backwall lettering		BY SEARS	
hanging signs		BY SEARS	
<u>#82 - CONSULTANTS</u>			
architectural			X
mechanical & electrical		BY SEARS	
structural			X
landscaping			X

29. SUMMARY OF RESPONSIBILITIES (continued)

	Supplied & installed by SEARS' CONTRACTOR	Supplied by SEARS. installed by SEARS' CONTRACTOR	Supplied & installed by OWNER
#84 - BUILDING ALTERATIONS			
roofing			X
insulation	X		
fireproofing			X
washroom counters	X		
baby change tables and accessories		X	
main electrical service			X
gas meter & service			X
water meter & service			X
#86 - MECHANICAL			
rooftop air units			X
HVAC ductwork & grills	X		
washroom fixtures	X		
toilet partitions	X		
training room sink	X		
coffee shop sink	X		
janitor's sink	X		
sprinklers	X		

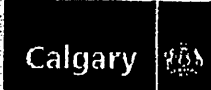
This is Exhibit "B" referred to in the
Affidavit of Randy Remington
sworn November 16, 2017



Commissioner for Taking Affidavits (or as may be)

Colleen Barbara-Mae Webb
My Commission expires
November 19, 2018

Z 946 (R2016-02) Property
5C BNR



Finance
800 Macleod Trail SE
PO Box 2405 Stn M
Calgary AB T2P 3L9
Canada

OWNER# 3095349
RENINGTON PROPERTIES INC..
300-200 QUARRY PARK BLVD SE
CALGARY AB T2C 5E3

2017 PROPERTY TAX BILL

T 513 (R2014-01)

PROPERTY ADDRESS	ROLL NUMBER	DATE OF MAILING	DUE DATE
70 GLENDEER CI SE	113 01199 3	2017/05/28	2017/08/30
LPAU ID	LEGAL DESCRIPTION		
	9111439;3;4		
MORTGAGE/MANAGEMENT COMPANY	TAXATION YEAR	ASSESSMENT	
	2017	15,980,000	

NON-RESIDENTIAL	ASSESSMENT	TAX RATE	AMOUNT	TOTAL
Opening Account Balance				\$0.00
Property Tax to the City	15,980,000	.013881900	\$221,832.76	
Property Tax to the Province	15,980,000	.003862600	\$61,724.35	
Current Taxes				\$283,557.11
Council Approved Rebates				\$6,160.29CR
TOTAL TAXES PAYABLE 2017/06/30 TO AVOID PENALTY				\$277,396.82

Property taxes must be paid on or before June 30 to avoid a late payment penalty of 7% on July 01. For all your payment options, including the Tax Instalment Payment Plan (TIPP), visit www.calgary.ca/propertytax or call 311. If calling from outside Calgary 403-268-CITY (2489). See reverse for more information.

Remington Development Corporation
RECEIVED
MAY 29 2017

FOR FURTHER INFORMATION, CALL 311 or
403-268-CITY (2489)

SEE REVERSE FOR TERMS OF PAYMENT.
STATEMENT PORTION - RETAIN FOR YOUR RECORDS



Finance
800 Macleod Trail SE
PO Box 2405 Stn M
Calgary AB T2P 3L9
Canada

2017 PROPERTY TAX BILL

T 513 (R2014-01)

REMITTANCE PORTION - RETURN WITH PAYMENT

PROPERTY ADDRESS	ROLL NUMBER
70 GLENDEER CI SE	113 01199 3

00027739682 00000000 011301199300 20

412151*

RENINGTON PROPERTIES INC..
300-200 QUARRY PARK BLVD SE
CALGARY AB T2C 5E3

AMOUNT DUE 2017/06/30	\$277,396.82
AMOUNT PAID	

This is Exhibit "C" referred to in the
Affidavit of Randy Remington
sworn November 16, 2017



Commissioner for Taking Affidavits (or as may be)

Colleen Barbara-Mae Webb
My Commission expires
November 19, 2018



300, 200 Quarry Park Boulevard S.E.
Calgary, Alberta T2C 5E3
Phone: (403) 255-7003 Fax: (403) 255-7530
www.remingtoncorp.com

INVOICE No:
620

Sears Canada Inc.
Dept 702D
290 Yonge Street, Suite 700
Toronto, Ontario M5B 2C3

June 21, 2017

Attention: Ms. Anita Short

Reference: Lease at 70 Glendeer Circle S.E. Calgary, Alberta

To invoice you for 2017 Property Taxes as follows;

Sears square footage		42,740		
Total square feet		<u>64,955</u>		
Sears portion		65.7994%		
2017 Property Taxes	\$	277,396.82	@ 65.7994%	\$ 182,525.44
Plus GST (#89743 0898)				<u>9,126.27</u>
INVOICE TOTAL				<u>\$ 191,651.71</u>

Please submit payment to the above address. If you have any questions or concerns regarding this invoice,
please contact Ms. Ramona Meixner, Director - Property Management

This is Exhibit "D" referred to in the
Affidavit of Randy Remington
sworn November 16, 2017



Commissioner for Taking Affidavits (or as may be)

Colleen Barbara-Mae Webb
My Commission expires
November 19, 2018

Burnet,
Duckworth
& Palmer LLP
Law Firm

Reply to: Natasha D. Wood
Direct Phone: (403) 260-0159
Direct Fax: (403) 260-0332
nwood@bdplaw.com

Assistant: Lori Droppo
Direct Phone: (403) 267-1621
Our File: 51182-471

July 25, 2017

Via Courier

Via Email (tsandler@osler.com)

Sears Canada Inc.
Dept 702D
290 Yonge Street, Suite 700
Toronto, Ontario M5B 2C3

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Attention: Anita Short

Attention: Tracy Sandler

Re: Lease Agreement between Remington Properties Inc. and Sears Canada Inc. ("Sears") at 70 Glendeer Circle SE Calgary, Alberta (the "Lease")

We are the solicitors for Remington Properties Inc. ("**Remington**").

In accordance with section 8.1(a) of the Lease, Remington issued an invoice on June 21, 2017 in respect of Sears' portion of the 2017 real property taxes due June 30, 2017 in the amount of \$191,651.71 (the "**Property Taxes**"). Pursuant to section 8.1 of the Lease, Sears is obligated to pay and discharge the real property taxes on or before the date when they become due.

As you are aware, by Order made on June 22, 2017 (as amended and restated, the "**Initial Order**"), Sears was granted protection under the *Companies' Creditors Arrangement Act*. The Initial Order provides in paragraph 11 that until a real property lease is disclaimed, Sears shall:

pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any or all of the Sears Canada Entities or the making of this Order) for the period of time 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). *Emphasis added.*

Remington has received full payment of July rent as of July 14, 2017. However, Remington has not received payment of the Property Taxes as set out in the invoice, nor has it received any correspondence from Sears in relation to the invoice. The Property Taxes are payable to Remington, as landlord, under its lease, as of June 30, 2017. The standard billing practice observed between Remington and Sears over the past two decades under this Lease has consisted of Remington issuing an invoice for Sears' portion of the property taxes and Sears issuing payment to Remington on or before the due date of June 30.

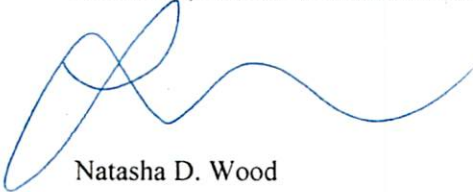
8422482.2

Remington is seeking payment of the Property Taxes to the end of July, 2017 in the amount of \$111,796.82 by lump sum payment to align with the current rent payments received. Given the ongoing sales process as approved by the Court on July 13, 2017 and the possibility of disclaimer of the Lease under the *Companies' Creditors Arrangement Act*, following such payment, Remington requests that the remainder of the 2017 Property Taxes be pro-rated and paid with the twice-monthly rent payments as prescribed by the Initial Order.

Please contact me should you have any questions regarding the foregoing.

Yours truly,

BURNET, DUCKWORTH & PALMER LLP



Natasha D. Wood

NDW/ljd

This is Exhibit "E" referred to in the
Affidavit of Randy Remington
sworn November 16, 2017



Commissioner for Taking Affidavits (or as may be)

Colleen Barbara-Mae Webb
My Commission expires
November 19, 2018

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE



Toronto
Montréal
Calgary
Ottawa
New York

July 25, 2017

Matthew Ritchie
Direct Dial: 416.862.5674
mritchie@osler.com
Our Matter Number: 1179649

Sent By Electronic Mail

Remington Development

Dear Sirs/Mesdames:

RE: CCAA Proceedings of Sears Canada Inc. et al.
AND RE: Adjustments for Lease Assignments or Terminations

As you are aware, Sears Canada Inc. (“SCI”) and certain of its subsidiaries and affiliates filed for and were granted protection from their creditors under the *Companies’ Creditors Arrangement Act* (Canada). FTI Consulting Canada Inc. was appointed as the Monitor (the “**Monitor**”). We are counsel to SCI.

Subsequently, the Court has also issued an order (the “**SISP Approval Order**”) approving the process for the disposition of, among other things, SCI’s leasehold interest(s) in the lease(s) for premises at the location(s) described in Schedule “A” hereto, of which you are the landlord (the “**Lease(s)**”). Copies of the SISP Approval Order and other court orders are available on the Monitor’s website at <http://cfcanada.fticonsulting.com/searscanada/>.

In anticipation of the disposition of the Lease(s), we wish to determine the amounts of any necessary adjustments to be made in connection with such disposition. We ask that you provide to SCI, at your earliest opportunity, the amounts and, if available, details and supporting documentation of any outstanding basic or minimum rents, reconciliations of CAM charges, operating expenses, insurance, costs of repairs and replacements, realty taxes, utilities and other additional rent, or such other amounts payable by SCI pursuant to the Lease(s) for the Lease(s) to be in good standing (subject to court order), in each case for 2016 and all previous years and the stub period in 2017 up to and including the date hereof.

Unless you advise otherwise, we will assume that there are no amounts outstanding for any period prior to 2016.

We look forward to receiving the requested information as soon as possible and would appreciate if you could respond to this request by no later than August 11, 2017. Please provide the requested information by email to Nina Marino at real-estate@sears.ca with a copy to Steven Bissell at Steven.Bissell@fticonsulting.com or by courier to Sears Canada, Suite 700, 290 Yonge Street, Toronto, Ontario, M5B 2C3, Attention: Nina Marino, Real Estate Department.

Thank you for your co-operation.

Yours very truly,



Matthew Ritchie

- c: Tracy Sandler, *Osler, Hoskin & Harcourt LLP*
- Ryan Nielsen, *Osler, Hoskin & Harcourt LLP*
- Phil Mohtadi, *Sears Canada Inc.*
- Leigh Lampert, *Sears Canada Inc.*
- Nina Marino, *Sears Canada Inc.*
- Steven Bissell, *FTI Consulting Canada Inc.*
- Virginie Gauthier, *Norton Rose Fulbright Canada LLP*

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

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF RANDY REMINGTON

**ROSS BARRISTERS
PROFESSIONAL CORPORATION**

123 John Street
Toronto ON M5V 2E2

Mark A. Ross (50872U)

MRoss@rossbarristers.com

Tel: 416-593-7107

Sarah Walker (62427H)

SWalker@rossbarristers.com

Tel: 416-572-4904

Tel: 416-572-4910

Fax: 416-551-8808

Lawyers for the Respondent
Remington Properties Inc.

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

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

**ROSS BARRISTERS
PROFESSIONAL CORPORATION**

123 John Street
Toronto ON M5V 2E2

Mark A. Ross (50872U)

MRoss@rossbarristers.com

Tel: 416-593-7107

Sarah Walker (62427H)

SWalker@rossbarristers.com

Tel: 416-572-4904

Tel: 416-572-4910

Fax: 416-551-8808

Lawyers for the Respondent
Remington Properties Inc.