

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

**SEARS CANADA INC.,
AND RELATED APPLICANTS**

THIRTY-FOURTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

January 6, 2020

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**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., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., 9845488
CANADA 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

**THIRTY-FOURTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. INTRODUCTION

1. On June 22, 2017, Sears Canada Inc. ("**Sears Canada**") and a number of its operating subsidiaries (collectively, with Sears Canada, the "**Applicants**") sought and obtained an initial order (as amended and restated on July 13, 2017, the "**Initial Order**"), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The relief granted pursuant to the Initial Order was also extended to Sears Connect, a partnership forming part of the operations of the Applicants (and together with the Applicants, the "**Sears Canada Entities**"). The proceedings commenced under the CCAA by the Applicants are referred to herein as the "**CCAA Proceedings**".

2. The Initial Order, among other things:
 - (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017 (the “**Stay Period**”); and
 - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the Stay Period. In addition, the following orders were issued:
 - (a) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities (“**Employee Representative Counsel**”);
 - (b) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters (“**Pension and Retiree Representative Counsel**”);
 - (c) an order authorizing the eventual suspension of special payments under the Sears Canada Pension Plan (the “**Pension Plan**”), certain payments in connection with supplemental pension plans, and certain payments under post-retirement benefit plans pursuant to a term sheet agreed to by the Ontario Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund (the “**Superintendent**”), Employee Representative Counsel, Pension Representative Counsel, each of their respective representatives, and the Sears Canada Entities; and
 - (d) an order approving a sale and investor solicitation process (the “**SISP**”) to solicit interest in potential transactions, including investment and liquidation proposals, involving the business, property, assets and/or leases of the Applicants (the “**SISP Approval Order**”).

4. On July 18, 2017, the Court issued an order approving an agreement and a process for the liquidation of inventory and FF&E at certain initial closing Sears Canada locations.
5. On October 13, 2017, the Court issued, among other orders, an order (a) approving an agreement and a process for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations.
6. The liquidation of all inventory and FF&E is now completed and all Sears Canada retail locations are closed.
7. The only remaining material asset of the Sears Canada Entities, other than possible litigation-related assets, that has not been sold is a real property asset located in Barrie, Ontario.
8. The Stay Period was most recently extended to March 31, 2020 by Order of the Court granted on September 19, 2019.
9. In connection with the CCAA Proceedings, the Monitor has provided 33 reports and [23] supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are, or will be made, available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada/.

B. PURPOSE

10. The purpose of this thirty-fourth report of the Monitor (the “**Thirty-Fourth Report**”) is to provide the Court with updated information and the Monitor’s comments and recommendations regarding the motion for approval of a sale transaction for the former Sears Canada full-line store located at the shopping centre commonly referred to as Georgian Mall in Barrie, Ontario (the “**Barrie Property**”).

C. TERMS OF REFERENCE

11. In preparing this Thirty-Fourth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities’ books and

records, certain financial information and forecasts prepared by the Sears Canada Entities, and discussions with various parties, including employees of, and advisors to, the Sears Canada Entities (collectively, the “**Information**”).

12. Except as otherwise described in this Thirty-Fourth Report:
 - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Thirty-Fourth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
13. Future-oriented financial information reported in or relied on in preparing this Thirty-Fourth Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
14. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
15. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the following documents filed as part of the CCAA Proceedings: (i) the affidavits of Mr. Billy Wong, former Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms. Becky Penrice, former Executive Vice-President and Chief Operating Officer of Sears Canada; (iii) the affidavits of Mr. Philip Mohtadi, former General Counsel and Corporate Secretary of Sears Canada; (iv) the Affidavit of Mark Caiger, sworn May 29, 2018 (the “**Caiger Affidavit**”); and (v) the Prior Reports.

D. UPDATES ON REAL PROPERTY MARKETING PROCESS

16. As described in the Nineteenth Report, on July 13, 2017, Sears Canada, with the assistance of BMO Nesbitt Burns Inc. as financial advisor to the Sears Canada Entities (“**BMO**”) sought offers for, among other things, the purchase of Sears Canada’s owned real property.
17. As required by the SISP Approval Order, the Monitor and the Special Committee (as defined in the SISP Approval Order) supervised the implementation of the SISP by the Sears Canada Entities and its advisors.
18. The SISP solicited interest in a broad range of transactions to refinance, restructure, sell or reorganize the business and assets, including owned real estate assets, of the Sears Canada Entities.
19. Expressions of interest were received for Sears Canada’s owned real property by the August 31, 2017 bid deadline under the SISP, at which time, Sears Canada continued to own the following real estate assets:
 - (a) Upper Canada Mall full-line store (Newmarket, ON);
 - (b) Distribution centre (Belleville, ON);
 - (c) Fleur de Lys full-line store (Quebec City, QC);
 - (d) Windsor full-line store (Windsor, ON);
 - (e) Peterborough full-line store (Peterborough, ON);
 - (f) The Barrie Property;
 - (g) Trois-Rivières full-line store (Trois-Rivières, QC);
 - (h) Place Vertu liquidation store (Montréal, QC);
 - (i) Lévis full-line store (Lévis, QC);
 - (j) Charlottetown store (Charlottetown, PEI);

- (k) Chicoutimi residual land (Chicoutimi, QC);
 - (l) Edmonton residual land (Edmonton, AB); and
 - (m) Sainte-Agathe-des-Monts residual land (Sainte-Agathe-des-Monts, QC),
- (collectively, the “**Real Estate Assets**”).
20. In light of the expressions of interest that were received by the August 31st bid deadline for the Real Estate Assets, Sears Canada, in consultation with BMO, and the Monitor, as well as the Owned Real Estate Consultation Parties¹ determined that additional time should be provided for the completion of further due diligence, including making available further environmental studies and related materials to potential purchasers.
 21. On February 7, 2018, BMO delivered an updated sale process letter (the “**Updated Sale Process Letter**”) to those parties who had previously expressed an interest in the Real Estate Assets under the SISP and parties who had contacted BMO expressing interest subsequent to the original bid deadline. BMO also delivered the Updated Sale Process Letter to other potentially interested parties identified by the real estate advisor to the Superintendent.
 22. The Updated Sale Process Letter solicited bids for all of the Real Estate Assets other than the assets located in Charlottetown, Edmonton, Chicoutimi and Sainte-Agathe-des-Monts (which properties were being marketed by CBRE Limited, hereafter referred to as “**CBRE**”). The Updated Sale Process Letter provided for a bid deadline of March 7, 2018 at 5:00 p.m. (Eastern).
 23. On March 7, 2018, BMO and the Monitor received a number of competing offers to purchase the Real Estate Assets that were the subject of the Updated Sale Process Letter.

¹ The Owned Real Estate Consultation Parties are: Pension Representative Counsel, Employee Representative Counsel, the Superintendent and Morneau Shepell Limited, as administrator of the Sears Canada Pension Plan and their respective financial and/or real estate advisors.

Subsequently, and as fully described in the Nineteenth Report and the supplemental reports thereto, Sears Canada sold all of the Real Estate Assets except the Barrie Property.²

E. THE BARRIE PROPERTY

24. The Barrie Property is located adjacent to Georgian Mall in Barrie, Ontario, owned in part by RioCan Holdings Inc. or its affiliates (“**RioCan**”).
25. The Barrie Property is the subject of an Easement and Operating Agreement dated as of July 15, 2007 between Ontrea Inc., CF/Realty Holdings Inc. and Sears Canada (as amended, assigned, extended, supplemented and/or otherwise modified from time to time, the “**Operating Agreement**”). The Operating Agreement governs various aspects of the relationship between the owner of the Georgian Mall (RioCan, as assignee of Ontrea Inc. and CF/Realty Holdings Inc.) and the owner of the Barrie Property (Sears Canada) or its assignee.
26. The Operating Agreement contains an option to purchase the Barrie Property in favour of RioCan (the “**Purchase Option**”). The Purchase Option would become exercisable by RioCan if Sears Canada (or its tenants, if any) did not carry on business in at least 58,250 square feet of gross floor area on the Barrie Property at any time after July 31, 2008. The Purchase Option could be exercised by RioCan for a period of one year after receiving notice from Sears Canada that business was not being conducted on at least 58,250 square feet of gross floor area. The liquidation of Sears Canada’s inventory and FF&E at the Barrie Property was completed at the end of January 2018 and Sears Canada ceased to carry on business at the Barrie Property at that time. On January 13, 2019, the Monitor received a notice from RioCan that it had exercised the Purchase Option. The Monitor, on behalf of Sears Canada, and RioCan engaged in the process prescribed by the terms of the Purchase Option to establish the purchase price for the Barrie Property under the Purchase Option. However, ultimately a transaction was not concluded under the Purchase Option and the Purchase Option was terminated by agreement of RioCan and Sears Canada on

² The Barrie Property was the subject of a purchase agreement dated July 31, 2018. However, on August 3, 2018, that agreement was terminated by Sears Canada as a result of the proposed purchaser’s breach of that purchase agreement.

July 18, 2019. A copy of the agreement terminating the Purchase Option is attached hereto as Appendix “A”.

27. Following the termination of the Purchase Option, Sears Canada engaged CBRE to undertake a further marketing process for the Barrie Property.
28. CBRE commenced marketing of the Barrie Property in August 2019. Initial marketing materials were delivered electronically and by mail to several thousand parties in CBRE’s database of potentially interested purchasers. Thirty-four parties signed confidentiality agreements to obtain further information regarding the Barrie Property. September 30th was established as the deadline for initial letters of intent and several letters of intent were received at that time. Following further discussions with the potential purchasers, CBRE requested a second submission of updated letters of intent on October 4, 2019 and updated letters of intent were received at that time. Following further discussions with the interested bidders, CBRE requested that offers be submitted in the form of a binding agreement of purchase and sale using Sears Canada’s standard form by October 21, 2019 and agreements of purchase and sale executed by bidders were submitted by that date.
29. Negotiations ensued with interested parties in respect of the financial and legal aspects of the offers, draft documents were exchanged by the parties and follow up discussions were held as necessary. A summary of offers received for the Barrie Property is attached hereto as Confidential Appendix “B”.
30. Following those discussions and exchanges, the Monitor determined, in consultation with CBRE and the Owned Real Estate Consultation Parties, that the transaction proposed by 1485900 Ontario Ltd. (the “**Barrie Purchaser**”) was in the best interests of the Applicants and their stakeholders.
31. The terms of the successful bid by the Barrie Purchaser for this property are contained in an Agreement of Purchase and Sale dated October 25, 2019 between the Barrie Purchaser and Sears Canada (the “**Barrie APS**”). An unredacted copy of the Barrie APS is attached hereto as Confidential Appendix “C”. A redacted copy of the Barrie APS is attached hereto as Appendix “D”.

32. The terms of the Barrie APS are substantially similar to prior real estate transactions entered into by Sears Canada during these CCAA Proceedings, including:
- (a) A deposit of 10% of the cash purchase consideration must be submitted by the acquirer to be held in escrow by the Monitor.
 - (b) The purchase consideration is subject to customary adjustments.
 - (c) Any taxes associated with the closing of the transaction would be paid by the Barrie Purchaser.
 - (d) The Transaction will be completed on an ‘as is, where is’ basis without representations and warranties other than minimal warranties expressly stated in the transaction documents that are customary for transactions of this type in an insolvency context.
 - (e) Sears Canada will have no obligations to repair or otherwise remediate the Barrie Property.
 - (f) Closing is conditional upon court approval.
33. The Barrie Purchaser has paid the required deposit to CBRE, in trust.
34. The outside date for completion of the transaction is January 20, 2020.
35. In addition to the Purchase Option, the Barrie Property was also the subject of a right of first refusal in favour of RioCan (the “**Right of First Refusal**”). The entry into the Barrie APS triggered the Right of First Refusal. It is a condition of closing of the Barrie APS that the Right of First Refusal must have expired in accordance with its terms or, alternatively, have been waived by RioCan in writing. If the Right of First Refusal was exercised and the Barrie APS was terminated as a result, the Barrie Purchaser would be entitled to a break fee pursuant to the Barrie APS. On December 2, 2019, RioCan’s counsel advised the Monitor’s counsel that RioCan did not intend to submit an offer under the Right of First Refusal. In addition, the period for RioCan to exercise the Right of First Refusal expired on December 13, 2019.

F. SALE APPROVAL MOTION

36. The Monitor now seeks approval for:

- (a) Sears Canada's entry into and completion of the transactions under the Barrie APS; and
- (b) the sealing of Confidential Appendix "B" and "C" to this Thirty-Fourth Report.

37. Section 36(1) of the CCAA states:

36(1) Restriction on disposition of business assets - A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

38. Section 36(3) of the CCAA states:

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

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

39. The Barrie Property was marketed extensively during the process established by the SISP Order and the Updated Sale Process Letter in 2017 and 2018. The Barrie Property was then further marketed under a process commenced by CBRE in August 2019.
40. The Monitor participated in all stages of the marketing process and is satisfied that the marketing process was carried out in accordance with all Orders of the Court, that the opportunity to acquire the asset offered was widely known and that the process that resulted in the Barrie APS was fair and reasonable. In the Monitor's view, the Applicants' marketing efforts were appropriate in the circumstances.
41. The Monitor approved the process set out in the SISP, the extended marketing process in early 2018 and the subsequent process by CBRE that led to the transaction for the Barrie Property.
42. The Monitor notes that the timeline for the completion of this transaction has been longer than the process to complete the sale of Sears Canada's other owned retail store locations. The Monitor believes that the existence of the Purchase Option may have limited the pool of potentially interested purchasers during the period from January 2018 to January 2019, being the time period during which the Purchase Option was effective. In particular, until January 2019, potential purchasers of the Barrie Property would have to accept the risk that they would acquire a property that remained the subject of a third party's Purchase Option. Further, when the Purchase Option was exercised in January 2019, Sears Canada was not in a position to continue to market the Barrie Property. Once Sears Canada had clarity that the Purchase Option was terminated in July 2019, opportunities to complete a transaction for the Barrie Property with a party other than RioCan increased.
43. The Sears Canada Entities have consulted with the Owned Real Estate Consultation Parties during the process to market the Barrie Property. The Owned Real Estate Consultation Parties were informed of material developments in that marketing process.
44. The Monitor understands the Owned Real Estate Consultation Parties support the proposed transaction.

45. The proposed transaction maximizes value from all options available at this time for the Barrie Property and eliminates ongoing carrying costs of this property, estimated at approximately \$56,000 per month.
46. The Operating Agreement will be assumed by the purchaser of the Barrie Property in accordance with the terms of the Operating Agreement.
47. The proposed transaction represents the highest and best offer obtained for the Barrie Property.
48. In accordance with the terms, and in particular section 7, of the agreement dated July 15, 2007 between Sears Canada and Ontrea Inc. pursuant to which the Right of First Refusal was granted (the “**ROFR Agreement**”), the Monitor will be requesting that the Court expunge from title the registrations of (a) the ROFR Agreement and (b) the assignment and assumption of the ROFR Agreement between Ontrea Inc., as assignor, and RioCan, as assignee. Copies of the ROFR Agreement and the assignment and assumption of ROFR Agreement are attached hereto as Appendices “E” and “F”.
49. As a result of discussions with the Barrie Purchaser, the Monitor will also be requesting that two instruments that relate to an agreement registered on title by Markborough Properties Inc. (“**Markborough**”) be deleted. The foregoing agreement dated November 3, 1995 and entered into by CF/Realty Holdings Inc. and Ontrea Inc. (as former owners of the Georgian Mall) and Markborough and Maston Ventures Ltd. (as former owners of lands near the Georgian Mall, the “**Markborough Property**”) contain restrictive covenants that expired on November 3, 2005. Copies of the two instruments that relate to the Markborough agreement are attached hereto as Appendices “G” and “H”.³

³ The Barrie APS does not require, as a condition of closing, that the instruments related to the agreement registered on title by Markborough Properties, the ROFR Agreement or the assignment and assumption of ROFR Agreement be deleted or expunged from title to the Barrie Property. However, the Monitor has requested that these instruments be deleted and expunged to accommodate a request of the Barrie Purchaser.

G. MONITOR'S RECOMMENDATION

50. Based upon the considerations set out above, the Monitor recommends the approval of the sale of the Barrie Property as contemplated in the Barrie APS.
51. Confidential Appendices "B" and "C" to this Thirty-Fourth Report contain commercially sensitive information, including information on the bids received for the Barrie Property and the purchase price for the Barrie Property. The public disclosure of this information would be harmful to the integrity of the process to sell the Barrie Property, including if the Barrie Property needed to be subject to a further marketing process. The Monitor supports the sealing of Confidential Appendices "B" and "C" to this Thirty-Fourth Report. The Monitor respectfully submits to the Court this, its Thirty-Fourth Report.

Dated this 6th day of January, 2020.

FTI Consulting Canada Inc.
in its capacity as Monitor of
the Sears Canada Entities



Steven W. Bissell
Managing Director

Appendix "A"

**Sears Canada Inc.
Suite 520, 180 John Street
Toronto, Ontario
M5T 1X5**

July 18, 2019

RioCan Management Inc.,
on behalf of Riocan Holdings Inc.
2300 Yonge Street
Toronto, Ontario
M4P1E2

Attention: XI Huang, Assistant VP, Investments & Residential

Dear Mr. Huang:

Easement and Operating Agreement between RioCan Holdings Inc. and Sears Canada Inc. dated July 15, 2007 (the "E&O Agreement") and relating to certain lands located at 521 Bayfield Street, Barrie, Ontario

Reference is made to the E&O Agreement and, in particular, the option to purchase the Sears Lands (as defined in the E&O Agreement) provided pursuant to Section 12 of the E&O Agreement, and as further described in Schedule "E" and Schedule "F" to the E&O Agreement (the "**RioCan Purchase Option**").

Reference is also made to the proceedings commenced by Sears Canada Inc. ("**SCI**") on June 22, 2017 pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCA**").

On January 13, 2019, RioCan Management Inc., on behalf of Riocan Holdings Inc., (together with its affiliates, "**RioCan**") provided notice to SCI of the exercise of the RioCan Purchase Option.

Following the exercise by RioCan of the RioCan Purchase Option, RioCan and SCI undertook the steps set out in paragraphs (a) through (d) of Schedule "E" to the E&O Agreement, including the delivery of notice by RioCan to SCI that the purchase price under the RioCan Purchase Option would be determined in accordance with Schedule "F" to the E&O Agreement. In accordance with Schedule "F" of the E&O Agreement, each of RioCan and SCI appointed an appraiser and each appraiser has prepared a draft report regarding the Sears Lands, which has been shared with both RioCan and SCI.

We write to confirm that SCI and RioCan agree to the following terms:

1. SCI and RioCan wish to terminate the RioCan Purchase Option and to cease all steps required under the RioCan Purchase Option. SCI and RioCan shall have no claims against each other in connection with such termination.
2. The rights of RioCan to purchase the Sears Lands pursuant to the RioCan Purchase Option are now deemed to be at an end, the E&O Agreement is amended by deleting the second paragraph of Section 12, and, for greater certainty, RioCan shall not be permitted to re-engage the RioCan Purchase Option at any time in the future, including following any sale of the Sears Lands to any other party.

3. RioCan acknowledges that SCI intends to continue marketing all of its right, title and interest in the Sears Lands for the purposes of completing a sale of the Sears Lands, subject to court-approval in SCI's proceedings under the CCAA.
4. This Letter Agreement and the termination of the Purchase Option hereunder shall not affect any rights or obligations of SCI or RioCan under the E&O Agreement, except as expressly set out herein.
5. This Letter Agreement and the termination of the Purchase Option hereunder shall not affect any rights or obligations of SCI or RioCan under the Right of First Refusal made as of July 15, 2007 in respect of the Sears Lands (the "ROFR"), which remains in full force and effect.
6. This Letter Agreement shall be binding upon the undersigned parties and any successors or assignees of such parties' rights in the Sears Lands or under the E&O Agreement or the ROFR.

Kindly confirm your acknowledgement and agreement to the foregoing by signing where indicated below.

Yours truly,

SEARS CANADA INC.

Per: _____

P. Mohtadi

Name: P. Mohtadi

Title: Corporate Secretary

By signing below, the undersigned confirm their agreement to the terms of this Letter Agreement:

Dated this day of July, 2019.

**RIOCAN MANAGEMENT INC., on behalf of
RIOCAN HOLDINGS INC.**

Per: _____

Name:


JONATHAN GITLIN

Title:

President & Chief Operating Officer

Confidential Appendix “B”

Confidential Appendix “C”

Appendix “D”

AGREEMENT OF PURCHASE AND SALE

SEARS CANADA INC.
as the Vendor

- and -

1485900 ONTARIO LIMITED
as the Purchaser

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THIS AGREEMENT OF PURCHASE AND SALE dated with effect as of Friday, October 25, 2019 (the “Effective Date”)

BETWEEN:

SEARS CANADA INC. (the “Vendor”)

OF THE FIRST PART,

- and -

1485900 ONTARIO LIMITED (the “Purchaser”)

OF THE SECOND PART,

RECITALS:

- A. The Vendor operated a chain of retail department stores throughout Canada under the “Sears” banner.
- B. On the Filing Date, the Vendor and certain of its affiliates and subsidiaries (the “**Sears Group**”) applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- C. On the SISP Order Date, the Court granted the SISP Order which, among other things, approved the SISP. The SISP Order and the SISP govern the process for soliciting and selecting bids for the sale of, among other things, the Assets (as defined in the SISP) of the Sears Group.
- D. The Purchaser hereby offers to acquire from the Vendor, the Vendor’s right, title and interest in and to the Subject Assets on the terms and conditions set out herein (the “**Offer**”).
- E. This Agreement is subject to approval by the Court, and the completion of the Transaction is subject to the Court issuing the Approval and Vesting Order and the Monitor releasing the Monitor’s Certificate, all as more particularly described herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Vendor and the Purchaser(individually, a “**Party**” and collectively, the “**Parties**”) covenant and agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

Unless otherwise provided for herein, all capitalized terms set out below when used in this Agreement shall have the meaning ascribed thereto unless the context expressly or by necessary implication otherwise requires:

“**Agreement**” means this agreement constituted by the Vendor’s acceptance of the Offer together with all schedules and instruments in written amendment or confirmation of it and the expression “**Section**” followed by a number means and refers to the ascribed thereto Section of this Agreement.

“**Approval and Vesting Order**” means an order issued by the Court approving this Agreement and the transactions contemplated by this Agreement, and conveying to the Purchaser all of the Vendor’s right, title and interest in and to the Subject Assets free and clear of all Encumbrances other than the Permitted Encumbrances, which order shall be substantially in the form of Schedule “D” (with only such changes as the Parties shall approve in their reasonable discretion, but in all cases in form and substance acceptable to the Monitor).

“**Assignment and Assumption of Assumed Contracts and Permitted Encumbrances**” means an assignment by the Vendor and an assumption by the Purchaser of the Vendor’s right, title and interest and all liability, covenants and obligations in, to and under the Assumed Contracts and any Permitted Encumbrances. The agreement evidencing same shall include an indemnity given by the Purchaser in favour of the Vendor from and against any Claims arising pursuant to or in connection with any of the Assumed Contracts and Permitted Encumbrances, and shall be in substantially the form attached as Schedule “E”.

“**Assumed Contracts**” means the Contracts listed on Schedule “G”.

“**Authorization**” means, with respect to any Person, any order, permit, approval, waiver, licence or similar authorization of any Governmental Authority having jurisdiction over the Person.

“**Balance**” has the meaning ascribed thereto in Section 3.1(b).

“**Buildings**” means, individually or collectively, as the context requires, all of the buildings and structures, improvements, appurtenances and fixtures, located on, in or under the Lands, but, for greater certainty, excluding the Excluded Assets.

“**Business Day**” means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario.

“**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).

“**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Sears Group pursuant to the Initial Order (Court File No. CV-17-11846-00CL).

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar

processes, assessments or reassessments, equitable interests, options, preferential arrangements of any kind or nature, assignments, restrictions, financing statements, deposit arrangements, rights of others, leases, sub-leases, licences, rights of first refusal or similar restrictions, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, including loss of value, reasonable professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all actual and documented costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“**Closing**” has the meaning ascribed thereto in Section 7.5(a).

“**Closing Date**” means the Business Day that is three (3) Business Days following the issuance of the Approval and Vesting Order, or such later date as the Vendor (with the consent of the Monitor) may advise the Purchaser in writing, or as otherwise ordered by the Court.

“**Closing Documents**” means those documents and deliveries to be delivered in connection with the Closing as contemplated in this Agreement including those set out in Section 7.4.

“**Contract and/or PE Assumption Agreements**” has the meaning ascribed thereto in Section 5.3.

“**Contracts**” means, collectively, all of the Vendor’s contracts and agreements to enter into contracts with respect to the operation, fire protection, servicing, maintenance, repair and cleaning of the Subject Assets (and no other properties), or the furnishing of supplies or services to the Subject Assets, any property management or asset management contracts, any employment contracts and any insurance contracts entered into by the Vendor or any manager or agent on behalf of the Vendor, in each case solely with respect to the Subject Assets.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**Deposit**” has the meaning ascribed thereto in Section 3.1(a).

“**Encumbrance**” means any security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of first refusal, options to purchase, or such similar rights relating to the Property, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise.

“**Environment**” means the environment or natural environment as defined in any Environmental Laws and includes air, surface water, ground water, land surface, soil and subsurface strata.

“**Environmental Laws**” means Laws relating to the protection of human health and the Environment, and includes Laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, Release, remediation, management and disposal of Hazardous Substances.

“**Excise Tax Act**” means the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended, restated, supplemented or substituted from time to time.

“**Excluded Assets**” means those assets (in each case, as of the Closing Date) described in Schedule “B”.

“Execution Date” means the date of this Agreement as set out on the top of page 1 hereof.

“FF&E” means all tools, signs, furniture, machinery, equipment, personal or moveable property, chattels, furnishings and fixtures including shelves, counters, video cameras and equipment, security systems, point-of-sales systems and related appurtenances, telecommunications systems and related appurtenances, electric light fixtures, elevating devices and equipment, in each case to the extent owned, leased or licensed by the Vendor, if any.

“Filing Date” means June 22, 2017.

“Financial Advisor” means BMO Nesbitt Burns Inc.

“Governmental Authorities” means governments, regulatory authorities, governmental departments, agencies, agents, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“GST/HST Certificate, Undertaking and Indemnity” mean the Purchaser’s certificate to be in substantially the form set out in Schedule “D”.

“Hazardous Substances” means pollutants, contaminants, wastes of any nature, hazardous substances, hazardous materials, toxic substances, prohibited substances, dangerous substances or dangerous goods regulated by or under Environmental Laws.

“Holders” has the meaning ascribed thereto in Section 5.3.

“Initial Order” means the Initial Order granted by the Court on June 22, 2017 pursuant to which the Sears Group were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).

“Interim Period” means the period between the close of business on the Execution Date and the Closing on the Closing Date.

“Inventory” includes all inventory, stock, supplies and all other items owned by the Vendor and located at the Property.

“Joint Direction” has the meaning ascribed thereto in Section 3.2(f).

“Lands” means the lands and premises legally described in Schedule “A”.

“Laws” means any and all applicable laws, including all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, ruling or awards, and general principles of common and civil law and equity, binding on or affecting the Person referred to in the context in which the word is used.

“**Monitor**” means FTI Consulting Canada Inc., in its capacity as Court-appointed monitor of the Sears Group pursuant to the Initial Order and not in its personal capacity.

“**Monitor’s Certificate**” means the certificate to be filed with the Court by the Monitor certifying receipt of (i) confirmation from the Purchaser and the Vendor that all conditions of Closing in Sections 7.1, 7.2 and 7.3 of this Agreement have been satisfied or waived and (ii) the Purchase Price and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser.

“**NDA**” means the confidentiality, non-disclosure and non-use agreement between the Vendor and McCowan and Associates Ltd. dated August 23, 2019, as amended or supplemented in writing from time to time.

“**Notice**” has the meaning ascribed thereto in Section 8.15.

“**Off-Title Compliance Matters**” means open permits or files, work orders, deficiency notices, directives, notices of violation, non-compliance and/or complaint and/or other outstanding matters or matters of non-compliance with the zoning and/or other requirements of any Governmental Authorities or any open building permits and Orders relating to any of the foregoing.

“**Offer**” has the meaning ascribed thereto in Recital D.

“**Operating Agreement**” means the easement and operating agreement dated July 15, 2007 between Ontrea Inc., CF/Realty Holdings Inc. and the Vendor, as assigned, amended, restated, supplemented and/or modified from time to time.

“**Orders**” means orders, injunctions, judgments, administrative complaints, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by any Governmental Authority or arbitrator.

“**Outside Date**” means January 20, 2020, or such later date as the Vendor (with the consent of the Monitor) and the Purchaser agree to in writing or as otherwise ordered by the Court provided that such date shall be no later than the eightieth (80th) day after the end of the Option Period as set out in Paragraph 8 of the ROFR.

“**Permitted Encumbrances**” means, collectively: (a) any Encumbrances resulting from the Purchaser’s actions or omissions; and (b) the items identified in Schedule “F” hereto.

“**Person**” means an individual, partnership, corporation, trust, unincorporated organization, company, government, or any department or agency thereof, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual.

“**Plans**” means all documentation in the Vendor’s possession and located on the Property on the Closing Date or located on the Execution Date in the electronic data room and monitored by the Financial Advisor relevant to the construction of the Buildings including, working drawings, detail drawings, shop drawings, approved municipal plans, structural, mechanical, electrical and engineering plans, site plans, other documentation prepared to illustrate or define a particular aspect of the Buildings, consultants' contracts, construction contracts, and plans submitted with all building permits issued for the Property.

“**Property**” means, collectively, the Lands and the Buildings.

“**Purchase Price**” has the meaning ascribed thereto in Section 3.1.

“**Purchaser**” has the meaning ascribed thereto on page 1 hereof.

“**Realty Tax Appeals**” has the meaning ascribed thereto in Section 4.3(a).

“**Realty Tax Refunds**” has the meaning ascribed thereto in Section 4.3(b).

“**Release**” has the meaning prescribed in any Environmental Laws and includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction.

“**ROFR**” means the right of first refusal contained in the right of first refusal dated July 15, 2007 between the Vendor and Ontrea Inc., as assigned by an assignment and assumption of ROFR dated as of August 31, 2012 between Ontrea Inc. and RioCan Holdings Inc., as further assigned, amended, restated, supplemented and/or modified from time to time.

“**ROFR Beneficiary**” means RioCan Holdings Inc. or its successor or assign, as beneficiary of the ROFR.

“**SISP**” means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).

“**SISP Order**” means the Order granted by the Court on the SISP Order Date (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.

“**SISP Order Date**” means July 13, 2017.

“**Subject Assets**” means all of the right, title and interest of the Vendor, if any, in and to: (a) the Property; (b) the Assumed Contracts; (c) the Warranties; and (d) all Inventory, FF&E and Excluded Assets left on the Property on the Closing Date, but excludes, the Vendor’s right, title and interest in and to each of the other Excluded Assets and any and all other assets of the Vendor relating to the Property not included in the foregoing.

“**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other similar charges imposed by any Governmental Authority under applicable Laws, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, registration, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, and all licence, franchise and registration fees.

“**Transaction**” means collectively the transactions contemplated in this Agreement.

“**Vendor**” has the meaning ascribed thereto on page 1 hereof.

“**Warranties**” means any existing warranties and guarantees in favour of the Vendor in connection with the construction, condition or operation of the Buildings or any component thereof or any improvements made to the Buildings or any component thereof (other than the Excluded Assets) which are assignable without the consent of the counterparty thereto.

ARTICLE 2 SALE TRANSACTION

2.1 Offer and Acceptance

- (a) Subject to the terms of this Agreement, the Initial Order and the SISP Order, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase and assume from the Vendor, the Subject Assets on the Closing Date in accordance with the terms and conditions of this Agreement.
- (b) The Offer shall be irrevocable by the Purchaser until 5:00 p.m. (Toronto time) on Monday, October 28, 2019.
- (c) Upon acceptance of this Offer by the Vendor, this Offer shall constitute a binding agreement to acquire the Subject Assets, on the terms of this Agreement.

2.2 As Is, Where Is

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees in favour of the Vendor that as of the Execution Date and the Closing Date:

- (a) the Purchaser is purchasing the Subject Assets (including the state of title thereto and/or the state of any Encumbrances and Permitted Encumbrances) and accepting and assuming the Subject Assets on an “as is, where is” basis, without any written or oral statements, representations, warranties, promises or guaranties of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), as to the condition of any of the Subject Assets, the Permitted Encumbrances, the rentable area of the Buildings, the existence of any default on the part of the Vendor, the physical, environmental or other condition of, in, on, under or in the vicinity of the Property, the use permitted at the Property, the existence of any Encumbrance and/or Off-Title Compliance Matters affecting the Subject Assets, or any other aspects of any of the Subject Assets and the Permitted Encumbrances, the structural integrity or any other aspect of the physical condition of any Subject Assets, the conformity of any Building to any Plans or specifications (including, but not limited to, any Plans and specifications that may have been or which may be provided to the Purchaser), compliance with Environmental Laws, the conformity of the Property to past, current or future applicable zoning or building code requirements or other applicable Laws, the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the Lands, or any Building situated on or as part of the Property, the sufficiency of any drainage, whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, the existence or non-existence of underground and/or above ground storage

tanks, the availability of public utilities, access, parking and/or services for the Property, the fitness or suitability of the Property for occupancy or any intended use (including matters relating to health and safety), the potential for further development of the Property, the existence of land use, zoning or building entitlements affecting the Property, the presence, release or use of wastes of any nature, Hazardous Substances, pollutants, contaminants or other regulated substances in, under, on or about the Property or any neighbouring lands; and without limiting the foregoing, any and all conditions or warranties expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation in other jurisdictions will not apply and are hereby waived by the Purchaser and the Parties agree to exclude the effect of the legal warranty provided for by Article 1716 of the Civil Code of Québec and that the Purchaser is purchasing the Subject Assets at its own risk within the meaning of Article 1733 of the Civil Code of Québec;

- (b) on Closing, the Subject Assets shall be subject to, without limitation, the Permitted Encumbrances;
- (c) any disclosure in respect of any of the Subject Assets was made available to the Purchaser solely as a courtesy but the Purchaser is not entitled to rely on such disclosure, and it is expressly acknowledged by the Purchaser that no written or oral statement, representation, warranty, promise or guarantee of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), is made by the Vendor and/or the Monitor and/or their respective legal counsel, the Financial Advisor or other advisors or representatives as to the accuracy, currency or completeness of any such disclosure, and each of them expressly disclaims any and all liabilities with respect to such disclosure and any and all errors therein or omissions therefrom;
- (d) the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Purchaser might have against the Vendor pursuant to any warranty, legal or conventional, express or implied, of any kind or type relating to the Subject Assets or any other assets or any other aspect of the Transaction. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects, whether or not discoverable, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights;
- (e) the Purchaser conducted its own independent review, inspection, diligence and investigations and forming its own independent opinions and conclusions in respect of the Subject Assets. The Purchaser's decision to make this Offer and enter into this Agreement was made of its own accord without reference to or reliance upon any disclosure in respect of any of the Subject Assets. The Purchaser acknowledges having been given a reasonable and adequate opportunity to conduct its own independent diligence prior to entering in this Agreement;

- (f) the Vendor shall not be responsible for making any repairs, replacements, renovations, alterations, improvements or upgrades or undertaking any remediation to address a Release in or to the Property or any part thereof, and it shall be the sole responsibility of the Purchaser to make, at the Purchaser's sole cost, any repairs, replacements, renovations, alterations, improvements and upgrades in or to the Property following Closing as may be required by the Purchaser to make the Property suitable for its purposes and to undertake any required, necessary, or desired remediation to address a Release at, on, under or migrating from the Property or any part thereof;
- (g) the Subject Assets may be subject to certain Off-Title Compliance Matters, municipal requirements, including building or zoning by-laws and regulations, easements or servitudes for hydro, gas, telephone affecting the Subject Assets, and like services to the Property, and restrictions and covenants which run with the land, including but not limited to the Permitted Encumbrances. Without limiting the foregoing, the Vendor shall not be responsible for rectification of any matters disclosed by any Governmental Authority or quasi-governmental authority having jurisdiction and the Purchaser shall accept the Subject Assets subject to such matters;
- (h) the Purchaser shall accept full responsibility for all conditions related to the Property, and the Purchaser shall comply with all orders relating to the condition of the Property issued by any competent Governmental Authority, including any order issued against the Vendor including without limitation, any non-compliance with Environmental Laws or relating to the existence of any Hazardous Substance; and
- (i) if any statement, error or omission shall be found in the particulars of the legal and/or the Subject Assets' description, the same shall not annul the sale or entitle the Purchaser to be relieved of any obligation hereunder, nor shall any compensation be allowed to the Purchaser in respect thereof.

The Vendor has no and shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Subject Assets or the condition thereof save and only to the extent expressly provided in this Agreement. The Purchaser shall be responsible for and hereby indemnifies and saves harmless the Vendor and its employees, directors, officers, appointees and agents from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgments, awards, including awards of costs, that may arise as a result of the condition of the Property, any order issued by any competent Governmental Authority in connection with the condition of the Property, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property including, without limitation, non-compliance with Environmental Laws or the existence of any Hazardous Substances. This Section 2.2 shall survive and not merge on Closing and all Closing Documents shall incorporate this Section 2.2 by reference.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

The Purchase Price for the Subject Assets shall be [REDACTED] (the “**Purchase Price**”) exclusive of all Taxes. Subject only to adjustment in accordance with this Agreement, the Purchase Price shall be paid to the Vendor as follows:

- (a) as to the sum of [REDACTED] (the “**Deposit**”), to the order of CBRE Limited (“CBRE”), in trust, or as it may otherwise direct in writing, on or prior to 3:00 p.m. (Toronto time) on the Business Day following execution of this Agreement by the Vendor, to be held in trust as a deposit pending the completion or other termination of this Agreement, provided that if the Deposit is not delivered to CBRE, in trust, on or prior to 3:00 p.m. (Toronto time) on the Business Day following execution of this Agreement by the Vendor, the Vendor may terminate this Agreement by notice to the Purchaser, without prejudice to any other remedies that may be available to the Vendor as a result of the Purchaser’s failure to deliver the Deposit; and
- (b) as to the balance of the Purchase Price (the “**Balance**”), subject only to the adjustments made in accordance with this Agreement, by wire transfer of immediately available funds payable to the Monitor or as it may direct on the Closing Date.

3.2 Deposit

- (a) Following receipt, the Deposit shall be held by CBRE, in trust, pending completion of the Transaction or earlier termination or non-completion of this Agreement. In holding and dealing with the Deposit pursuant to this Agreement, CBRE is not bound in any way by any agreement other than this Section 3.2, and CBRE shall not and shall not be considered to assume any duty, liability or responsibility other than to hold the Deposit in accordance with the provisions of this Section 3.2, and to pay the Deposit to the Person becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the Parties as to entitlement to the Deposit. In the case of such dispute, CBRE shall immediately pay the Deposit to the Monitor and the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by any of the Parties, pay the Deposit into Court, whereupon the Monitor shall have no further obligations relating to the Deposit. The Monitor shall not, under any circumstances, be required to verify or determine the validity of any notice or other document whatsoever delivered to the Monitor and the Monitor is hereby relieved of any liability or responsibility for any Claims which may arise as a result of the acceptance by the Monitor of any such notice or other document.
- (b) If the Transaction is completed, the Deposit shall be paid to the Vendor forthwith on Closing and applied to the Purchase Price.

- (c) If the Transaction is not completed by reason of a default of the Purchaser, the full amount of the Deposit shall be paid to the Vendor as liquidated damages (and not as a penalty) to compensate the Vendor for the expenses incurred and the delay caused and opportunities foregone as a result of the failure of the Transaction to close. The entitlement of the Vendor to receive and retain the Deposit, if any, in such circumstances shall not limit the Vendor's right to exercise any other rights or remedies which the Vendor may have against the Purchaser in respect of such breach or default.
- (d) If the Transaction is not completed by reason of the default of the Vendor, the full amount of the Deposit shall be paid to the Purchaser as full and final settlement and the Purchaser shall have no further recourse against the Vendor.
- (e) If the Transaction is not completed for any other reason, the full amount of the Deposit shall be paid to the Purchaser.
- (f) In holding and dealing with the Deposit pursuant to this Agreement, CBRE shall release the Deposit to the Persons becoming entitled thereto in accordance with the provisions of (i) Section 7.7(c); or (ii) this Section 3.2 as evidenced by a joint direction in writing executed by the Vendor and the Purchaser (the "**Joint Direction**") except in the event of a dispute between the Parties as to entitlement to the Deposit in which event CBRE shall pay the Deposit to the Monitor and the Monitor may, in its sole, unfettered and unreviewable discretion, pay the Deposit into Court, whereupon the Monitor shall have no further obligations relating to the Deposit or otherwise hereunder.
- (g) CBRE shall not, under any circumstances, be required to verify or determine the validity of the Joint Direction and the Monitor shall not be required to verify or determine the validity of any written confirmation received pursuant to Section 7.8(b) and CBRE and the Monitor are hereby relieved of any liability or responsibility for any loss or damage which may arise as the result of the acceptance by CBRE of the Joint Direction or the Monitor of the written confirmation.
- (h) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Vendor and the Purchaser acknowledges and agrees that: (i) the Monitor's and CBRE's obligations hereunder are and shall remain limited to those specifically set out in this Section 3.2; and (ii) FTI Consulting Canada Inc. is acting solely in its capacity as the Court-appointed Monitor of the Vendor in the CCAA Proceedings and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise.
- (i) The Parties acknowledge that the Monitor and CBRE may rely upon the provisions of this Section 3.2 notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 3.2 shall survive the termination or non-completion of the Transaction.

3.3 Termination Payment

If this Agreement is terminated, as a result of (i) the condition in Section 7.3(a) not being satisfied, by reason of the ROFR Beneficiary having exercised the ROFR; or (ii) a default of the Vendor under this Agreement and at any time during the period commencing on the Effective Date and ending 3 months following such termination of this Agreement, an agreement or other arrangement is entered into with the ROFR Beneficiary whereby the ROFR Beneficiary (other than as a result of the exercise of the ROFR by the ROFR Beneficiary) acquires the Property (each a “Trigger Event”), then the Vendor hereby covenants and agrees to pay the Purchaser a termination fee equal to eight (8%) per cent of the Purchase Price (“Termination Payment”) in consideration of the lost opportunity to the Purchaser. Such Termination Payment is to be paid by the Vendor within 2 Business Days of completion of the acquisition of the Property by the ROFR Beneficiary.

3.4 Trade-Marks

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees that: (a) no signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “Sears” are conveyed or intended to be conveyed to the Purchaser as part of the Subject Assets; and (b) all right, title and interest of the Vendor in and to all of its existing signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “Sears” or containing the words “Sears” are hereby specifically reserved and excluded from the Subject Assets. Notwithstanding the foregoing or anything to the contrary, the Vendor shall not be obligated to remove any interior or exterior signs located at the Property, including those identifying “Sears” and the Vendor shall have no liability for any removal or destruction costs relating thereto and any such signs left on the Property on the Closing Date shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. This Section shall survive and not merge on Closing.

ARTICLE 4 ADJUSTMENTS

4.1 Statement of Adjustments and Absence of Post-Closing Adjustments

The Vendor shall prepare a statement of adjustments and deliver same with supporting documentation to the Purchaser no later than two (2) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be made by the Vendor as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably and such estimate shall serve as a final determination. The final form of statement of adjustments shall be satisfactory to the Monitor, acting reasonably. There shall be no further adjustments or readjustments after Closing of any amounts adjusted or intended to be adjusted on the statement of adjustments pursuant to this Agreement and the amounts set out on the statement of adjustments shall be final.

4.2 General Adjustments

- (a) The adjustments shall include realty taxes, local improvement rates and charges and, except as set out in this Agreement, other adjustments established by usual

practice in the municipality in which the Property is located for the purchase and sale of similar properties. In addition, the adjustments shall include the other matters referred to in this Agreement which are stated to be the subject of adjustment and shall exclude the other matters in this Agreement which are stated not to be the subject of adjustment.

- (b) From and after the Closing Date, the Purchaser shall be responsible for all expenses and shall be entitled to all revenue from the Subject Assets. The Vendor shall be responsible for all expenses and entitled to all revenue from the Subject Assets for that period prior to the Closing Date.
- (c) The Purchaser shall be responsible for and pay all applicable Taxes payable in connection with the transfer of any of the Subject Assets by the Vendor to the Purchaser.

4.3 Realty Tax Appeals

- (a) The Vendor and the Purchaser acknowledge that with respect to the Property the Vendor may have instituted certain appeals and/or claims in respect of realty taxes or assessments for certain periods prior to the Closing Date and possibly including the tax year in which the Closing Date occurs (all such appeals and any associated reassessments are hereinafter collectively referred to as the “**Realty Tax Appeals**”).
- (b) On Closing, an irrevocable letter of direction shall be delivered by the Purchaser to all government authorities with respect to any expected credit, refund and/or rebate which may arise from any of the Realty Tax Appeals (collectively, the “**Realty Tax Refunds**”) for any period that is prior to the Closing Date. The letter shall direct payment of the foregoing Realty Tax Refunds to the Vendor.

4.4 Utilities

- (a) The Purchaser shall not assume any contracts or agreements entered into by or on behalf of the Vendor for the supply of any utilities (including electricity, gas, water, fuel, telephone service, internet services, security and surveillance services or otherwise) at the Property. On or before the Closing Date, the Vendor shall terminate all of its contracts and agreements for the supply of any utilities to the Property. For the avoidance of doubt, there shall be no adjustment at Closing in respect of the payment of any utilities. The provisions of this Section 4.4(a) shall survive and not merge on Closing.
- (b) From and after the Closing Date, any and all utility charges and other related fees payable for any of the Property, pursuant to any invoice or statement issued on or after the Closing Date, shall be the sole responsibility of the Purchaser, and there shall be no adjustments between the Vendor and the Purchaser of any utility charges or related fees paid by the Purchaser pursuant to any such invoice or statement issued on or after the Closing Date.

ARTICLE 5 INTERIM PERIOD

5.1 Interim Period

- (a) The Vendor shall not be obligated to (i) remove any Inventory, FF&E or Excluded Assets and the Vendor shall have no liability for any removal or destruction costs relating thereto, or (ii) repair, renovate, alter, improve or upgrade the Property in any manner. Any Inventory, FF&E or Excluded Assets left on the Property on the Closing Date shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. This Section shall survive and not merge on Closing.
- (b) In the event that prior to the Closing Date all or a part of the Lands is expropriated or notice of expropriation or intent to expropriate all or a part of the Lands is issued by any Governmental Authority, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Vendor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis.
- (c) The Subject Assets shall be and remain until Closing at the risk of the Vendor. In the event of material damage by fire or other hazard to the Subject Assets or any part thereof occurring before the Closing Date, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and the proceeds of any insurance actually paid or payable to the Vendor shall be paid and/or assigned to the Purchaser.

5.2 Contracts

The Vendor covenants to terminate effective as of the Closing Date, at its sole cost and expense, all Contracts other than the Assumed Contracts and Permitted Encumbrances.

5.3 Permitted Encumbrances and Assumed Contracts

- (a) The Purchaser shall provide such financial, business, organizational, managerial and other information and enter into such assumption agreements or deeds of re-hypothecation as the relevant party to an Assumed Contract or Permitted Encumbrance (the relevant party being a “**Holder**”) shall require to effect the assumption of the Assumed Contracts or the Permitted Encumbrances, as applicable, by the Purchaser (collectively, the “**Contract and/or PE Assumption Agreements**”). The Purchaser shall use reasonable efforts to assist the Vendor and shall co-operate with the Vendor, as reasonably requested, to obtain from third parties a full release of the Vendor’s obligations under the Assumed Contracts and Permitted Encumbrances, and shall provide such financial and other information

and enter into such assumption agreements as such third parties may reasonably require, in form and substance acceptable to each of the parties thereto acting reasonably and without delay.

ARTICLE 6 REPRESENTATIONS, WARRANTIES & COVENANTS

6.1 Vendor's Representations and Warranties

The Vendor represents and warrants to and in favour of the Purchaser that as of the Execution Date and as of Closing as to the following and acknowledges and confirms that the Purchaser is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) the execution, delivery and performance by the Vendor of this Agreement has been duly authorized by all necessary corporate action on the part of the Vendor subject to the Approval and Vesting Order and authorization as is required by the Court;
- (b) the Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada); and
- (c) the Vendor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*.

6.2 Purchaser's Representations and Warranties

The Purchaser represents and warrants to and in favour of the Vendor that as of the Execution Date and as of Closing as to the following and acknowledges and confirms that the Vendor is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) the Purchaser has been duly formed or incorporated and is validly subsisting under the Laws of the jurisdiction of its formation or incorporation, and has all requisite corporate or other capacity, power and authority to carry on its business as now conducted by it and to own its properties and assets and is qualified to carry on business under the Laws of the jurisdictions where it carries on a material portion of its business;
- (b) the Purchaser is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Purchaser is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*;
- (d) the execution, delivery and performance by the Purchaser of this Agreement:
 - (i) has been duly authorized by all necessary corporate or other action on the part of the Purchaser;
 - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms

or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and

- (iii) will not result in the violation of any Laws;
- (e) this Agreement has been duly executed and delivered by the Purchaser and constitutes legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with their respective terms subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction; and
- (f) the Purchaser has, and will have at Closing, all funds on hand necessary to pay the Purchase Price and any Taxes payable and that are not self-assessed and remitted by the Purchaser.

The Purchaser's representations and warranties shall survive Closing for a period of one (1) year thereafter.

6.3 Purchaser's Covenants

- (a) The Purchaser shall use commercially reasonable efforts to take all such actions as are within its power or control, and to cause other actions to be taken which are not within its power or control, so as to ensure compliance with each of the conditions and covenants set forth in Article 7 which are for the benefit of any other Party.
- (b) The Purchaser shall take any and all steps in order to avoid the filing of an application for, or the issuance of any interim Order or other Order which would have the effect of delaying or preventing the Closing, and if any such interim Order or other Order is issued, the Purchaser shall take any and all steps to have it rescinded, revoked or set aside as soon as possible. For greater certainty, "any and all steps" shall include, committing to or effecting undertakings, a consent agreement, a hold separate arrangement, a consent Order, a hold separate Order, a sale, a divestiture, a disposition or other action, in any such case without any reduction of the Purchase Price.
- (c) The Purchaser will promptly notify the Vendor and the Vendor will promptly notify the Purchaser upon:
 - (i) becoming aware of any Order or any complaint requesting an Order restraining or enjoining the execution of this Agreement or the consummation of the Transactions; or
 - (ii) receiving any notice from any Governmental Authority of its intention:
 - (A) to institute a suit or proceeding to restrain or enjoin the execution of this Agreement or the consummation of the Transaction; or

(B) to nullify or render ineffective this Agreement or such Transaction.

6.4 Vendor's Covenants

The Vendor agrees, that subject to the Initial Order, the SISP Order and the Approval and Vesting Order, to thereafter take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to fulfill the conditions set forth in Article 7 which are for the benefit of the Vendor or the mutual benefit of the Parties.

6.5 Tax Matters

In addition to the representations and warranties set forth in Section 6.2, the Purchaser further warrants, represents and covenants to the Vendor, and acknowledges and confirms that the Vendor is relying on such representations and warranties, indemnities and covenants in connection with the entering into of this Agreement, that:

- (a) the Purchaser is duly registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* with respect to the goods and services tax and harmonized sales tax and that its registration number shall be on the Closing Date: 88084 2117 RC 0001 , which registration shall be in full force and effect and shall not have been cancelled or revoked on the Closing Date;
- (b) the Purchaser has entered into this Agreement and is purchasing the Subject Assets on the Closing Date, as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of another Person;
- (c) to the extent permitted under subsection 221(2) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation, the Purchaser shall self-assess and remit directly to the appropriate Governmental Authority any Taxes including goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax imposed by any applicable provincial or territorial legislation payable in connection with the purchase and sale transaction of the Subject Assets, including the transfer of the Vendor's real or immovable property interests in the corresponding Subject Assets;
- (d) on Closing, the Purchaser will pay, in addition to the Purchase Price, and the Vendor will collect, any Taxes including transfer taxes as well as goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax exigible on the purchase and sale transaction of the Subject Assets, except to the extent that the Purchaser is permitted under subsection 221(2) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation to self-assess and remit such Taxes directly to the appropriate Governmental Authority, and the Purchaser shall have executed and delivered a certificate, undertaking and indemnity which includes its certification of its registration number issued under the *Excise Tax Act*, and incorporates the

provisions of this Section 6.5 (the “**GST/HST Certificate, Undertaking and Indemnity**”);

- (e) the Purchaser shall make and file all required return(s) in accordance with the requirements of subsection 228(4) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation; and
- (f) the Purchaser shall indemnify and save the Vendor harmless from and against any and all Taxes including, transfer taxes and goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of any failure by the Vendor to collect and remit any goods and services tax or harmonized sales tax payable under the *Excise Tax Act* or any similar value added or multi-staged tax or sales tax and applicable on the sale and conveyance of the Subject Assets by the Vendor to the Purchaser or as a result of any inaccuracy, misstatement, or misrepresentation made by the Purchaser in connection with any matter raised in this Section 6.5 or in the GST/HST Certificate, Undertaking and Indemnity or any failure by the Purchaser to comply with the provisions of this Section 6.5 or the GST/HST Certificate, Undertaking and Indemnity.

The provisions of this Section 6.5 shall survive and not merge on Closing.

6.6 Survival of Covenants,

Except as otherwise expressly provided in this Agreement to the contrary, no representations, warranties, covenants or agreements of the Vendor or the Purchaser in this Agreement shall survive the Closing.

ARTICLE 7 CLOSING

7.1 Conditions of Closing for the Benefit of the Purchaser

The Purchaser’s obligation to complete the purchase and sale of the Subject Assets is subject to the following conditions to be fulfilled or performed, on or before the Closing Date, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser:

- (a) the representations and warranties of the Vendor in Section 6.1 shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date;
- (b) the Vendor shall have performed and complied with all of the other terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the

Closing Documents contemplated or required to be so executed and delivered in this Agreement; and

- (c) the Purchaser shall have received the Closing Documents.

7.2 Conditions of Closing for the Benefit of the Vendor

The Vendor's obligation to complete the purchase and sale of the Subject Assets is subject to the following conditions to be fulfilled or performed, on or before the Closing Date, which conditions are for the exclusive benefit of the Vendor and may be waived, in whole or in part, by the Vendor:

- (a) the representations and warranties of the Purchaser in Section 6.2 shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date;
- (b) the Purchaser shall have paid the Balance in its entirety to the Monitor and shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Vendor at Closing all the documents contemplated required to be so executed and delivered in this Agreement; and
- (c) the Vendor shall have received the Closing Documents.

7.3 Conditions of Closing for the Mutual Benefit of the Parties

The obligations of either the Vendor or the Purchaser to complete the purchase and sale of the Subject Assets are subject to the following conditions to be fulfilled or performed, on or before the Closing Date, which conditions are for the mutual benefit of each of the parties and may only be waived, in whole or in part, by agreement of the parties to this Agreement:

- (a) the ROFR shall have validly expired in accordance with the terms of the ROFR or as ordered by the Court or been waived by the ROFR Beneficiary in writing;
- (b) the Approval and Vesting Order, substantially in the form attached hereto as Schedule "D", shall have been issued and entered by the Court; and
- (c) the Monitor shall have delivered the Monitor's Certificate.

7.4 Closing Documents

On or before Closing, subject to the provisions of this Agreement, the Vendor and the Purchaser shall, execute or cause to be executed and shall deliver or cause to be delivered into escrow (in a sufficient number of copies or counterparts for the Purchaser and the Vendor and, where applicable, in registerable form), the following, which shall be in form and substance reasonably satisfactory to the Purchaser and the Vendor and their respective solicitors:

- (a) By the Vendor and the Purchaser:

- (i) the Assignment and Assumption of Assumed Contracts and Permitted Encumbrances;
 - (ii) an Irrevocable Letter of Direction regarding the Realty Tax Refunds, in form satisfactory to the Vendor; and
 - (iii) such other documents as each Party or each Party's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (b) By the Vendor:
- (i) the Approval and Vesting Order;
 - (ii) the statement of adjustments;
 - (iii) an assignment of Warranties, to the extent there are any and are in the Vendor's possession and located on the Property and to the further extent that they are assignable without cost or consent;
 - (iv) all master keys relating to the Buildings, if any, all security cards and access cards relating to the Buildings, if any, and all combinations and passwords to vaults and combination locks and other security features located in the Buildings, if any, in each case, to the extent in the possession of the Vendor; and
 - (v) such other documents as the Purchaser or the Purchaser's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (c) By the Purchaser:
- (i) the Balance plus all Taxes thereon;
 - (ii) GST/HST Certificate, Undertaking and Indemnity;
 - (iii) an assumption agreement in favour of the Vendor and the counterparty to the Operating Agreement whereby the Purchaser assumes the obligations of the Vendor under the Operating Agreement, in form and substance acceptable to the Vendor;
 - (iv) the Contract and/or PE Assumption Agreements along with any deliveries to the Holders required in respect of the Assumed Contracts or Permitted Encumbrances; and
 - (v) such other documents as the Vendor or the Vendor's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.

7.5 Closing Date

- (a) The completion of the Transaction contemplated by this Agreement (the “**Closing**”) shall take place at 4:00 p.m. (Toronto time) on the Closing Date at the Toronto office of Norton Rose Fulbright Canada LLP, or at such other place as may be agreed upon by the Vendor and the Purchaser in writing.
- (b) Subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of closing in its favour contained in this Article 7, at Closing, the Purchaser will pay or satisfy the Purchase Price in accordance with Article 3, and the Closing of the Transaction will take effect, pursuant to the Approval and Vesting Order, upon delivery of the Monitor’s Certificate.

7.6 Confirmation of Satisfaction of Conditions

On the Closing Date, subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of Closing in its favour contained in Article 7, the parties or their respective solicitors shall confirm to the Monitor the satisfaction of all conditions to Closing and upon the Monitor receiving the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser, the Monitor shall deliver copies of the Monitor’s Certificate to the Parties hereto and release the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser to the Vendor and following Closing file the Monitor’s Certificate with the Court.

7.7 Closing

- (a) Subject always to Section 3.2 hereof, the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be held by the Monitor or CBRE, as applicable, in trust in a separate account, pending completion of the Transaction or earlier termination of this Agreement. In holding and dealing with the funds paid to the Monitor or CBRE, as applicable, in trust, the Monitor and CBRE are not bound in any way by any agreement other than Section 3.2 and this Section 7.7 and the Monitor shall not assume or be deemed to assume any duty, liability or responsibility other than to hold the trust funds in accordance with the provisions of this Section 7.7 and to pay the funds to the Party becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the parties as to entitlement to the trust funds, of which the Monitor or CBRE, as applicable, has been given notice in writing, the Monitor or CBRE, as applicable, may, in its sole, subjective and unreviewable discretion, or shall, if requested by either of the parties, pay the trust funds into court, whereupon the Monitor or CBRE, as applicable shall have no further obligations relating to the trust funds or otherwise hereunder.
- (b) The Monitor shall not, under any circumstances, be required to verify or determine the validity of any written notice or other document whatsoever delivered to the Monitor in connection with the trust funds and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as a result of the acceptance by the Monitor of any such written notice or other document.

- (c) On or before Closing, the parties' respective solicitors shall exchange the Closing Documents in escrow and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be delivered to or paid to the order of the Monitor, in trust, and the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall remain in escrow with the Monitor or CBRE, as applicable, until the Monitor has delivered the Monitor's Certificate to the Vendor and the Purchaser, upon the occurrence of which the escrow shall be lifted, the Closing Documents shall take effect as of the date and time set out in the Monitor's Certificate, the entire amount of the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be forthwith released to the Vendor and the Closing shall be deemed to have occurred as of such date and time set out in the Monitor's Certificate and fully signed Closing Documents shall be released to each of the Vendor and Purchaser.
- (d) The parties acknowledge that, notwithstanding that the Monitor is not a party to this Agreement, the Monitor may rely upon the provisions of Section 3.2 hereof and this Section 7.7.
- (e) This Section 7.7 shall survive the Closing or termination of this Agreement.

7.8 Filings and Authorizations

- (a) Each of the Vendor and the Purchaser, as promptly as practicable after the execution of this Agreement, will make, or cause to be made, all such filings and submissions under all Laws applicable to it, as may be required for it to consummate the purchase and sale of the Subject Assets in accordance with the terms of this Agreement (other than the motion seeking approval of the Transaction and the issuance of the Approval and Vesting Order). The Vendor and the Purchaser shall co-ordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing including, providing each other with all notices and information supplied to or filed with any Governmental Authority (except for notices and information which the Vendor or the Purchaser, in each case acting reasonably, considers highly confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any Governmental Authority.
- (b) The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the parties and file the Monitor's Certificate with the Court, without independent investigation, upon receiving written confirmation from the Vendor and the Purchaser or their respective solicitors that all conditions of Closing have been satisfied or waived and upon receipt of the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser, and the Monitor shall have no liability to the Vendor or the Purchaser or any other Person as a result of filing the Monitor's Certificate.

7.9 Court Matters

- (a) The Vendor shall consult and co-ordinate with the Purchaser and their respective legal advisors regarding the parties upon whom the motion seeking the Approval and Vesting Order will be served.
- (b) The Purchaser shall provide such information and take such actions as may be reasonably requested by the Vendor to assist the Vendor in obtaining the Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the transactions contemplated by this Agreement, including, any Court ordered assignment of the Contracts.
- (c) Notwithstanding anything else contained in this Agreement or elsewhere, the Purchaser acknowledges and agrees that the Vendor cannot guarantee that it will obtain the Approval and Vesting Order and the Approval and Vesting Order may or may not be granted by the Court.

7.10 Termination

This Agreement may, by notice in writing given at or prior to Closing, be terminated:

- (a) by mutual consent of the Purchaser and the Vendor (in respect of which the Vendor shall require the consent of the Monitor to provide its consent) or on further order of the Court;
- (b) by the Purchaser if any of the conditions in Section 7.1 have not been satisfied on or before the Closing Date and the Purchaser has not waived such condition;
- (c) by the Vendor with the consent of the Monitor if any of the conditions in Section 7.2 have not been satisfied on or before the Closing Date and the Vendor has not waived such condition; or
- (d) by either Party if any of the conditions precedent in Section 7.3 have not been satisfied on or before the Closing Date and the parties have not waived such condition; or
- (e) by the Vendor (with the consent of the Monitor) or the Purchaser if Closing has not occurred on or before the Outside Date, provided that the Vendor or the Purchaser may not terminate this Agreement pursuant to this Section 7.10(e) if it has failed to perform any one or more of its respective obligations or covenants under this Agreement and the Closing has not occurred because of such failure.

ARTICLE 8 OTHER PROVISIONS

8.1 Confidentiality

The Vendor shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the Court, the Monitor, the ROFR Beneficiary, the

counterparty to the Operating Agreement, and parties in interest to the CCAA Proceedings. The NDA shall survive and not merge on Closing.

8.2 Time of the Essence

Time shall be of the essence of this Agreement.

8.3 Entire Agreement

This Agreement and the NDA constitute the entire agreement between the parties with respect to the Transaction and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the Transaction.

8.4 Waiver

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

8.5 Further Assurances

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Subject Assets to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent. The provisions of this Section 8.5 shall survive and shall not merge on Closing.

8.6 Severability

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

8.7 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province in which the Property is located and the federal laws of Canada applicable therein. Each Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable Laws, any objection that it may now or hereafter have to the venue of any action or proceeding arising out of or relating to this Agreement or the Transaction in any court of the Province of

Ontario. Each of the Parties hereby irrevocably waives, to the fullest extent permitted by applicable Laws, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

8.8 English Language

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

8.9 Statute References

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

8.10 Headings

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

8.11 References

Where in this Agreement reference is made to an article or section, the reference is to an article or section in this Agreement unless the context indicates the reference is to some other agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. The word “includes” or “including” shall mean “includes without limitation” or “including without limitation”, respectively. The word “or” is not exclusive.

8.12 Number and Gender

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

8.13 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day must be made or taken by no later than 5:00 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

8.14 Currency and Payment Obligations

Except as otherwise expressly provided in this Agreement all dollar amounts referred to in this Agreement are stated in Canadian Dollars.

8.15 Notice

Any notice, consent or approval required or permitted to be given in connection with this Agreement (a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

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

Sears Canada Inc.
c/o/ FTI Consulting Canada Inc.
TD South Tower
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8
Attn: Steven Bissell
Email: Steven.Bissell@fticonsulting.com

With a copy to:

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

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

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

1485900 Ontario Limited
158 Dunlop Street East
Barrie, ON
L4M 1B1
Attn: Ron McCowan
Email: ronmccowan@rogers.com &
lauraphilp@rogers.com

with a copy to:

Alousis Law
Professional Corporation
76 Mulcaster Street
Barrie, ON
L4M 3M4

Attn: John Alousis
Email: john@alousislaw.com &

melissa@alouislaw.com

A Notice is deemed to be given and received (i) if sent by personal delivery or same day courier, on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day, (ii) if sent by overnight courier, on the next Business Day, or (iii) if transmitted by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile, or (iv) if sent by email, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic “read receipt” does not constitute acknowledgment of an email for purposes of this section. Any Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party’s address that is not specifically changed in a Notice will be assumed not to be changed. Subject to Section 8.17, sending a copy of a Notice to a Party’s legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

8.16 Subdivision Control Legislation

This Agreement and the Transaction are subject to compliance with the applicable subdivision control legislation to the extent applicable.

8.17 Solicitors as Agent and Tender

Any Notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement (including, without limitation, any agreement to amend this Agreement) may be given or delivered and accepted or received by the Purchaser’s solicitors on behalf of the Purchaser and by the Vendor’s solicitors on behalf of the Vendor and any tender of Closing Documents may be made upon the Vendor’s solicitors and the Purchaser’s solicitors, as the case may be.

8.18 No Registration of Agreement

The Purchaser covenants and agrees not to register or cause or permit to be registered this Agreement or any notice of this Agreement on title to any of the Subject Assets and that no reference to or notice of it or any caution, certificate of pending litigation or other similar court process in respect thereof shall be registered on title to the Subject Assets and/or any part thereof and the Purchaser shall be deemed to be in material default under this Agreement if it makes, or causes or permits, any registration to be made on title to the Subject Assets and/or any part thereof prior to the successful completion of the Transaction contemplated herein on the Closing Date. The Purchaser shall indemnify and save the Vendor harmless from and against any and all Claims whatsoever arising from or with respect to any such registration, including, all the legal fees, on a full indemnity basis, including those incurred by the Vendor with respect to obtaining the removal of such registration. This indemnity shall survive and not merge on the expiration, non-completion and/or termination of this Agreement for any reason.

8.19 Third Party Costs

Each of the Parties hereto shall be responsible for the costs of their own solicitors, respectively, in respect of the Transaction. The Purchaser shall be solely responsible for and shall pay, in addition to the Purchase Price, all fees and expenses in respect of all necessary applications pursuant to the *Competition Act*, the *Investment Canada Act*, any land transfer taxes and transfer duties payable on the transfer of the Subject Assets, all registration taxes, fees and other costs payable in respect of registration of any documents to be registered by the Purchaser at Closing and all federal and provincial sales and other taxes payable upon or in connection with the conveyance or transfer of the Subject Assets, including, goods and services tax, harmonized sales tax or other similar value added or multi-staged tax imposed by any applicable provincial or territorial legislation, as the case may be, and any other provincial sales taxes. This Section 8.19 shall survive the Closing or the termination of this Agreement. The Purchaser acknowledges that, subject to the limitations contained in Section 2.2, the Vendor has provided, or may provide, to the Purchaser, solely as a courtesy an updated environmental report prepared by Pinchin Ltd. in respect of the Lands and an updated building condition report prepared by OHE Consultants in respect of the Buildings and reliance letters for such reports, and that the costs and expenses incurred by the Vendor in obtaining such reports and reliance letters will be paid by the Purchaser to the Vendor on Closing and will be shown on the statement of adjustments as an additional adjustment in favour of the Vendor. This Section 8.19 shall survive the Closing or the termination of this Agreement.

8.20 Interpretation

The parties hereto acknowledge and agree that: (a) each Party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to their revision, (b) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and (c) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favour of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

8.21 No Third Party Beneficiaries

Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person, other than the Parties hereto and the Monitor, and no Person, other than the Parties hereto and the Monitor, shall be entitled to rely on the provisions hereof in any Claim, proceeding, hearing or other forum. The Parties acknowledge and agree that the Monitor, acting in its capacity as the Monitor, will have no liability in connection with this Agreement whatsoever, in its capacity as Monitor, in its personal capacity or otherwise.

8.22 Enurement

This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. The Purchaser has and shall have no right to assign, convey and/or transfer its rights and/or obligations hereunder or to direct title to any of the Subject Assets to any other Person or to effect a "change of control" so as to indirectly effect the foregoing, without in each case first obtaining the prior written consent of the Vendor, which consent may be arbitrarily and unreasonably withheld by the Vendor.

8.23 Amendments

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Vendor and the Purchaser, except that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor or the Vendor's solicitors on one hand and the Purchaser or the Purchaser's solicitors on the other.

8.24 Counterparts and Delivery


All Parties agree that this Agreement and any amendments hereto (and any other agreements, Notices, or documents contemplated hereby) may be executed in counterpart and transmitted by facsimile or e-mail (PDF) and that the reproduction of signatures in counterpart by way of facsimile or e-mail (PDF) will be treated as though such reproduction were executed originals.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF the parties have executed this Agreement.

**FTI Consulting Canada Inc., in its capacity
as court-appointed Monitor of SEARS
CANADA INC., among others, and not in its
personal or corporate capacity and without
personal or corporate liability, on behalf of:**

SEARS CANADA INC.

By: 
Name: Steven Bissell
Title: Managing Director

1485900 ONTARIO LIMITED

By: _____
Name: Ron McCowan
Title: President

IN WITNESS WHEREOF the parties have executed this Agreement.

SEARS CANADA INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

1485900 ONTARIO LIMITED

By: _____

Name: Ron McCowan

Title: President

SCHEDULE "A"
LANDS

PIN 58928-2332 (LT)

PT LT 19 CON 4 VESPRA PTS 1, 2 & 3 51R12305 EXCEPT PT 3 51R35109, S/T & T/W
EASEMENT RO487004 (FIRSTLY), S/T EASEMENT OVER PT 1 51R29766 AS IN
LT512231; BARRIE

SCHEDULE "B"
EXCLUDED ASSETS

1. All intellectual property or proprietary rights, whether registered or not, and any intangible property, owned, used or held by the Vendor.
2. All items, materials and signs bearing the logo, trade-mark, trade-name or business name or other mark or design of the Vendor.
3. All FF&E and Inventory which have been removed from the Property by or on behalf of the Vendor or its agents or their respective representatives prior to the Closing Date.
4. All insurance policies of the Vendor.
5. All rights and interests in trade-marks, trade-names, logos, commercial symbols and business names containing "Sears" or any other proprietary wording or intellectual property rights of the Vendor or any of its affiliates (including, the websites).
6. All rights of the Vendor against the Purchaser pursuant to this Agreement.
7. All (i) computers and related systems and information storage media and other IT equipment, (ii) video cameras and equipment, and (iii) point-of-sales systems and all appurtenances thereto.

SCHEDULE "C"
PURCHASE PRICE ALLOCATION

Intentionally Deleted.

**SCHEDULE “D”
FORM OF APPROVAL AND VESTING ORDER**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	●, THE ● TH
)	
JUSTICE HAINEY)	DAY OF ●, 2018

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., 9370-2751
QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES
INC., 9845488 CANADA INC., INITIUM TRADING AND
SOURCING CORP., SEARS FLOOR COVERING CENTRES
INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO
LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC.,
168886 CANADA INC., AND 3339611 CANADA INC.
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

APPROVAL AND VESTING ORDER – ●

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: the sale of lands and buildings located at ●, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and ● (the “**Purchaser**”) as purchaser dated ●, 2019 (the “**APA**”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor, the ● Report of the Monitor, filed, and on hearing the submissions of respective counsel for the Monitor, the Purchaser and such other

counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2018, filed:

SERVICE AND DEFINITIONS

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

2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the APA, as applicable.

APPROVAL OF THE APA

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the APA by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor) and the Purchaser may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the sale, assignment and transfer by Sears Canada of its right, title and interest in and to the Subject Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Subject Assets are as set out on Schedule “B” hereto.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or

filed and whether secured, unsecured or otherwise in respect of the Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (●) or any other personal property registry system; and
- (c) those Claims listed on Schedule “B” hereto;

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to Sears Canada’s right, title and interest in and to the Subject Assets are hereby expunged and discharged as against Sears Canada’s right, title and interest in and to the Subject Assets including the real or immoveable property identified in Schedule “B”.

5. THIS COURT ORDERS that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar is hereby directed to specifically discharge, cancel, delete and expunge from title to the applicable real or immovable property described in Schedule “B” all of the Encumbrances listed in Schedule “B” hereto.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds received on the Closing of the Transaction shall stand in the place and stead of the Subject Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the “**Net Proceeds**”) with the same priority as they had with respect to the Subject Assets immediately prior to the Closing of the Transaction, as if the Transaction had not been completed.

7. THIS COURT ORDERS that the Monitor shall be entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

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

SEALING

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

PURCHASE OPTION

10. THIS COURT ORDERS that the rights of RioCan Holdings Inc. and its affiliates (collectively, "**RioCan**") to purchase the Subject Assets pursuant to Section 12 of the Operating Agreement (the "**Purchase Option**") have been deemed to be at an end and, for greater certainty, RioCan shall not be permitted to re-engage the Purchase Option at any time in the future.

GENERAL PROVISIONS

11. THIS COURT ORDERS that, notwithstanding:

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

the sale, assignment and transfer of the Subject Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment,

fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

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

SCHEDULE "A"

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

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., 9845488 CANADA INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.
(each, an "**Applicant**", and collectively, the "**Applicants**")

MONITOR'S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2018 (the "**Approval and Vesting Order**") approving the Agreement of Purchase and Sale between Sears Canada Inc. ("**Sears Canada**"), as vendor, and ● (the "**Purchaser**") as purchaser dated ●, 2018 (the "**APA**"), a copy of which is attached as Exhibit ● to the Monitor's ● Report dated ●, 2018.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the sale, assignment and transfer to the Purchaser of Sears Canada's right, title and interest in and to the Subject Assets (as defined in the APA), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the delivery by the Monitor to the Purchaser and Sears Canada of a certificate confirming that (i) the conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APA have been satisfied or waived by the Purchaser and Sears Canada, as applicable,

and (ii) the Purchase Price and any Taxes payable (each as defined in the APA) to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APA have been satisfied or waived by the Purchaser and Sears Canada, as applicable; and
2. The Purchase Price and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

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

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

Per: _____

Name:

Title:

SCHEDULE "B"

No .	Location / Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
Sect	●	●	●	●	[NIL]

SCHEDULE "C"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, collectively, (a) any Encumbrances resulting from the Purchaser's actions or omissions; and (b) the items identified in Schedule "G" of the APA.

**SCHEDULE “D”
PURCHASER’S GST/HST [AND QST] CERTIFICATE, UNDERTAKING AND
INDEMNITY**

[NTD: to be revised for applicable Property]

TO: Sears Canada Inc. (the “Vendor”)

AND TO: Norton Rose Fulbright Canada LLP

AND TO: FTI Consulting Canada Inc., as court-appointed Monitor of the Vendor

RE: Agreement of Purchase and Sale dated ●, 2018, made between the Vendor, as Vendor, and ●, as Purchaser, (the “Purchaser”), as amended from time to time (the “Purchase Agreement”), for the purchase and sale of the Property and other Subject Assets (as such terms are defined in the Purchase Agreement)

In consideration of the completion of the transaction set out in the Agreement, the Purchaser hereby certifies and agrees as follows:

- a) the Subject Assets are being purchased by the Purchaser as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of or for another Person;
- b) the Purchaser is registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) (the “*Excise Tax Act*”) for the collection and remittance of goods and services tax and harmonized sales tax (“GST/HST”) **[NTD: and under Division I of Chapter VIII of Title I of An Act respecting the Québec Sales Tax (the “Québec Act”) with respect to the Québec sales tax (“QST”)]** and its registration number is **[numbers are]●** and such registration[s] is **[are]** in good standing and has **[have]** not been varied, cancelled or revoked;
- c) the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate governmental authority, all GST/HST which is payable under the *Excise Tax Act* **[and all QST which is payable under the Québec Act]** in connection with the transfer of the Subject Assets, all in accordance with the *Excise Tax Act* **[and the Québec Act respectively]**;
- d) the Purchaser shall indemnify and save harmless the Vendor from and against any and all GST/HST, **[QST]** penalties, interest and/or other costs which may become payable by or be assessed against the Vendor as a result of any failure by the Vendor to collect and remit any GST/HST **[or QST]** applicable on the sale and conveyance of the Subject Assets by the Vendor to the Purchaser or as a result of any inaccuracy, misstatement or misrepresentation by the Purchaser in this GST/HST **[and QST]** Certificate, Undertaking and Indemnity or any failure by the Purchaser to comply with the provisions of this GST/HST **[and QST]** Certificate, Undertaking and Indemnity; and
- e) this GST/HST **[and QST]** Certificate, Undertaking and Indemnity shall survive and not merge upon closing of the above-noted transaction.

This GST/HST **[and QST]** Certificate, Undertaking and Indemnity may be executed in counterpart and transmitted by facsimile or e-mail (PDF) and that the reproduction of signatures in counterpart by way of facsimile or e-mail (PDF) will be treated as though such reproduction were executed originals.

DATED _____, 2018.

[PURCHASER]

By: _____
Name: ●
Title: ●

SCHEDULE "E"

FORM OF ASSIGNMENT AND ASSUMPTION OF ASSUMED CONTRACTS AND PERMITTED ENCUMBRANCES

THIS AGREEMENT is made as of the _____ day of _____, 2018 (the "Effective Date")

B E T W E E N:

SEARS CANADA INC.

(the "Vendor")

- and -



(the "Purchaser")

RECITALS:

A. The Vendor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.

B. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2018 (the "**Purchase Agreement**"), whereby, among other things, the Vendor agreed to assign to the Purchaser all of the Vendor's right, title and interest in and to the Permitted Encumbrances.

C. The Purchase Agreement was approved by the Court pursuant to the Order dated● (the "**Approval and Vesting Order**").

D. The Vendor and the Purchaser are entering into this Agreement to provide for the assignment and assumption of the Assumed Contracts and the Permitted Encumbrances by the Vendor to the Purchaser in accordance with the Purchase Agreement and the Approval and Vesting Order.

E. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Purchase Agreement.

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

ARTICLE 1 ASSIGNMENT

1.1 Assignment by Vendor

The Vendor assigns and transfers to the Purchaser, as of the Effective Date, all of the Vendor's obligations, rights, title and interest, both at law and at equity, in and to the Assumed Contracts and the Permitted Encumbrances and all related rights, benefits and advantages thereto (collectively, the "Assigned Interest").

1.2 Assumption by Purchaser

The Purchaser hereby accepts the assignment of the Assigned Interest provided for in this Agreement and assumes all of the Vendor's obligations, right, title and interest in and to the Assigned Interest from and after the Effective Date.

1.3 Indemnity

The Purchaser hereby covenants with the Vendor, as of and from the Effective Date to indemnify and save the Vendor harmless from any and all Claims arising from, relating to or in connection with any non-payment of amounts payable on the part of the Purchaser to be paid from time to time under the Assumed Contracts and the Permitted Encumbrances, or any non-observance or non-performance of any of the terms, agreements, covenants, obligations and conditions on the part of the Purchaser under the Assumed Contracts and the Permitted Encumbrances to be paid, observed or performed from time to time, in respect of the period on or after the Effective Date, or otherwise arising, incurred or accrued on or after the Effective Date whether in respect of the period before or after the Effective Date, including, without limitation, any default as a consequence of the closing of the Transaction contemplated by the Purchase Agreement.

1.4 Paramourncy

The rights and obligations of the parties respectively with respect to the Assumed Contracts and the Permitted Encumbrances and any other Subject Assets shall be governed by the Purchase Agreement. In the event of any conflict, inconsistency, ambiguity or difference between the provisions of this Agreement and of the Purchase Agreement, then the provisions of the Purchase Agreement shall govern and be paramount, and any such provision in this Agreement shall be deemed to be amended, to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

ARTICLE 2 GENERAL

2.1 Time of the Essence

Time shall be of the essence of this Agreement.

2.2 Enurement

This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs,

executors, personal legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

2.3 Entire Agreement

This Agreement and the Purchase Agreement constitute the entire agreement between the parties with respect to the assignment and assumption of the Assumed Contracts and the Permitted Encumbrances contemplated in the Purchase Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and the Purchase Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement and the Purchase Agreement.

2.4 Waiver

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

2.5 Further Assurances

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

2.6 Severability

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

2.7 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province in which the Property is located [NTD: to be revised if multiple Properties] and the federal laws of Canada applicable therein.

2.8 CCAA Proceedings

Each party to this Agreement submits to the exclusive jurisdiction of the Court in any action, application, reference or other proceeding arising out of or related to this Agreement or the Purchase Agreement and agrees that all claims in respect of any such actions, application, reference or other proceeding shall be heard and determined in the CCAA Proceedings before the Court.

2.9 English Language

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

2.10 Statute References

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

2.11 Headings

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

2.12 References

Where in this Agreement reference is made to an article or section, the reference is to an article or section in this Agreement unless the context indicates the reference is to some other agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. The word “includes” or “including” shall mean “includes without limitation” or “including without limitation”, respectively. The word “or” is not exclusive.

2.13 Number and Gender

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

2.14 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day must be made or taken by no later than 4:30 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

2.15 Notice

Any notice, consent or approval required or permitted to be given in connection with this Agreement (a “Notice”) shall be in writing and shall be sufficiently given if delivered or

transmitted in accordance with the Purchase Agreement.

2.16 Counterparts and Delivery

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

[Signature pages follow.]

IN WITNESS WHEREOF the Vendor has executed this Agreement.

SEARS CANADA INC.

By: _____
Name:
Title:
By: _____
Name:
Title:

IN WITNESS WHEREOF the Purchaser has executed this Agreement.

●

By: _____

Name: ●

Title: ●

By: _____

Name: ●

Title: ●

SCHEDULE "F"

PERMITTED ENCUMBRANCES

GENERAL ENCUMBRANCES

- (a) The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any royalties, mines and minerals in the Crown or in any other person.
- (b) Subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements with Governmental Authorities or private or public utilities affecting the development or use of any Property.
- (c) Rail siding agreements or facility, cost sharing, servicing, reciprocal use or other similar agreements.
- (d) Any easements, servitudes, or rights-of-way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner.
- (e) Any unregistered easements, servitudes, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property.
- (f) Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable Law.
- (g) Encumbrances for real or immovable property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
- (h) Restrictive covenants, private deed restrictions and other similar land use control agreements.
- (i) Minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners.
- (j) The provisions of all applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property.
- (k) The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) (other than paragraphs 4, 6 and 11) or the *Land Titles Act* (Alberta).

- (l) Security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property.
- (m) Any minor title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Property which would be disclosed by an up-to-date plan of survey, real property report, certificate of location, or technical description.
- (n) Permits, licenses, agreements, servitudes, easements, (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, options, rights-of-way, public ways, rights in the nature of an easement or servitude and other similar rights in land granted to or reserved by other persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) (other than those described in paragraph (d) and (e) of this Schedule) which do not materially impair the current use, operation or marketability of the Property.
- (o) Undetermined or inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Property or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Lien Act* (Ontario) or similar legislation, and in respect of any of the foregoing cases, the Vendor has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts.
- (p) Any reference plans or plans registered pursuant to the *Boundaries Act* (Ontario).
- (q) All Off-Title Compliance Matters.
- (r) Any unregistered interests in the Property of which the Purchaser has actual notice.
- (s) All rights of first refusal, option to purchase or similar rights relating to the Property.
- (t) All instruments which are registered against title to a Property: (i) as of the date that is one (1) Business Days prior to the Execution Date; or (ii) otherwise agreed to by the Purchaser; or (iii) permitted by this Agreement, except for those Encumbrances to be vested off pursuant to the Approval and Vesting Order.

SPECIFIC ENCUMBRANCES

The characterization or descriptions of those items on the balance of this Schedule "G" is prepared for purposes of convenience only and for accurate reference, recourse should be had to the registration itself.

- (a) Operating Agreement.

SCHEDULE "G"
ASSUMED CONTRACTS

Operating Agreement.

**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., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., 9845488 CANADA INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

MONITOR’S CERTIFICATE

RECITALS

A. Reference is made to the Right of First Refusal made as of the 15th day of July, 2008 between SCI and Ontrea Inc. with respect to the property commonly known as 521 Bayfield Street, Barrie, Ontario (the “**Property**”), as assigned to RioCan Holdings Inc. by Assignment and Assumption of ROFR made as of the 31st day of August 2012 (the “**ROFR**”).

B. Reference is also made to the Agreement of Purchase and Sale between Sears Canada Inc. (“**SCI**”) and 1485900 Ontario Limited (“**148**”) dated October 25, 2019 (the “**APA**”).

C. This certificate is provided in connection with Section 4 of the ROFR by FTI Consulting Canada Inc., in its capacity as court-appointed Monitor of SCI, among others (the “**Monitor**”).

THE MONITOR CERTIFIES the following to RioCan Holdings Inc., as Optionee pursuant to the ROFR:

1. No consideration is to be received by any party to the APA pursuant to or in connection with the sale of the Subject Assets from SCI to 148 pursuant to the APA other than as expressly set out in the APA; and
2. The APA is not entered into as part of or in connection with any other transaction.

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

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

Per: _____
Name:
Title:

Appendix “E”

Properties

PIN 58928 – 2332 LT
Description PT LT 19 CON 4 VESPRE PTS 1, 2 & 3 51R12305 EXCEPT PT 3 51R35109, S/T & T/W
 EASEMENT RO487004 (FIRSTLY), S/T EASEMENT OVER PT 1 51R29766 AS IN
 LT512231; BARRIE
Address BARRIE

Consideration

Consideration \$0.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name ONTREA INC.
Address for Service 20 Queen Street West,
 Toronto, ON
 M5H 3R4

I, JOHN SULLIVAN, A.S.O. and I, PETER J. BARBETTA, EXEC. VICE-PRESIDENT, GENERAL COUNSEL & SECRETARY, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Statements

The land registrar is authorized to delete the notice on the consent of the following party(ies) ONTREA INC.

Schedule: See Schedules

Signed By

Susan Natalie Crisp 250 Yonge Street Suite 2400 acting for Signed 2008 02 08
 Toronto Applicant(s)
 M5B 2M6

Tel 4169792211

Fax 4169791234

Submitted By

GOODMANS LLP 250 Yonge Street Suite 2400 2008 02 08
 Toronto
 M5B 2M6

Tel 4169792211

Fax 4169791234

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

File Number

Applicant Client File Number : 06-1729 NOTICE OF ROFR (JM/SNC)

I, Thomas M. F. Macdonald, am a solicitor with the firm of Goodmans LLP, solicitors for **ONTREA INC.**, the Applicant, and hereby confirm that **ONTREA INC.** has an unregistered estate, right, title and interest in the lands denoted by PIN 58928-2332(LT) (the "**Lands**"), of which **SEARS CANADA INC.** is the registered owner and I confirm that this document effects an interest in the Lands.

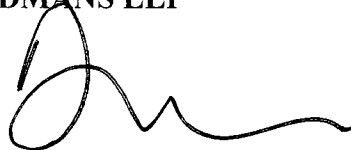
I hereby apply under Section 71 of the *Land Titles Act* for the entry of a Notice in the register for the Lands.

The land registrar is authorized to delete the notice on the consent of Ontrea Inc.

Dated February 8, 2008.

GOODMANS LLP

Per:



Thomas M. F. Macdonald

RIGHT OF FIRST REFUSAL

THIS AGREEMENT made as of the 15th day of July, 2007.

B E T W E E N:

SEARS CANADA INC.
(hereinafter called the "Optionor")

OF THE FIRST PART,

- and -

ONTREA INC.
(hereinafter called the "Optionee")

OF THE SECOND PART.

WHEREAS the Optionor is the owner of certain lands and premises legally described in Schedule "A" attached hereto (the "**Property**");

AND WHEREAS the Optionor has agreed that, if it is desirous of selling any part or parts or all of the Property, the Optionor shall give the Optionee the right of first refusal to purchase the same on the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH in consideration of the sum of two dollars (\$2.00) of lawful money of Canada and other good and valuable consideration, the receipt and sufficiency of which each party hereby acknowledges, the parties hereto hereby covenant and agree as follows:

1. Definitions:

For the purposes of this Agreement:

- (a) "**Affiliate**" has the meaning ascribed thereto in the *Ontario Business Corporations Act*;
- (b) "**Bona Fide Offer**" means a *bona fide*, irrevocable offer in writing from an Offeror received from time to time by the Optionor to purchase or to lease for in excess of 30 years (including all renewals) any Offered Part and (i) such offer contains no trade or exchange of lands or interest therein as part or all of the consideration; and (ii) such offer contains no term which is so unique or unusual as to render it incapable of being matched or performed on a commercially reasonable basis (other than for monetary reasons) by anyone and the cash equivalent of the offer as a whole must be readily ascertainable;
- (c) "**Business Day**" means any day of any week except for Saturdays, Sundays and statutory holidays in Ontario;
- (d) "**Offered Part**" means any part or parts of the Property or all of the Property, as applicable; and
- (e) "**Offeror**" means a purchaser or purchasers which is the offeror pursuant to a Bona Fide Offer.

2. Prohibition on Sale:

The Optionor shall not transfer or sell or otherwise dispose of (including, without limitation, by way of long term lease in excess of 30 years, including all renewals) (collectively, "**Dispose**") any Offered Part except pursuant to a Bona Fide Offer or an Affiliate of the Optionor provided it is directly or indirectly owned 100% by the Landlord and so long as it remains a wholly-owned Affiliate. Prior to any Disposition to an Affiliate, the parties hereto and the Affiliate shall enter into an agreement satisfactory to all parties to provide rights to purchase the Property to the Optionee should the Affiliate cease to be wholly-owned by the Optionor.

3. Offer From Third Party:

If the Optionor is desirous of Disposing of any Offered Part and if the Optionor has received a Bona Fide Offer to purchase the Offered Part which it is willing to accept, then the Optionee shall have the option to require the Optionor to Dispose of the Offered Part to the Optionee, or as the Optionee may in writing direct, on the same terms and conditions contained in the Bona Fide Offer and in accordance with this Agreement.

4. Notice of Bona Fide Offer:

Prior to accepting a Bona Fide Offer, the Optionor shall give written notice (the "Notice") to Optionee that Optionor wishes to accept such Bona Fide Offer. The Notice shall be accompanied by a true copy of the Bona Fide Offer, together with a statutory declaration by the Optionor that there is no direct or indirect supplementary consideration (whether or not in the nature of a tangible or intangible asset, money, property, securities, or other benefit) and that the Bona Fide Offer is not made as part of or in connection with any other transaction.

5. Exercise of Right of First Refusal by Optionee:

The Optionee shall have a period of ten (10) Business Days (the "Option Period") from the receipt of the Notice within which to submit an offer to purchase the Offered Part at the same price and on the same terms and conditions as the Bona Fide Offer (the "Offer"). Upon receipt of the Offer by the Optionor, the Offer shall constitute a firm and binding agreement of purchase and sale on the terms set out therein and the Optionor shall be bound to complete the Disposition of the Offered Part pursuant to the Offer.

6. Due Diligence:

The Optionor shall provide to the Optionee, together with the Notice, all building condition reports and environmental site assessments within its possession or control relating to the Property and if the Bona Fide Offer does not contain a due diligence period, in the sole unfettered discretion of the Optionee, the Option Period shall be deemed to be automatically extended by twenty (20) Business Days to thirty (30) Business Days from the receipt of the Notice.

7. Sale to Third Party:

If the Optionee does not submit the Offer within the Option Period, the Optionee's option to submit the Offer shall automatically expire with respect to the Offered Part, and the Optionor may accept the Bona Fide Offer and complete the sale of the Offered Part pursuant to and in accordance with the terms of the Bona Fide Offer, in which event this Agreement shall be discharged from title to such Offered Part.

8. Continuation of Right of First Refusal:

If the Optionor does not accept the Bona Fide Offer or if the Optionor accepts the Bona Fide Offer and the Disposition of the Offered Part is not completed pursuant to the terms thereof within eighty (80) days after the end of the Option Period, the option herein contained shall continue in full force and effect. If the Optionor accepts the Bona Fide Offer and completes the Disposition of the Offered Part pursuant to the terms thereof within such eighty (80) day period, and the Offered Part does not include all of the Property, the right of first refusal herein contained shall terminate only with respect to the Offered Part and shall continue in full force and effect with respect to the remainder of the Property.

9. Compliance with the *Planning Act*:

The completion of a transaction pursuant to this Agreement is conditional upon compliance with the provisions of Section 50 of the *Planning Act*, R.S.O. 1990, or a successor thereto.

10. Perpetuities:

The rights hereunder shall end on the last of the period of 21 days after the death of the survivor of the issue living at the date of this Agreement of his late Majesty King George V of England.

11. Notices:

Any notice required or permitted to be given hereunder to a party shall be in writing and shall be given by personal delivery addressed to such party at the address specified below or to such other address as either party shall specify to the other party by written notice as aforesaid:

(a) to the Optionor at:

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

Attention: The Secretary

Telecopy No: (416) 941-2321

with a copy to:

Attention: Vice-President, Real Estate

Telecopy No.: (416) 861-6870

(b) to the Optionee at:

ONTREA INC.
20 Queen Street West
Toronto, Ontario
M5H 3R4

Attention: Mr. John Sullivan

Telecopy No: (416) 598-8212

with a copy to:

Attention: Corporate Secretary

Telecopy No. (416) 598-8222

If notice is given by personal delivery, it shall be deemed to be received on the day of delivery.

12. Assignment:

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

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date and year first above written.

SEARS CANADA INC.

Per: 


BRIAN M. WHIBBS
VICE-PRESIDENT
REAL ESTATE &
BUSINESS DEVELOPMENT

Per: 

Franco Perugini
Associate General
Counsel

I/We have the authority to bind the Corporation

ONTREA INC.

Per:  John Sullivan
Authorized Signatory

Per: 

Peter J. Barbetta
I/We have the authority to execute for the Corporation, General Counsel & Secretary

SCHEDULE "A"

PIN 58928-2332(LT)

Part of Lot 19, Concession 4 Vespra, designated as Parts 1, 2 and 3 on Plan 51R-12305, except Part 3 on Plan 51R-35109, City of Barrie, County of Simcoe, Land Titles Division of Simcoe (No. 51), being the whole of the PIN.

Appendix “F”

Properties

PIN 58928 – 2332 LT
Description PT LT 19 CON 4 VESPRA PTS 1, 2 & 3 51R12305 EXCEPT PT 3 51R35109, S/T &
 T/W EASEMENT RO487004 (FIRSTLY), S/T EASEMENT OVER PT 1 51R29766 AS IN
 LT512231; BARRIE
Address BARRIE

Consideration

Consideration \$2.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name ONTREA INC.
Address for Service 20 Queen Street West
 5th Floor
 Toronto, Ontario
 M5H 3R4

I, Cathal O'Connor and I, Sandra Hardy, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Party To(s)*Capacity**Share*

Name RIOCAN HOLDINGS INC.
Address for Service RioCan Yonge Eglinton Centre
 2300 Yonge Street, Suite 500
 P.O. Box 2386
 Toronto, Ontario M4P 1E4

I, Jonathan Gitlin, Senior Vice-President, Investments, have the authority to bind the corporation

This document is not authorized under Power of Attorney by this party.

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, SC623574 registered on 2008/02/08 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration no.(s) SC623574

Signed By

Donald Charles Stanbury Suite 4400, 1 First Canadian Pl, P. acting for Signed 2012 08 30
 O. Box 63 Applicant(s)
 Toronto
 M5X 1B1

Tel 4168630900

Fax 4168630871

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

DAVIES WARD PHILLIPS & VINEBERG LLP Suite 4400, 1 First Canadian Pl, P. 2012 08 31
 O. Box 63
 Toronto
 M5X 1B1

Tel 4168630900

Fax 4168630871

The applicant(s) hereby applies to the Land Registrar.

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Provincial Land Transfer Tax	\$0.00
Total Paid	\$60.00

File Number

Applicant Client File Number :	239709
Party To Client File Number :	12/4060

LAND TRANSFER TAX STATEMENTS

In the matter of the conveyance of: 58928 – 2332 PT LT 19 CON 4 VESPRA PTS 1, 2 & 3 51R12305 EXCEPT PT 3
51R35109, S/T & T/W EASEMENT RO487004 (FIRSTLY), S/T
EASEMENT OVER PT 1 51R29766 AS IN LT512231; BARRIE

BY: ONTREA INC.

TO: RIOCAN HOLDINGS INC.

1. GITLIN, JONATHAN

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for _____ described in paragraph(s) () above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for RIOCAN HOLDINGS INC. described in paragraph(s) (c) above.
- (f) A transferee described in paragraph() and am making these statements on my own behalf and on behalf of _____ who is my spouse described in paragraph() and as such, I have personal knowledge of the facts herein deposed to.
-

3. **The total consideration for this transaction is allocated as follows:**

(a) Monies paid or to be paid in cash	2.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	0.00
(ii) Given Back to Vendor	0.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	2.00
(h) VALUE OF ALL CHATTELS –items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	2.00

4.

Explanation for nominal considerations:

s) other: there is no consideration passing for the assignment of SC623574.

5. The land is not subject to an encumbrance

PROPERTY Information Record

A. Nature of Instrument: Notice
LRO 51 Registration No. SC1008536 Date: 2012/08/31

B. Property(s): PIN 58928 – 2332 Address BARRIE Assessment – Roll No

C. Address for Service: RioCan Yonge Eglinton Centre
2300 Yonge Street, Suite 500
P.O. Box 2386
Toronto, Ontario M4P 1E4

D. (i) Last Conveyance(s): PIN 58928 – 2332 Registration No. LT512231
(ii) Legal Description for Property Conveyed: Same as in last conveyance? Yes No Not known

E. Tax Statements Prepared By: Donald Charles Stanbury
Suite 4400, 1 First Canadian PI, P.O. Box 63
Toronto M5X 1B1

ASSIGNMENT AND ASSUMPTION OF ROFR

MEMORANDUM OF AGREEMENT made as of the 31st day of August, 2012.

BETWEEN:

ONTREA INC.,
(the "Assignor")

OF THE FIRST PART,

- and -

RIOCAN HOLDINGS INC.,
(the "Assignee")

OF THE SECOND PART.

WHEREAS the Assignor and RioCan Real Estate Investment Trust (the "**Purchaser**") have entered into an agreement of purchase and sale made as of July 10, 2012 (such agreement, as amended, supplemented and/or restated to the date hereof, the "**Purchase Agreement**") pursuant to which the Purchaser has agreed to purchase from the Assignor, and the Assignor has agreed to sell to the Purchaser, the Purchased Assets;

AND WHEREAS pursuant to the Purchase Agreement, the Assignor has agreed to execute and deliver this assignment of its interest in the ROFR (as defined below);

AND WHEREAS pursuant to a direction dated as of August 21, 2012 from the Purchaser and the Assignee to the Assignor, the Purchaser has directed that the ROFR be transferred to the Assignee;

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Definitions

Unless otherwise defined herein, all capitalized terms used in this Agreement shall have the respective meanings ascribed to them in the Purchase Agreement. In this Agreement:

- (a) "**Agreement**" means this Assignment and Assumption of ROFR and "**herein**", "**hereof**", "**hereunder**" and similar expressions refer to this Agreement taken as a whole;
- (b) "**ROFR**" the Right of First Refusal made as of July 15, 2007 between Sears and the Assignor pursuant to which Sears granted the Assignor a right of first refusal in respect of the Sears Lands, as amended, extended, renewed, supplemented or otherwise modified;

- (c) "**Sears**" means Sears Canada Inc.; and
- (d) "**Sears Lands**" means the lands and premises legally described in Schedule A hereto.

2. **Assignment**

Subject to Section 7.4 of the Purchase Agreement, the Assignor hereby assigns and transfers unto the Assignee all of the Assignor's right, title and interest in, to and under the ROFR and all rights, benefits and advantages accruing to the Assignor thereunder or arising therefrom, to have and to hold the same absolutely. The Assignor hereby agrees, subject to the provisions of Section 6.5 of the Purchase Agreement, to fully indemnify and save harmless the Assignee from and against any and all Claims arising directly or indirectly from, in connection with or resulting from any breach by the Assignor (or any predecessors in interest to the Assignor, or those for whom it is responsible at law) of any obligation of the Assignor (or any predecessors in interest to the Assignor) under the ROFR which arose prior to the Closing Date, or relates to the period prior to the Closing Date.

3. **Assumption**

The Assignee hereby accepts the assignment and transfer contained in Section 2 hereof and covenants and agrees with the Assignor that the Assignee will assume, observe, perform and fulfill each and every covenant, proviso, obligation, term and condition of the Assignors in, to and under the ROFR relating to the period from and after the Closing Date (and including the Closing Date) to the same extent as if it had been originally named as a party to the ROFR in the place of the Assignor (or the Assignor's predecessors in title, if applicable). The Assignee hereby agrees, subject to the provisions of Section 6.5 of the Purchase Agreement, to fully indemnify and save harmless the Assignor and all other Vendor Parties from and against any and all Claims arising directly or indirectly from or in connection with the ROFR except for those Claims which are the responsibility of the Assignor pursuant to Section 2 hereof. The Assignee agrees that the Vendor Parties that are not party to this Agreement shall be entitled to the benefit of the provisions of this Section 3, with the same force and effect as if they had been parties to this Agreement for the purpose of receiving the benefit of the Assignee's indemnification in their favour.

4. **Further Assurances**

Each of the parties hereto shall execute and deliver such additional documents and instruments and shall perform such additional acts as may be necessary or appropriate in connection with this Agreement and all transactions contemplated by this agreement to effectuate, carry out and perform all of the covenants, obligations and agreements of this Agreement and such transactions.

5. **Governing Law**

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

6. Successors and Assigns

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

7. Headings, Extended Meanings

The headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof and are not to be considered in the interpretation hereof. In this Agreement, words importing the singular include the plural and vice versa; words importing the masculine gender include the feminine and vice versa; and words importing persons firms or corporations and vice versa.

8. Counterparts

This Agreement may be executed in several counterparts and by facsimile transmission of an originally executed document, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

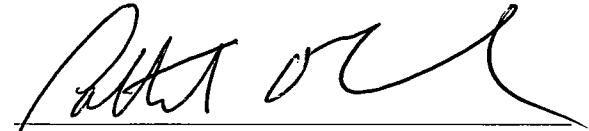
9. Survival

The provisions of this Agreement shall survive the Closing.

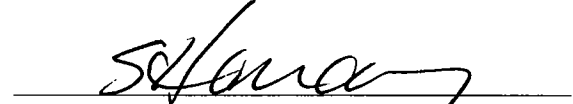
[Remainder of page left blank intentionally; signature page follows]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first mentioned.

ONTREA INC.

by 

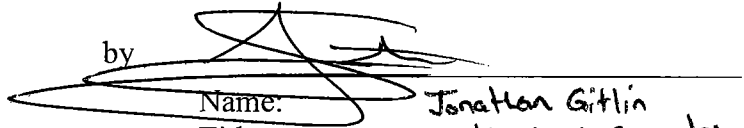
Name: Cathal O'Connor
Title: Authorized Signatory



Name: Sandra Hardy
Title: Authorized Signatory

I/We have authority to bind the Corporation

RIOCAN HOLDINGS INC.

by 

Name: Jonathan Gitlin
Title: Authorized Signatory

I have authority to bind the Corporation

SCHEDULE A

LEGAL DESCRIPTION - SEARS LANDS

PIN 58928-2332(LT)

Part of Lot 19, Concession 4 Vespra, designated as Parts 1, 2 and 3 on Plan 51R-12305, except Part 3 on Plan 51R-35109, City of Barrie, County of Simcoe, Land Titles Division of Simcoe (No. 51), being the whole of the PIN.

Appendix “G”

(1) Registry Land Titles (2) Page 1 of 16 pages *70*

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

(4) Nature of Document
RESTRICTIVE COVENANT AGREEMENT

(5) Consideration
Dollars \$

(6) Description
Firstly:
Part of Lot 19, Fourth Concession, designated as Parts 4, 5, 6, 13 and 14, Reference Plan 51R-12305, City of Barrie, County of Simcoe

more particularly described on Schedule A attached

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

FOR OFFICE USE ONLY

01308928

NOV 11 1996

NEW PROPERTY IDENTIFIERS

Additional: See Schedule

Executions

Additional: See Schedule

(8) This Document provides as follows:
Copy of agreement dated November 3, 1995 attached.

Continued on Schedule

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

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

MARKBOROUGH PROPERTIES INC.
by its solicitors, McCarthy Tétrault

Per: *Evan Bickerton*
Evan Bickerton

1996 03 08

(11) Address for Service **1 Dundas Street West, Suite 2800, Toronto, Ontario, M5G 2J2**

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

CF/REALTY HOLDINGS INC.

(13) Address for Service **c/o The Cadillac Fairview Corporation Limited, 20 Queen Street West, Toronto, Ontario, M5M 3R4**

(14) Municipal Address of Property
**Georgian Mall
West Side of Highway 400
and South of Essa Road
Barrie, Ontario**

(15) Document Prepared by:
**Evan Bickerton
McCarthy Tétrault
Suite 4700, P.O. Box 48
Toronto Dominion Bank Tower
Toronto-Dominion Centre
Toronto, Ontario M5K 1E6**

Fees and Tax	
Registration Fee	50
Total	50

Box (12) Additional Parties

ONTREA INC.

Address for Service: c/o The Cadillac Fairview Corporation Limited,
20 Queen Street West, Toronto, Ontario, M5M 3R4

MASTON VENTURES LTD.

Address for Service: c/o Markborough Properties Inc., Suite 2800,
1 Dundas Street West, Toronto, Ontario, M5G 2J2

SCHEDULE "A"
LEGAL DESCRIPTION

Georgian Mall

FREEHOLD LANDS

FIRSTLY:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Barrie (formerly in the Township of Vespra), in the County of Simcoe, being composed of Part of Lot 19, in the Fourth Concession of the said City, the said parcel being designated as Parts 4, 5, 6, 13 and 14 on a Reference Plan of Survey on deposit in the Registry Office for the Land Registry Division of Simcoe (No. 51) as Plan Number 51R-12305.

TOGETHER WITH an easement described in Instrument No. 477083 registered in the said Land Registry Office in favour of the owners from time to time of Parts 4, 5 and 6 on Plan 51R-12305 to install and from time to time maintain and replace storm drainage facilities of every nature and kind in, over, along and upon that part of the said Lot 19 designated as Parts 2 and 7 on said Plan 51R-12305 for the purpose of providing for storm drainage from the said Parts 4, 5 and 6 on said Plan.

SECONDLY:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Barrie (formerly in the Township of Vespra), in the County of Simcoe, being composed of Part of Lot 19, in the Fourth Concession of the said City, the said parcel being designated as Parts 7, 8 and 9 on a Reference Plan of Survey on deposit in the Registry Office for the Land Registry Division of Simcoe (No. 51) as Plan Number 51R-12305.

SUBJECT TO an easement described in Instrument No. 477083 registered in the said Land Registry Office in favour of the owners from time to time of Parts 1, 2, 3, 4, 5 and 6 on said Plan 51R-12305, to install and from time to time maintain and replace storm drainage facilities of every nature and kind in, over, along and upon that part of said Lot 19 designated as Part 7 on said Plan 51R-12305, for the purpose of providing from storm drainage from the said Parts 1, 2, 3, 4, 5 and 6 on said Plan 51R-12305.

LEASEHOLD LANDS

FIRSTLY:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Barrie (formerly in the Township of Vespra), in the County of Simcoe, being composed of Part of Lot 19, in the Fourth Concession of the said City, the said parcel being designated as Parts 10 and 12 on a Reference Plan of Survey on deposit in the Registry Office for the Land Registry Division of Simcoe (No. 51) as Plan Number 51R-12305 save and except Parts 1 and 2 on Plan 51R-24721 expropriated by the City of Barrie under Instrument No. 1281334 registered April 18, 1995.

SECONDLY:

Part of Lot 19, Concession 4, in the City of Barrie, in the County of Simcoe (formerly in the Township of Vespra), designated as Part 1, Plan 51R-13576.

4

THIS AGREEMENT made this 3rd day of November, 1995

B E T W E N:

CF/REALTY HOLDINGS INC.

(hereinafter called "CF")

OF THE FIRST PART;

- and -

ONTREA INC.

(hereinafter called "Ontrea")

OF THE SECOND PART;

MARKBOROUGH PROPERTIES INC.

(hereinafter called "Markborough")

OF THE THIRD PART;

- and -

MASTON VENTURES LTD.

(hereinafter called "Ontario")

OF THE FOURTH PART.

WHEREAS CF and Ontrea (collectively, the "Georgian Mall Owners") by way of freehold and leasehold interests own and operate a regional shopping centre located in the City of Barrie and known as the Georgian Mall, the legal description of which is attached as Schedule "A" (the "Georgian Mall Lands");

AND WHEREAS Markborough and Ontario (collectively, the "Markborough Owners") are the registered owners of the lands described in Schedule "B" hereto (the "Markborough Lands"), which lands are generally located on the west side of Highway 400 and south of Essa Road in the City of Barrie;

AND WHEREAS the Markborough Owners propose to develop a shopping centre on the Markborough Lands (the "Markborough Centre");

AND WHEREAS approvals were granted by the Council of the City of Barrie to permit the development of the Markborough Centre, and as a result of appeals and referrals made by the former owner of the Georgian Mall Lands and others to such approvals, the Ontario Municipal Board, by its order dated January 7, 1994 (the "Order"), imposed certain restrictions and controls on the development of the Markborough Centre;

AND WHEREAS one of the restrictions and controls imposed under the Order was to limit the Markborough Centre to one traditional full line department store which store could not be a store represented in the City of Barrie as of August 4, 1993 (the "Unrepresented Department Store Restriction");

AND WHEREAS the Markborough Owners made application (the "Markborough Application") to the Council of the City of Barrie for amendments to the applicable Official Plan and Zoning By-law ("Official Plan Amendment No. 87" and "By-law 91-138", respectively) so as to eliminate all of the restrictions and controls imposed by the Ontario Municipal Board under the Order, including the Unrepresented Department Store Restriction, and therefore zone the Markborough Centre such that it is subject to the general zoning provisions applicable to a C3 zone pursuant to By-law 85-95 of the City of Barrie, as amended;

AND WHEREAS the Markborough Owners also wish to seek assurances from Georgian Mall Owners that for a period of 5 years they will not lease any portion of the Georgian Mall Lands for use as a traditional full line department store other than in any premises, as such premises may be expanded or modified from time to time, that are, as of the date hereof, being used as a department store;

AND WHEREAS Council for the City of Barric approved the Markborough Application on April 24, 1995, through its adoption of Official Plan Amendment No. 132 ("OPA 132") and enactment of By-law No. 95-89 (the "Zoning Amendment");

AND WHEREAS OPA 132 has been referred and the Zoning Amendment appealed to the Ontario Municipal Board (the "OMB");

AND WHEREAS the Georgian Mall Owners, in consideration for them agreeing to withdraw their objection to the Markborough Application and thus not participate in the pending OMB hearing, seeks assurances that, subject to the more particular terms of this Agreement, the Markborough Owners and their respective successors and assigns will not sell or lease any portion of the Markborough Lands for a period of 10 years to The T. Eaton Company Limited ("Eatons") or Sears Canada Inc. ("Sears");

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the covenants hereinafter expressed and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada, now paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged), the parties hereby covenant and agree to and with each of the others as follows:

1. The Georgian Mall Owners acknowledge that they are aware of the Markborough Application.

2. Except as hereinafter provided and provided the Markborough Owners are not in default of their obligations hereunder, the Georgian Mall Owners covenant and agree that they will withdraw their objection to the Markborough Application and withdraw from the pending OMB hearing, and that for a period of 10 years from the date hereof, they will not file any further appeal or request any further referral under the *Planning Act*, or take any other steps whatsoever to question, challenge, appeal or seek the review of, the Markborough Application

or any development, construction or other dealing with the Markborough Lands, provided such dealing complies with the Markborough Application.

3. Except as hereinafter provided and provided the Georgian Mall Owners are not in default of their obligations hereunder, the Markborough Owners covenant and agree that for a period of 10 years from the date hereof they will not object or take any other steps whatsoever to question, challenge, appeal or seek the review of any development, construction or other dealing with the Georgian Mall Lands, provided such dealing complies with the existing zoning requirements applicable to the Georgian Mall Lands or is being undertaken to facilitate the occupancy of premises, as they may be expanded or modified from time to time, currently occupied by the Eatons, Sears or K-Mart department stores by a replacement tenant (in which case the dealing may include without limitation a rezoning to affect such occupancy, and the Markborough Owners agree not to question, challenge, appeal or seek the review of any such rezoning).

4. The Markborough Owners covenant and agree that:

- (a) for a period of 10 years from the date hereof, the Markborough Owners will not lease or sell to, or permit the commencement of occupation of, any portion of the Markborough Centre or the Markborough Lands by Eatons or Sears and their respective successors and assigns or any other entity operating a traditional full line department store under the Eatons or Sears banner or the banner of such successor or assign as is applicable, provided that if any such successor or assign is operating a majority of Eatons and Sears stores in Canada of which it is the successor or assign or, if in the case of any such other entity, such other entity is operating a majority of its full line traditional department stores in Canada under the Eatons or Sears banner as applicable, including the existing Eatons and Sears stores which are the subject matter of this Agreement, then this provision shall not prohibit the Markborough Owners from leasing to, selling to or

permitting occupation by such successor or assign or other such entity on the Markborough Lands, provided such successor or assign or other such entity is operating such premises as a traditional full line department store under a different banner than Eatons or Sears;

- (b) subject to subparagraph 4(c), nothing in subparagraph 4(a) shall apply to prevent the Markborough Owners at any time from leasing, selling to or permitting the occupation by Hudsons Bay Company and its affiliates of any portion of the Markborough Centre or the Markborough Lands; and
- (c) for a period of 5 years from the date hereof, the Markborough Owners will not lease or sell, or permit the occupation of, any portion of the Markborough Centre or the Markborough Lands such that there is more than one traditional full line department store in the Markborough Centre or on the Markborough Lands at any given time.

5. The Georgian Mall Owners covenant and agree that for a period of 5 years from the date hereof, they will not lease, or sell or permit the occupation of, any portion of the Georgian Mall Lands for use as a traditional full line department store other than in any premises, as such premises may be expanded or modified from time to time, that as of the date hereof, is being used as a department store. For greater certainty, it is agreed that the premises within the Georgian Mall Lands currently being used as a department store consist of premises occupied by the Eatons, Sears and K-Mart department stores.

6. If the OMB refuses to approve the Markborough Application, or if the OMB varies the Markborough Application in any way, then the Markborough Owners may, but need not, terminate this Agreement by delivering a notice in writing (the "Termination Notice") to the Georgian Mall Owners indicating that they wish to terminate the Agreement, provided that the Markborough Owners shall not be entitled to deliver a Termination Notice unless and until

the following land-use controls (hereinafter, the "Essential Controls") have been reintroduced on the Markborough Lands, and are in full force and effect with no further rights of appeal:

(a) subparagraphs 4.3.2.11.2(a)(i) and (ii) and paragraph 4.3.2.11.2(f) of the City of Barrie's Official Plan, as set forth in Official Plan Amendment No. 87; and

(b) subsections 3(a), (b) and (c) and Section 6 of By-law 91-138.

The Markborough Owners covenant and agree that, for a period of three (3) years following the date of delivery of a Termination Notice, they shall not seek in any way, through application to the City of Barrie or otherwise, to remove the Essential Controls from the Markborough Lands. Upon delivery of a Termination Notice from the Markborough Owners to the Cadillac Fairview, and provided the Markborough Owners were entitled to deliver such notice in accordance with the foregoing, this Agreement shall be at an end and neither party shall be under any obligation to the other, save and except for the foregoing obligation of the Markborough Owners not to seek to remove the Essential Controls from the Markborough Lands for a period of three (3) years.

7. Any notices (a "Notice") provided for in this Agreement shall be in writing and shall be given by personal delivery or written telegraphic or electronic communication which results in a written or printed notice being given to the applicable address set forth below:

Markborough and Ontario
c/o Markborough Properties Inc.
1 Dundas Street West
Suite 2800
Toronto, Ontario
M5G 2J2
Attention: Corporate Secretary
Facsimile No.: (416) 591-2829

CF and Ontrea
c/o The Cadillac Fairview Corporation Limited
20 Queen Street West
Toronto, Ontario
MSM 3R4
Attention: Corporate Secretary and Don Biback, Executive V.P.
Facsimile No.: (416) 598-8784

Any Notice, if delivered, shall be deemed to have been validly and effectively given and received on the date of delivery. Any Notice, if sent by telegraphic or electronic communication, shall be deemed to have been validly and effectively given and received on the date of transmission. Notwithstanding the foregoing, if the date on which Notice is deemed to have been given and received pursuant to this provision is not a business day, Notice shall be deemed to have been given and received on the next following day that is a business day. A copy of any Notice which is given to one party hereto shall be given to all other parties hereto. By giving to the other parties at least ten (10) business days Notice thereof, any party may, at any time and from time to time, change its address for delivery or communication for purposes of this provision.

8. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their successors and assigns.

9. Sections 4, 5 and 6 of this Agreement constitute restrictive covenants with the burden thereof being upon the Markborough Lands (Sections 4 and 6) and the Georgian Mall Lands (Section 5), respectively, and the benefit thereof upon the Georgian Mall Lands (Sections 4 and 6) and the Markborough Lands (Section 5), respectively. It is the expressed intention of the parties that the burden of the restrictive covenants shall run with and bind the respective lands of the party giving such covenant and every part thereof and the benefit thereof shall be annexed to and run with the lands of the benefiting party. Each and every transfer, charge, lease or other conveyance of all or any part of the Markborough Lands and the Georgian Mall Lands or any interest therein, other than leases of retail and service space or grants of easement

for municipal services or utilities or conveyances of a minor portion of the lands to a governmental authority, shall contain an acknowledgement by the grantee, transferee, mortgagee, chargee or lessee, as the case may be, that such recipient accepts the respective lands or any interest therein subject to the applicable covenants set out in Sections 4, 5 and 6 of this Agreement and the covenant that such recipient will comply with the said covenants and will not do any act which could result in a breach of the said covenants provided, however, if any currently registered mortgagee goes into possession under its mortgage without agreeing to be bound by the provisions hereof, the party to which the acknowledgement should have been given shall, at its option, be entitled to terminate this Agreement and the parties agree to deliver all necessary releases and discharges to give effect to the termination. Notwithstanding the transfer, charge, lease or other conveyance of all or any part of the Markborough Lands or the Georgian Mall Lands, as applicable, or any interest therein, the Markborough Owners and the Georgian Mall Owners shall continue to be bound by the applicable terms of Sections 4, 5 and 6, respectively, and shall be liable to the other as a result of any breach thereof.

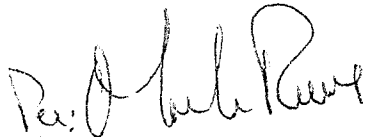
10. At any time after the OMB has issued a decision or order with respect to the Markborough Application, the parties shall be entitled to register this Agreement (and any related postponement agreements) or notice thereof against the title to the Markborough Lands and the Georgian Mall Lands, and the parties agree to consent to such registration, provided, however, if prior to registration, either of the Markborough Owners or the Georgian Mall Owners transfer, charge, lease or otherwise convey any part of their respective lands, the acknowledgement referred to in paragraph 9 shall be obtained.

11. In the event that any party breaches the terms of this Agreement, the parties agree and acknowledge that the party not in breach will suffer grievous harm which is incapable of


estimation or quantification, and for which monetary damages could not adequately compensate the party not in breach.

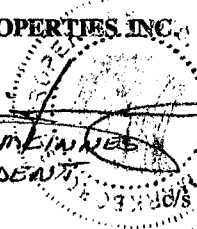
12. The parties hereto agree that this Agreement may be executed in counterpart.

IN WITNESS WHEREOF the parties hereto have hereunto set their respective corporate seals on the 3rd day of November, 1995.


Per: 
Name: G.M. REEVE
Title: VICE PRESIDENT

MARKBOROUGH PROPERTIES INC.

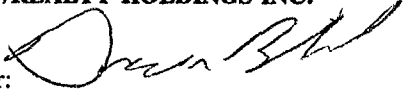
Per: 
Name: K. B. MCINNES
Title: PRESIDENT




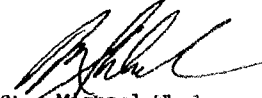
MASTON VENTURES LTD.

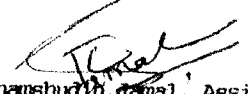
Per: 
Name: DAVID BUNSTON
Title: SECRETARY,
TREASURER, c/s

I/We have authority to bind the Corporation
CF/REALTY HOLDINGS INC.

Per: 
Name: Donald Biback
Title: A.S.O. c/s


John MacDonald, A.S.O.
I/We have authority to bind the Corporation
ONTREA INC.

Per: 
Name: Michael Whelan
Title: Assistant to Vice President c/s


Shanshudh Jamal, Assistant to Vice President
I/We have authority to bind the Corporation

**SCHEDULE "A"
LEGAL DESCRIPTION**

Georgian Mall

FREEHOLD LANDS

FIRSTLY:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Barrie (formerly in the Township of Vespra), in the County of Simcoe, being composed of Part of Lot 19, in the Fourth Concession of the said City, the said parcel being designated as Parts 4, 5, 6, 13 and 14 on a Reference Plan of Survey on deposit in the Registry Office for the Land Registry Division of Simcoe (No. 51) as Plan Number 51R-12305.

TOGETHER WITH an easement described in Instrument No. 477083 registered in the said Land Registry Office in favour of the owners from time to time of Parts 4, 5 and 6 on Plan 51R-12305 to install and from time to time maintain and replace storm drainage facilities of every nature and kind in, over, along and upon that part of the said Lot 19 designated as Parts 2 and 7 on said Plan 51R-12305 for the purpose of providing for storm drainage from the said Parts 4, 5 and 6 on said Plan.

SECONDLY:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Barrie (formerly in the Township of Vespra), in the County of Simcoe, being composed of Part of Lot 19, in the Fourth Concession of the said City, the said parcel being designated as Parts 7, 8 and 9 on a Reference Plan of Survey on deposit in the Registry Office for the Land Registry Division of Simcoe (No. 51) as Plan Number 51R-12305.

SUBJECT TO an easement described in Instrument No. 477083 registered in the said Land Registry Office in favour of the owners from time to time of Parts 1, 2, 3, 4, 5 and 6 on said Plan 51R-12305, to install and from time to time maintain and replace storm drainage facilities of every nature and kind in, over, along and upon that part of said Lot 19 designated as Part 7 on said Plan 51R-12305, for the purpose of providing from storm drainage from the said Parts 1, 2, 3, 4, 5 and 6 on said Plan 51R-12305.

LEASEHOLD LANDS

FIRSTLY:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Barrie (formerly in the Township of Vespra), in the County of Simcoe, being composed of Part of Lot 19, in the Fourth Concession of the said City, the said parcel being designated as Parts 10 and 12 on a Reference Plan of Survey on deposit in the Registry Office for the Land Registry Division of Simcoe (No. 51) as Plan Number 51R-12305 save and except Parts 1 and 2 on Plan 51R-24721 expropriated by the City of Barrie under Instrument No. 1281334 registered April 18, 1995.

SECONDLY:

Part of Lot 19, Concession 4, in the City of Barrie, in the County of Simcoe (formerly in the Township of Vespra), designated as Part 1, Plan 51R-13576.

SCHEDULE "B"

LEGAL DESCRIPTION OF LANDS AT HWY #27 (ESSA ROAD) BARRIE, REGISTERED IN THE NAME OF MARKBOROUGH PROPERTIES INC. AS TO AN UNDIVIDED 90% INTEREST AND MASTON VENTURES LTD. AS TO THE REMAINING UNDIVIDED 10% INTEREST

FIRSTLY

Parcels 1-1, 2-1, 3-1, 4-1, 5-1, 6-1, 7-1, 8-1, 9-1, 10-1, 11-1, 12-1, 13-1, 14-1, 15-1, 16-1, 17-1, 18-1, 19-1, 21-1, 22-1, 23-1, 24-1 and 25-1, Section 51M-369, being Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24 and 25 on Plan 51M-369, City of Barrie, County of Simcoe.

SECONDLY

Parcel 39-2, Section 51M-374, being part of Lot 39, Plan 51M-374, City of Barrie, County of Simcoe, designated as Parts 1 and 4 on Plan 51R-21591.

THIRDLY

Part of Lot 7, Concession 13, Part of Lot 1, Plan 67, Township of Innisfil, now City of Barrie, County of Simcoe, described as follows:-

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the Township of Innisfil (now City of Barrie), in the County of Simcoe and being composed of Part of Lot Number 7, in the Thirteenth Concession of the said Township and Part of Lot 1 according to Registered Plan Number 67, for the said Township, more particularly described as follows:-

PREMISING that the Easterly limit of Highway Number 27, as widened, has a bearing of North 20 degrees 25 minutes 20 seconds East and relating all bearings herein thereto;

BEGINNING at the Southwest corner of Lot 1, according to Registered Plan Number 67:

THENCE North 71 degrees 00 minutes East, 75.85 feet to a point;

THENCE North 4 degrees 30 minutes West, 206.80 feet to a point;

THENCE North 15 degrees 51 minutes East, a distance of 127.95 feet to a point;

THENCE North 17 degrees 13 minutes East, 100 feet to a point;

THENCE North 19 degrees 43 minutes East, 93 feet to an iron bar planted;

THENCE North 20 degrees 25 minutes 20 seconds East, 53.40 feet to an iron bar planted at the place of commencement of the lands herein described;

THENCE continuing North 20 degrees 25 minutes 20 seconds East, 198.10 feet to an iron bar planted;

THENCE North 69 degrees 34 minutes 10 seconds West, 17 feet to an iron bar planted in the Easterly limit of Highway Number 27 as widened by instrument number 20004;

THENCE North 20 degrees 25 minutes 20 seconds East, along the said Easterly limit of Highway Number 27 as widened, 82.85 feet to an iron bar;

THENCE North 73 degrees 15 minutes 20 seconds East, 388.25 feet to an iron bar;

THENCE South 16 degrees 12 minutes East, 279.14 feet to an iron bar;

THENCE South 77 degrees 58 minutes 10 seconds West, 543.70 feet to the place of commencement of the lands under description.

BEING THE LANDS DESCRIBED IN INSTRUMENT NO. 164355 (LT), 01093263 (RO).

FOURTHLY

Part Lot 34, Plan 67, City of Barrie (formerly in the Township of Innisfil), County of Simcoe, more particularly described as follows:-

PREMISING that all bearings are astronomic herein and derived from the westerly limit of the King's Highway No. 27, as widened, shown as North 20 degrees, 20 seconds East on M.T.C. Plan P-2054-22 in registered Instrument No. 116151 and relating all bearings herein thereto;

BEGINNING at the Northeast corner of Lot 34, Registered Plan 67;

THENCE South 72 degrees 23 minutes 20 seconds West 3.868 meters to an iron bar;

THENCE continuing South 72 degrees, 23 minutes, 20 seconds West 6.578 meters to a found iron bar being the POINT OF COMMENCEMENT of the lands described herein;

THENCE South 72 degrees 19 minutes 25 seconds West 57.162 meters to a found iron bar;

THENCE South 20 degrees 27 minutes 40 seconds West 51.860 meters to an iron bar;

THENCE North 72 degrees 19 minutes 25 seconds East 57.197 meters to an iron bar;

THENCE North 20 degrees 25 minutes 20 seconds East 51.816 meters to the POINT OF COMMENCEMENT;

The lands described herein are shown on a survey prepared by R.C. Kirkpatrick, Ontario Land Surveyor, attached to and forming part of the description in Instrument registered as Number 671575.

The most recently registered instrument containing the above noted description is Instrument No. 01122407.

FIFTHLY

Part of Lot 34, Plan 67, City of Barrie (formerly in the Township of Innisfil) County of Simcoe, designated as Part 1 on Plan 51R-12379 and as Part 1 on Plan 51R-12349.

Note: Lot 20 on Plan 51M-369 is under agreement for sale to Markborough and will be acquired in the near future but for the moment the registered owner is Intertan Canada Ltd.

The lands Firstly and Secondly described are subject to the following easements:

FIRSTLY

A) BELL CANADA by Instrument Nos. 987440 and 992975

Lot No. 1	-	Part 2, Plan 51R-18310
Lot No. 2	-	Part 2, Plan 51R-18310
Lot No. 3	-	Part 3, Plan 51R-18429
Lot No. 4	-	Part 4, Plan 51R-18429
Lot No. 5	-	Part 5, Plan 51R-18429
Lot No. 6	-	Part 6, Plan 51R-18429
Lot No. 7	-	Part 7, Plan 51R-18435
Lot No. 8	-	Part 8, Plan 51R-18435
Lot No. 9	-	Parts 6 and 7, Plan 51R-18435

B) CITY OF BARRIE by Instrument No. 136554

Lot No. 2	-	Part 1, Plan 51R-18423
Lot No. 3	-	Part 2, Plan 51R-18423
Lot No. 4	-	Part 1, Plan 51R-18424
Lot No. 5	-	Part 2, Plan 51R-18424
Lot No. 6	-	Part 1, Plan 51R-18435
Lot No. 7	-	Part 2, Plan 51R-18435
Lot No. 8	-	Part 3, Plan 51R-18435
Lot No. 9	-	Parts 4, 5 and 6, Plan 51R-18435
Lot No. 10	-	Parts 1 and 2, Plan 51R-18426
Lot No. 11	-	Parts 3 and 4, Plan 51R-18426
Lot No. 12	-	Parts 8 and 12, 51R-18427
Lot No. 13	-	Parts 6 and 7, Plan 51R-18427
Lot No. 14	-	Parts 2, 4 and 5, Plan 51R-18427
Lot No. 15	-	Parts 1 and 3, Plan 51R-18427
Lot No. 16	-	Part 11, Plan 51R-18427
Lot No. 17	-	Parts 9 and 10, Plan 51R-18427
Lot No. 18	-	Parts 7 and 8, Plan 51R-18426
Lot No. 19	-	Parts 5 and 6, Plan 51R-18426
Lot No. 22	-	Part 2, Plan 51R-18428
Lot No. 23	-	Part 1, Plan 51R-18428

SECONDLY

CITY OF BARRIE by Instrument No. 140614 over Part 4, Plan 51R-21591.

Appendix “H”

ADR
L. FINLAY

23

D

(1) Registry Land Titles (2) Page 1 of 16 pages **52**

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

(4) Nature of Document
Restrictive Covenant Agreement

(5) Consideration
Dollars \$

(6) Description
Firstly
Part of Lot 7, Concession 13, Part of Lot 1, Plan 67, City of Barrie (formerly Township of Innisfil), County of Simcoe, more particularly described in the Schedule annexed hereto.

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

FOR OFFICE USE ONLY

01307344

CERTIFICATE OF REGISTRATION
CLASSIFICAT. D'INSTRUMENTS
SIMCOE (S) BARRIE

'96 03 18 12 42

[Handwritten Signature]

New Property Identifiers Additional: See Schedule

Executions Additional: See Schedule

(8) This Document provides as follows:
See executed copy of the Agreement dated November 3, 1995 between CF/REALTY HOLDINGS INC., ONTREA INC., MARKBOROUGH PROPERTIES INC., and MASTON VENTURES LTD.,

Continued on Schedule

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

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

CF/REALTY HOLDINGS INC.,
by its solicitors,
GOODMAN PHILLIPS & VINEBERG

Per: *[Signature]* 1996 03 01
Thomas Macdonald

(11) Address for Service 250 Yonge Street, Suite 2400, Box 24, Toronto, Ontario, M5B 2M6

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

(13) Address for Service

(14) Municipal Address of Property
multiple
X:STYLBUSDOCS\942188A.DG

(15) Document Prepared by: TMM/942188
SUSAN N. CRISP
GOODMAN PHILLIPS & VINEBERG
Suite 2400
250 Yonge Street
Toronto, Ontario, Canada
M5B 2M6

Fees and Tax	
Registration Fee	50
Total	50

Additional Property Identifier(s) and/or Other Information

FIRSTLY

Part of Lot 7, Concession 13, Part of Lot 1, Plan 67, Township of Innisfil, now City of Barrie, County of Simcoe, described as follows:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the Township of Innisfil (now City of Barrie), in the County of Simcoe and being composed of Part of Lot Number 7, in the Thirteenth Concession of the said Township and Part of Lot 1 according to Registered Plan Number 67, for the said Township, more particularly described as follows:

PREMISING that the Easterly limit of Highway Number 27, as widened, has a bearing of North 20 degrees 25 minutes 20 seconds East and relating all bearings herein thereto;

BEGINNING at the Southwest corner of Lot 1, according to Registered Plan Number 67:

THENCE North 71 degrees 00 minutes East, 75.85 feet to a point;

THENCE North 4 degrees 30 minutes West, 206.80 feet to a point;

THENCE North 15 degrees 51 minutes East, a distance of 127.95 feet to a point;

THENCE North 17 degrees 13 minutes East, 100 feet to a point;

THENCE North 19 degrees 43 minutes East, 93 feet to an iron bar planted;

THENCE North 20 degrees 25 minutes 20 seconds East, 53.40 feet to an iron bar planted at the place of commencement of the lands herein described;

THENCE continuing North 20 degrees 25 minutes 20 seconds East, 198.10 feet to an iron bar planted;

THENCE North 69 degrees 34 minutes 10 seconds West, 17 feet to an iron bar planted in the Easterly limit of Highway Number 27 as widened by instrument Number 20004;

Thence North 20 degrees 25 minutes 20 seconds East, along the said Easterly limit of Highway Number 27 as widened, 82.85 feet to an iron bar;

THENCE North 73 degrees 15 minutes 20 seconds East, 388.25 feet to an iron bar;

THENCE South 16 degrees 12 minutes east, 279.14 feet to an iron bar;

THENCE South 77 degrees 58 minutes 10 seconds West, 543.70 feet to the place of commencement of the lands under description.

BEING THE LANDS DESCRIBED IN INSTRUMENT NO. 01093263 (RO).

SECONDLY

Part Lot. 34, Plan 67, City of Barrie (formerly in the township of Innisfil), County of Simcoe, more particularly described as follows:

PREMISING that all bearings are astronomic herein and derived from the westerly limit of the King's Highway No. 27, as widened, shown as North 20 degrees, 20 seconds East on M.T.C. Plan P-2054-22 in registered Instrument No. 116151 and relating all bearings herein thereto;

BEGINNINGS at the Northeast corner of Lot 34, Registered Plan 67;

THENCE South 72 degrees 23 minutes 20 seconds West 3.868 metres to an iron bar;

THENCE continuing South 72 degrees, 23 minutes, 20 seconds West 6.578 metres to a found iron bar being the POINT OF COMMENCEMENT of the lands described herein;

THENCE South 72 degrees 19 minutes 25 seconds West 57.162 metres to a found iron bar;

THENCE South 72 degrees 27 minutes 40 seconds West 51.860 metres to an iron bar;

THENCE North 20 degrees 25 minutes 20 seconds East 51.816 metres to the POINT OF COMMENCEMENT;

The lands described herein are shown on a survey prepared by R.C. Kirkpatrick, Ontario Land Surveyor, attached to and forming part of the description in Instrument registered as Number 671575.

FOR OFFICE USE ONLY

Additional Property Identifier(s) and/or Other Information

The most recently registered instrument containing the above noted description is Instrument No. 01122407.

THIRDLY

Part of Lot 34, Plan 67, City of Barrie (formerly in the Township of Innisfil) County of Simcoe, designated as Part 1 on Plan 51R-12379 and as Part 1 on Plan 51R-12349.

x:\styleus\docs\942188a.sch

FOR OFFICE USE ONLY

4

THIS AGREEMENT made this 3rd day of November, 1995

B E T W E N:

CF/REALTY HOLDINGS INC.

(hereinafter called "CF")

OF THE FIRST PART;

- and -

ONTREA INC.

(hereinafter called "Ontrea")

OF THE SECOND PART;

MARKBOROUGH PROPERTIES INC.

(hereinafter called "Markborough")

OF THE THIRD PART;

- and -

MASTON VENTURES LTD.

(hereinafter called "Ontario")

OF THE FOURTH PART.

WHEREAS CF and Ontrea (collectively, the "Georgian Mall Owners") by way of freehold and leasehold interests own and operate a regional shopping centre located in the City of Barrie and known as the Georgian Mall, the legal description of which is attached as Schedule "A" (the "Georgian Mall Lands");

AND WHEREAS Markborough and Ontario (collectively, the "Markborough Owners") are the registered owners of the lands described in Schedule "B" hereto (the "Markborough Lands"), which lands are generally located on the west side of Highway 400 and south of Essa Road in the City of Barrie;

34/36

AND WHEREAS the Markborough Owners propose to develop a shopping centre on the Markborough Lands (the "Markborough Centre");

AND WHEREAS approvals were granted by the Council of the City of Barrie to permit the development of the Markborough Centre, and as a result of appeals and referrals made by the former owner of the Georgian Mall Lands and others to such approvals, the Ontario Municipal Board, by its order dated January 7, 1994 (the "Order"), imposed certain restrictions and controls on the development of the Markborough Centre;

AND WHEREAS one of the restrictions and controls imposed under the Order was to limit the Markborough Centre to one traditional full line department store which store could not be a store represented in the City of Barrie as of August 4, 1993 (the "Unrepresented Department Store Restriction");

AND WHEREAS the Markborough Owners made application (the "Markborough Application") to the Council of the City of Barrie for amendments to the applicable Official Plan and Zoning By-law ("Official Plan Amendment No. 87" and "By-law 91-138", respectively) so as to eliminate all of the restrictions and controls imposed by the Ontario Municipal Board under the Order, including the Unrepresented Department Store Restriction, and therefore zone the Markborough Centre such that it is subject to the general zoning provisions applicable to a C3 zone pursuant to By-law 85-95 of the City of Barrie, as amended;

AND WHEREAS the Markborough Owners also wish to seek assurances from Georgian Mall Owners that for a period of 5 years they will not lease any portion of the Georgian Mall Lands for use as a traditional full line department store other than in any premises, as such premises may be expanded or modified from time to time, that are, as of the date hereof, being used as a department store;

AND WHEREAS Council for the City of Barrie approved the Markborough Application on April 24, 1995, through its adoption of Official Plan Amendment No. 132 ("OPA 132") and enactment of By-law No. 95-89 (the "Zoning Amendment");

AND WHEREAS OPA 132 has been referred and the Zoning Amendment appealed to the Ontario Municipal Board (the "OMB");

AND WHEREAS the Georgian Mall Owners, in consideration for them agreeing to withdraw their objection to the Markborough Application and thus not participate in the pending OMB hearing, seeks assurances that, subject to the more particular terms of this Agreement, the Markborough Owners and their respective successors and assigns will not sell or lease any portion of the Markborough Lands for a period of 10 years to The T. Eaton Company Limited ("Eatons") or Sears Canada Inc. ("Sears");

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the covenants hereinafter expressed and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada, now paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged), the parties hereby covenant and agree to and with each of the others as follows:

1. The Georgian Mall Owners acknowledge that they are aware of the Markborough Application.
2. Except as hereinafter provided and provided the Markborough Owners are not in default of their obligations hereunder, the Georgian Mall Owners covenant and agree that they will withdraw their objection to the Markborough Application and withdraw from the pending OMB hearing, and that for a period of 10 years from the date hereof, they will not file any further appeal or request any further referral under the *Planning Act*, or take any other steps whatsoever to question, challenge, appeal or seek the review of, the Markborough Application

or any development, construction or other dealing with the Markborough Lands, provided such dealing complies with the Markborough Application.

3. Except as hereinafter provided and provided the Georgian Mall Owners are not in default of their obligations hereunder, the Markborough Owners covenant and agree that for a period of 10 years from the date hereof they will not object or take any other steps whatsoever to question, challenge, appeal or seek the review of any development, construction or other dealing with the Georgian Mall Lands, provided such dealing complies with the existing zoning requirements applicable to the Georgian Mall Lands or is being undertaken to facilitate the occupancy of premises, as they may be expanded or modified from time to time, currently occupied by the Eatons, Sears or K-Mart department stores by a replacement tenant (in which case the dealing may include without limitation a rezoning to affect such occupancy, and the Markborough Owners agree not to question, challenge, appeal or seek the review of any such rezoning).

4. The Markborough Owners covenant and agree that:

- (a) for a period of 10 years from the date hereof, the Markborough Owners will not lease or sell to, or permit the commencement of occupation of, any portion of the Markborough Centre or the Markborough Lands by Eatons or Sears and their respective successors and assigns or any other entity operating a traditional full line department store under the Eatons or Sears banner or the banner of such successor or assign as is applicable, provided that if any such successor or assign is operating a majority of Eatons and Sears stores in Canada of which it is the successor or assign or, if in the case of any such other entity, such other entity is operating a majority of its full line traditional department stores in Canada under the Eatons or Sears banner as applicable, including the existing Eatons and Sears stores which are the subject matter of this Agreement, then this provision shall not prohibit the Markborough Owners from leasing to, selling to or

permitting occupation by such successor or assign or other such entity on the Markborough Lands, provided such successor or assign or other such entity is operating such premises as a traditional full line department store under a different banner than Eatons or Sears;

- (b) subject to subparagraph 4(c), nothing in subparagraph 4(a) shall apply to prevent the Markborough Owners at any time from leasing, selling to or permitting the occupation by Hudsons Bay Company and its affiliates of any portion of the Markborough Centre or the Markborough Lands; and
- (c) for a period of 5 years from the date hereof, the Markborough Owners will not lease or sell, or permit the occupation of, any portion of the Markborough Centre or the Markborough Lands such that there is more than one traditional full line department store in the Markborough Centre or on the Markborough Lands at any given time.

5. The Georgian Mall Owners covenant and agree that for a period of 5 years from the date hereof, they will not lease, or sell or permit the occupation of, any portion of the Georgian Mall Lands for use as a traditional full line department store other than in any premises, as such premises may be expanded or modified from time to time, that as of the date hereof, is being used as a department store. For greater certainty, it is agreed that the premises within the Georgian Mall Lands currently being used as a department store consist of premises occupied by the Eatons, Sears and K-Mart department stores.

6. If the OMB refuses to approve the Markborough Application, or if the OMB varies the Markborough Application in any way, then the Markborough Owners may, but need not, terminate this Agreement by delivering a notice in writing (the "Termination Notice") to the Georgian Mall Owners indicating that they wish to terminate the Agreement, provided that the Markborough Owners shall not be entitled to deliver a Termination Notice unless and until

PSR
LE FINKAY

23

(1) Registry Land Titles (2) Page 1 of 16 pages 52

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

(4) Nature of Document
Restrictive-Covenant Agreement

(5) Consideration
Dollars \$

(6) Description
Firstly
Part of Lot 7, Concession 13, Part of Lot 1, Plan 67, City of Barrie (formerly Township of Innisfil), County of Simcoe, more particularly described in the Schedule annexed hereto.

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

FOR OFFICE USE ONLY
01307344
CERTIFICATE OF REGISTRATION
CERTIFICAT D'ENREGISTRAMENT
SIMCOE (S) BARRIE
'96 03 18 1P 42
Additional: See Schedule

Executions
Additional: See Schedule

(8) This Document provides as follows:
See executed copy of the Agreement dated November 3, 1995 between CF/REALTY HOLDINGS INC., ONTREA INC., MARKBOROUGH PROPERTIES INC., and MASTON VENTURES LTD.,
Continued on Schedule

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

(10) Party(ies) (Set out Status or Interest)
Name(s) Signature(s) Date of Signature Y M D
CF/REALTY HOLDINGS INC.,
by its solicitors,
GOODMAN PHILLIPS & VINEBERG
Per: *Thomas Macdonald* 1996 03 01
Thomas Macdonald

(11) Address for Service 250 Yonge Street, Suite 2400, Box 24, Toronto, Ontario, M5B 2M6

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

(13) Address for Service

(14) Municipal Address of Property
multiple
X:STYLEUS\DOCS\942188A.D0

(15) Document Prepared by: TMM/942188
SUSAN N. CRISP
GOODMAN PHILLIPS & VINEBERG
Suite 2400
250 Yonge Street
Toronto, Ontario, Canada
M5B 2M6

Fees and Tax	
Registration Fee	50
Total	50

Additional Property Identifier(s) and/or Other Information

FIRSTLY

Part of Lot 7, Concession 13, Part of Lot 1, Plan 67, Township of Innisfil, now City of Barrie, County of Simcoe, described as follows:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the Township of Innisfil (now City of Barrie), in the County of Simcoe and being composed of Part of Lot Number 7, in the Thirteenth Concession of the said Township and Part of Lot 1 according to Registered Plan Number 67, for the said Township, more particularly described as follows:

PREMISING that the Easterly limit of Highway Number 27, as widened, has a bearing of North 20 degrees 25 minutes 20 seconds East and relating all bearings herein thereto;

BEGINNING at the Southwest corner of Lot 1, according to Registered Plan Number 67:

THENCE North 71 degrees 00 minutes East, 75.85 feet to a point;

THENCE North 4 degrees 30 minutes West, 206.80 feet to a point;

THENCE North 15 degrees 51 minutes East, a distance of 127.95 feet to a point;

THENCE North 17 degrees 13 minutes East, 100 feet to a point;

THENCE North 19 degrees 43 minutes East, 93 feet to an iron bar planted;

THENCE North 20 degrees 25 minutes 20 seconds East, 53.40 feet to an iron bar planted at the place of commencement of the lands herein described;

THENCE continuing North 20 degrees 25 minutes 20 seconds East, 198.10 feet to an iron bar planted;

THENCE North 69 degrees 34 minutes 10 seconds West, 17 feet to an iron bar planted in the Easterly limit of Highway Number 27 as widened by instrument Number 20004;

Thence North 20 degrees 25 minutes 20 seconds East, along the said Easterly limit of Highway Number 27 as widened, 82.85 feet to an iron bar;

THENCE North 73 degrees 15 minutes 20 seconds East, 388.25 feet to an iron bar;

THENCE South 16 degrees 12 minutes east, 279.14 feet to an iron bar;

THENCE South 77 degrees 58 minutes 10 seconds West, 543.70 feet to the place of commencement of the lands under description.

BEING THE LANDS DESCRIBED IN INSTRUMENT NO. 01093263 (RO).

SECONDLY

Part Lot. 34, Plan 67, City of Barrie (formerly in the township of Innisfil), County of Simcoe, more particularly described as follows:

PREMISING that all bearings are astronomic herein and derived from the westerly limit of the King's Highway No. 27, as widened, shown as North 20 degrees, 20 seconds East on M.T.C. Plan P-2054-22 in registered Instrument No. 116151 and relating all bearings herein thereto;

BEGINNINGS at the Northeast corner of Lot 34, Registered Plan 67;

THENCE South 72 degrees 23 minutes 20 seconds West 3.868 metres to an iron bar;

THENCE continuing South 72 degrees, 23 minutes, 20 seconds West 6.578 metres to a found iron bar being the POINT OF COMMENCEMENT of the lands described herein;

THENCE South 72 degrees 19 minutes 25 seconds West 57.162 metres to a found iron bar;

THENCE South 72 degrees 27 minutes 40 seconds West 51.860 metres to an iron bar;

THENCE North 20 degrees 25 minutes 20 seconds East 51.816 metres to the POINT OF COMMENCEMENT;

The lands described herein are shown on a survey prepared by R.C. Kirkpatrick, Ontario Land Surveyor, attached to and forming part of the description in Instrument registered as Number 671575.

FOR OFFICE USE ONLY

Additional Property Identifier(s) and/or Other Information

The most recently registered instrument containing the above noted description is Instrument No. 01122407.

THIRDLY

Part of Lot 34, Plan 67, City of Barrie (formerly in the Township of Innisfil) County of Simcoe, designated as Part 1 on Plan 51R-12379 and as Part 1 on Plan 51R-12349.

x:\styleus\docs\942188a.sch

FOR OFFICE USE ONLY

THIS AGREEMENT made this 3rd day of November, 1995

B E T W E N:

CF/REALTY HOLDINGS INC.

(hereinafter called "CF")

OF THE FIRST PART;

- and -

ONTREA INC.

(hereinafter called "Ontrea")

OF THE SECOND PART;

MARKBOROUGH PROPERTIES INC.

(hereinafter called "Markborough")

OF THE THIRD PART;

- and -

MASTON VENTURES LTD.

(hereinafter called "Ontario")

OF THE FOURTH PART.

WHEREAS CF and Ontrea (collectively, the "Georgian Mall Owners") by way of freehold and leasehold interests own and operate a regional shopping centre located in the City of Barrie and known as the Georgian Mall, the legal description of which is attached as Schedule "A" (the "Georgian Mall Lands");

AND WHEREAS Markborough and Ontario (collectively, the "Markborough Owners") are the registered owners of the lands described in Schedule "B" hereto (the "Markborough Lands"), which lands are generally located on the west side of Highway 400 and south of Essa Road in the City of Barrie;

34/136



5

AND WHEREAS the Markborough Owners propose to develop a shopping centre on the Markborough Lands (the "Markborough Centre");

AND WHEREAS approvals were granted by the Council of the City of Barrie to permit the development of the Markborough Centre, and as a result of appeals and referrals made by the former owner of the Georgian Mall Lands and others to such approvals, the Ontario Municipal Board, by its order dated January 7, 1994 (the "Order"), imposed certain restrictions and controls on the development of the Markborough Centre;

AND WHEREAS one of the restrictions and controls imposed under the Order was to limit the Markborough Centre to one traditional full line department store which store could not be a store represented in the City of Barrie as of August 4, 1993 (the "Unrepresented Department Store Restriction");

AND WHEREAS the Markborough Owners made application (the "Markborough Application") to the Council of the City of Barrie for amendments to the applicable Official Plan and Zoning By-law ("Official Plan Amendment No. 87" and "By-law 91-138", respectively) so as to eliminate all of the restrictions and controls imposed by the Ontario Municipal Board under the Order, including the Unrepresented Department Store Restriction, and therefore zone the Markborough Centre such that it is subject to the general zoning provisions applicable to a C3 zone pursuant to By-law 85-95 of the City of Barrie, as amended;

AND WHEREAS the Markborough Owners also wish to seek assurances from Georgian Mall Owners that for a period of 5 years they will not lease any portion of the Georgian Mall Lands for use as a traditional full line department store other than in any premises, as such premises may be expanded or modified from time to time, that are, as of the date hereof, being used as a department store;

AND WHEREAS Council for the City of Barrie approved the Markborough Application on April 24, 1995, through its adoption of Official Plan Amendment No. 132 ("OPA 132") and enactment of By-law No. 95-89 (the "Zoning Amendment");

AND WHEREAS OPA 132 has been referred and the Zoning Amendment appealed to the Ontario Municipal Board (the "OMB");

AND WHEREAS the Georgian Mall Owners, in consideration for them agreeing to withdraw their objection to the Markborough Application and thus not participate in the pending OMB hearing, seeks assurances that, subject to the more particular terms of this Agreement, the Markborough Owners and their respective successors and assigns will not sell or lease any portion of the Markborough Lands for a period of 10 years to The T. Eaton Company Limited ("Eatons") or Sears Canada Inc. ("Sears");

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the covenants hereinafter expressed and the sum of **TWO DOLLARS (\$2.00)** of lawful money of Canada, now paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged), the parties hereby covenant and agree to and with each of the others as follows:

1. The Georgian Mall Owners acknowledge that they are aware of the Markborough Application.
2. Except as hereinafter provided and provided the Markborough Owners are not in default of their obligations hereunder, the Georgian Mall Owners covenant and agree that they will withdraw their objection to the Markborough Application and withdraw from the pending OMB hearing, and that for a period of 10 years from the date hereof, they will not file any further appeal or request any further referral under the *Planning Act*, or take any other steps whatsoever to question, challenge, appeal or seek the review of, the Markborough Application



or any development, construction or other dealing with the Markborough Lands, provided such dealing complies with the Markborough Application.

3. Except as hereinafter provided and provided the Georgian Mall Owners are not in default of their obligations hereunder, the Markborough Owners covenant and agree that for a period of 10 years from the date hereof they will not object or take any other steps whatsoever to question, challenge, appeal or seek the review of any development, construction or other dealing with the Georgian Mall Lands, provided such dealing complies with the existing zoning requirements applicable to the Georgian Mall Lands or is being undertaken to facilitate the occupancy of premises, as they may be expanded or modified from time to time, currently occupied by the Eatons, Sears or K-Mart department stores by a replacement tenant (in which case the dealing may include without limitation a rezoning to affect such occupancy, and the Markborough Owners agree not to question, challenge, appeal or seek the review of any such rezoning).

4. The Markborough Owners covenant and agree that:

- (a) for a period of 10 years from the date hereof, the Markborough Owners will not lease or sell to, or permit the commencement of occupation of, any portion of the Markborough Centre or the Markborough Lands by Eatons or Sears and their respective successors and assigns or any other entity operating a traditional full line department store under the Eatons or Sears banner or the banner of such successor or assign as is applicable, provided that if any such successor or assign is operating a majority of Eatons and Sears stores in Canada of which it is the successor or assign or, if in the case of any such other entity, such other entity is operating a majority of its full line traditional department stores in Canada under the Eatons or Sears banner as applicable, including the existing Eatons and Sears stores which are the subject matter of this Agreement, then this provision shall not prohibit the Markborough Owners from leasing to, selling to or

permitting occupation by such successor or assign or other such entity on the Markborough Lands, provided such successor or assign or other such entity is operating such premises as a traditional full line department store under a different banner than Eatons or Sears;

- (b) subject to subparagraph 4(c), nothing in subparagraph 4(a) shall apply to prevent the Markborough Owners at any time from leasing, selling to or permitting the occupation by Hudsons Bay Company and its affiliates of any portion of the Markborough Centre or the Markborough Lands; and
- (c) for a period of 5 years from the date hereof, the Markborough Owners will not lease or sell, or permit the occupation of, any portion of the Markborough Centre or the Markborough Lands such that there is more than one traditional full line department store in the Markborough Centre or on the Markborough Lands at any given time.

5. The Georgian Mall Owners covenant and agree that for a period of 5 years from the date hereof, they will not lease, or sell or permit the occupation of, any portion of the Georgian Mall Lands for use as a traditional full line department store other than in any premises, as such premises may be expanded or modified from time to time, that as of the date hereof, is being used as a department store. For greater certainty, it is agreed that the premises within the Georgian Mall Lands currently being used as a department store consist of premises occupied by the Eatons, Sears and K-Mart department stores.

6. If the OMB refuses to approve the Markborough Application, or if the OMB varies the Markborough Application in any way, then the Markborough Owners may, but need not, terminate this Agreement by delivering a notice in writing (the "Termination Notice") to the Georgian Mall Owners indicating that they wish to terminate the Agreement, provided that the Markborough Owners shall not be entitled to deliver a Termination Notice unless and until

the following land-use controls (hereinafter, the "Essential Controls") have been reintroduced on the Markborough Lands, and are in full force and effect with no further rights of appeal:

(a) subparagraphs 4.3.2.11.2(a)(i) and (ii) and paragraph 4.3.2.11.2(f) of the City of Barrie's Official Plan, as set forth in Official Plan Amendment No. 87; and

(b) subsections 3(a), (b) and (c) and Section 6 of By-law 91-138.

The Markborough Owners covenant and agree that, for a period of three (3) years following the date of delivery of a Termination Notice, they shall not seek in any way, through application to the City of Barrie or otherwise, to remove the Essential Controls from the Markborough Lands. Upon delivery of a Termination Notice from the Markborough Owners to the Cadillac Fairview, and provided the Markborough Owners were entitled to deliver such notice in accordance with the foregoing, this Agreement shall be at an end and neither party shall be under any obligation to the other, save and except for the foregoing obligation of the Markborough Owners not to seek to remove the Essential Controls from the Markborough Lands for a period of three (3) years.

7. Any notices (a "Notice") provided for in this Agreement shall be in writing and shall be given by personal delivery or written telegraphic or electronic communication which results in a written or printed notice being given to the applicable address set forth below:

Markborough and Ontario
c/o Markborough Properties Inc.
1 Dundas Street West
Suite 2800
Toronto, Ontario
M5G 2J2
Attention: Corporate Secretary
Facsimile No.: (416) 591-2829

CF and Ontrea
 c/o The Cadillac Fairview Corporation Limited
 20 Queen Street West
 Toronto, Ontario
 M5M 3R4
 Attention: Corporate Secretary and Don Biback, Executive V.P.
 Facsimile No.: (416) 598-8784

Any Notice, if delivered, shall be deemed to have been validly and effectively given and received on the date of delivery. Any Notice, if sent by telegraphic or electronic communication, shall be deemed to have been validly and effectively given and received on the date of transmission. Notwithstanding the foregoing, if the date on which Notice is deemed to have been given and received pursuant to this provision is not a business day, Notice shall be deemed to have been given and received on the next following day that is a business day. A copy of any Notice which is given to one party hereto shall be given to all other parties hereto. By giving to the other parties at least ten (10) business days Notice thereof, any party may, at any time and from time to time, change its address for delivery or communication for purposes of this provision.

8. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their successors and assigns.

9. Sections 4, 5 and 6 of this Agreement constitute restrictive covenants with the burden thereof being upon the Markborough Lands (Sections 4 and 6) and the Georgian Mall Lands (Section 5), respectively, and the benefit thereof upon the Georgian Mall Lands (Sections 4 and 6) and the Markborough Lands (Section 5), respectively. It is the expressed intention of the parties that the burden of the restrictive covenants shall run with and bind the respective lands of the party giving such covenant and every part thereof and the benefit thereof shall be annexed to and run with the lands of the benefiting party. Each and every transfer, charge, lease or other conveyance of all or any part of the Markborough Lands and the Georgian Mall Lands or any interest therein, other than leases of retail and service space or grants of easement



for municipal services or utilities or conveyances of a minor portion of the lands to a governmental authority, shall contain an acknowledgement by the grantee, transferee, mortgagee, chargee or lessee, as the case may be, that such recipient accepts the respective lands or any interest therein subject to the applicable covenants set out in Sections 4, 5 and 6 of this Agreement and the covenant that such recipient will comply with the said covenants and will not do any act which could result in a breach of the said covenants provided, however, if any currently registered mortgagee goes into possession under its mortgage without agreeing to be bound by the provisions hereof, the party to which the acknowledgement should have been given shall, at its option, be entitled to terminate this Agreement and the parties agree to deliver all necessary releases and discharges to give effect to the termination. Notwithstanding the transfer, charge, lease or other conveyance of all or any part of the Markborough Lands or the Georgian Mall Lands, as applicable, or any interest therein, the Markborough Owners and the Georgian Mall Owners shall continue to be bound by the applicable terms of Sections 4, 5 and 6, respectively, and shall be liable to the other as a result of any breach thereof.

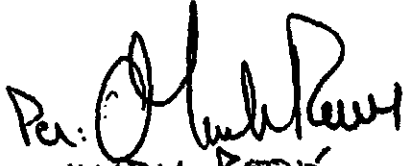
10. At any time after the OMB has issued a decision or order with respect to the Markborough Application, the parties shall be entitled to register this Agreement (and any related postponement agreements) or notice thereof against the title to the Markborough Lands and the Georgian Mall Lands, and the parties agree to consent to such registration, provided, however, if prior to registration, either of the Markborough Owners or the Georgian Mall Owners transfer, charge, lease or otherwise convey any part of their respective lands, the acknowledgement referred to in paragraph 9 shall be obtained.

11. In the event that any party breaches the terms of this Agreement, the parties agree and acknowledge that the party not in breach will suffer grievous harm which is incapable of


estimation or quantification, and for which monetary damages could not adequately compensate the party not in breach.

12. The parties hereto agree that this Agreement may be executed in counterpart.


IN WITNESS WHEREOF the parties hereto have hereunto set their respective corporate seals on the 3rd day of November, 1995.

Per: 
MARK REQUE
VICE-PRESIDENT
ONTARIO HOLDINGS

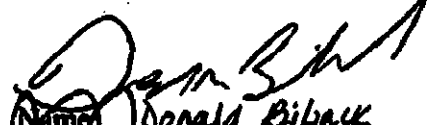
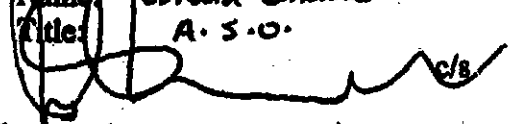
MARKBOROUGH PROPERTIES INC.



Per: 
Name: KIM MCINNES
Title: PRESIDENT LAND & OFFICE
MANAGEMENT c/s

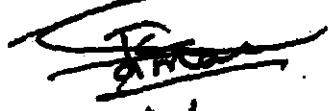
MASTON VENTURES LTD.

Per: 
Name: J. DAVID BINSTON.
Title: SECRETARY - TREASURER
c/s

CF/REALTY HOLDINGS INC.

Per: 
Name: Donald Biback
Title: A.S.O.

John Macdonald - A.S.O.
ONTREA INC.

Per: 
Name: 
Title: MICHAEL WHELAN
ASSISTANT TO THE VICE PRESIDENT c/s

Per: 
SHAMSHUDIN JAMAL
Assistant to the Vice-President



**SCHEDULE "A"
LEGAL DESCRIPTION**

Georgian Mall

FREEHOLD LANDS

FIRSTLY:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Barrie (formerly in the Township of Vespra), in the County of Simcoe, being composed of Part of Lot 19, in the Fourth Concession of the said City, the said parcel being designated as Parts 4, 5, 6, 13 and 14 on a Reference Plan of Survey on deposit in the Registry Office for the Land Registry Division of Simcoe (No. 51) as Plan Number 51R-12305.

TOGETHER WITH an easement described in Instrument No. 477083 registered in the said Land Registry Office in favour of the owners from time to time of Parts 4, 5 and 6 on Plan 51R-12305 to install and from time to time maintain and replace storm drainage facilities of every nature and kind in, over, along and upon that part of the said Lot 19 designated as Parts 2 and 7 on said Plan 51R-12305 for the purpose of providing for storm drainage from the said Parts 4, 5 and 6 on said Plan.

SECONDLY:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Barrie (formerly in the Township of Vespra), in the County of Simcoe, being composed of Part of Lot 19, in the Fourth Concession of the said City, the said parcel being designated as Parts 7, 8 and 9 on a Reference Plan of Survey on deposit in the Registry Office for the Land Registry Division of Simcoe (No. 51) as Plan Number 51R-12305.

SUBJECT TO an easement described in Instrument No. 477083 registered in the said Land Registry Office in favour of the owners from time to time of Parts 1, 2, 3, 4, 5 and 6 on said Plan 51R-12305, to install and from time to time maintain and replace storm drainage facilities of every nature and kind in, over, along and upon that part of said Lot 19 designated as Part 7 on said Plan 51R-12305, for the purpose of providing from storm drainage from the said Parts 1, 2, 3, 4, 5 and 6 on said Plan 51R-12305.

LEASEHOLD LANDS

FIRSTLY:

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Barrie (formerly in the Township of Vespra), in the County of Simcoe, being composed of Part of Lot 19, in the Fourth Concession of the said City, the said parcel being designated as Parts 10 and 12 on a Reference Plan of Survey on deposit in the Registry Office for the Land Registry Division of Simcoe (No. 51) as Plan Number 51R-12305 save and except Parts 1 and 2 on Plan 51R-24721 expropriated by the City of Barrie under Instrument No. 1281334 registered April 18, 1995.

SECONDLY:

Part of Lot 19, Concession 4, in the City of Barrie, in the County of Simcoe (formerly in the Township of Vespra), designated as Part 1, Plan 51R-13576.

G22MACDONATI110705.



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SCHEDULE "B"

**LEGAL DESCRIPTION OF LANDS AT
HWY #27 (ESSA ROAD) BARRIE,
REGISTERED IN THE NAME OF
MARKBOROUGH PROPERTIES INC. AS
TO AN UNDIVIDED 90% INTEREST AND
MASTON VENTURES LTD. AS TO THE
REMAINING UNDIVIDED 10% INTEREST**

FIRSTLY

Parcels 1-1, 2-1, 3-1, 4-1, 5-1, 6-1, 7-1, 8-1, 9-1, 10-1, 11-1, 12-1, 13-1, 14-1, 15-1, 16-1, 17-1, 18-1, 19-1, 21-1, 22-1, 23-1, 24-1 and 25-1, Section 51M-369, being Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24 and 25 on Plan 51M-369, City of Barrie, County of Simcoe.

SECONDLY

Parcel 39-2, Section 51M-374, being part of Lot 39, Plan 51M-374, City of Barrie, County of Simcoe, designated as Parts 1 and 4 on Plan 51R-2159i.

THIRDLY

Part of Lot 7, Concession 13, Part of Lot 1, Plan 67, Township of Innisfil, now City of Barrie, County of Simcoe, described as follows:-

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the Township of Innisfil (now City of Barrie), in the County of Simcoe and being composed of Part of Lot Number 7, in the Thirteenth Concession of the said Township and Part of Lot 1 according to Registered Plan Number 67, for the said Township, more particularly described as follows:-

PREMISING that the Easterly limit of Highway Number 27, as widened, has a bearing of North 20 degrees 25 minutes 20 seconds East and relating all bearings herein thereto;

BEGINNING at the Southwest corner of Lot 1, according to Registered Plan Number 67:

THENCE North 71 degrees 00 minutes East, 75.85 feet to a point;

THENCE North 4 degrees 30 minutes West, 206.80 feet to a point;

THENCE North 15 degrees 51 minutes East, a distance of 127.95 feet to a point;

THENCE North 17 degrees 13 minutes East, 100 feet to a point;

THENCE North 19 degrees 43 minutes East, 93 feet to an iron bar planted;

THENCE North 20 degrees 25 minutes 20 seconds East, 53.40 feet to an iron bar planted at the place of commencement of the lands herein described;

THENCE continuing North 20 degrees 25 minutes 20 seconds East, 198.10 feet to an iron bar planted;

THENCE North 69 degrees 34 minutes 10 seconds West, 17 feet to an iron bar planted in the Easterly limit of Highway Number 27 as widened by instrument number 20004;

THENCE North 20 degrees 25 minutes 20 seconds East, along the said Easterly limit of Highway Number 27 as widened, 82.85 feet to an iron bar;

THENCE North 73 degrees 15 minutes 20 seconds East, 388.25 feet to an iron bar;

THENCE South 16 degrees 12 minutes East, 279.14 feet to an iron bar;

THENCE South 77 degrees 58 minutes 10 seconds West, 543.70 feet to the place of commencement of the lands under description.

BEING THE LANDS DESCRIBED IN INSTRUMENT NO. 164355 (LT), 01093263 (RO).

FOURTHLY

Part Lot 34, Plan 67, City of Barrie (formerly in the Township of Innisfil), County of Simcoe, more particularly described as follows:-

PREMISING that all bearings are astronomic herein and derived from the westerly limit of the King's Highway No. 27, as widened, shown as North 20 degrees, 20 seconds East on M.T.C. Plan P-2054-22 in registered Instrument No. 116151 and relating all bearings herein thereto;

BEGINNING at the Northeast corner of Lot 34, Registered Plan 67;

THENCE South 72 degrees 23 minutes 20 seconds West 3.868 meters to an iron bar;

THENCE continuing South 72 degrees, 23 minutes, 20 seconds West 6.578 meters to a found iron bar being the POINT OF COMMENCEMENT of the lands described herein;

THENCE South 72 degrees 19 minutes 25 seconds West 57.162 meters to a found iron bar;

THENCE South 20 degrees 27 minutes 40 seconds West 51.860 meters to an iron bar;

THENCE North 72 degrees 19 minutes 25 seconds East 57.197 meters to an iron bar;

THENCE North 20 degrees 25 minutes 20 seconds East 51.816 meters to the POINT OF COMMENCEMENT;

The lands described herein are shown on a survey prepared by R.C. Kirkpatrick, Ontario Land Surveyor, attached to and forming part of the description in Instrument registered as Number 671575.

The most recently registered instrument containing the above noted description is Instrument No. 01122407.

FIFTHLY

Part of Lot 34, Plan 67, City of Barrie (formerly in the Township of Innisfil) County of Simcoe, designated as Part 1 on Plan 51R-12379 and as Part 1 on Plan 51R-12349.

Note: Lot 20 on Plan 51M-369 is under agreement for sale to Markborough and will be acquired in the near future but for the moment the registered owner is Intertan Canada Ltd.

The lands Firstly and Secondly described are subject to the following easements:

FIRSTLY

A) BELL CANADA by Instrument Nos. 987440 and 992975

- Lot No. 1 - Part 2, Plan 51R-18310
- Lot No. 2 - Part 2, Plan 51R-18310
- Lot No. 3 - Part 3, Plan 51R-18429
- Lot No. 4 - Part 4, Plan 51R-18429
- Lot No. 5 - Part 5, Plan 51R-18429
- Lot No. 6 - Part 6, Plan 51R-18429
- Lot No. 7 - Part 9, Plan 51R-18435
- Lot No. 8 - Part 8, Plan 51R-18435
- Lot No. 9 - Parts 6 and 7, Plan 51R-18435

B) CITY OF BARRIE by Instrument No. 136554

- Lot No. 2 - Part 1, Plan 51R-18423
- Lot No. 3 - Part 2, Plan 51R-18423
- Lot No. 4 - Part 1, Plan 51R-18424
- Lot No. 5 - Part 2, Plan 51R-18424
- Lot No. 6 - Part 1, Plan 51R-18435
- Lot No. 7 - Part 2, Plan 51R-18435
- Lot No. 8 - Part 3, Plan 51R-18435
- Lot No. 9 - Parts 4, 5 and 6, Plan 51R-18435
- Lot No. 10 - Parts 1 and 2, Plan 51R-18426
- Lot No. 11 - Parts 3 and 4, Plan 51R-18426
- Lot No. 12 - Parts 8 and 12, 51R-18427
- Lot No. 13 - Parts 6 and 7, Plan 51R-18427
- Lot No. 14 - Parts 2, 4 and 5, Plan 51R-18427
- Lot No. 15 - Parts 1 and 3, Plan 51R-18427
- Lot No. 16 - Part 11, Plan 51R-18427
- Lot No. 17 - Parts 9 and 10, Plan 51R-18427
- Lot No. 18 - Parts 7 and 8, Plan 51R-18426
- Lot No. 19 - Parts 5 and 6, Plan 51R-18426
- Lot No. 22 - Part 2, Plan 51R-18428
- Lot No. 23 - Part 1, Plan 51R-18428

SECONDLY

CITY OF BARRIE by Instrument No. 140614 over Part 4, Plan 51R-21591.

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., *et al.*

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**THIRTY-FOURTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

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Monitor