

Properties

PIN33154 – 0218 LT

DescriptionLT 24–25 PL 429; PT LT 22–23 PL 429 AS IN R158889; SOUTH BRUCE PENINSULA

Address00605 MAIN ST
SAUBLE BEACH

Applicant(s)

NameRAY KIRKLAND HOLDINGS LIMITED

Address for ServiceR. R. #1
Hepworth, Ontario
N0H 1P0

I, Gordon Ray Kirkland, have the authority to bind the corporation.

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

Statements

Schedule: See Schedules

Signed By

Stacey Lynn Stoneham 930 1st Ave. W., PO Box 730 acting for Signed 2009 01 30

Owen Sound

N4K 5W9

Tel5193767450

Fax5193768288

Submitted By

KIRBY ROBINSON TRESLAN & CONLAN 930 1st Ave. W., PO Box 730 2009 01 30

Owen Sound

N4K 5W9

Tel5193767450

Fax5193768288

Fees/Taxes/Payment

Statutory Registration Fee\$60.00

Total Paid\$60.00

File Number

Applicant Client File Number : 110003001

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT made as of the 30th day of January, 2009

B E T W E E N :

LOBLAW PROPERTIES LIMITED
(“Loblaw”)

OF THE FIRST PART

- AND -

RAY KIRKLAND HOLDINGS LIMITED
(“Kirkland Holdings”)

OF THE SECOND PART

WHEREAS Loblaw is the registered owner of the lands more particularly described in Schedule “A” attached hereto (the “**Dominant Lands**”); and

AND WHEREAS Kirkland Holdings is the registered owner of the lands more particularly described in Schedule “B” attached hereto (the “**Servient Lands**”);

AND WHEREAS the parties hereto have agreed to enter into this Agreement on the following terms and conditions.

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained, other good and valuable consideration and the sum of Two Dollars (\$2.00) paid by each party to the other the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Restrictive Covenant in favour of the Dominant Lands

Kirkland Holdings hereby grants a restrictive covenant on title to the Servient Lands, for the benefit of the owner of the Dominant Lands, and which restrictive covenant shall run with the title to the Dominant Lands, and shall be a burden upon, and bind the title to the Servient Lands, on the following terms and conditions:

- (a) Kirkland Holdings or any “subsidiary”, “affiliate” or “associate” as such terms are defined in the *Business Corporations Act*, R.S.O. 1990, of Kirkland Holdings will not directly or indirectly on the Servient Lands carry on or permit to be carried on or rent any premises or space or allow any tenant, subtenant, assignee, concessionaire, franchisee or licensee to use any space or premises, or any part thereof, for the purpose of an operation of a food supermarket or wholesale or retail store which carries on, directly or indirectly, in its premises the business of a grocer or a dealer of meats, fruits, vegetables, dairy, fish, poultry, bakery or delicatessen products, dry or bulk food, or as a garden centre (the “**Prohibited Activities**”).
- (b) The burden of this restrictive covenant shall run with the Servient Lands for the benefit of the Dominant Lands and shall be registered on title to the Servient Lands for a period of twenty-five (25) years from the date of registration of this Agreement.

2. Notwithstanding the foregoing, the following shall apply to the department store operating as “J.K.’s Department Store” within the Servient Lands (the “**Department Store**”):

the Department Store shall be exempt from the foregoing restrictive covenant, provided that no more than one hundred and fifty (150) linear feet may be dedicated to the conduct of the Prohibited Activities and/or the sale of food items within the meaning of Prohibited Activities. Notwithstanding of the foregoing, the Department Store shall not sell any dairy products, fresh produce, fresh meat, fresh seafood, or fresh baked goods within its premises except in the operation of any type of restaurant or retail operation where the food being sold is intended to be consumed on the premises. For the purposes of this provision, the expression "linear feet" shall mean the linear measurement, in feet of display shelving.

3. Each of Kirkland Holdings and the undersigned Kirkland Family Property Ltd. hereby represent and warrant and confirm to Loblaw that the Servient Lands are the only lands now owned or leased by either corporation or by any "subsidiary", "affiliate" or "associate" as such terms are defined in the *Business Corporations Act*, R.S.O. 1990 of either of such corporations within a twenty five (25) mile radius of the Dominant Lands (provided the foregoing representation, warranty and confirmation does not apply to the primary personal residence of Jay William Kirkland, Jeffery Gordon Kirkland, and James Ray Kirkland or to lands that they own (either directly or by a corporation that one or more of them is a shareholder in) that are zoned residential or agricultural.)

4. If any item of this Agreement shall be held or rendered in valid, unenforceable or illegal, then such term shall be considered separate and severable from the remainder of this Agreement and shall not affect, impair or invalidate the remainder of this Agreement which shall continue to be applicable to and enforceable to the fullest extent permitted by law against any person or circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

5. This Agreement may be executed in counterparts, all such counterparts shall constitute the same agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. Counterparts may be executed either in original or faxed form or an email with a PDF attachment and the parties adopt any signatures received by a receiving fax machine or e-mail as aforesaid as original signatures of the parties, and any party providing its signature in such manner agrees to promptly forward to the other parties an original of the signed copy of this Agreement which was so faxed or emailed with a PDF attachment.

6. This Agreement shall endure to the benefit and shall be binding on and enforceable by the parties and their respective successors and permitted assigns. No party may assign any of its rights or obligations hereunder without the prior written consent of the other party.

7. This Agreement shall be read and construed with all changes of gender or number required by the context.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

LOBLAW PROPERTIES LIMITED

Per: 

Name: Jane Marshall

Title: Executive Vice-President

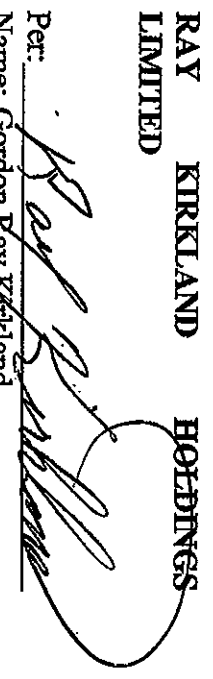
Per: 

Name: Doris L. Baughan

Title: Senior Vice-President, Legal
Services

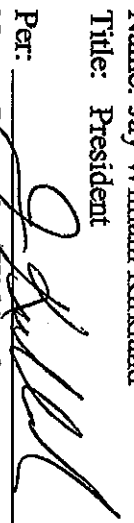
We have authority to bind the Corporation

RAY KIRKLAND HOLDINGS
LIMITED

Per: 
Name: Gordon Ray Kirkland
Title: President

I have authority to bind the Corporation

KIRKLAND FAMILY PROPERTY
LTD.

Per: 
Name: Jay William Kirkland
Title: President
Per: 
Name: James Ray Kirkland
Title: Secretary-Treasurer

I/We have authority to bind the Corporation

SCHEDULE “A”

Dominant Lands

Loblaw Lands

Firstly: PIN 33161-0294 (LT) being Lot 19 and East Half of Lot 18, Plan 435, subject to R317727, Town of South Bruce Peninsula, County of Bruce

Secondly: PIN 33161-0296 (LT) being Lots 36 and 37, Plan 435, Town of South Bruce Peninsula, County of Bruce

municipally known as 650 Main Street and 611-615 Bannister Drive, Sauble Beach, Ontario

Thirdly: PIN 33161-0295 (LT) being Lots 20, 21, 38 and Block A, Plan 435, Together with R317727, Town of South Bruce Peninsula, County of Bruce

municipally known as 612 and 620 Main Street, Sauble Beach, Ontario

SCHEDULE “B”

Servient Lands

Kirkland Holdings Lands

PIN 33154-0218 (LT) being Lots 24, 25, Plan 429 and Part Lots 22 and 23, Plan 429, as in R158889, Town of South Bruce Peninsula, County of Bruce
municipally known as 605 Main Street, Sauble Beach, Ontario