

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

THE CITY OF OTTAWA

Applicant

AND:

CLUBLINK CORPORATION ULC

Respondent

**RESPONSE TO APPLICATION FOR LEAVE TO APPEAL OF
THE RESPONDENT, CLUBLINK CORPORATION ULC**
(Pursuant to Rule 27 of the *Rules of the Supreme Court of Canada*)

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SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

CITY OF OTTAWA

Applicant
(Respondent)

AND:

CLUBLINK CORPORATION ULC

Respondent
(Appellant)

**NOTICE OF CONDITIONAL CROSS-APPLICATION FOR LEAVE TO APPEAL
OF THE RESPONDENT, CLUBLINK CORPORATION ULC**

(Form 29)

Pursuant to *Rule 29(2)(a), Rules of The Supreme Court of Canada* (SOR/2002-156)

TAKE NOTICE that, in the event the Applicant's application for leave to appeal is granted, the Respondent, ClubLink Corporation ULC, conditionally applies for leave to appeal to the Supreme Court of Canada, pursuant to section 40(1) of the *Supreme Court Act*, R.S.C. 1985, c. S-26, and Rule 29 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156, from the Judgment of the Court of Appeal for Ontario, Docket C69176, dated November 26, 2021 (*Ottawa (City) v. ClubLink Corporation ULC*, 2021 ONCA 847) and for an order granting the Respondent its costs in this application, and any further or other Order that this Court may deem appropriate;

AND FURTHER TAKE NOTICE that this conditional application for leave is made, only in the event the Applicant's application for leave to appeal is granted, on the following grounds:

1. Judicial economy favours hearing the issue of severance together with the issues in the Applicant's application for leave to appeal, so that this matter can be fully and completely resolved by this Court; and

2. No new evidence is necessary for this Court to decide the severance issue. It raises a pure question of law and can be decided on the record as it currently exists.

AND FURTHER TAKE NOTICE that the Respondent will not pursue this cross-application for leave to appeal in the event the Applicant's application for leave to appeal is denied.

Dated at the City of Toronto, in the Province of Ontario, this 28th day of February, 2022

Per: 

for John Carlo Mastrangelo

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BETWEEN:

CITY OF OTTAWA

Applicant

AND:

CLUBLINK CORPORATION ULC

Respondent

**MEMORANDUM OF ARGUMENT OF THE RESPONDENT,
CLUBLINK CORPORATION ULC**

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PART I - OVERVIEW AND STATEMENT OF FACTS

A. OVERVIEW

1. This case is about the interpretation of the parties' unique 40-year old contract, and the family of agreements that followed it, applied to an uncontroversial legal principle that finds ample support in this Court's jurisprudence. It raises no issue of national or public importance.

2. The main contract at issue, between a developer and a municipality, provides for the operation of a private 18-hole golf course on lands surrounded by residential subdivisions. The contract states that, if the developer desires to discontinue operating the golf course and cannot find another person to acquire or operate it, the developer must immediately convey the land and golf club to the municipality free of charge. The municipality takes the conveyance subject to a similar obligation to operate the land as a golf course. The contract further states that, if the municipality ceases operating the golf course, it must immediately reconvey the land to the developer, free of charge and free of any obligation to operate the golf course or other restriction on the land's use. This contract, and the subsequent agreements that implement its terms, were all registered on title to the golf course lands.

3. The issue in the Courts below was whether the parties intended to create contingent property interests in the golf course lands, which interests are subject to the rule against perpetuities in Ontario, or personal rights under contract that are not subject to the rule. Following this Court's decisions in *City of Halifax* and *Weinblatt*, and more recent appellate authority applying them, the Court of Appeal for Ontario unanimously interpreted the conveyance provisions in this specific agreement as creating contingent property interests in the golf course lands. Those interests are void because they did not vest within the statutory 21-year perpetuity period.

4. The Applicant, City of Ottawa, disputes the Court of Appeal's conclusion that these conveyance provisions create property interests subject to the rule against perpetuities. Seeking to find a jurisprudential issue warranting leave to appeal, its submission parses decades-old appellate case law in an attempt to create uncertainty where none exists. This Court should decline the City's invitation to reconsider long-settled principles applied to an atypical contractual arrangement. No issue of national and public importance exists because:

- (a) the decision below concerns the interpretation of a specific set of agreements arising in a unique commercial context. The principles of contractual interpretation are settled and uncontested, and their application in this case has no import beyond the immediate dispute;
- (b) the case law is consistent and clear that an obligation to convey land creates a proprietary interest that runs with and binds the land, even if that obligation is contingent on uncertain future events. In cases such as these, fee simple ownership is subject to a qualified estate that could arise at some unknown time. It is no different than the classic example of a contingent property interest, where land is devised to *A*, subject to the qualification that if he should remarry, the land shall transfer to *B*. This contingency—which may or may not happen, and is outside *B*’s control—does not negate his equitable interest in the land;
- (c) this Court’s decision in *Canadian Long Island* deals with a different type of interest, specifically a right of first refusal. To the extent there is any uncertainty on characterizing rights of first refusal as proprietary or personal (and there is none), it is not germane to the facts of this dispute, and will—as with all cases of contractual interpretation—need to be dealt with on a case-by-case basis;
- (d) the common law rule against perpetuities does not have consistent application across Canada. It has been varied by statute in some provinces (including Ontario) and abolished completely in others—further undermining any national scope that this decision could be said to have; and
- (e) the City’s contention that the Court of Appeal’s conclusion “implements a fundamental reform of common law principles” or “creates a novel form of property interest” is wrong. Contingent property interests are a basic feature of property law, and the very essence of the rule against perpetuities. This case is a straightforward application of centuries-old law.

5. There was no error in the Ontario Court of Appeal’s decision. Nor does it raise a legal or jurisprudential question of any public importance. Leave to appeal should be denied.

B. FACTUAL BACKGROUND

(i) *Campeau's Development Proposal*

6. In 1979, Campeau Corporation owned approximately 1,400 acres of land in the former City of Kanata. These lands included a nine-hole golf course. Campeau proposed to develop most of these lands for residential uses.

7. At the time, Kanata was a lower-tier municipality within the Regional Municipality of Ottawa-Carleton. Among other approvals, Campeau required amendments to the official plans for both Kanata and the Regional Municipality to pursue its development project.

8. To gain support for its development project, Campeau proposed reserving approximately 40% of its land for recreation and open space. This was far more than the 5% that Kanata or the Regional Municipality could require for parkland dedication as a condition of approval of a subdivision plan (*City of Ottawa v. ClubLink Corporation ULC*, [2021 ONSC 1298](#) (“**Application Reasons**”), para. 12). Part of this recreation and open space land would include an expanded eighteen-hole golf course.

9. Both municipalities accepted this proposal. On May 26, 1981, Campeau and Kanata executed an agreement that “confirm[ed] the principle” that approximately 40% of the total development area would be left as open space for recreation and natural environmental purposes (the “**1981 Agreement**”, Exhibit “F” to the October 24, 2019 affidavit of Eileen Adams-Wright, at **Tab 3A** of this Responding Record). The Kanata and Regional Official Plans were amended to permit Campeau’s development project.

(ii) *The 1981 Agreement*

10. Section 3 of the 1981 Agreement provides that “approximately forty (40%) percent of the total development area . . . shall be left as open space for recreation and natural environmental purposes”. These open space and recreational lands would include an 18-hole golf course, stormwater management lands, natural environmental areas and land for park purposes. Section 4(1) of the Agreement stipulates that the location of the lands to be provided for the 18-hole golf course would be mutually agreed between the parties. Section 12 of the 1981 Agreement required it to be registered on title to the lands owned by Campeau at that time.

11. Section 5 of the 1981 Agreement provides that the proposed 18-hole golf course “shall be operated by Campeau as a golf course in perpetuity” (s. 5(1)). Campeau would retain title to the golf course lands, and the 1981 Agreement provides that those lands may only be sold to a third party on the condition that:

- (a) ClubLink give Kanata a first refusal right on the same terms as those offered by the third party (s. 5(3)); and
- (b) if the third party acquires the land, it must enter into an agreement with Kanata for the operation of the golf course on the same terms as Campeau (s. 5(2)).

12. Section 5(4) of the 1981 Agreement requires that, if Campeau desires to cease operating the golf course and cannot find another party to acquire or operate it, Campeau must convey the golf course lands to Kanata at no cost. Further, if Kanata accepts the conveyance, it must continue operating the golf course. That provision reads:

5(4) In the event that Campeau desires to discontinue the operation of the golf course and it can find no other persons to acquire or operate it, then it shall convey the golf course (including land and buildings) to Kanata at no cost and if Kanata accepts the conveyance, Kanata shall operate or cause to be operated the land as a golf course subject to the provisions of paragraph 9.

13. Sections 6-8 of the 1981 Agreement required Campeau to convey lands to Kanata for stormwater management, natural environmental areas and land for park purposes at no cost, once the specific areas were capable of definition.

14. Section 9 of the 1981 Agreement requires Kanata to reconvey to Campeau any of the lands set aside for open space over which it holds title—including the golf course, if Kanata were to obtain title pursuant to section 5(4)—if those lands cease to be used for recreational and natural environmental purposes. It reads:

9. In the event that any of the land set aside for open space for recreation and natural environmental purposes ceases to be used for recreation and natural environmental purposes by Kanata then the owner of the land, if it is Kanata, shall reconvey it to Campeau at no cost unless the land was conveyed to Kanata as in accordance with Sections 33(5)(a) or 35b of The Planning Act.

(iii) *Subsequent Agreements between Campeau and Kanata*

15. Subsequent to the 1981 Agreement, Campeau and Kanata entered into several contracts to implement the terms of the “40% principle” and address the operation of the golf course:

- (a) On June 10, 1985 and December 29, 1988, Campeau and Kanata executed agreements to define the improvements, size, location and required safety measures for the golf course. These two agreements state that they are binding upon future owners of the subject lands, and enure to the benefit of the Marchwood Lakeside Community (*Ottawa (City) v. ClubLink Corporation ULC*, 2021 ONCA 847 (“**Appeal Reasons**”), para. 21); and
- (b) on December 20, 1988, Campeau and Kanata entered into a further agreement identifying the specific lands to which the 1981 Agreement applied (the “**1988 Agreement**”). The recitals to this 1988 Agreement confirm the City’s intention that “the obligations under the [1981 Agreement] . . . are binding upon successors in title of Campeau”. Section 7 states:

It is hereby agreed that the [1981 Agreement] and this Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of Campeau and the City and shall run with and bind the Current Lands for the benefit of the Kanata Marchwood Lakeside Community.

(Appeal Reasons, paras. 22-23)

16. Like the 1981 Agreement, these 1985 and 1988 agreements (together, the “**Kanata/Campeau Agreements**”) were registered on title to the golf course lands.

(iv) *ClubLink Acquires the Golf Course*

17. In 1996, ClubLink entered into an agreement with Campeau’s successor-in-title to purchase various assets, including the golf course lands. By agreement dated November 1, 1996 (the “**Assumption Agreement**”), ClubLink agreed that all of the liabilities and obligations under the 1981 and 1988 Agreements would “apply to and bind [ClubLink] in the same manner and to the same effect as if [ClubLink] had executed the same in the place and stead of Campeau” (Application Reasons, paras. 31-32).

(v) *Kanata Amalgamates into the City of Ottawa*

18. On January 1, 2001, Kanata and other municipalities were dissolved and the Applicant, City of Ottawa (the “City”), was constituted in their place. All of Kanata’s assets and liabilities—including those under the Kanata/Campeau and Assumption Agreements—became the assets and liabilities of the City (Appeal Reasons, para. 28).

(vi) *ClubLink Explores Redevelopment Options*

19. ClubLink has owned and operated the golf course lands as a private, members-only club since 1997. As of November 2019, membership was approximately 70% of capacity. Entrance fees had fallen from \$22,500 to \$9,000 (Application Reasons, paras 36-37).

20. In October 2019, ClubLink submitted planning applications to the City for a zoning by-law amendment and approval for a plan of subdivision to permit the redevelopment of the golf course lands into a residential subdivision with recreational space, consistent with the highest and best use of the land, and in conformity with the City’s current Official Plan.

21. ClubLink’s planning applications envision the redevelopment of the golf course for single-detached homes, townhomes and other medium density housing. They also provide for significant amounts of new, permanently accessible green space—much more than is currently accessible to the public on the golf course lands. These planning applications are opposed by neighbouring landowners, who prefer to have their properties back on to a golf course.

C. DECISION OF THE ONTARIO SUPERIOR COURT OF JUSTICE

22. Shortly after ClubLink submitted its planning applications, the City commenced an expedited application, seeking (among other things):

- (a) a declaration that the obligations of ClubLink in Section 3 of the Assumption Agreement and the 1981 and 1988 Agreements remain valid and enforceable;
- (b) an order that ClubLink withdraw its planning applications, or convey the golf course lands to the City at no cost pursuant to s. 5(4) of the 1981 Agreement; and

- (c) a declaration that if the City accepts a conveyance of those lands, it is not obliged to operate them as a golf course pursuant to s. 9 of the 1981 Agreement.

23. ClubLink argued that the 1981 Agreement was unenforceable because it contains contingent conveyance obligations that violate the rule against perpetuities, and that cannot be severed from the balance of the contract. ClubLink also argued that the 1981 Agreement was *ultra vires* the statutory powers of Kanata, and operated as an illegal fetter on the planning authority of Kanata and the Region.

24. By reasons indexed as *City of Ottawa v. ClubLink Corporation ULC*, [2021 ONSC 1298](#), Justice Labrosse (the “**Application Judge**”) held that the 1981 Agreement was valid and enforceable. He concluded that sections 5(4) and 9—which create contingent conveyance obligations—are merely contractual, and do not create property rights subject to the rule against perpetuities. This, he determined, is because the “true intent” of the 1981 Agreement was not to cause a change in ownership of the golf course lands, but instead “to maintain 40% open space within the Campeau Lands through the use of a golf course”. He also considered that sections 5(4) and 9 “may or may not crystallize”, as an indication that they were not intended to create interests in the land (para. 104).

25. Despite finding the 1981 Agreement enforceable, the Application Judge found that ClubLink had not demonstrated a “desire to discontinue” the operation of the golf course and declined to order that ClubLink either withdraw its planning applications or convey the golf course to the City at no cost pursuant to section 5(4) (Application Reasons, paras. 153-157). This conclusion was not challenged on appeal.

D. DECISION OF THE ONTARIO COURT OF APPEAL

26. The Court of Appeal allowed ClubLink’s appeal. At issue was the Application Judge’s determination that ss. 5(4) and 9 of the 1981 Agreement do not create contingent interests in property that are subject to the rule against perpetuities, but rather private contractual rights that are not subject to the rule. The unanimous panel held:

[11] . . . the application judge erred in his determination that because the parties never intended the rights to the conveyances to ‘crystallize’, there was no intention to create an interest in land. In my view, when the correct

legal principles are applied, in the context of the Agreements, the plain language of sections 5(4) and 9 are therefore void and unenforceable as being contrary to the rule against perpetuities because the City's right to call upon a conveyance of the golf course lands did not vest during the perpetuity period.

27. Among the factors considered by the Court of Appeal was that the 1981 Agreement binds the golf course lands. The Court relied upon the “well-established” distinction between property interests that bind and run with the land, and contractual rights that do not (para. 43).

28. Despite finding ss. 5(4) and 9 of the 1981 Agreement void for perpetuities, the Court of Appeal declined to consider whether severing these provisions would fundamentally change the nature of the parties' agreement—“with the result that ClubLink would be saddled with a perpetual obligation to run a golf course . . . with no escape mechanism” (para. 67). The Court directed that the severance issue be returned to the Application Judge for determination (para. 70).

PART II - STATEMENT OF ISSUES

29. The City's application for leave to appeal raises no issue of national or public importance. It concerns the interpretation of a specific, complex contractual arrangement between two sophisticated parties, and the application of settled principles regarding the distinction between property interests and personal rights. It is uncontroversial that rights to the conveyance of land, like those in ss. 5(4) and 9 of the 1981 Agreement, create proprietary interests in favour of the right-holder, even where the vesting of such interests are contingent on uncertain future events. Leave to appeal should be denied.

PART III - STATEMENT OF ARGUMENT

A. COURT OF APPEAL DECISION A PRIVATE MATTER OF CONTRACTUAL INTERPRETATION

30. The Court of Appeal's decision is a straightforward interpretation of the 1981 Agreement to determine whether the parties intended to create property interests in the subject lands, in accordance with the legal holding in *2123201 Ontario Inc. v. Israel Estate*, [2016 ONCA 409](#). Neither the principles of contractual interpretation nor their application to these unique facts raise jurisprudential issues that warrant this Court's attention.

31. In *Israel Estate*, Justice Laskin of the Ontario Court of Appeal held that whether an agreement creates an equitable interest in land “can only be resolved by looking at what the parties intended” (para. 37). In that case, a seller sold a gravel pit to aggregate extractors in 1931. The parties agreed that the seller would have the “first option to purchase” the land for \$1.00 once the purchaser determined that the gravel had been removed. Decades later, the purchaser brought an application for an order declaring the agreement void and deleting it from title, because the purchase option created a contingent interest in land that did not vest within the 21-year perpetuity period. The Court of Appeal agreed, concluding:

. . . the purpose of the agreement, the context in which it was made, its terms, and the conduct of the parties under it suggest [the landowner] was being given not a mere personal right of first refusal but an option to repurchase, which created an immediate interest in the land (para. 39).

32. The decision in *Israel Estate* was not appealed to this Court. It remains settled law in Ontario, having been followed in over a dozen Ontario cases and in British Columbia.¹ There is no conflict on this legal point between appeal courts in other Canadian jurisdictions.

33. Nor is this approach novel. In *Frobisher Ltd. v. Canadian Pipelines & Petroleums Ltd.*, [1960] S.C.R. 126, this Court held “in all cases it is a question of construction whether the contract is intended to create a limitation of property only, or a personal obligation only, or both” (p. 147, citing *Halsbury's Laws of England*, 2nd ed., vol. 25, p. 109, emphasis added). And in *Harris v. Minister of National Revenue*, [1966] S.C.R. 489, this Court concluded “that as a matter of construction the clause granting the option to the appellant which we are considering in the case at bar is one agreeing to create a contingent future interest in the land demised and nothing else and that it is void as infringing the rule against perpetuities” (p. 504, emphasis added).

34. The decision below follows the guidance from this Court and the Ontario Court of Appeal. Upon review of the family of agreements between Kanata and Campeau, the Court of Appeal found the “parties’ intention to create an interest in land” in their “plain and explicit language” (para. 62):

¹ See, e.g., *In the Matter of the Notice of Intention to make a Proposal of CIM Bayview Creek Inc.*, 2021 ONSC 220; *Prism Resources Inc. v. Detour Gold Corporation*, 2021 ONSC 1693; *2284064 Ontario Inc. v. Shunock*, 2017 ONSC 7146; *Sandhu v. Chan*, 2017 BCSC 1279.

- i. The 1981 Agreement uses clear conveyance language with respect to the contingent interests created under s. 5(4) (“convey and “conveyance”) and s. 9 (“reconvey” and “conveyed”). I contrast this conveyance language with the contractual “right of first refusal” that appears in s. 5(3).
- ii. Section 12 of the 1981 Agreement stipulates that the Agreement shall be registered on the title to the entire property, including the golf course lands. All four Agreements were registered on title to the property.
- iii. Section 7 of the December 20, 1988 Agreement expressly states that the 1981 and 1988 Agreements “shall enure to the benefit and be binding upon the respective successors and assigns of Campeau and the City and shall run with and bind the Current Lands for the benefit of the Kanata Marchwood Lakeside Community”. (Emphasis added.)

35. Based on the language of these contracts, read as a whole and in their plain and ordinary meaning, the Court correctly found that they provide for conveyances of the golf course lands in the event something occurred in the future—the very definition of a contingent interest in land (see *Brinkos v. Brinkos* (1989), [69 O.R. \(2D\) 225](#), 1989 CarswellOnt 252 (C.A.), para. 14).

36. In reaching this conclusion, the Court of Appeal followed settled principles of contractual interpretation from this Court in *Sattva Capital Corp. v. Creston Moly Corp.*, [2014 SCC 53](#). These principles are not disputed by the City.

37. The Court of Appeal’s application of these principles does not have any importance beyond the immediate dispute. The 1981 Agreement is an atypical contractual arrangement—part of a family of agreements between a municipality and a sophisticated property developer, entered into for the specific objective of balancing development and greenspace in a residential community. As this Court noted in *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, [2016 SCC 37](#), contractual interpretation is “often the ‘pure application’ of contractual interpretation principles to a unique set of circumstances”. It does not raise general questions of law, and “the interpretation is not ‘of much interest to judges and lawyers in the future’ because of its ‘utter particularity’” (para. 42).

38. The Court of Appeal’s interpretation of the 1981 Agreement raises nothing of any national or public interest. It is a routine contractual interpretation dispute. Leave should be denied on this basis alone.

B. NO CONFLICT IN THIS COURT’S JURISPRUDENCE

39. In an attempt to find a legal question arising from the decision below, the City points to an alleged conflict in jurisprudence from this Court dating back to the 1960s and 1970s. No such conflict exists, and any purported uncertainty has since been resolved by more recent case law.

(i) The Court of Appeal Followed This Court in City of Halifax and Weinblatt

40. At issue in *City of Halifax v. Vaughan Construction Company Ltd. and The Queen*, [1961] S.C.R. 715, was an agreement allowing the City of Halifax to repurchase land sold to a developer if the developer did not begin construction on the land within a reasonable time. Unbeknownst to Halifax, the developer negotiated to sell the land to the Province, and the Province eventually expropriated it. Halifax claimed the proceeds from the expropriation.

41. This Court ruled in Halifax’s favour, finding that the right to repurchase created an equitable interest in land that was contingent upon the happening of a future event.

42. *City of Halifax* was followed by this Court several years later, on almost indistinguishable facts, in *Kitchener v. Weinblatt*, [1969] S.C.R. 157. In that case, the City of Kitchener sold land to a construction company. Their agreement allowed Kitchener to repurchase the land if the construction company did not begin erecting a building within twelve months. The company did not begin construction by the required date, and Kitchener succeeded in its claim to repurchase the land. This Court rejected the builder’s argument that the agreement offended the rule against perpetuities. It unanimously held that the provision creates “an interest in the property to arise at a future date”—analogizing to *City of Halifax*, which was found “indistinguishable both on fact and law”—which remained valid because it was incapable of vesting outside the perpetuity period (pp. 160-161).²

² Accordingly, the City’s submission at paragraph 41 of its memorandum of argument—that the Supreme Court took a “different approach” in *Weinblatt* than in *City of Halifax*—is incorrect.

43. In this leave application, the City’s submission relies on what it characterizes as tension between *City of Halifax* and *Weinblatt* on one hand, and *Canadian Long Island Petroleums Ltd. et al. v. Irving Industries Ltd.*, [1975] 2 S.C.R. 715, on the other. In *Canadian Long Island*, this Court held that a right of first refusal does not create an equitable right in the subject land until the occurrence of a triggering event—typically an offer to purchase from a third party. Only when that triggering event occurs does the personal right convert into a proprietary option to purchase.

44. *Canadian Long Island* has consistently been understood as holding that rights of first refusal create property interests, subject to the rule against perpetuities, only when they are converted into purchase options. Its holding is properly limited to rights of first refusal and does not consider the types of repurchase rights in *City of Halifax* and *Weinblatt*. Conversely, options to purchase and ordinary conveyance rights do create immediate equitable interests that must vest within the 21-year perpetuity period in Ontario. These are uncontroversial points of law.

45. In the decision below, the Court of Appeal correctly held that the conditional conveyance rights in ss. 5(4) and 9 of the 1981 Agreement—which do not fall neatly into the categories of options or rights of first refusal—are analogous to those in *City of Halifax* and *Weinblatt*. In each case, a municipality held the right to demand the conveyance of land upon a contingent future event. These conditional conveyance obligations create equitable interests that bind the subject property, and which therefore must vest within the perpetuity period under Ontario law. *Canadian Long Island* does not apply because, unlike section 5(3) of the 1981 Agreement, sections 5(4) and 9 do not create rights of first refusal.

(ii) No “Lingering Uncertainty” Following Canadian Long Island

46. Any alleged uncertainty arising from the approaches in *City of Halifax* and *Canadian Long Island*—of which there is none—was resolved in *Jain v. Nepean (City)* (1992), 9 O.R. (3d) 11 (C.A.). At issue in *Jain* was an agreement for the sale of land between the City of Nepean and a developer. Like *City of Halifax* and *Weinblatt*, the agreement provided the municipality with a right of repurchase in the event the developer did not commence construction within twelve months. After the developer defaulted on a secured mortgage, Nepean sued for a declaration that it has a proprietary interest in the land.

47. The Ontario Court of Appeal unanimously ruled in Nepean’s favour, rejecting the suggestion that *Canadian Long Island Petroleum* overruled *City of Halifax* and *Weinblatt*. The Court contextualized these precedents, noting that “at the time they were evolving, the rule against perpetuities appeared as an unpopular barrier in the way of commercial contracts. In all three cases the courts focused on rejecting perpetuities arguments and this may explain some inconsistency in the observation relating to property and contractual rights”.

48. *Jain* confirmed that *City of Halifax* and *Weinblatt* remain good law, and were not implicitly overtaken by *Canadian Long Island*—which makes no mention of either decision. It also clarified that the question of who has “control” over the contingency is not determinative when delineating between proprietary interests and contractual rights. This Court denied leave to appeal from the decision in *Jain* ([1993] 1 S.C.R. ix).

49. *Israel Estate* follows *Jain* in holding that “control over the exercise of the option does not resolve whether the agreement gave [the seller with a repurchase right] an immediate interest in the land”. As noted above, the resolution of this question rightly turns on the parties’ intentions—a point consistent with this Court’s decisions in *Frobisher* and *Harris*:

[38] Instead of focusing on the question of control, I view the issue as one of contract interpretation: to determine the true intent of the parties at the time the agreement was made. In my opinion, the purpose of the agreement, the context in which it was made, its terms, and the conduct of the parties under it show an intention to give Israel an option to repurchase the land, which gave rise to an immediate, equitable interest in the land.

50. There is no “lingering uncertainty” in these decisions. The proposition that control over the contingency is not determinative accords with today’s approach to contractual interpretation: a “practical, common-sense approach not dominated by technical rules of construction” (*Sattva*, para. 47). Justice Laskin confirmed in *Israel Estate* that the overriding concern is “to determine the true intent of the parties at the time the agreement was made” (para. 38) rather than to impose a “rigid classification scheme” (Appeal Reasons, para. 51). This is settled law.

(iii) Any Unanswered Questions are Not Germane to the City’s Proposed Appeal

51. To the extent that there remains any unanswered issue arising out of *Canadian Long Island*, it concerns the principled basis for treating rights of first refusal differently from grants or

contracts that create equitable interests—like purchase options or conditional conveyance rights. The leading paper on this point (cited in the Court of Appeal’s decision, and in the City’s submissions to this Court) suggests “perhaps the tide has turned and it is the *Canadian Long Island Petroleum* case that is incorrect and that rights of first refusal should join options and rights of repurchase as immediate interests in land” (P.M. Perell, “Options, Rights of Repurchase and Rights of First Refusal as Contracts and as Interests in Land” (1991) [70:1 Canadian Bar Review](#) 1, at p. 27). Whether this proposition is correct, as a matter of law, is not germane to this proposed appeal because sections 5(4) and 9 of the 1981 Agreements are not rights of first refusal.

52. What remains uncontroversial is that conveyance obligations create equitable interests in land—not personal rights—even if those obligations are contingent on uncertain future events. *Canadian Long Island* does not change this. The decisions in *City of Halifax*, *Weinblatt*, *Jain*, *Israel Estate* and the Court of Appeal’s decision in this case are consistent and unambiguous. There is no need for further confirmation by this Court.

C. NO “FUNDAMENTAL REFORM” OR “NEW FORM OF PROPERTY HOLDING”

53. There is no merit to the City’s submission that the Court of Appeal “creat[ed] a novel form of property interest” (para. 48). Far from a “fundamental reform of common law principles”, as the City puts it, the decision below is a textbook example of a contingent property interest that engages the rule against perpetuities.

54. There is nothing new about the proposition that “rights purporting to bind the land and control its use or development, thereby fettering real property, are interests in land” (City’s Memorandum of Argument, para. 50). The concept of fettered property rights is basic to property law and intimately tied to the rule against perpetuities. In *Canadian Long Island*, this Court cited the Fifth Circuit Court of Appeal in *Weber v. Texas Co.* (1936), [83 F. 2d 807](#), for the following proposition:

The rule against perpetuities springs from considerations of public policy. The underlying reason for and purpose of the rule is to avoid fettering real property with future interests dependent upon contingencies unduly remote which isolate the property and exclude it from commerce and development for long periods of time, thus working an indirect restraint upon alienation, which is regarded at common law as a public evil. (Emphasis added.)

55. The Saskatchewan Court of Appeal also noted this in *Taylor v. Scurry-Rainbow Oil Ltd.*, [2001 SKCA 85](#), para. 52:

The underlying and fundamental purpose of the rule [against perpetuities] is founded in the public policy of preventing the fettering of the marketability of property over long periods of time by indirect restraints upon its alienation. The general purpose of the rule is to prevent the tying up of property to the detriment of society in general. (Emphasis added.)

56. Similarly, The Nova Scotia Law Reform Commission explains the purpose of the rule against perpetuities is to allow a grantor to “bind property to his or her intentions for some period of time, but not longer” (“The Rule Against Perpetuities”, Final Report December 2010, [2010 CanLIIDocs 4](#), p. 13). It observed the application of this rule to circumstances analogous to those in the present case:

The Rule also applies outside the trust and estate planning context, where an interest in property may be held in abeyance for longer than the rule allows. For example, an owner, person A, may transfer property to B, unless the property is used for certain purposes (e.g., a gambling house), but if so, then to C (or for that matter back to A). The conditional right of C (or A) to enter (or re-enter) the property upon breach of the condition conceivably could vest outside the perpetuity period, and so that interest is held wholly invalid from the outset – B receives the property absolutely. Similarly, options for the purchase of land or an interest in land are bound by the Rule, as are conditional easements, remainder estates following a life tenancy, and perhaps rights of first refusal as well. The Rule generally applies to property interests of all kinds, and the list of circumstances in which it may arise to thwart an intended transfer or transaction is not closed. (p. 9, emphasis added.)

57. In this case, the parties to the 1981 Agreement intended to (and did) fetter ownership of the golf course lands by creating conveyance obligations contingent on the happening of future events. Fee simple ownership is not absolute, but subject to a qualified estate that could arise at some unknown time—including outside the perpetuity period. It is no different than the example of a contingent property interest taught across Canadian law schools: ‘*land to A, but if he should remarry, to B*’. Like the interests under ss. 5(4) and 9 of the 1981 Agreement, B’s interest in the land is uncertain because it vests only upon A’s remarriage—which may or may not happen, and over which, presumably, B has no control.

58. The City’s submission also rests on a misunderstanding of *Israel Estate*. Nowhere did the Court of Appeal suggest that “options to purchase are the only type of conditional conveyance rights that create an interest in land” (City’s Memorandum of Argument, para. 51, emphasis added). While options and rights of first refusal are *examples* of property interests and contractual rights, respectively, other kinds of grants will not fall neatly within these categories and must be dealt with on the principled basis of contract interpretation. This is consistent with appellate authorities, and was followed by the Court of Appeal in this case.

59. It should also be noted that the rule against perpetuities does not have consistent application or effect across Canada. The rule was abolished in Saskatchewan and Manitoba, and varied by statute in British Columbia, Alberta, Ontario, Quebec and Prince Edward Island. It continues to exist at common law in Nova Scotia, New Brunswick and Newfoundland and Labrador. This further undermines any national scope that the decision below could be said to have.

D. NO NEED TO REVISIT SETTLED LEGAL PRINCIPLES

60. Finally, and contrary to the City’s submission at Part E of its argument, there are no legal developments since *Canadian Long Island* that require this Court to revisit and reconsider its earlier jurisprudence. The decision in *Semelhago v. Paramadevan*, [1996] 2 S.C.R. 415 stands for the narrow proposition that damages will not necessarily be inadequate when considering specific performance as a remedy for breach of an agreement to sell land. Similarly, *Bhasin v. Hrynew*, 2014 SCC 71 concerns good faith in the exercise of discretion under contract. Neither case affects the question of whether a specific grant is subject to a contractual right or an equitable proprietary interest. Nor do the principles in those decisions apply at all to the present case.

E. CLUBLINK’S CONDITIONAL CROSS-APPLICATION FOR LEAVE TO APPEAL

61. In the event that leave to appeal is granted, ClubLink asks that leave also be granted to its conditional cross-application, which concerns whether sections 5(4) and 9 of the 1981 Agreement render invalid the entirety of the Kanata/Campeau and Assumption Agreements, or whether some provisions can be saved by the doctrine of severance without fundamentally altering the parties’ bargain.

62. The question raised in ClubLink’s conditional cross-application—the extent to which a contractual provision that has been found to be void for perpetuities invalidates the entire agreement/instrument, or only a portion of it—merits a determination by this Court for two reasons:

- (a) *First*, judicial economy favours hearing related issues together. The severance issue is necessary to the full and complete resolution of the underlying application. It can and should be resolved by this Court to bring finality to the parties and the future of the golf course lands. This is preferable to a bifurcated approach that separates the rule against perpetuities issue from the severance issue, and remits the latter to the Superior Court for determination at some later date, with further appeal rights.
- (b) *Second*, no new evidence is necessary on the severance issue. It can be decided on the basis of the record as it currently exists, by applying this Court’s decisions in *Transport North American Express Inc. v. New Solutions Financial Corp.*, 2004 SCC 7 and *Shafron v. KRG Insurance Brokers (Western) Inc.*, 2009 SCC 6.

63. In the event that the City’s application for leave to appeal is granted, ClubLink asks that the related issues in its conditional cross-application be heard and decided together by this Court.

PART IV - SUBMISSIONS ON COSTS

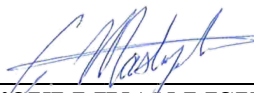
64. ClubLink seeks costs on the City’s application for leave to appeal.

PART V - ORDER REQUESTED

65. ClubLink respectfully submits that the City’s application for leave to appeal should be dismissed, with costs.

66. If the City’s application for leave to appeal is granted, the City seeks an order granting leave to appeal in its conditional cross-application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28 day of February, 2022.



LAX O'SULLIVAN LISUS GOTTLIEB LLP
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

PART VI - TABLE OF AUTHORITIES

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2.	<i>Frobisher Ltd. v. Canadian Pipelines & Petroleum Ltd.</i> , [1960] S.C.R. 126	33
3.	<i>Harris v. Minister of National Revenue</i> , [1966] S.C.R. 489	33
4.	<i>In the Matter of the Notice of Intention to make a Proposal of CIM Bayview Creek Inc.</i> , 2021 ONSC 220	32
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7.	<i>Sandhu v. Chan</i> , 2017 BCSC 1279	32
8.	<i>Brinkos v. Brinkos</i> (1989), 69 O.R. (2D) 225 , 1989 CarswellOnt 252 (C.A.)	35
9.	<i>Sattva Capital Corp. v. Creston Moly Corp.</i> , 2014 SCC 53	36,50
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11.	<i>City of Halifax v. Vaughan Construction Company Ltd. and The Queen</i> , [1961] S.C.R. 715	40
12.	<i>Kitchener v. Weinblatt</i> , [1969] S.C.R. 157	42
13.	<i>Canadian Long Island Petroleum Ltd. et al. v. Irving Industries Ltd.</i> , [1975] 2 S.C.R. 715	4c, 43, 44, 45, 46, 47, 48, 51, 52, 54, 60
14.	<i>Jain v. Nepean (City)</i> (1992), 9 O.R. (3d) 11 (C.A.)	46
15.	<i>Weber v. Texas Co.</i> (1936), 83 F. 2d 807	54
16.	<i>Taylor v. Scurry-Rainbow Oil Ltd.</i> , 2001 SKCA 85	55
17.	<i>Semelhago v. Paramadevan</i> , [1996] 2 S.C.R. 415	60
18.	<i>Bhasin v. Hrynew</i> , 2014 SCC 71	60
19.	<i>Transport North American Express Inc. v. New Solutions Financial Corp.</i> , 2004 SCC 7	62b
20.	<i>Shafron v. KRG Insurance Brokers (Western) Inc.</i> , 2009 SCC 6	62b

SECONDARY SOURCE		PARA.
1.	P.M. Perell, “Options, Rights of Repurchase and Rights of First Refusal as Contracts and as Interests in Land” (1991) 70:1 Canadian Bar Review 1	51
2.	Nova Scotia Law Reform, “The Rule Against Perpetuities”, Final Report December 2010, 2010 CanLIIDocs 4	56

PART VII - STATUTES, LEGISLATION, RULES, ETC.

None.

THIS AGREEMENT made in triplicate this 26th day of May 1981.

BETWEEN:

CAMPEAU CORPORATION, a body corporate and
politic, incorporated under the laws of the
Province of Ontario, having its Head Office
in the City of Nepean,

Hereinafter called "Campeau"

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF KANATA

Hereinafter called "Kanata"

OF THE SECOND PART

WHEREAS Campeau has applied to The Regional
Municipality of Ottawa-Carleton (hereinafter called the
"Region") to amend its Official Plan to permit the development
of the 'Marchwood Lakeside Community' in the City of Kanata in
accordance with the plans proposed by Campeau;

AND WHEREAS Campeau has proposed to designate
approximately forty (40%) percent of the development area as
recreation and open space and the parties are desirous of
entering in this agreement to establish the principles
relating to Campeau's offer;

AND WHEREAS the Region has agreed to amend its
Official Plan in accordance with Campeau's request;

THEREFORE this agreement witnesseth that for and in
consideration of One Dollar paid by Kanata to Campeau (receipt
of which is acknowledged), and the mutual covenants contained
herein:

1. This Agreement shall apply to the lands described in
Schedule "A" attached hereto.

**APPLICATION TO REGISTER
NOTICE OF AN AGREEMENT**

140350

THE LAND TITLES ACT SECTION 78

**TO: THE LAND REGISTRAR
FOR THE LAND TITLES DIVISION OF OTTAWA-CARLETON NO.4**

I, THE CORPORATION OF THE CITY OF KANATA
being interested in the lands entered
as Parcel 6-1 and 5-1
in the Register for Section March-1 and March-2
or which CAMPEAU CORPORATION
is the registered Owner
hereby apply to have Notice of an Agreement dated the
26th day of May, 1981
made between CAMPEAU CORPORATION and THE REGIONAL MUNICIPALITY
OF OTTAWA-CARLETON
entered on the parcel register.
The evidence in support of this Application consists of:
1. An executed copy of the said Agreement
This Application is not being made for any fraudulent or
improper purpose.
My address for service is 150 Katimavik, Kanata, Ontario.

THE CORPORATION OF THE CITY OF KANATA


by its Solicitor
DOUGLAS KELLY

REGIONAL OFFICIAL PLAN

2. Campeau and Kanata mutually covenant and agree to support the application by the Region for approval of Official Plan Amendment No. 24 to the Official Plan of the Ottawa-Carleton Planning Area which is attached hereto as Schedule "B".

PRINCIPLE OF PROVISION OF 40% OPEN SPACE AREAS

3. Campeau hereby confirms the principle stated in its proposal that approximately forty (40%) percent of the total development area of the 'Marchwood Lakeside Community' shall be left as open space for recreation and natural environmental purposes which areas consist of the following:


- (a) the proposed 18 hole golf course
- (b) the storm water management area
- (c) the natural environmental areas
- (d) lands to be dedicated for park purposes.

4. (1) The location of the lands to be provided for the 18 hole golf course shall be mutually agreed between the parties;

(2) The lands set aside for the major storm water management area is shown generally as part of the Environmental Constraints Area on Schedule "2" of Official Plan Amendment No. 24, the exact boundaries of this area and the location and boundaries of the remainder of the storm water management system shall be mutually agreed between the parties.

(3) The lands set aside for the natural environmental areas are shown generally on Schedule "2" of the proposed Official Plan Amendment No. 24 attached as Schedule "B" hereto as Environmental Area Class 1 and 2 and part of the Environmental Constraint Area provided that the exact boundaries of these areas shall be mutually agreed between the parties.

(4) The lands to be dedicated for park purposes will be determined at the time of the development applications in accordance with The Planning Act.



METHODS OF PROTECTION

5. (1) Campeau covenants and agrees that the land to be provided for the golf course shall be determined in a manner mutually satisfactory to the parties and subject to sub-paragraphs 2 and 3 shall be operated by Campeau as a golf course in perpetuity provided that Campeau shall at all times be permitted to assign the management of the golf course without prior approval of Kanata.


(2) Notwithstanding sub-paragraph (1), Campeau may sell the golf course (including lands and buildings) provided the new owners enter into an agreement with Kanata providing for the operation of the golf course in perpetuity, upon the same terms and conditions as contained herein.

(3) In the event Campeau has received an offer for sale of the golf course it shall give Kanata the right of first refusal on the same terms and conditions as the offer for a period of twenty-one (21) days.

(4) In the event that Campeau desires to discontinue the operation of the golf course and it can find no other persons to acquire or operate it, then it shall convey the golf course (including lands and buildings) to Kanata at no cost and if Kanata accepts the conveyance, Kanata shall operate or cause to be operated the land as a golf course subject to the provisions of paragraph 9.

(5) In the event Kanata will not accept the conveyance of the golf course as provided for in sub-paragraph (4) above then Campeau shall have the right to apply for development of the golf course lands in accordance with The Planning Act, notwithstanding anything to the contrary contained in this agreement.

6. Campeau shall convey the lands set aside for the storm water management system to Kanata at no cost when the lands are capable of definition by Plans of Survey or Plans of Subdivision being developed in the vicinity of the storm water management system.



7. Campeau shall convey the natural environmental areas to Kanata at no cost when the lands are capable of definition by Plans of Survey or Plans of Subdivision being developed in the vicinity of the open space and natural environmental areas.


8. Campeau shall convey to Kanata at no cost the land for park purposes upon the development of lands in accordance with The Planning Act.

9. In the event that any of the land set aside for open space for recreation and natural environmental purposes ceases to be used for recreation and natural environmental purposes by Kanata then the owner of the land, if it is Kanata, shall reconvey it to Campeau at no cost unless the land was conveyed to Kanata as in accordance with Section 33(5)(a) or 35b of The Planning Act.

10. It is the intent of the parties that this agreement shall establish the principle as proposed by Campeau to provide 40% of the land in the 'Marchwood Lakeside Community' as "open space, however, as development occurs and plans are finalised, further agreements concerning specific open space areas may be required to implement this principle and to provide for the construction of works in these areas.

11. This agreement shall be binding on the parties and have full force and effect when Official Plan Amendment No. 24 to the Official Plan of the Ottawa-Carleton Planning Area is approved by either The Minister of Housing or the Ontario Municipal Board.

12. This agreement shall be registered against the lands described in Schedule "A" provided that when any part of the lands are severed or approved for development in accordance with the Planning Act, Kanata at the request of Campeau shall provide a release of this agreement for those specific lands severed or approved for development provided that the specific lands do not contain any of the open space land designated by this agreement and provided further that the principles contained by the terms and conditions of this agreement are maintained.




13. It is agreed and declared that this agreement and covenants, provisos, conditions and schedules herein shall endure to the benefit of and be binding upon the respective successors or assigns of each of the parties hereto.

IN WITNESS WHEREOF, the Parties hereto have hereunto affixed their corporate seals, attested by the hands of their proper officers duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED
in the presence of

CAMPEAU CORPORATION


PRESIDENT

VICE PRESIDENT AND SECRETARY
THE CORPORATION OF THE CITY
OF KANADA


MAYOR


CLERK

SCHEDULE A

To An agreement, dated May 26, 1981,
between CAMPEAU CORPORATION and the
Corporation of the City of Kanata

- FIRSTLY:** All and singular that certain parcel or tract of land and premises, situate, lying and being now in the City of Kanata formerly Township of March, in the Regional Municipality of Ottawa-Carleton and being those parts of Lots 7, 8 and 9, Concession 3, in the original Township of March, County of Carleton, designated as parts 1, 3, 4, 7 and 8 of a plan of survey of record in the Land Registry Office for the Registry Division of Carleton (No. 5) on October 6, 1976 as No. 5R-2702.
- SECONDLY:** All and singular that certain parcel or tract of land and premises, situate, lying and being now in the City of Kanata formerly Township of March, in the Regional Municipality of Ottawa-Carleton and being composed of those parts of Lot 6 and 7, Concession 3, in the original Township of March, County of Carleton, designated as parts 3, 4 and 6 on a plan of survey of record deposited in the Land Registry Office for the Registry Division of Carleton (No. 5) on October 13, 1976 as No. 5R-2710.
- THIRDLY:** All and singular that certain parcel or tract of land and premises, situate, lying and being now in the City of Kanata formerly Township of March, in the Regional Municipality of Ottawa-Carleton and being composed of those parts of Lots 3, 4 and 5, Concession 3, in the said Township of March, designated as parts 7, 8 and 10 on a plan of survey of record deposited in the Land Registry Office for the Registry Division of Carleton (No. 5) on October 14, 1976 as No. 5R-2710.
- FOURTHLY:** All and singular that certain parcel or tract of land and premises, situate, lying and being now in the City of Kanata formerly Township of March, in the Regional Municipality of Ottawa-Carleton and Province of Ontario and being that part of Lot 5, Concession 2, in the said Township of March designated as parts 1, 2, 3, 4 and 5 on a plan of survey of record, registered on November 7, 1974 as No. 4R-1135 being the whole of parcel 5-1 in the Register of Section March-2.
- FIFTHLY:** All and singular that certain parcel or tract of land and premises, situate, lying and being now in the City of Kanata formerly Township of March, in the Regional Municipality of Ottawa-Carleton and being those parts of Lot 6 and 7, Concession 2, in the said Township of March designated as parts 1, 2 and 3 on a plan of survey or record numbered 4R-804, being the whole of parcel 6-1 in the Register of Section March-1.
- SIXTHLY:** All and singular that certain parcel or tract of land and premises situate, lying and being now in the City of Kanata formerly Township of March, in the Regional Municipality of Ottawa-Carleton and the Province of Ontario and being composed of parts of Lots 6, 7, 8 and 9, Concession 2 of the said Township of March, more particularly described as follows:-

Commencing at the point of intersection of the division line between the northwest and southeast halves of the said Lot 6 with the northeasterly limit of the Road Allowance between Concessions 1 and 2;

Thence northwesterly, along the said northeasterly limit of the Road Allowance between Concessions 1 and 2, a distance of 1015.15 feet to the most southerly angle of the said Lot 7;

Thence northwesterly, continuing along the said northeasterly limit of the Road Allowance between Concessions 1 and 2, 1981.18 feet to the most southerly angle of the said Lot 8;

Thence northwesterly and continuing along the said northeasterly limit of the Road Allowance between Concessions 1 and 2, a distance of 2888.4 feet, more or less, to the southerly limit of the lands of the Canadian National Railway as described in Registered Instrument No. 1081;

Thence easterly, along the said southerly limit of the lands of the Canadian National Railway, a distance of 4695 feet, more or less, to the westerly limit of the forced road crossing the said Lots 6, 7 and 8 (Goulbourn Road);

Thence southerly and following the said westerly limit of the forced road as at present fenced, a distance of 3630 feet, more or less, to the established division line between the northwest and southeast halves of the said Lot 6;

Thence southwesterly, along the last mentioned division line, 2373 feet, more or less, to the point of commencement.

Subject to a 30-foot easement in favour of Bell Canada, crossing the said Lot 6 and more particularly described in Registered Instrument No. 3486;

SEVENTHLY:

All and singular that certain parcel or tract of land and premises situate, lying and being now in the City of Kanata formerly the Township of March, in the Regional Municipality of Ottawa-Carleton and the Province of Ontario, and being composed of part of Lots 8 and 9, Concession 2 of the said Township, more particularly described as follows:-

Premising that all bearings are astronomic and are derived from the south from the southwesterly limit of the Road Allowance between Concessions 2 and 3 across Lots 8 and 9, having a bearing of north 41 degrees 24 minutes west;

Commencing at the point of intersection the established division line between the northwest and southeast halves of the said Lot 9 with the southwesterly limit of the Road Allowance between Concessions 2 and 3;

Thence south 41 degrees 24 minutes east, along the said southwesterly limit of the Road Allowance between Concessions 2 and 3, 2236.8 feet to the line of a post and wire fence defining the southeasterly limit of the lands described in Registered Instrument No. 5134 (Parcel 3);

Thence south 44 degrees 26 minutes west, and following the said fence, a distance of 165.4 feet to a jog in the said fence;

Thence on a bearing of north 45 degrees 34 minutes west, along the said jog, a distance of 14.7 feet to a fence corner;

Thence on a bearing of south 49 degrees 41 minutes west and following an existing fence, a distance of 469.1 feet to an angle in the said fence;

Thence on a bearing of south 8 degrees 56 minutes west, and following the line of the said fence, a distance of 371.5 feet to a point in the northerly limit of the lands of the Canadian National Railway, as described in Instrument No. 1081;

Thence westerly, along the last mentioned limit, to the northeasterly limit of the Road Allowance between Concessions 1 and 2;

Thence northwesterly, along the last mentioned limit, 31.1 feet, more or less, to the said established division line between the northwest and southeast halves of Lot 9;

Thence north 48 degrees 53 minutes east, along the last mentioned division line, 4258 feet, more or less, to the point of commencement.

EIGHTLY:

ALL AND SINGULAR that certain parcel or tract of land and premises situate lying and being in the City of Kanata, in the Regional Municipality of Ottawa-Carleton and the Province of Ontario and being composed of Part of Lot 4, Concession 2 of the Township of March and being more particularly described as follows:

PREMISING that the north easterly limit of said Lot 4 has an astronomic bearing of north 41 degrees 53 minutes west as shown on Plan 5R-1749 and relating all bearings herein thereto;

COMMENCING at the most easterly angle of the said Lot 4;

THENCE north 41 degrees 53 minutes west along the north easterly limit of the said Lot, a distance of 1995.6 feet more or less to the division line between Lots 4 and 5;

THENCE south westerly along the said division line having the following courses and distances;

THENCE south 48 degrees 30 minutes west, a distance of 240.46 feet;

THENCE south 47 degrees 47 minutes 20 seconds west, a distance of 512.17 feet;

THENCE south 47 degrees 27 minutes 20 seconds west, a distance of 413.19 feet;

THENCE south 48 degrees 40 minutes 35 seconds west, a distance of 692.90 feet;

THENCE south 47 degrees 31 minutes 20 seconds west, a distance of 519.50 feet to the easterly limit of the Goulbourn Forced Road;

THENCE southerly along the said easterly limit of the Goulbourn Forced Road having the following courses and distances;

THENCE south 13 degrees 04 minutes 20 seconds east, a distance of 49.38 feet;

THENCE south 14 degrees 49 minutes 00 seconds east, a distance of 245.60 feet;

THENCE south 80 degrees 13 minutes 25 seconds west, a distance of 18.48 feet;

THENCE south 6 degrees 10 minutes 40 seconds east, a distance of 164.62 feet;

THENCE south 36 degrees 35 minutes 40 seconds east, a distance of 519.97 feet;

THENCE south 32 degrees 05 minutes 30 seconds east, a distance of 452.79;

THENCE south 24 degrees 26 minutes 35 seconds east, a distance of 366.62;

THENCE south 27 degrees 54 minutes 10 seconds east, a distance of 306.96 feet to the division line between Lots 3 and 4;

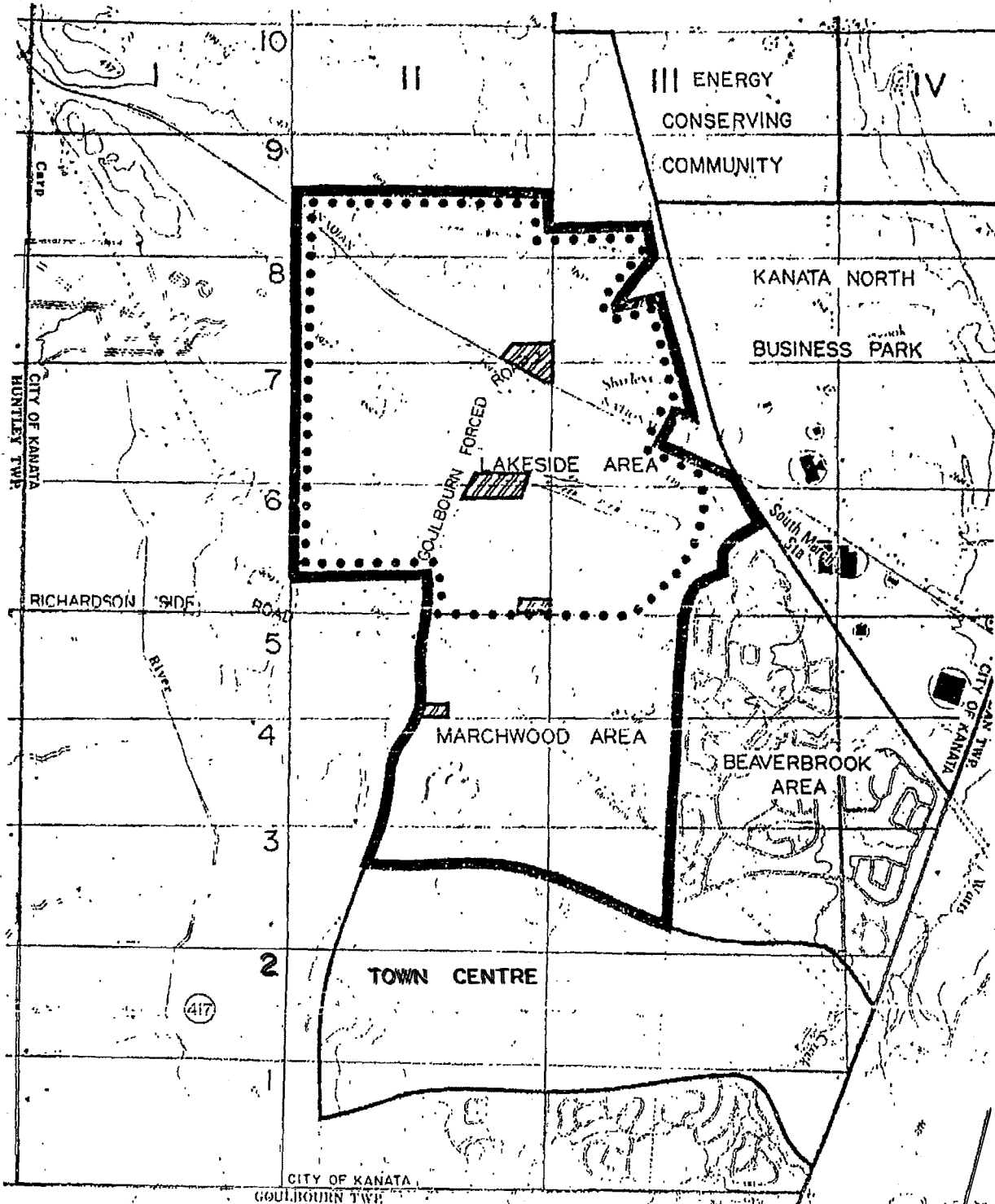
THENCE north 48 degrees 09 minutes east along the last mentioned division line 2965.1 feet more or less to the point of commencement.

THIS AGREEMENT SHALL APPLY TO THE LANDS SHOWN AS "CORPORATE PROPERTY" ON THIS SCHEDULE.

SCHEDULE "A"

REFERENCE MAP MARCHWOOD-LAKESIDE AREA 140350

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LEGEND

- CORP. PROPERTY INSIDE MARCHWOOD LAKESIDE
- TRANSMISSION LINE - TELEPHONE
- TRANSMISSION LINE - HYDRO
- AREA SUBJECT TO AGREEMENT
- PROPERTIES NOT OWNED BY CORP.

AMENDMENT 24

OFFICIAL PLAN OF THE OTTAWA-CARLETON PLANNING AREA

Purpose

The purpose of Amendment 24 is to redesignate certain lands in Lots 4 and 5, Concession I, Lots 3, 4, 5, 6, 7, 8 and the south half of Lot 9 in Concession II, and Lots 6, 7, 8 and the south half of Lot 9 in Concession III, City of Kanata, from "Special Study Area", "Agricultural Resource Area" and "Natural Environment Area Classes 1 and 2" to "Principal Urban Area" as shown on Schedule "1" attached and to extend the "Residential District" designation and add Natural Environment Area Classes 1 and 2 as shown on Schedule "2" attached.

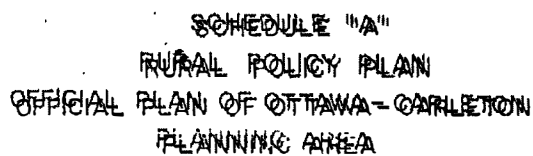
Basis

The Regional Official Plan as approved by Council 9 Oct, 1974 did not envisage urban development on the lands described above and hence it is necessary to amend the Plan so that development may proceed. It is felt that several small forest areas will retain sufficient natural environment characteristics to warrant their preservation as part of the urban community.

The Amendment

1. Schedule "A" - Rural Policy Plan be amended as shown on Schedule "1" of this amendment.
2. Schedule "B" - Urban Policy Plan be amended as shown on Schedule "2" of this amendment.
3. Map "2" of "Appendix E" as introduced through Amendment 12 be amended as shown on Schedule "3" of this amendment.
4. Section 5.3.9 as introduced through Amendment 12 be amended by deleting the first two paragraphs; by deleting the first two words of the third paragraph and replacing them with "The first"; and by deleting the second word of the fourth paragraph and replacing it with "second".
5. Section 5.3.10 as introduced through Amendment 12 be amended by adding the phrase "except for that portion within the West Urban Community" after the phrase "the South March Highlands" in policy 15.
6. Section 5.3.10 as introduced through Amendment 12 be amended by deleting policy 19.

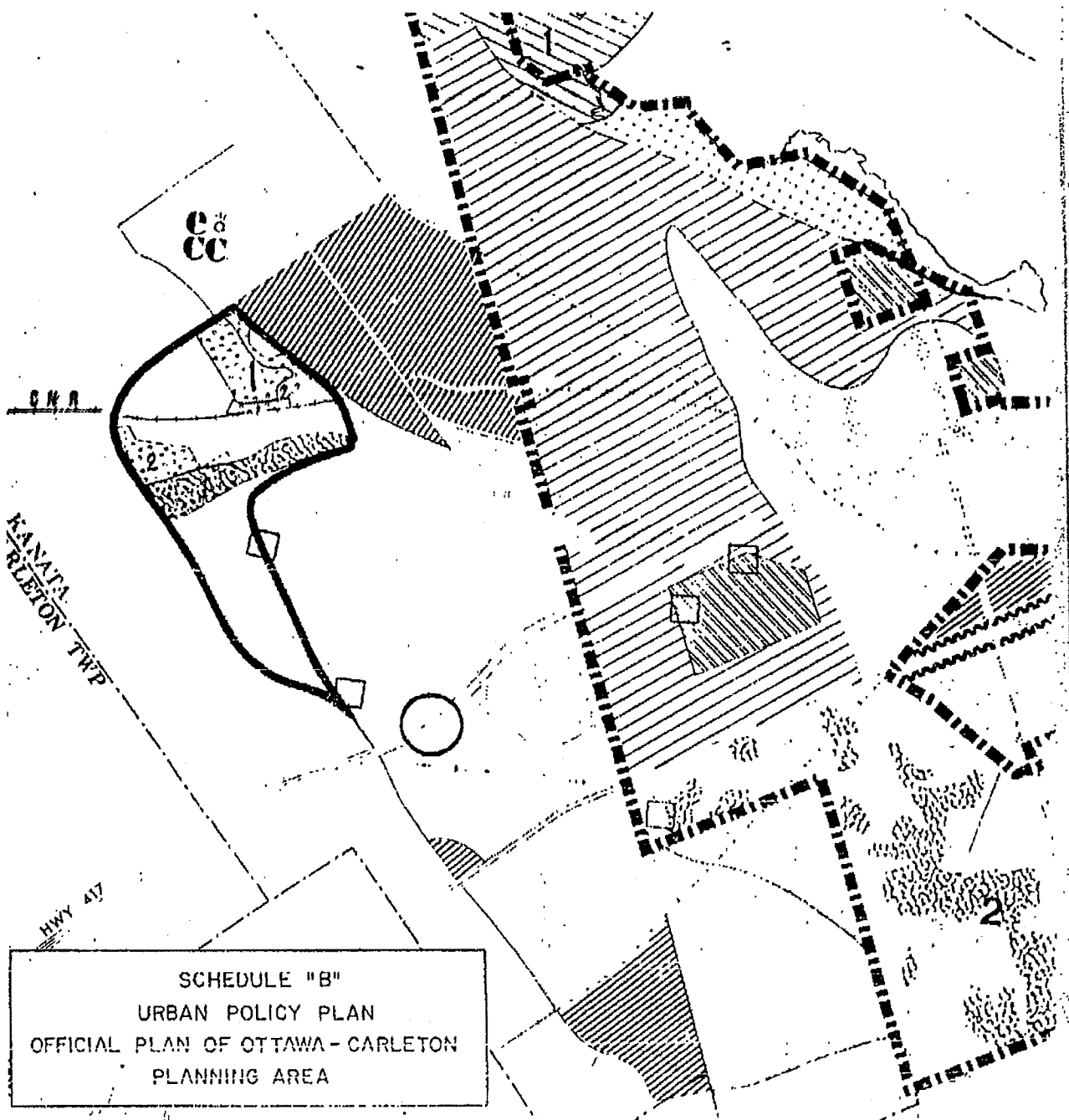
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	ENVIRONMENTAL AREA CLASS 11		WILLAGE
	ENVIRONMENTAL AREA CLASS 22		INTERIM RIVER CORRIDOR
	ENVIRONMENTAL AREA CLASS 33		POTENTIAL SOLID WASTE DISPOSAL SITE
	WATER ACCESS AND WATER REGULATION AREA		AMPHIBIOUS
	GEOMORPHIC OR GEOLOGICAL FEATURE		ENVIRONMENTAL CONSTRAINTS AREA
	AGRICULTURAL RESOURCE AREA		PRINCIPAL URBAN AREAS
	MARGINAL RESOURCE AREA		RESERVED INDUSTRY
	MINERAL RESOURCE AREA		OTHER EXTENSIVE USE
			AREAS SUBJECT TO AMENDMENT

SSSEE: 1110000.00

SCHEDULE "2" REGIONAL OFFICIAL PLAN AMENDMENT No.24



LEGEND

- RESIDENTIAL DISTRICT
- GENERAL INDUSTRY
- RESTRICTED INDUSTRY
- DISTRICT CENTRE
- OTHER EXTENSIVE USE
- ENVIRONMENTAL CONSTRAINTS AREA
- THESE LANDS DESIGNATED AS RESIDENTIAL DISTRICT, AND TO BE USED AS AN ENERGY CONSERVING COMMUNITY
- SPECIAL STUDY AREA

- AGRICULTURAL RESOURCE AREA
- GEOMORPHIC OR GEOLOGICAL FEATURE
- MAJOR COMMERCIAL
- GREENBELT BOUNDARY
- WATERFRONT OPEN SPACE
- ENVIRONMENTAL AREA CLASS 1
- ENVIRONMENTAL AREA CLASS 1 (DRIVER CORRIDOR)
- ENVIRONMENTAL AREA CLASS 2
- AREA SUBJECT TO AMENDMENT

NS140350

DATED THE 26th day of May 1981PROPERTY OF THE
LAND REGISTRY OFFICE

CAMPEAU CORPORATION

AND

THE CORPORATION OF THE CITY OF KANATA

NS140350

AGREEMENT

JAN 1981
OF OTTAWA-CARLETON
CITY OF OTTAWA
15-1-1981

'82 JAK -8 P2:34

IN THE LAND REGISTRY OFFICE
OTTAWA, ONTARIO

JAN 1981

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15

The Regional Municipality of
Ottawa-Carleton
Legal Department
222 Queen Street
Ottawa, Ontario

DK:web

File No: P.1.10.1.25

- Box-215 -

LAND REGISTRY #5

CK	
	#
Bk. 2 March	
Bk. 7	

JAN 1981 0074 0000 003901