

**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., INITIUM COMMERCE LABS INC.,
INITIUM TRADING AND SOURCING CORP.,
SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC.,
2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC.,
1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

**MOTION RECORD OF THE RESPONDENT
OXFORD PROPERTIES GROUP
(Appointment of Arbitrator)
(Returnable on a date to be fixed)**

August 29, 2018

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Lawyers for Oxford Properties Group

TO: **THE SERVICE LIST**

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TAB 1

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
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Applicants

NOTICE OF MOTION

(Returnable on a date to be fixed)

Oxford Properties Group and OPGI Management Limited, together with Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (collectively, "**Oxford**") will make a motion to the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) on a date to be fixed at a 9:30 am chambers appointment, at 330 University Avenue in the City of Toronto, Ontario.

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

THE MOTION IS FOR:

1. The appointment of John A. Keefe, Keefe Chambers, Arbitration Place as arbitrator to determine the Current Value of the Sears Property (as those terms are defined below) pursuant to Section 12(d)(ii) of an Option Agreement made as of January 21, 1994 between Sears Canada Inc. (“**Sears**”) and Regional Shopping Centres Limited, as amended (the “**Option Agreement**”).

THE GROUNDS FOR THE MOTION ARE:

1. The Option Agreement relates to real property legally described as Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 3 on Reference Plan 65R-899 (being PIN03554-0077) on which Sears previously operated a Sears department store (the “**Sears Property**”). The Sears Property is physically connected to the Upper Canada Mall in the City of Newmarket, which is owned by Oxford.
2. The Option Agreement grants Oxford the right to purchase the Sears Property for a purchase price equal to its Current Value (as defined therein) calculated in accordance with Section 11 of the Option Agreement (the “**Option**”).
3. Oxford exercised the Option on June 29, 2018, resulting in a binding agreement of purchase and sale being constituted for the Sears Property at a purchase price equal to the Current Value, as defined and determined in accordance with the terms of the Option Agreement.

4. The Option Agreement prescribes the method for determining Current Value in the absence of the Current Value being agreed to by Sears and Oxford. No agreement on Current Value in accordance with the terms of the Option Agreement has been reached.
5. Pursuant to the terms of the Option Agreement, appraisals were obtained by each of Sears and Oxford. As the appraisals were not within 5% of one another, the final determination of the Current Value of the Sears Property is to be determined by a single arbitrator appointed by the parties or, failing agreement as to the identity of the arbitrator, by an arbitrator appointed by the Court upon an application made by either Sears or Oxford.
6. The parties have been unable to agree on the selection of arbitrator.
7. Oxford seeks the appointment of John A. Keefe as arbitrator.
8. Mr. Keefe has subject matter expertise, having acted as counsel and as arbitrator in numerous arbitrations involving real estate, particularly those specifically involving real estate valuations which involve the determination of the fair market value of land.
9. Mr. Keefe also has significant experience in arbitral proceedings generally, where he has acted as counsel and as arbitrator in numerous domestic and international commercial arbitrations, including arbitrations under the rules of the International Chamber of Commerce, the London Court of International Arbitration, the *Ontario and British Columbia International Arbitration Acts* and the *Canada Arbitration Act*.
10. Mr. Keefe is unencumbered by any prior involvement in the within proceedings. The arbitrator to be appointed by the Court will only have jurisdiction to decide one issue under the Option Agreement: the Current Value of the Sears Property, which is the

purchase price payable by Oxford in accordance with the terms of the Option Agreement. This narrow issue will not require any application of CCAA insolvency principles, but rather will relate solely to real property valuation. The parties have expressly, by contract, agreed to have the matter determined in this manner.

11. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE to be used at the hearing of the motion:

1. The affidavit of Mudasir Marfatia, sworn August 29, 2018.
2. Such further and other materials counsel may advise and this Honourable Court may permit.

August 29, 2018

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Lawyers for Oxford Properties Group

TO: **THE SERVICE 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., *et al.*

(Applicants)

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

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(Returnable on a date to be fixed)**

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Lawyers for Oxford Properties Group

TAB 2

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC.,
CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC.,
THE CUT INC., SEARS CONTACT SERVICES INC.,
INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC.,
INITIUM TRADING AND SOURCING CORP.,
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Applicants

**AFFIDAVIT OF MUDASIR MARFATIA
(Sworn on August 29, 2018)**

I, **MUDASIR MARFATIA**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

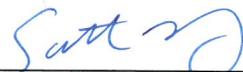
1. I am a lawyer with the firm of Thornton Grout Finnigan LLP (“TGF”), lawyers for Oxford Properties Group and OPGI Management Limited Partnership, together with Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc. (collectively, “Oxford”), and as such have knowledge of the matters set out below.
2. The facts stated herein are within my personal knowledge or determined from the face of the documents attached hereto as Exhibits and from the information and advice provided

to me by D.J. Miller, a lawyer with TGF. Where I have relied upon such information and advice, I verily believe it to be true.

3. A copy of the Option Agreement made as of January 21, 1994 between Sears Canada Inc. (“**Sears**”) and Regional Shopping Centres Limited, as amended (the “**Option Agreement**”) is attached hereto as **Exhibit “A”**. The Option Agreement was previously annexed as Exhibit “H” to an Affidavit of Genevieve Wong of Oxford sworn July 12, 2017 that was served and filed in this proceeding.
4. The Option Agreement grants Oxford the right to purchase the property legally described as Part of Lot 96, Concession 1, West of Yonge Street, Town of Newmarket, Regional Municipality of York, designated as Part 3 on Reference Plan 65R-899 (being PIN03554-0077) (the “**Sears Property**”) at a purchase price equal to the Current Value (as defined in the Option Agreement), to be determined in accordance with a mechanism set out therein.
5. Sears and Oxford have been engaged in the process outlined in the Option Agreement to determine the Current Value since the triggering of the option by Oxford on June 29, 2018. I am advised by Ms. Miller and verily believe that Sears and Oxford have been unable to agree on the Current Value of the Sears Property. In addition, despite the parties’ good faith negotiations, Sears and Oxford have been unable to agree on an arbitrator to be appointed, who will make a final binding determination of Current Value in accordance with the terms of the Option Agreement.
6. Oxford has proposed that John A. Keefe act as arbitrator. Sears has not agreed to the appointment of Mr. Keefe.

7. A copy of Mr. Keefe's curriculum vitae is attached hereto as **Exhibit "B"**.
8. I am advised by Ms. Miller and verily believe that Oxford served a Notice of Dispute regarding claims disallowed by Sears and the Monitor in the CCAA process on August 24, 2018, in accordance with the timelines provided under the Claims Procedure Order.
9. I swear this affidavit in support of a motion brought by Oxford pursuant to section 12(d)(ii) of the Option Agreement to appoint John A. Keefe as arbitrator for the purpose of determining Current Value of the Sears Property, and for no other or improper purpose.

SWORN before me at the City of Toronto,
in the Province of Ontario, this 29th day of
August, 2018.



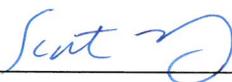
Commissioner for Taking Affidavits

Scott McGrath



MUDASIR MARFATIA

This is **Exhibit "A"** to the Affidavit of Mudasir Marfatia,
sworn before me this 29th day of August, 2018



Commissioner for Taking Affidavits

Scott McGrath

Sears/ORC/
~~FOR REGISTRATION PURPOSES~~

UPPER CANADA MALL OPTION TO PURCHASE

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

B E T W E E N:

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

(hereinafter called "Sears")

- and -

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

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

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

Definitions

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

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

Grant of Option

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

Term and Limitations

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

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

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

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

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

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

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

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

Exercise of Option

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

Agreement of Purchase

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

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

Determination of Current Value

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

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

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

- (d) If there is more than one appraiser and if, in their reports, they do not agree on the Current Value of either the Sears (Upper Canada) Lands or the Sears (Upper Canada) Reserved Lands, Sears and the Owner shall, acting in good faith, attempt to agree on the Current Value of such lands over which there is disagreement within ten (10) days after receipt of the reports. If Sears and the Owner are unable to so agree on the Current Value of such lands over which there is disagreement, then the following provisions shall apply:
- (i) if the lower appraisal is within 5% of the higher appraisal, the Current Value shall be the average of the two appraisals;
 - (ii) if sub-paragraph (i) is not applicable, then the Current Value shall be determined by arbitration and Sears and the Owner shall appoint a single arbitrator who, acting reasonably in accordance with the provisions hereof and in his sole discretion, shall determine the Current Value of the lands over which there is disagreement which shall in any event be not less than the lower appraisal nor greater than the higher appraisal but need not be an average of them and if Sears and the Owner are unable to agree upon the arbitrator within fifteen (15) days after receipt of the reports, such arbitrator shall be appointed by a judge of the Ontario Court (General Division) upon the application of either Sears or the Owner, and the arbitrator shall render his or her decision no later than twenty (20) days after his or her appointment.
- (e) The determination of Current Value pursuant to this clause shall, in the absence of fraud, be final and binding upon Sears and the Owner and all other persons affected thereby and there shall be no appeal therefrom.
- (f) The appraiser or appraisers, as the case may be, and the arbitrator, if any, shall be deemed to be acting as experts and not as arbitrators.
- (g) Each of Sears and the Owner shall pay the fees and expenses of the appraiser appointed by it and shall each pay one-half of the cost of an arbitrator.

Closing

- 13.(a) The closing (the "Closing") of any sale of the Sears Lands to the Owner pursuant to this Agreement shall be held at 10:00 a.m. (local time) thirty (30) days after the determination of the Current Value of the Sears Lands, or such earlier or later date as may be mutually agreed upon by the parties to the transaction.
- (b) At the Closing a transfer from Sears or its successor in title, if applicable, to the Owner of the Sears Lands, together with such instruments and documents (to be reasonably satisfactory to counsel for the Owner) as may be necessary or desirable to give effect to the sale and transfer of the Sears Lands (the "Transfer Documents") shall be delivered to the Owner. At the Closing,

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

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

Notice

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

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

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

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

Applicable Law

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

Invalidity

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

Amendment of Agreement

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

Successors and Assigns

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

Time

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

Non-Waiver

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

Further Assurances

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

Calculation of Time

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

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

SEARS CANADA INC.

Per:  c/s
Larry E. Ginther - Vice President, Chief Financial Officer and Treasurer

Per: 
Ronald R. Nezer - Vice President, Secretary and General Counsel
We have authority to bind the Corporation.

REGIONAL SHOPPING CENTRES LIMITED

Per:  c/s
RONALD L. MEIERS
Senior Vice-President
& Chief Operating Officer

Per: 
We have authority to bind the Corporation.
WILLIAM W. HYMOUTH
Senior Vice-President
Corporate Planning

This is **Exhibit "B"** to the Affidavit of Mudasir Marfatia,
sworn before me this 29th day of August, 2018



Commissioner for Taking Affidavits

Scott McGrath

**JOHN A. KEEFE*****CURRICULUM VITAE***

Keefe Chambers
 Arbitration Place
 333 Bay Street, Suite 900
 Toronto, Ontario M5H 2R2
 Telephone: (416) 309.4486
 Email: jkeefe@keefechambers.com

Present**Arbitration Place****Previously****Partner, Goodmans LLP**

Engaged in all aspects of commercial litigation, commercial arbitration and appearances before administrative tribunals

Education

1971 B.A. University of Toronto
 (Economics)

1974 LL.B University of Toronto
 Faculty of Law

April 1976 Called to the Ontario Bar

ARBITRATION AND MEDIATION TRAINING

1985 Harvard University
 Program on Negotiation

1996 Harvard University
 Mediation Workshop
 (Through the Advocates' Society)

2018 Harvard University
 Negotiation Masterclass

PROFESSIONAL ASSOCIATIONS

University of Toronto Governing Council – Discipline Tribunal – 1992-2016
 The Advocates' Society – Past Director
 International Chamber of Commerce – Canadian Arbitration Committee
 International Bar Association – Past Secretary Section on Business Crime
 Arbitration and Mediation Institute – Past Director

TEACHING

1982 – 1995 University of Toronto, Faculty of Law, Instructor, Trial Advocacy

PRINCIPAL AREAS OF PRACTICE

1. COMMERCIAL ARBITRATION AND MEDIATION

Have acted as counsel and as arbitrator in numerous domestic and international commercial arbitrations, including arbitrations under the rules of the International Chamber of Commerce, the London Court of International Arbitration, the *Ontario and British Columbia International Arbitration Acts* and the *Canada Arbitration Act*. Also, a member of the steering committee that established a pilot project of the Bench and Bar for mandatory mediation for all civil cases in Ontario.

2. REAL ESTATE AND COMMERCIAL LEASING DISPUTES

Have acted as counsel and as arbitrator in numerous arbitrations involving real estate and commercial leasing disputes, particularly those involving real estate valuations which involve the determination of the fair market value of land.

3. CORPORATE COMMERCIAL LITIGATION AND DISPUTE RESOLUTION

Have acted as counsel in numerous corporate disputes, usually involving some element of dishonesty or breach of fiduciary duties including shareholder disputes, proxy contests and oppression remedies.

4. SECURITIES LITIGATION, BUSINESS CRIME AND UNETHICAL CONDUCT

Have been involved in numerous matters relating to business crime and unethical conduct including corporate governance issues, internal investigations, employee dishonesty, conflict of interest, theft of trade secrets, money laundering, bribery of foreign officials and sexual harassment. Have acted as counsel to boards, audit committees and special committees to investigate allegations of corporate misconduct and conflict of interest. Past Secretary of the Section on Business Crime of the International Bar Association.

5. PROFESSIONAL RECOGNITION

Regularly recognized as a leading practitioner in the areas of commercial litigation, commercial arbitration and securities litigation in the Canadian Legal Lexpert Directory, the *Lexpert/American Lawyer Media Guide to the Leading 500 Lawyers in Canada*, *The Lexpert Special Edition on Canada's Leading Litigation Lawyers*, *The Lexpert Guide to the Leading US/Canada Cross-border Litigation Lawyers*, *Chambers Global Guide to the World's Leading Lawyers for Business*, *to Canada's Leading Lawyers for Business*, *Woodward/White's The Best Lawyers in Canada*, *Who's Who Legal* and *Euromoney's Guide to the World's Leading Litigation Lawyers and Experts in Commercial Arbitration*.

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.*

(Applicants)

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

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

Proceedings commenced at Toronto

**MOTION RECORD OF THE RESPONDENT
OXFORD PROPERTIES GROUP
(Appointment of Arbitrator)**

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Lawyers for Oxford Properties Group