

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

FOURTH REPORT OF THE COURT APPOINTED RECEIVER
OF BAYSIDE MALL LIMITED

Dated June 5, 2014

Introduction

Pursuant to a motion heard on December 5, 2012, the Honourable Mr. Justice Wilton-Siegel appointed A. John Page & Associates Inc. as receiver and manager ("**the Receiver**") of the assets, undertakings and properties of Bayside Mall Limited ("**Bayside**") used in connection with a business pursuant to Section 243 (1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended ("**the BIA**") and Section 101 of the Courts of Justice Act, R.S.O. 1990, c. 43, as amended. A copy of the Order of the Honourable Mr. Justice Wilton-Siegel dated December 5, 2012 ("**the Initial Order**") is attached as *Exhibit "A"*.

The principal asset of Bayside is a 245,598 leasable square foot shopping mall located at 150-202 Christina St. N., Sarnia, Ontario ("**Bayside Mall**", the "**Mall**" or "**the Building**").

On January 28, 2013 the Receiver made its First Report to the Court ("**the First Report**").

On February 12, 2013 the Receiver made its Supplement to the First Report ("**the Supplement to the First Report**").

On February 15, 2013 the Receiver issued a Notice of Motion asking, among other things, for an order directing the former property manager of Bayside Mall, SAMAK Management & Construction Inc. (“**SAMAK**”), to remit \$155,580.93 to the Receiver, being the amount of rent collected from tenants of the Bayside Mall by SAMAK for the month of December 2012 (“**the December Rents**”).

By order of the Honourable Mr. Justice Wilton-Siegel dated February 21, 2013 (“**the February 21, 2013 Order**”) the activities of the Receiver set down in the First Report and the Supplement to the First Report were approved. The fees and expenses of the Receiver and its then primary counsel, Heath Whiteley, to January 31, 2013 were also approved. The fees and expenses of the Receiver’s independent counsel, Gardiner Roberts LLP, to December 31, 2012 were also approved.

On February 28, 2013 the Receiver made its Second Supplement to the First Report to provide the court with an update of certain information relating to the December Rents matter.

In light of the bankruptcy of SAMAK (see later) the motion for an order directing SAMAK to remit the December Rents to the Receiver was adjourned by the court to a date to be determined. It now seems likely that that motion will never proceed.

On April 16, 2013 the Receiver made its Second Report to the Court (“**the Second Report**”).

By order of the Honourable Mr. Justice Wilton-Siegel dated April 25, 2013 (“**the April 25, 2013 Order**”) the activities of the Receiver set down in the Second Report were approved. The Receiver was authorized to enter into a two year lease extension agreement with the County of Lambton. The receipts and disbursements set down in the Statement of Receipts and Disbursements contained in the Second Report, together with the fees and expenses of the Receiver, the Receiver’s counsel and the Receiver’s independent counsel to March 31, 2013 were also approved.

On October 23, 2013 the Receiver made its Third Report to the Court (“**the Third Report**”).

By order of the Honourable Madam Justice Thorburn dated November 7, 2013 the activities of the Receiver set down in the Third Report were approved. The receipts and disbursements set down in the Statement of Receipts and Disbursements contained in the Third Report, together with the fees and expenses of the Receiver,

the Receiver's counsel and the Receiver's independent counsel to September 30, 2013 were also approved.

Notice to Reader

In preparing this Report and making some of the comments contained in the Report, the Receiver has been provided with unaudited financial and other information from a variety of sources. While the Receiver has no reason to believe that such information is not materially correct, readers should note that the Receiver has not formally audited or reviewed such information. In this Report nothing of a material nature is believed to turn on the information not otherwise audited or reviewed for accuracy.

The Bayside Mall - Overview

The Bayside Mall comprises a 245,598 leasable square foot enclosed shopping mall and office building together with close to 1,000 underground and over 300 surface parking spaces. It is located at 150-202 Christina St. N. in Sarnia, Ontario. The Bayside Mall is situated on approximately 8.72 acres of leased land ("**the Land**") owned by The City of Sarnia ("**the City**") pursuant to a land lease (see later). At the date of our appointment the Bayside Mall had 24 tenants collectively occupying approximately 44% of the available space. Two small tenants have since left the Mall and there are now 22 tenants occupying 43.55% of the Mall. In addition a number of people rent parking and storage space at the Mall. The Receiver's property manager, Larlyn Property Management Ltd. ("**Larlyn**"), continues to handle day to day management issues at the Mall.

Purpose of this Report

- To provide the court with information on the activities of the Receiver since its Third Report
- To seek the advice and direction of the court with respect to the future of the receivership, given the current inability of the Receiver to effect a sale of Building at a reasonable price, the current inability of the Receiver to reach an agreement with the City satisfactory to ICICI Bank Canada to enable the Land to be sold with the Building and the Receiver's looming shortage of funds
- To seek approval of the activities of the Receiver and its Statement of Receipts and Disbursements as described in this Report
- To seek approval for the fees and disbursements of the Receiver, Heath Whiteley,

and the Receiver's independent legal counsel, Gardiner Roberts, for the period from October 1, 2013 to May 31, 2014 as set down in fee affidavits.

Summary of Key Economic Interests in the Bayside Mall

As detailed further elsewhere in this report, the Mall is owned by Bayside Mall Limited and is subject to first and second mortgages held by ICICI Bank Canada ("**the Bank**") on which over \$10 million is outstanding. There are unpaid property taxes of \$830,000 as at June 1, 2014 and further arrears continue to accrue. The land on which the Mall is situated is owned by the City. The prospects for the Bank seeing its loans repaid in full seem unlikely and therefore any unsecured creditors of Bayside would seem to have no economic interest in the Mall.

The Land Lease

As noted earlier, Bayside Mall is situated on leased land ("**the Land**") owned by the City. This relationship is governed by a complex 97 page land lease made as of April 15, 1981 and since amended ("**the Land Lease**"). We attach a copy of the Land Lease as *Exhibit "B"*. As noted in the Third Report it appears that no rent has been paid to the City in many years pursuant to the Land Lease.

We and our counsel have not to date expended significant effort in attempting to understand and clarify the rights and obligations under the Land Lease. Based on a cursory and incomplete review we have however noticed that the Land Lease appears to be initially for a term of 60 years to approximately 2043 with a 30 year right of renewal and a right to renew for a further 60 years if major renovation is undertaken. There is an obligation to keep the Building in good order and condition. There is a clause that states that if a receiver is appointed then the Land Lease can be terminated. There is a further clause that appears to give the holder of a mortgage over the Mall the right, if this termination right has been exercised, to demand a new lease on the same terms and conditions. Given the complexities of the Land Lease we do not have a strong sense of the rights of the City, of Bayside and of the Bank pursuant to Land Lease. It has been until now our hope that it would be more a more productive use of time to try and negotiate a prospective agreement between the City and the Receiver, with the consent of the Bank, regarding the future of the Mall and the Land.

The Physical Condition of the Bayside Mall

The Parking Garage and the City Order to Remedy –

As detailed in the Third Report, at the date of our last report there was an outstanding “Order to Remedy Unsafe Building” dated September 17, 2013 (“**the September 17, 2013 Order to Remedy**”) issued by Mr. Alan Shaw, the City Chief Building Official . We attach a copy of the September 17, 2013 Order as *Exhibit “C”*. The September 17, 2013 Order has five “Required Remedial Steps”. We/Larlyn have complied with and, where applicable, are continuing to comply with the first four steps. Step 5 states that a certain repair strategy (“**Repair Strategy One**”) is to be commenced no later than June 1st 2014.” Repair Strategy One involves localised concrete and expansion joint repairs to address leaks through the expansion joints, localised roof slab membrane and drain leakage and corresponding concrete deterioration. The most recent estimate of the cost of Repair Strategy One is in the \$400,000 - \$600,000 range. Based on the advice of our engineers, Halsall Associates (“**Halsall**”), (see later) we have not to date committed to undertake Repair Strategy One in the parking garage. We should note that, at the present time, we have insufficient funds on hand to be able to commence Repair Strategy One.

Halsall provided us with a report on the condition of the parking garage dated September 18, 2013 (“**the Garage Condition Evaluation**”) at the same time Mr. Shaw was issuing the September 17, 2013 Order. In summary, with regular inspection, Halsall did not think that the areas that were the subject of the September 17, 2013 Order presented an immediate safety concern. While they recommend that Repair Strategy One be completed “in the near term”, they commented that, if the work is deferred beyond the summer of 2014 then they recommended that the garage be reassessed.

Periodic inspections have continued. We understand that Larlyn are continuing their weekly inspections and our local engineers, MIG Engineering (2011) Ltd. (“**MIG**”), have been conducting monthly inspections. Copies of their reports have been forwarded periodically to Mr. Shaw. The only issue raised by MIG requiring action was a recommendation that a small amount of shoring be installed at one place in the parking garage. We promptly had Larlyn follow MIG’s recommendation.

We met with Mr. Shaw, Ms Margaret Misk-Evans, the City Manager, and Mr. Brian Knott, the City solicitor, on January 27, 2014 in the Sarnia area to discuss their concerns and our plans and continue to be in regular communication with them.

In response to a recommendation by Halsall in July 2013 we have had height restrictors erected on the outdoor parking garage area that forms the roof of some of the parking garage in order to limit the weight of vehicles parking there. This has allowed, with the concurrence of Mr. Shaw, the previously closed off area of the roof to be opened for vehicle parking.

To date no matters of immediate and valid concern have been brought to our attention that have not been promptly addressed and we have no reason to believe there is any immediate potential health or safety issue relating to the parking garage.

We commissioned Halsall to update their Garage Condition Evaluation. In their report dated May 8, 2014 (“**The Garage Condition Evaluation Update**”) they stated that in their opinion Repair Strategy One should be completed in the near term, but if the work is deferred beyond December 2014 they recommend that the garage be reassessed. Therefore, based on their experience, and in their opinion, they do not believe it is essential from a safety perspective that work on implementing Repair Strategy One be commenced on or before June 1, 2014. We attach a copy of the Garage Condition Evaluation Update as *Exhibit “D”*.

We supplied a copy of the Garage Condition Evaluation Update to Mr. Shaw and asked that the deadline set down in step 5 of the September 17, 2013 Order to Remedy for the commencement Repair Strategy One be set back to at least December 1, 2014.

Mr. Shaw did not immediately accept the findings of the Garage Condition Evaluation Update and obtained his own peer review of it. We had to redirect our focus on seeking the advice and direction of the court for a period of time in May because we were concerned over the possibility of having to make a different court application to address this safety issue.

However, fortunately on May 27, 2014 we received an email from Mr. Shaw enclosing an “Order to Remedy Unsafe Building” dated May 27, 2014 (“**the**

May 27, 2014 Order to Remedy”). We have attached a copy of the May 27, 2014 Order to Remedy as *Exhibit “E”*. The May 27, 2014 Order to Remedy rescinds and replaces the September 17, 2013 Order to Remedy. It seems to adopt the findings of Halsall in the Garage Condition Evaluation Update and extends until late 2014 and early 2015 the time by which garage repairs need to have been commenced.

Repairs and Maintenance

Larlyn have been overseeing necessary repairs and maintenance at the Mall. Major expenditures require our prior approval.

The Marketing of the Mall

As noted in the Third Report, on May 16, 2013 we signed a listing agreement (“**the Listing Agreement**”) with Colliers International London Ontario (“Colliers”). Colliers launched the marketing of the Mall on October 1, 2013. The Listing Agreement covered the period from May 16 to November 16, 2013. We extended the Listing Agreement to February 16, 2014. In light of, among other things, the lack of serious interest in the Mall without the Land we did not extend the Listing Agreement further but have allowed it to expire and have taken the Mall off the market pending, among other things, us seeing if we could negotiate an agreement with the City through which the Land and Building could be sold jointly. We provide overall details below of the marketing of the Mall during the period ended February 16, 2014. Since some of the information relating to our marketing is market sensitive we have not included it in the body of this report but have attached as *Exhibit “F”* a confidential memorandum that we wrote in March 2014 providing more details of the marketing of the Mall, the results of that marketing and our assessment of those results. We are asking the court to order that this memorandum be sealed until a sale of the Mall has closed or we are discharged.

Delay in Commencing Launch

Despite having signed the Listing Agreement in May 2013 we delayed the launch of the Mall pending determining whether we could jointly sell the Land and the Building as we saw this as a much more attractive package. As detailed in the Third Report, we held discussions with the City in the spring and summer of 2013 but were unable to reach an agreement to that effect at that

time. The Bank did not wish to see us delay marketing the Mall any further so, rather than continue discussions with the City at that time, we moved to launch the marketing of just the Mall (ie without the Land).

Preparations for Launch

In preparation for the launch of the marketing of Bayside Mall we worked with Colliers to create a flier and a Confidential Information Memorandum ("CIM") and to populate an on line data room for potential purchasers, hosted by Colliers.

The CIM detailed the two stage sales process we wished to adopt, namely, in stage one encouraging a purchaser to submit a non binding letter of intent ("LOI") setting down the price and any key conditions prior to us and them incurring the cost of converting such interest into a binding agreement of purchase and sale ("APS"). Parties deemed qualified were to be elevated to the second stage of the sales process where we would attempt to agree upon and sign a binding APS.

It was and is our view that we should provide potential purchasers with as much information as reasonably possible regarding the Mall so that they would be in a position to make either an unconditional bid for the Mall or one with a limited due diligence period during which no issues would likely be revealed that might provide grounds for a purchaser attempting to effect a price reduction.

The books and records and lease information we had obtained on our appointment were at times unclear or incomplete. We worked to compile copies of what we believed to be the most up to date and accurate documentation reflecting the leasing arrangements between the tenants and Bayside Mall. We compiled a rent roll to best reflect the information we had regarding the rental obligations of tenants. We worked with Larlyn to prepare a current year pro forma financial statement. We also prepared memoranda providing additional information and explanations of the Land Lease and of the recent "Orders to Remedy Unsafe Building" that had been issued with respect to the parking garage. We had Halsall Associates prepare a Building Condition Report and a specific Parking Garage Evaluation.

All this information was included in the data room.

We also worked with our legal counsel, Gardiner Roberts, to prepare a form of Confidentiality Agreement suitable for presentation to potential purchasers and a standard form of APS ready for use if any of the LOIs were deemed worthy of elevation to the second stage of our offering process.

The Determination of a Listing Price

Based on input from Colliers and on the appraisals we had previously obtained from the Altus Group we listed the Mall at \$6.5 million.

Initial Marketing

Colliers launched the marketing of the Mall on October 1, 2013. They ran advertisements in the Globe & Mail Report on Business on October 8 and 10, 2013 and again on December 10 and 12, 2013. They sent out fliers to 295 investors and conducted other marketing activities. They posted details on their website. We also posted details of the opportunity on our own website.

Colliers provided us with bi weekly reports on their activities (“**the Bi Weekly Colliers Reports**”).

Non Binding Letters of Intent

Colliers forwarded to us 9 LOIs from 5 different parties.

Assessment of the LOIs

We reviewed all the LOIs. We concluded that none of the LOIs was attractive.

Communications with ICICI Bank Canada

We have been supplying the Bank and its legal counsel, Heath Whiteley, with copies, on a confidential basis, of the Bi Weekly Colliers Reports and the LOIs. We have had meetings and telephone conversations with the Bank and Mr.

Whiteley regarding the marketing. We have also arranged at least one conference call with Colliers.

Overall Assessment

In general we have not found that the Mall is attractive to purchasers. We attribute much of this lack of serious interest to the fact that we have been trying to sell the Mall without the Land that the Mall is built on. We think that the uncertainties caused by the Land Lease have made the Mall a significantly less attractive opportunity to potential purchasers. It is also affected by the fact that the Mall is over 50% vacant and the lease of the major tenant, the County of Lambton, is due to expire in 2016.

We determined that we should take the Mall off the market while we attempted to negotiate agreements with the City to include the Land in the sale and with the County to have them extend their lease at the Mall.

Depending on the outcome of those negotiations we had been envisaging that we would then likely look for listing proposals from a number of qualified realtors for a remarketing of, hopefully, the Land with the Building.

Discussions with the County of Lambton and the City of Sarnia

As noted, as the marketing of the Building proceeded it became more apparent that the Building without the Land was not an attractive proposition.

The Mall is located at the heart of downtown Sarnia. The Mall is over 30 years old and, in its partially leased state, is “tired”. The City and the Sarnia community seem very interested in seeing a revitalized Mall. The City, in particular, has expressed the desire to see the Building sold to a purchaser with the vision and financial capability to redevelop or otherwise rejuvenate the Mall. They are obviously concerned about the likely impact on their downtown area if the Mall is sold to a poorly financed party or if the Mall were to be abandoned.

The County of Lambton (“**the County**”), as the largest tenant, has also been expressing a concern over the future of the Mall. The County is the largest tenant at Bayside Mall pursuant to a lease dated August 17, 2000 as amended and extended (“**the Lambton Lease**”). The County currently occupies a total of 55,595 sf of office

space and 895 sf of storage space. As authorized by the April 25, 2013 Order, we and Lambton agreed to extend the term of the Lambton Lease by two years to May 15, 2016 otherwise on the same terms and conditions. The County have commented that it would likely take them two years to relocate so, normally, they would be looking to firm up a lease extension at this time. However they were not keen in being committed to staying at the Mall if it were to be purchased by a poorly financed operator who was not prepared to spend the money required to keep it in good repair. They particularly wanted to be sure that certain repairs were going to be undertaken, including Repair Strategy One relating to the parking garage and certain roofing and escalator repairs or replacements. We observed that a lease renewal ought to enhance value at the Mall and would send a positive signal about the future of the Mall whereas a signal that the County was making plans to vacate the Mall would likely be a “disaster”.

The Receiver met with the Mayor of the City, the Warden of the County and senior City and County staff in early January 2014 to brief them on our activities to date and to listen to their concerns and desires. Mr. Whiteley was in attendance at that meeting. We informed them that interest in the Building alone had been “underwhelming” and that the more mainstream potential purchaser groups seemed to have been turned off the opportunity because of the cloud of uncertainty on ownership caused by the Land Lease. We indicated that we thought that a joint sale of the Land and the Building should be in the best interests of all stakeholders. We also explored how it might be possible to extend the lease of the County in a way that addressed the concerns of the County and enhanced the value of the Mall.

We were then asked if we would address a joint meeting of the Councils of the City of Sarnia and the County of Lambton to provide a similar briefing to the councillors. We agreed and this meeting was held at the end of January 2014. Part of the meeting was open to the public and part was “in camera”. Mr. Whiteley was also in attendance at that meeting.

City and County staff were then empowered to meet with us to see if a two part deal between the Receiver and the City regarding offering the Land for sale with the Building and between the Receiver and the County regarding extending the County lease could be agreed.

Since that time we have had eight face to face meetings with County and City staff and their legal counsel and numerous additional conference calls in an attempt to

reach an agreement. Mr. Whiteley, in his role as counsel to the Bank, has attended the earlier meetings and participated in the earlier conference calls. We have had our own independent counsel, Gardiner Roberts, involved in the later meetings and calls.

Status of the Negotiations with the City

Progress has been made on a number of fronts but at the moment the key unresolved issue relates to the “Sharing Formula” that sets down how the proceeds of any joint sale of the Land and Building should be divided between the City and the Receiver. The Receiver has been canvassing the views of the Bank through Mr. Whiteley, as the party with the key economic interest in the proceeds from the sale of the Building. At the moment there is no consensus between the Bank and the City as to an acceptable Sharing Formula. The City is also asking for the right to veto an unsuitable potential purchaser, a concept we are sympathetic to. However they also wish to be guaranteed an, as yet unspecified, minimum amount of funds from a sale. This raises the prospect that, even if a Sharing Formula is agreed or established, the Receiver will be unable to sell the Land and the Building after running a court supervised sale process because the market might be unwilling to pay the minimum amount set by the City. The setting of this minimum seems to be caught up in council politics, perhaps more than usual because it is an election year. Heightened political considerations could be making matters pertaining to the Mall more challenging as getting certainty in a timely manner is harder and there is a real prospect of a council decision out of line with the reality of our negotiations. The fact that it is summer adds to the timing difficulties.

Status of the Negotiations with the County

Negotiations have been progressing but slowly. Although the key aspects of a term sheet relating to a lease extension appeared to have been agreed in March 2014 the County has continued to “ask for more” and assessing and responding to these requests has taken time (and therefore, money). Negotiations with the County have not broken down and we think a deal is achievable. However, given the recent “asks” we do not have a key terms agreement in principle at the moment. The County have indicated that they do not wish to finalize those negotiations and seek the approval of their Council until we have reached an agreement with the City regarding a satisfactory Sharing Formula. As a result of the breakdown in negotiations with the City we therefore feel that our negotiations with the County in the last two months have been going somewhat in circles. This has added to professional costs without us

securing a lease agreement. We have therefore halted these negotiations pending obtaining the advice and the direction of the court.

We have provided more information in regard to the status of negotiations with the City and the County in a confidential memorandum attached as *Exhibit "G"*.

Other Tenants and Leasing Generally

We have not actively attempted to locate tenants for vacant space because such a process takes time and is expensive, in terms of commissions, Receiver's and legal fees and of any required lease hold improvements. In addition new tenancies bind the Mall and its image.

Given our strategy to sell the Mall as soon as reasonably possible, we felt it better that a potential purchaser be as free as possible regarding how they might take the Mall forwards.

We are working with a number of tenants, in one case to try and formalize their lease arrangement and in others to try and offer the certainty of a short term extension until the future of the Mall is clearer. We have very recently heard that two smaller tenants wish to vacate the Mall.

Larlyn and Operations Generally

Larlyn continue to act as property manager. They collect the rent and pay expenses. They have staff on site on a daily basis, including the Mall manager and security and maintenance staff. They address concerns that tenants might have. We have generally received complementary reports from tenants about their level of service. Larlyn provide us with a detailed report and remit surplus moneys to us monthly be it still not always in accordance with the time line set down in our contract with them.

Media Enquiries

The receivership of the Mall is news in the Sarnia area and we have undertaken a number of radio and newspaper interviews on its status.

Property Taxes

Property taxes due and unpaid as at June 1, 2014 are \$830,415.48. We have made no payments to the City on account of property taxes to date.

We engaged the property tax division of Altus Group and they have filed an application for a vacancy rebate re 2013. They were able to get the taxes reduced by \$42,982.40 for 2012 and we suspect a similar reduction will be granted for 2013. We have also had them file an appeal of the MPAC Property Assessment which valued the Mall for tax purposes at \$7,110,000 for 2013 – 2016.

Operating Budget

Larlyn recently submitted to us a 2014 Normalized Budget reflecting operating income and expenses. We have yet to review this budget in detail but note that it is generally in line with 2013.

Additional Rent

Many of the lease arrangements include provision for the payment of a tenant's share of property taxes and common area maintenance ("CAM") costs as additional rent based initially on estimates. It seems that SAMAK/Bayside had not prepared annual statements to "true up" their estimates of CAM and taxes for some time. We have worked with Larlyn to prepare annual CAM statements for 2013. Larlyn are in the process of communicating to tenants the net amounts due or to be refunded.

Secured Creditors

We understand that the Bank is currently owed well in excess of \$10,000,000 secured by mortgages registered against the Bayside Mall together with a General Security Agreement registered under the PPSA against Bayside. Our independent legal counsel, Gardiner Roberts, have reviewed the Bank's security and have indicated that, subject to the usual standard assumptions and qualifications, and subject to taxes and possible deemed trusts and subject to the Receiver's charge and any related borrowings by us pursuant to the Initial Order, in their opinion the Bank has a good and valid first charge upon the leasehold interest of Bayside in the property comprising Bayside Mall in face amount of \$15,500,000.

SAMAK and the December Rents

The property manager of the Bayside Mall prior to the receivership appointment, SAMAK, was owned and/or controlled by Mr. Malik Khalid, the former principal of Bayside. On March 5, 2013 SAMAK filed an assignment in bankruptcy and Kunjar Sharma & Associates Inc. ("**Sharma**") was named as Trustee of the Estate of

SAMAK. Mr Whiteley was appointed an Inspector of the Estate of SAMAK. We understand that the December Rents were not in the possession of SAMAK at the time of its bankruptcy. Mr. Whiteley inquired of Sharma whether it had made any investigation into the December Rents, and was informed it had yet to complete a review to identify any potential reviewable transactions and that it lacked funds to carry out any investigations. We asked Sharma for an estimate of the cost for them to review the SAMAK books in order to enable them to inform us as to what happened to the December Rents. We suspect however that there may be little likelihood of us recovering the December Rents and the motion in respect of same may therefore never proceed. Sharma have asked us for a retainer of \$5,000. In light in part because of our cash situation (see later) we are not pursuing this matter further at this time.

Insurance

We were able to renew the property insurance coverage at the Mall for a further three months to April 25, 2014 for \$55,000 plus taxes through our insurance brokers, Firstbrook Cassie & Anderson Limited (“FCA”). FCA have recanvassing the market and have been able to obtain comparable coverage at a slightly lower monthly rate from April 25, 2014 onwards.

Harmonized Sales Tax (“HST”)

We have now filed all the outstanding pre appointment HST returns. We have also filed quarterly returns covering the receivership period to July 31, 2013. We have recently received a deemed trust priority demand from CRA for unpaid pre receivership HST totalling \$23,604.83. We will review this claim in due course.

Legal Counsel

In light of the fact that the Bank and the City have been unable to agree upon a satisfactory Sharing Formula we have expanded the use of our independent counsel, Gardiner Roberts, to help make it clear to the City and the County that we are independent of the Bank and to allow Mr. Whiteley to focus on his responsibilities to his client, the Bank. Mr. Whiteley while acting primarily as counsel to the Bank has continued to provide us with assistance regarding a few uncontroversial matters. We have paid Mr. Whiteley’s fees to May 31, 2014 but in light of the need to increase the involvement of Gardiner Roberts and our lack of funds we have indicated to him that we think it inappropriate for us to continue to pay his fees from our receivership account.

Fees and Expenses of the Receiver and its Legal Counsel

The fees and expenses of the Receiver, Heath Whiteley, and the Receiver's independent counsel, Gardiner Roberts, relating to their activities from October 2013 to May 2014 were as follows:

A. John Page & Associates Inc.

Month	Hours	Fees	HST	Total
October 2013	88.69	\$29,257.65	\$3,803.49	\$33,061.14
November 2013	38.41	11,356.73	1,476.37	12,833.10
December 2013	35.02	11,047.84	1,436.22	12,484.06
January 2014	93.43	31,787.39	4,132.36	35,919.75
February 2014	79.52	26,213.38	3,407.74	29,621.12
March 2014	82.66	28,677.92	3,728.13	32,406.05
April 2014	95.59	33,887.59	4,405.39	38,292.98
May 2014	107.48	36,549.01	4,751.37	41,300.38
Total	620.80	\$208,777.51	\$27,141.07	\$235,918.58

Heath Whiteley

Period	Fees	Disbursements	HST	Total
October 1 - 30, 2013	\$4,600.00	\$0.00	\$598.00	\$5,198.00
November 1 - December 23, 2013	5,400.00	127.00	702.00	6,229.00
December 31, 2013 - January 31, 2014	16,080.00	134.00	2,107.82	18,321.82
February 1 - 28, 2014	8,000.00	0.00	1,040.00	9,040.00
March 1 - 31, 2014	13,800.00	0.00	1,794.00	15,594.00
April 2 - May 30, 2014	16,680.00	0.00	2,168.40	18,848.40
Total	\$47,880.00	\$261.00	\$6,241.82	\$54,382.82

Gardiner Roberts

Period	Fees	Disbursements	HST	Total
Oct 1, 2013 - Oct 31, 2013	\$25,612.50	\$846.00	\$3,439.61	\$29,898.11
Nov 1, 2013 - Nov 27, 2013	9,159.00	320.17	1,232.29	10,711.46
Dec 2, 2013 - Dec 20, 2013	1,740.00	33.25	230.52	2,003.77
Jan 3, 2013 - Jan 21, 2014	4,291.00	100.50	570.90	4,962.40

Feb 5, 2013 - Mar 31, 2014	17,931.50	64.25	2,339.45	20,335.20
Apr 3, 2014 - Apr 30, 2014	5,700.00	20.00	743.60	6,463.60
May 1 - 30, 2014	18,140.00	54.75	2,365.32	20,560.07
Total	<u>\$82,574.00</u>	<u>\$1,438.92</u>	<u>\$10,921.69</u>	<u>\$94,934.61</u>

The Receiver, Mr. Whiteley and Gardiner Roberts are submitting fee affidavits to the court concurrent with the submission of this Report and are asking the court to approve these fees and disbursements.

Banking, the Receiver's Statement of Receipts and Disbursements and its Looming Shortage of Cash

At the commencement of this assignment, we opened up receivership bank accounts at Royal Bank of Canada and at ICICI Bank Canada. Shortly after their appointment as property manager Larlyn opened up a separate account at Royal Bank of Canada (“the Larlyn Royal Account”) for use in the management of the Bayside Mall. Attached as *Exhibit "H"* is a copy of the Receiver's Interim Statement of Receipts and Disbursement from December 5, 2012 to June 5, 2014 combining the three accounts (“the R&D”). The R&D does not include any transactions flowing through the Larlyn Royal Account after April 30, 2014 as these have yet to be reported to us. The funds shown as being on hand are deceptively large because they include \$87,000 of prepaid rent and a reserve held by Larlyn of approximately \$91,000 to cover unpaid commitments incurred by them to April 30, 2014. At the date of the Report the Receiver has therefore perhaps “only” \$100,000 of free cash and it has certain cost obligations including giving notice to its property manager, if it is to disengage as Receiver. It also has an outstanding HST deemed trust claim of about \$24,000.

The fees and disbursements of the Receiver, Mr. Whiteley and Gardiner Roberts for October 2013 through to May 2014 are included as a disbursement in the R&D. We are asking the court to approve the R&D.

In a typical month we receive a payment from Larlyn representing the net surplus from basic operations at the Mall. Over the last twelve months these payments have averaged \$45,000 per month but in some months they have been zero or nominal. From that balance we have had to pay insurance averaging about \$20,000 per month. Based on a cursory review of the Larlyn 2014 budget and given the forthcoming departure of two tenants the trend line on these payments is downwards but

erratically so. If we “hunker down” and undertake minimal professional activities and if there are no unpredictable events then we can likely tick over with the resources we have for a month or two. However this tactic will not work for long because tenants, including the County, have leases they wish to negotiate, the parking garage will require further consideration and the overall direction of the receivership is currently not clear.

This recent deterioration in the cash position of the Receivership has been caused in part by the time being spent in recent months attempting to reach a three way agreement with the City, the County and the Receiver. Unfortunately, for the reasons detailed in this report, those efforts have yet to bear fruit. The second reason for the deterioration is that over the last two months we have only received less than \$30,000 from Larlyn when, on average, we might have expected to receive about \$90,000. We have crossed the cash reserves “trip wire” we set for ourselves at the commencement of the receivership. Given the unpredictability of payments from Larlyn we do not have sufficient funds on hand to proceed at anything close to the recent “burn rate”. We have had a brief informal discussion with the Bank and are of the opinion that they would not be receptive to advancing further funds to the Receiver beyond the \$750,000 they have already advanced.

Given the complexities regarding the Mall and the Land Lease, what we learned through our marketing of the Building and the size of the property tax arrears and the existing Receiver’s borrowings we do not think any third party lender would provide further funding to the Receiver.

Recent Discussions with the Bank

We recently had discussions with the Bank regarding the status of the receivership in particular in light of the inability to reach an agreement with the City to allow us to sell the Land with the Building and also our looming funding crisis. We discussed the options we saw available including, perhaps, asking the Court to “force-down” the most recent offer from the City re the Land on the Bank or perhaps us seeking our discharge as Receiver on the basis that we were running out of funds and did not think we could add further value given the state of the Mall and the positions taken by the various stakeholders. The Bank expressed a general desire to not have the City’s offer forced upon them. They indicated that they would support us approaching the potential purchaser that submitted the highest (on face value) of the conditional LOIs earlier in the year (“**the Conditional LOI Purchaser**”) and giving

them 30 days in which to “firm up a deal”. This may necessitate the Conditional LOI Purchaser approaching the City. If that were to be unsuccessful then we gained the impression that the Bank would be prepared to either reconsider the “offer” from the City or would look at the options available to it upon us being discharged.

This LOI of the Conditional LOI Purchaser, details of which are included in the Confidential Memorandum attached as *Exhibit “F”*, had a 90 day due diligence period and two key conditions, that they had satisfactory discussions with the City regarding the potential purchase of the Land from the City and secondly that they had satisfactory discussions with the County regarding subsequent terms of their lease. We had previously dismissed this LOI as not being acceptable, with the full knowledge of the Bank.

Alternatives available to the Receiver

The Receiver is seeking the advice and direction of the court regarding the alternatives available to the Receiver in light of the inability of the Bank and the City to agree upon a Sharing Formula to enable the Land to be jointly sold with the Building and the Receiver’s looming funding crisis. Those alternatives would appear to be as follows:

Alternative 1

1. Agree to the Bank’s request that we allow the Conditional LOI Purchaser 30 days to “firm up” their interest, presumably by having urgent discussions with the City and the County.
2. In parallel indicate to the Bank and the City that the Receiver would strongly encourage them to take one further attempt during that 30 day period to bridge the gap between their two positions on a Sharing Formula but without any minimum price thresholds, merely a City veto.
3. Scale down the Receiver and its counsel’s activities to the bare minimum to conserve resources.
4. If, at the end of the 30 days, the Conditional LOI Purchaser has indicated a willingness to proceed on an unconditional basis, then move to try and formalize that interest.
5. If, in the alternative, at the end of the 30 days the Bank and the City have reached an agreement on a Sharing Formula, then assess whether the Receiver

feels, at that time, it is comfortable proceeding with a process that sees the Land and the Building sold given the then cash position.

6. Failing which the Receiver will proceed to seek court approval to effect an orderly hand over/back of the Mall as soon as possible, presumably at first instance to Bayside Mall Limited but perhaps in reality to either the Bank or the City and then obtain its discharge.

Advantages of Alternative 1

- It provides the Bank with the 30 day option they requested
- It does not force a Sharing Formula on the principal stakeholder, the Bank until they are ready.
- It provides both the Bank and the City one last chance to compromise and reach an agreement
- It provides the Receiver with quick exit strategy hopefully before we run out of funds

Disadvantages of Alternative 1

- Based on our experience we are pessimistic that the Conditional LOI Purchaser will be able or inclined to move fast enough to waive their two major conditions in 30 days.
- Based on our experience we are pessimistic that, even if the Conditional LOI Purchaser were to waive the two major conditions in 30 days, their price would stay as stated in the LOI.
- In light of our discussions with the City and the County and their need for council approval of major matters, we suspect that, even if agreement in principle were to be reached, it would take further time for such agreements to be approved by the respective councils and, given the cash position, time is not on the side of the receivership, particularly if further extensive negotiation and then drafting is required.

Alternative 2

- Attempt to conclude the lease extension negotiations with the County on an expedited, take it or leave it basis.

Advantages of Alternative 2

- If successful it provides a source of funding for parking garage repairs, protects the position of the County as a tenant at the Mall and should enhance value

Disadvantages of Alternative 2

- Of itself and without further negotiation it does not directly address the Receiver's looming funding crisis.
- It does not provide a route to a successful sale of the Land and Building
- Negotiating a lease extension will require us to incur further professional costs

Alternative 3

1. Attempt to conclude, with court approval, an agreement with the City re Land on the basis of the City's current position. Pursue concurrent deal with County re their lease.
2. Accrue but do not pay Receiver's and legal fees until either funds obtained or sale completed

Advantages of Alternative 3

- If fully successful, it is, in keeping with the Receiver's earlier view, the option with the prospect of providing the best outcome for all stakeholders.
- Provides a route by which the parking garage can be repaired in early 2015.
- Should ensure that cash reserves are not depleted

Disadvantages of Alternative 3

- This alternative is currently not supported by the principal stakeholder, the Bank as the party with the prime economic interest in the Building.
- The City are asking not only to be able to veto any "unsuitable" potential purchaser but also that they will receive an as yet unknown minimum amount from any sale. On this basis we may never be able to effect a successful sale.
- In light of the funds now on hand, unreasonably high financial risk for the Receiver and its legal counsel particularly given the lack of certainty re a successful exit strategy

Alternative 4

- Proceed to seek court approval to effect an orderly hand over/back of the Mall as soon as possible, presumably at first instance to Bayside Mall Limited but perhaps in reality to either the Bank or the City and then obtain our discharge as Receiver

Advantages of Alternative 4

- Brings closure to the receivership, hopefully before funds are exhausted, allowing the prospect of a small repayment to the Bank of the Receiver's Certificate borrowings.
- The lifting of the Stay of Proceedings would allow the City to take whatever steps it feels it is entitled to take to declare the Land Lease in default, to terminate the Land Lease and, subject to whatever steps the Bank might take, to take over the Mall

Disadvantages of Alternative 4

- It is not clear what will happen to the Mall after the discharge of the Receiver.
- Financially not an attractive prospect for the Bank.

Alternative 5

- Give the City and the County 30 days in which to make an offer to buy the Building

Advantages of Alternative 5

- Allows key interested parties an opportunity to take control of a very unstable situation

Disadvantages of Alternative 5

- Both the City and the County have so far declined to make such an offer

The Receiver's Assessment of the Alternatives

None of the alternatives are "great". We are inclined on balance to recommend the pursuit of Alternative 1 at this time in order to allow the Bank to see if the

Conditional LOI Purchaser is “real” and also to try and push the Bank and the City to realize that, if it is not now too late, an agreement between them should be in both of their best interests. Given the possible consequences and uncertainties for the City and the County of our discharge we would recommend Alternative 5 in parallel to Alternative 1.

Our second choice alternative is, unfortunately, Alternative 4 where we would move to plan our exit, settle obligations and request our discharge.

The Impact of our Recommendations on the City and the County

We do not know how the City and the County will react to our recommendations or to whatever advice and direction we receive from the court. We suspect that they will be surprised at the speed with which we have had to change direction. Our dealings with them have been cordial and professional and they may feel let down by our recommendation. This would be unfortunate. We have tried to work in a manner that respected their needs and processes. However, in receiverships, deals need to be completed in a timely manner and, often, flexibility is required in order to get agreements. When the Bank’s last Sharing Formula offer was rejected on April 30, 2014 without a change from the City’s March 31, 2014 position the die was cast and our assessment of the alternatives since then has lead us to conclude that without a very quick change in approach by all concerned, we do not have enough “runway” to conclude a sale of the Mall, with or without the Land.

In Alternative I we are proposing allowing the City 30 days to see if an agreement can be reached regarding the Land. In Alternative 5 we are proposing giving both the City and the County 30 days in which to make an offer for the Mall. If we end up moving to seek our discharge then the lifting of the Stay of Proceedings will give the City the ability to take whatever steps it is entitled to do under the Land Lease.

All of which is respectfully submitted this 5th day of June, 2014

A. JOHN PAGE & ASSOCIATES INC.
COURT APPOINTED RECEIVER OF BAYSIDE MALL LIMITED

per:


A. John Page FCPA, FCA, CIRP
President

**Exhibits to the Fourth Report of A. John Page & Associates Inc.
as Court Appointed Receiver of Bayside Mall Limited
dated June 5, 2014**

Initial Order	A
Land Lease and Amendments	B
September 17, 2013 Order to Remedy	C
Garage Condition Evaluation Update	D
May 27, 2014 Order to Remedy	E
Confidential Marketing Memorandum	F
Confidential Memorandum re the Status of Negotiations with the City and the County	G
Statement of Receipts and Disbursements	H

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Exhibit "A"

**Fourth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated June 5, 2014**

Initial Order

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEDNESDAY, THE 5th DAY
)
JUSTICE WILTON-SIEGEL) OF DECEMBER, 2012

ICICI BANK CANADA

Applicant

- and -

BAYSIDE MALL LIMITED

Respondent

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing A. John Page & Associates Inc. as receiver and manager (in such capacities, the "**Receiver**") without security, of certain of the assets, undertakings and properties of Bayside Mall Limited (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Lionel Meunier sworn November 16 and December 4, 2012 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, the Debtor and SAMAK Management & Construction Inc. ("**SAMAK**"), on reading the consent of A. John Page & Associates Inc. to act as the Receiver and on

reading the proposed transition agreement dated December 5, 2012 to be executed by the Receiver and SAMAK,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, A. John Page & Associates Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor, acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"), with such appointment being effective as of 10:00 a.m. on December 5, 2012.

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor, and nothing herein shall preclude the Receiver from appointing any party related to the Debtor as its agent for such purposes;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request. All Persons shall inform the Receiver if any of the Records might contain information of third parties that were and remain subject to confidentiality

obligations and shall provide the Receiver with details of any such confidentiality obligations. The Receiver shall then keep any such information confidential.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER OR PROPERTY MANAGER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver or its property manager except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with: (i) the Debtor; or (ii) SAMAK in respect of the Property; or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor and/or SAMAK or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may

terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*,

the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its

legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. THIS COURT ORDERS that the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

25. THIS COURT ORDERS that the Plaintiff, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at www.ajohnpage.com.

GENERAL

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

32. THIS COURT ORDERS that the first report of the Receiver shall be served on counsel for the Debtor and counsel for SAMAK by no later than January 28, 2013, and that there shall be a motion in connection with such report scheduled for a date no later than 10 days following service.



W. Van-Holt

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE.

LA PRÉSENT ATTEST QUE CE DOCUMENT, DONT CHACUNE DES PAGES EST REVERTE DU SCEAU DE LA COUR SUPÉRIEURE DE JUSTICE À TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS CE BUREAU.

DATED AT TORONTO THIS 5th DAY OF Dec 20 12
FAIT À TORONTO LE JOUR DE

REGISTRAR

[Handwritten Signature]

GREFFIER

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 05 2012

MB

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that A. John Page & Associates Inc., the receiver (the "**Receiver**") of certain of the assets, undertakings and properties of Bayside Mall Limited (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ____ day of _____, 20__ (the "**Order**") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

A. John Page & Associates Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____
Name:
Title:

BETWEEN:

ICICI BANK CANADA
Applicant

- AND -

BAYSIDE MALL LIMITED
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

(PROCEEDING COMMENCED AT TORONTO)

ORDER

(appointing Receiver)

Heath P.L. Whiteley
(L.S.U.C. No. 38528P)

Tel: (905) 773-7700

Fax: (905) 773-7666

Email: heath@whiteleylligation.com

310 Stouffville Road
Richmond Hill, Ontario
L4E 3P4

Lawyer for the Applicant



Exhibit "B"

**Fourth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated June 5, 2014**

Land Lease and Amendments

FOR OFFICE USE ONLY

1988 JUN 22 PM 2:45

NUMBER 629020
CERTIFICATE OF REGISTRATION

JUN 22 1988

LAMBTON No. 25 SARNIA
Ken Dan
LAND REGISTRAR

New Property Identifiers

Executions

(1) Registry Land Titles (2) Page 1 of 9 pages *MS*

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

(4) Nature of Document Agreement

(5) Consideration Mutual covenants and conditions Dollars \$ -----

(6) Description In the City of Sarnia, in the County of Lambton parts of Lots 1, 5 and 10, according to Registrar's Composite Plan Number 664 for the City of Sarnia, in the County of Lambton.

(7) This Document Contains: (a) Redescription New Easement Plan/Sketch (b) Schedule for: Pg. 5-9 Description Additional Parties Other

(8) This Document provides as follows:
Amends a Lease dated April 15th, 1981 registered as Instrument Number 495101 for the County of Lambton.

Continued on Schedule

(9) This Document relates to instrument number(s) 495101

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

THE CORPORATION OF THE CITY OF SARNIA
by its Solicitor, Gerald F. Gillespie *G. Gillespie* 88 06 22

(11) Address for Service 255 N. Christina Street, Sarnia, Ontario N7T 5V4

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

WESCAN SHOPPING CENTRES INC.

(13) Address for Service c/o Mr. S. Paul Mantini, Barrister & Solicitor, Suite 3400, The Exchange Tower, P. O. Box 420, 2 First Canadian Place, Toronto, Ontario M5X 1J3

(14) Municipal Address of Property
N/A

(15) Document Prepared by:
Gerald F. Gillespie
City Solicitor's Office
255 N. Christina Street
Sarnia, Ontario
N7T 5V4

Fees and Tax	
Registration Fee	<u>70</u>
Total	

AGREEMENT made this 29th day of February, 1988.

B E T W E E N:

THE CORPORATION OF THE CITY OF SARNIA
(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

WESCAN SHOPPING CENTRES INC.

(hereinafter called the "Tenant")

OF THE SECOND PART

WHEREAS the Landlord, as landlord, and The Cadillac Fairview Corporation Limited ("Cadillac Fairview") and Eaton Properties Limited ("Eaton"), as tenant (as to 75% and 25% undivided interests therein, respectively) entered into a Lease made as of the 15th day of April, 1981, and registered in the Registry Office for the Registry Division of Lambton (the "Land Registry Office") as Instrument Number 495101, with reference to the development of the Sarnia Eaton Centre;

AND WHEREAS the Lease was amended and supplemented by an Indenture made as of June 1, 1981 between the Landlord, as landlord, and Cadillac Fairview and Eaton, as tenant, which Indenture was registered in the Land Registry Office as Instrument Number 511285;

AND WHEREAS the Lease and the Indenture are hereinafter collectively referred to as the "Ground Lease";

AND WHEREAS by Assignment of Lease dated as of March 1, 1982, and registered in the Land Registry Office as Instrument Number 514141 Eaton, as assignor, assigned to Cadillac Fairview, as assignee, all of its 25% undivided interest, as tenant in the Ground Lease and in the premises demised thereby;

AND WHEREAS by an Assignment of Lease made as of the 1st day of March, 1983, and registered in the Land Registry Office as Instrument Number 519545, between Cadillac Fairview, as assignor, and Wescan Shopping Centres Inc. ("Wescan"), as assignee, Cadillac Fairview assigned to Wescan an undivided fifty percent (50%) interest in the Ground Lease and in the premises demised thereby;

AUTH. B. L.

No. 9574

PASSED 29TH DAY
FEBRUARY 1988

AND WHEREAS by Sublease made of the 1st day of March, 1983, and registered in the Land Registry Office as Instrument Number 519547, between Cadillac Fairview, as sublandlord, and Wescan, as subtenant, Cadillac Fairview subleased to Wescan its remaining 50% undivided interest in the lands described in Schedule "A" hereto and the premises constructed thereon for a term expiring on August 19, 1985;

AND WHEREAS the term of the aforementioned Sublease expired on August 19, 1985 and Wescan, as subtenant thereunder, by Surrender Agreement dated as of August 19, 1985 and registered in the Land Registry Office as Instrument Number 568512, surrendered to Cadillac Fairview, as sublandlord thereunder, the Sublease and its interest, as subtenant, in and to the premises demised thereby;

AND WHEREAS by Assignment of Lease dated as of August 19, 1985; and registered in the Land Registry Office as Instrument No. 568511, Cadillac Fairview, as assignor, assigned to Wescan, as assignee, its remaining 50% undivided interest, as tenant, in the Ground Lease and in the premises demised thereby;

AND WHEREAS the parties hereto wish to amend the Ground Lease with reference to computation of Operating Costs (as defined in the Ground Lease) of the Tenant.

NOW THIS AGREEMENT WITNESSETH THAT in consideration of the terms of the Ground Lease and of the covenants and provisos herein, the parties hereto agree as follows:

- 1. The lands affected by this Agreement are described in Schedule "A" hereto.
- 2. Article 1.01(bb)(N)(1) is deleted and the following substituted therefor:

 "1.01(bb)(N)(1): The excess of the Gross Revenues over the amounts determined in (A) to (J) and (M) above;

 by".
- 3. This Agreement shall be deemed to be effective from

3.

the 15th day of April, 1981.

IN WITNESS WHEREOF the parties have executed this Agreement.

THE CORPORATION OF THE CITY OF SARNIA

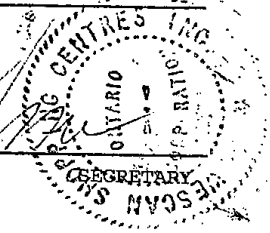
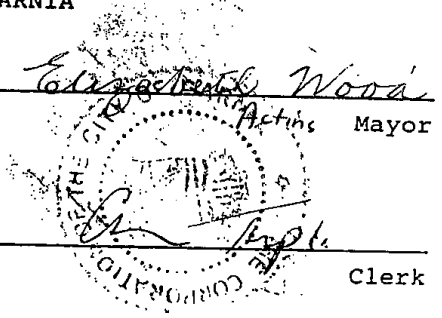
Per: *Ed Wood* Acting Mayor

Per: *[Signature]* Clerk

WESCAN SHOPPING CENTRES INC.

Per: *[Signature]*

Per: *[Signature]*
JOSEPH L. ROTMAN



SCHEDULE "A"

PART 1

ALL AND SINGULAR those certain parcels or tracts of land and premises in the City of Sarnia, County of Lambton and Province of Ontario composed of the following:

- (a) Part of Lot 1 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 7 on Reference Plan 25R-3518;

Subject to an easement for an existing storm sewer located in part of Lochiel Street and part of former Lochiel Street (now closed by By-Law Number 8188 of the City of Sarnia, registered as Instrument Number 488095 for the County of Lambton), according to Registered Plan Number 14 for the City of Sarnia, now known as Part of Lots 1, 5 and 10 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 2 and 5 on Reference Plan 25R-3477;

And subject to an easement for access to said storm sewer, for excavation and working, for maintenance, repair, restoration and replacement purposes over parts of Lochiel Street and former Lochiel Street (closed as aforesaid), according to Registered Plan Number 14 for the City of Sarnia, now known as Part of Lots 1, 5 and 10 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 1, 2 and 3 on Reference Plan 25R-3477 from and below the level of Lochiel Street, as the same may exist from time to time; and over parts of the former Lochiel Street (closed as aforesaid) and the former Victoria Street (also closed as aforesaid) according to Registered Plan Number 14 for the City of Sarnia, now known as Part of Lots 1, 5 and 10 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 4, 5 and 6 on Reference Plan 25R-3477 at and below the basement floor level of the Parking Structure as the same may exist from time to time;

And subject to an easement through the ramps and driveways of the Parking Structure for the passage of men and equipment for the purpose of the maintenance, repair or replacement of the said storm sewer; and the Corporation of the City of Sarnia, for the purpose of the said easements, may store equipment and pile material relative to such maintenance, repair or replacement adjacent thereto in a manner consistent both with the efficient carrying out of the work, and minimizing disturbance and inconvenience to the tenant under the lease registered as Instrument No. 495101, both parties acting reasonably; and

- (b) Part of Lot 10 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 8 on Reference Plan 25R-3518; and lying at and below a plane having an elevation of 597.20 feet along the most easterly limit of said Part 8, said plane inclining to an elevation of 597.00 feet along the westerly limit of said Part 8; elevations herein are referred to City of Sarnia datum.

SCHEDULE "A"

PART 2

ALL AND SINGULAR those certain parcels or tracts of land and premises in the City of Sarnia, County of Lambton and Province of Ontario composed of the following:

Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 12 on Reference Plan 25R-3518.

SCHEDULE "A"

PART 3

ALL AND SINGULAR those certain parcels or tracts of land and premises in the City of Sarnia, County of Lambton and Province of Ontario composed of the following:

Parts of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 2 and 3 on Reference Plan 25R-3518;

Subject to an easement for the benefit of the owners and occupants from time to time of Lot 9, according to Registrar Composite Plan Number 664 for the City of Sarnia for the passage of pedestrians and vehicles over said Part 3 on Reference Plan 25R-3518;

And subject to an easement to maintain and repair a manhole, storm sewer connections and that part of a storm sewer lying north of said manhole, located within said Part 3 on Reference Plan 25R-3518.

SCHEDULE "A"

PART 4A

ALL AND SINGULAR those certain parcels or tracts of land and premises in the City of Sarnia, County of Lambton and Province of Ontario composed of the following:

- (a) Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 4 on Reference Plan 25R-3518; and
- (b) Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 6 on Reference Plan 25R-3518 (at basement level only).

SCHEDULE "A"

PART 4B

ALL AND SINGULAR those certain parcels or tracts of land and premises in the City of Sarnia, County of Lambton and Province of Ontario composed of the following:

- (a) Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 5 on Reference Plan 25R-3518; and
- (b) Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 6 on Reference Plan 25R-3518 (not including the basement level).

511285

THIS INDENTURE made as of the 1st day of June, 1981.

B E T W E E N:

THE CORPORATION OF THE CITY OF SARNIA

(hereinafter called the "Landlord")

OF THE FIRST PART,

- and -

THE CADILLAC FAIRVIEW CORPORATION LIMITED
and EATON PROPERTIES LIMITED

(hereinafter collectively called the "Tenant")

OF THE SECOND PART.

WHEREAS the parties hereto entered into a Lease made as of the 15th day of April, 1981 (hereinafter called the "said Lease");

AND WHEREAS the parties hereto have agreed to amend certain terms of the said Lease;

NOW THIS AGREEMENT WITNESSETH THAT the parties hereto in consideration of \$2.00 and the covenants and obligations set forth in the said Lease and the provisoes hereinafter set forth, agree as follows:

1. Sub-Clause 1.01(r) "Initial Tenant Return" of the said Lease is amended by adding at the end thereof the following:
 "or, in the event the Tenant has not arranged initial permanent financing, "Initial Tenant Return" means the sum of 0.02 plus a decimal fraction equal to 0.005 plus the effective rate of interest, as published by the Bank of Canada in its Notice of Issue, payable on those Government of Canada Bonds the date of issue of which is closest to and prior to Opening Date and which have a term of at least eleven (11) years;"

so that said Sub-Clause 1.01(r) "Initial Tenant Return" of the said Lease will now read in full as follows:

"1.01(r) "Initial Tenant Return" means the sum of 0.02 plus the quotient obtained by dividing:

- (A) the equal annual amount necessary to amortize (by equal monthly payments of blended principal and interest) the original aggregate principal amount of the Tenant's initial permanent financing of the Property over a term of years (equal to the term of such financing but not less than 25 nor more than 30 years) at a rate of interest equal to the nominal rate of interest borne by such financing; by

- (B) the net proceeds of such financing;

or, in the event the Tenant has not arranged initial permanent financing, "Initial Tenant Return" means the sum of 0.02 plus a decimal fraction equal to 0.005 plus the effective rate of interest, as published by the Bank of Canada in its Notice of Issue, payable on those Government of Canada Bonds the date of issue of which is closest to and prior to Opening Date and which have a term of at least eleven (11) years;"

2. Save as hereby amended the said Lease remains in force and effect, and shall be read as if the amendment provided for in this Agreement had always been contained in the said Lease.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

EATON PROPERTIES LIMITED

[Signature]

 DIRECTOR
[Signature]

 ASSISTANT SECRETARY

THE CORPORATION OF THE CITY OF SARNIA

[Signature]

 Mayor
[Signature]

 Deputy Clerk

THE CABILLAC FAIRVIEW CORPORATION LIMITED

[Signature]

 VICE-PRESIDENT
[Signature]

 ASSISTANT VICE-PRESIDENT

EATON PROPERTIES LIMITED

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30.01 Successors and Assigns

Approved *[Signature]*

THIS INDENTURE made as of the 15th day of April,
1981.

B E T W E E N :

THE CORPORATION OF THE CITY OF SARNIA

(hereinafter called the "Landlord"),

OF THE FIRST PART,

- and -

THE CADILLAC FAIRVIEW CORPORATION LIMITED
(hereinafter individually called "Cadillac
Fairview") and EATON PROPERTIES LIMITED
(hereinafter individually called "Properties")
(hereinafter collectively called the "Tenant")

OF THE SECOND PART,

ARTICLE I

DEFINITIONS

1.01 IN THIS INDENTURE unless there is something in the context inconsistent therewith, the terms defined in this Section 1.01 shall have, for all purposes of this Lease and of all indentures, leases or other instruments supplemental hereto or confirmatory or amendatory hereof now or hereafter entered into the meanings herein specified:

- (a) "Additional Development Costs" means the cost (calculated on the same basis as Initial Development Costs, where relevant), of any capital improvement or replacement, incurred after the Opening Date, which is designed or calculated to maintain existing rental revenue or to increase rental revenue to the extent that the same is not charged to Subtenants on a current or amortized basis and deducted as an Operating Cost in the determination of Net Participation Income;
- (b) "Additional Renewal Terms" means those portions of the Term referred to in Sections 2.04(c) and (d) and

- "Additional Renewal Term" means any one of such portions of the Term;
- (c) "Additional Security" means an irrevocable letter of credit, in form reasonably satisfactory to the Landlord, for the lesser of:
- (A) 25% of the estimated cost to the Tenant of completing the construction of the Buildings, and
 - (B) Two Million Five Hundred Thousand Dollars (\$2,500,000).
- (d) "Additional Tenant Return" means the sum of 0.02 plus the quotient obtained by dividing:
- (A) ~~the~~ the equal annual amount necessary to amortize (by equal monthly payments of blended principal and interest) the cost of the relevant Additional Development Costs over a term of years (equal to the expected life of the capital improvement or replacement determined by the Tenant in accordance with generally accepted accounting principles) at a rate of interest equal to the generally prevailing (at the time the relevant Additional Development Costs are incurred) market interest rate in Ontario for a leasehold mortgage of a project similar to the Development; by
 - (B) the estimated net proceeds of the hypothetical financing contemplated in (A) above;
- (e) "Buildings" means all buildings, structures and improvements now or at any time and from time to time erected, constructed or situated upon the Demised Land during the Term, including without limitation all fixtures, plant, and equipment of every kind and description owned by the Tenant now or hereafter affixed or

- attached or situate within such buildings, structures or improvements, and "Building" means any such building, structure or improvement;
- (f) "Demised Land" means the Stage 1 Land, the Stage 2 Land, the Stage 3 Land, the Stage 4A Land and the Stage 4B Land;
 - (g) "Department Store" means that portion of the Buildings indicated as such on the Design Drawings;
 - (h) "Design Drawings" means those attached as Schedule "B" hereto, as the same may be amended, from time to time, by agreement between the parties hereto;
 - (i) "Development" means the Buildings erected or to be erected on the Demised Land pursuant to the terms of the Development Agreement and this Lease;
 - (j) "Development Agreement" means the agreement dated as of the 2nd day of June, 1980, as amended, between the Landlord and the Tenant, relating to the construction of the Development and other matters;
 - (k) "First Renewal Term" means the portion of the Term referred to in Section 2.04(b);
 - (l) "Government Funding" means the lesser of:
 - (A) the total cost to the Landlord of:
 - (i) assembling the Demised Land;
 - (ii) demolition and removal of improvements constructed on the Demised Land;
 - (iii) the net carrying costs with respect to the Demised Land; and
 - (iv) supplying the necessary services to the Demised Land; and
 - (B) Nine Million Three Hundred Thousand (\$9,300,000.00) Dollars;
 - (m) "Gross Revenues" means all amounts received by the Tenant in its capacity as tenant of the Demised Land including,

without limitation:

- (A) all rents and revenues from Subtenants;
 - (B) heating, ventilating and air-conditioning capital and operating charges;
 - (C) recoveries of Impositions and operating costs from Subtenants;
 - (D) revenue from parking facilities;
 - (E) accounts written off and later recovered;
 - (F) amounts received by the Tenant for performing services to Subtenants;
 - (G) any other income which is normal (at the time received) for shopping centres similar to the Development;
- (n) "herein", "hereof", "hereby", "hereunder", "hereto", "hereinafter" and similar expressions refer to this Lease and not to any particular paragraph, section or other portion thereof, unless there is something in the subject matter or context inconsistent therewith;
- (o) "Impositions" means all taxes, assessments, local improvement rates, water and sewer rates, rates and charges, business taxes, licence and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time during the Term may be assessed, levied, confirmed, imposed upon or grow or become due or payable out of or in respect of the Property or any part thereof or any appurtenances thereto (but does not include any fine, penalty, interest or cost added thereto for the non-payment thereof) and "Imposition" means any of the above taxes and other items;
- (p) "Initial Deposit" means the sum of five hundred thousand dollars (\$500,000), in the form of an irrevocable

letter of credit in favour of the Landlord, deposited by the Tenant with the Landlord pursuant to the Development Agreement;

- (g) "Initial Development Costs" means the total of:
- (A) the cost of acquiring a leasehold interest in the Demised Land (including expenses ancillary to acquiring the same, legal and survey fees, land transfer taxes, registration expenses and other direct acquisition expenses);
 - (B) the cost of obtaining and maintaining in force the option to purchase the Option Land (including expenses ancillary to acquiring the same, legal fees, and other direct negotiation expenses associated with the acquisition);
 - (C) the cost of renovating and expanding the Department Store to the outline specifications and functional requirements of The T. Eaton Company Limited;
 - (D) the cost of constructing the Buildings (except the Department Store) including all off-site costs, all parking facilities and equipment for the operation thereof, and landscaping;
 - (E) all development costs relating to the construction of the Development (including the renovation and expansion of the Department Store) including:
 - (1) all architectural, engineering and consulting fees including any Cadillac Fairview in-house architectural and engineering costs and overhead;
 - (2) the payment to The Greater York Group of their pre-development expenses of \$150,000;

- (3) such insurance carried by the Tenant as would be carried by a prudent owner during the construction of a development similar to the Development;
- (4) building permits and all other related costs in connection with obtaining the necessary approvals and inspections to allow construction;
- (5) all surveys including the survey of Subtenant areas for leasing purposes;
- (6) all legal costs relating to the construction, development, and the initial leasing of each part of the Property;
- (7) audit fees with respect to the determination of Initial Development Costs and excluding those required by the Tenant in its normal course of business;
- (8) the cost of on-site operating management prior to the Opening Date, and excluding any amounts recoverable from Subtenants, and without duplication of amounts included in the determination of Net Participation Income;
- (9) the net cost of the pre-opening promotional campaign including the contribution by the Tenant (to the extent of \$25,000 only) to The T. Eaton Company Limited for its pre-opening promotional campaign;
- (10) all costs of acquiring Subtenants for the Property including tenant allowances, tenant inducements, and tenant co-ordination;
- (11) all Impositions and other costs of an operating nature incurred prior to the

Opening Date, but excluding any amounts recoverable from Subtenants and excluding amounts included in the determination of Net Participation Income;

- (12) the cost of any letters of credit required by the Landlord; pursuant to the Development Agreement or this Lease;
- (13) the cost of interim financing including interest, standby fees and commitment fees. Interest to be at the actual rate if a separate, individual arm's length line of credit is established for the Property or if no individual arm's length line of credit is established, the prevailing bank prime rate plus one percentage point;
- (14) the cost of creating long term, first mortgage financing including, but not limited to, legal costs, commitment fees, letters of credit, appraisal and survey costs, providing such costs are not duplicated by inclusion in the determination of net financing proceeds in regards to the Initial Tenant Return;
- (15) an initial leasing one-time fee of \$1.50 per square foot of the total of the retail and kiosk space (excluding the Department Store and the food supermarket but not the food court area);
- (F) the Operating Cost (except for items (K), (L) and (N) thereof) of parking facilities, and retail space open prior to the Opening Date and outside management charges, if applicable;

Less the total of:

- (G) the Gross Revenues derived by the Tenant from the Property prior to the Opening Date, and;

(H) the total of all moneys directly related to the Property received by the Tenant from all levels of government;

Plus the total of:

(I) a development fee for Cadillac Fairview of 2% of the total of (A) to (F) less (H) above, and;

(J) a development fee paid to Shefco Investments Limited of 1 1/2 per cent of the result of the calculation referred to in (A) to (H) above to a maximum of \$255,000;

(r) "Initial Tenant Return" means the sum of 0.02 plus the quotient obtained by dividing:

(A) the equal annual amount necessary to amortize (by equal monthly payments of blended principal and interest) the original aggregate principal amount of the Tenant's initial permanent financing of the Property over a term of years (equal to the term of such financing but not less than 25 nor more than 30 years) at a rate of interest equal to the nominal rate of interest borne by such financing; by

(B) the net proceeds of such financing;

(s) "Initial Term" means that portion of the Term referred to in Section 2.01;

(t) "Major Renovation or Redevelopment of the Property" means a redevelopment thereof or a renewal or recharacterization thereof which represents an investment in the Buildings of at least 35% of the Replacement Cost of the then existing Buildings;

(u) "Minister" means Her Majesty The Queen in Right of the Province of Ontario as Represented by the Minister of

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Housing for Ontario;

- (v) "Minister's Approval" means the approval of the Minister under Sections 22(8) and 24 of The Planning Act, being approval under the ODRP of the Development and shall be evidenced by:
 - (A) in the case of approval under Section 22(8) of The Planning Act, a letter signed by the Minister and certified as a true copy by the Clerk of the Landlord; and.
 - (B) in the case of approval under Section 24 of The Planning Act, a copy of the Order of the Lieutenant-Governor in Council of Ontario certified by the Clerk of the Legislative Assembly of Ontario;
- (w) "Mortgage" means any mortgage, charge or other form of encumbrance or security of the Tenant's interest in the Property;
- (x) "Mortgagee" means any mortgagee or lender under a Mortgage;
- (y) "Net Participation Income" means for any Operating Year the Gross Revenues in respect of such year, less the Operating Cost for such year;
- (z) "ODRP" means the Ontario Downtown Revitalization Programme;
- (aa) "Opening Date" means the date on which the construction of the Development is complete and the malls and common areas are open to the public and two-thirds (2/3) (by area) of the mall Subtenants are open for business to the public;
- (bb) "Operating Cost" means the total of the following amounts not included in calculating Additional Development Costs and paid by the Tenant in its capacity as Tenant of the Demised Land (less any recovery from

Subtenants and others not included in Gross Revenues) or calculated as herein provided and related to the Property:

- (A) maintaining, repairing, managing and operating the Buildings and the equipment used by the Tenant therein;
- (B) on-site management including salaries, fringe benefits, office expenses and office overhead;
- (C) fees, including legal, surveying, audit, advertising and consulting;
- (D) the cost of premiums for:
 - (1) insurance required to be carried by the Tenant pursuant to Article VI; and
 - (2) such other insurance carried by the Tenant acting reasonably;
- (E) Impositions required to be paid by the Tenant pursuant to Article V;
- (F) a management fee paid to a manager of the Property. For the purposes of the calculations to be made under this Lease:
 - (1) the management fee to be paid to Cadillac Fairview has been agreed to be 4.1% of the total of all minimum and percentage rents received from Subtenants; and
 - (2) any such fee to be paid to any other manager shall be as agreed to by the Landlord and the Tenant;
- (G) interest calculated at one percentage point above the average prime bank commercial lending rate charged from time to time by any Canadian chartered bank designated from time to time by the Tenant upon the undepreciated or unamortized portions of the original cost of all maintenance

- and cleaning equipment and upon the undepreciated or unamortized portions of the cost of repairs and replacements required to be made by the Tenant pursuant to Article VII and the principal amount of any such depreciation or amortization;
- (H) uncollected accounts written off by the Tenant;
 - (I) contributions by the Tenant to the Property merchants' association or promotion fund or to charitable or non-profit organizations dealing at arms' length with the Tenant and the cost of permits and licences required for the operation of the Property;
 - (J) an amount equal to the difference between the prevailing rate (if greater than 3/10 of 1%) of Ontario paid-up capital tax and 3/10 of 1% calculated upon an imputed capital amount equal to the aggregate of the Initial Development Costs and the Additional Development Costs;
 - (K) an amount equal to the product of the Initial Tenant Return times the Initial Development Costs;
 - (L) an amount equal to the product of the Additional Tenant Return times the Additional Development Costs, if any;
 - (M) any other expenses (including income participation payments made to a Mortgagee) which are normal (at the time they are incurred) for shopping centres similar to the Development and which are incurred by the Tenant in arms' length transactions;
 - (N) if in the immediately preceding lease year the quotient resulting from dividing:
 - (1) the excess of the Gross Revenues over the amounts determined in (A) to (M) above;by

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(2) the aggregate of the Initial Development Costs and the Additional Development Costs;

each for such year shall be less than 0.125, an amount equal to the product of the difference between such quotient and 0.125 times the aggregate of such Initial Development Costs and Additional Development Costs may be carried forward, without interest, for recovery in the subsequent operating year or years until fully deducted pursuant to this paragraph (N);

- (cc) "Operating Year" means a period of twelve (12) months, commencing on the Opening Date or on any anniversary date thereof;
- (dd) "Option Land" means the land described as Parts 1 and 4, Reference Plan 25R2804;
- (ee) "Parking Structure" means that part of the Development indicated as such on the Design Drawings, and any structure erected, from time to time, in substitution therefor or replacement thereof;
- (ff) "Participation Rent" means, until the Tenant has (other than through payment of Impositions) paid the Landlord an amount equal to the Government Funding, 50% of the Net Participation Income and, thereafter, 15% of the Net Participation Income;
- (gg) "Property" means the Demised Land and the Buildings situate thereon from time to time;
- (hh) "Renewal Term" means that part of Term which is not the Initial Term;
- (ii) "Replacement Cost" means the actual cost of replacing the Buildings, or any part thereof, as agreed by the Landlord and the Tenant or, failing such agreement, as

determined by a quantity surveyor selected by the Tenant, provided that if the Landlord does not agree with the cost so determined, the matter will be determined by binding arbitration pursuant to Article XXII;

- (jj) "Special Financing Payment" means the payment calculated pursuant to the provisions of Section 4.03;
- (kk) "Stage 1 Delivery Date" means May 31, 1981 or such earlier date as may be agreed by the Landlord and the Tenant;
- (ll) "Stage 2 Delivery Date" means September 1, 1981;
- (mm) "Stage 3 Delivery Date" means January 15, 1982;
- (nn) "Stage 4A Delivery Date" means the earlier to occur of January 15, 1982 and a date ninety (90) days after the Tenant shall have given written notice to the Landlord requiring the delivery of the Stage 4A Land;
- (oo) "Stage 4B Delivery Date" means the Opening Date;
- (pp) "Stage 1 Land" means those parts of the Demised Lands described in Part 1 of Schedule "A" hereto;
- (qq) "Stage 2 Land" means those parts of the Demised Lands described in Part 2 of Schedule "A" hereto;
- (rr) "Stage 3 Land" means those parts of the Demised Lands described in Part 3 of Schedule "A" hereto;
- (ss) "Stage 4A Land" means those parts of the Demised Lands described in Part 4A of Schedule "A" hereto;
- (tt) "Stage 4B Land" means those parts of the Demised Lands described in Part 4B of Schedule "A" hereto;
- (uu) "Sublease" means a grant of rights by the Tenant to any Subtenant;
- (vv) "Sublet" means the act of granting a Sublease;
- (ww) "Subtenant" means any person, firm or corporation to whom the Tenant has granted any rights with respect to any part of the Property whether by way of sublease,

grant of licence, grant of concession, or otherwise and includes the tenant of the bank premises on the the Stage 4B Land;

(xx) "Term" means the term of this Lease as set out in Article II; and

(yy) "Unavoidable Delay" means any condition or cause beyond the reasonable control of the party obliged to perform if such party has acted in a reasonable manner with respect thereto.

1.02 All of the provisions of this Lease shall be deemed and construed to be covenants as though the words importing such covenants were used in each separate provision hereof. Should any provision or provisions of this Lease be illegal or not enforceable it or they shall be considered separate and severable from the Lease, and its remaining provisions shall remain in force and be binding upon the parties hereto as though the said illegal or unenforceable provision or provisions had never been included.

1.03 The titles of Articles appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or any provision hereof.

1.04 Where the context permits, or requires, the singular shall include the plural and the neuter gender shall include the masculine or feminine genders.

ARTICLE II

THE DEMISE

2.01 Witnesseth that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord has demised and leased and by these presents does demise and lease unto the Tenant ALL AND SINGULAR the Demised Land being the lands and premises described in Schedule "A" hereto.

TO HAVE AND TO HOLD the Demised Land for and during a term commencing on the 15th day of April, 1981, and expiring on the earlier of:

- (a) Sixty (60) years after the Opening Date, and
- (b) Sixty-five (65) years after the commencement of the Term;

subject to the options to renew and terminate hereinafter provided for. Provided that if:

- (c) The Landlord shall not have delivered the Stage 1 Land to the Tenant by the Stage 1 Delivery Date and satisfied the Tenant of the ability of the Landlord to deliver the Stage 2 Land by the Stage 2 Delivery Date; the Stage 3 Land by the Stage 3 Delivery Date, the Stage 4A Land by the Stage 4A Delivery Date and the Stage 4B Land by the Stage 4B Delivery Date, in each case with such title as is required by the Development Agreement, then at any time prior to November 30, 1981 the Tenant may terminate this Lease by giving the Landlord written notice to that effect whereupon this Lease shall be fully ended and of no further force or effect, provided that no such termination shall prejudice any remedies the Tenant shall have against the Landlord. At any time before any such termination, the Landlord and the Tenant may agree to an extension of the Stage 1 Delivery Date to a later date and if such extension is agreed to, November 30, 1981 shall be extended by a period equal to such extension.

The Stage 1 Delivery Date, the Stage 2 Delivery Date, the Stage 3 Delivery Date, the Stage 4A Delivery Date and the Stage 4B Delivery Date shall not (except as hereinbefore provided) be subject to extension, or

- (d) The Landlord shall not have delivered
- (i) the Stage 2 Land to the Tenant by the Stage 2 Delivery Date;
 - (ii) the Stage 3 Land to the Tenant by the Stage 3 Delivery Date;
 - (iii) the Stage 4A Land to the Tenant by the Stage 4A Delivery Date; or
 - (iv) Stage 4B Land to the Tenant by the Stage 4B Delivery Date;

in each case with such title as is required by the Development Agreement, at any time after the Stage 2 Delivery Date, the Stage 3 Delivery Date, the Stage 4A Delivery Date or the Stage 4B Delivery Date, as the case may be, the Tenant shall have the right to terminate this Lease by giving the Landlord written notice to that effect, whereupon this Lease shall be fully ended and of no further force or effect, provided that no such termination shall prejudice any remedies the Tenant shall have against the Landlord.

Any termination of this Lease pursuant to this Section 2.01 shall not prejudice any rights which the Tenant may have against the Landlord except, in the case of the failure of the Landlord to deliver the Stage 1 Land by the Stage 1 Delivery Date, if such failure results from the Landlord's inability to acquire title to the Stage 1 Land as required by the Development Agreement or to satisfy the Tenant of the Landlord's ability to deliver the Stage 2 Land by the Stage 2 Delivery Date or the Stage 3 Land by the Stage 3 Delivery Date or the Stage 4A Land by the Stage 4A Delivery Date or the Stage 4B Land by the Stage 4B Delivery Date (in each case having used its reasonable best efforts in that respect) in which case no party hereto shall have any claim against any other party hereto. Upon any termination pursuant to this Section 2.01

whichever of the Initial Deposit and the Additional Security as is then held by the Landlord shall be returned to the Tenant without interest or deduction.

2.02 Notwithstanding anything herein contained to the contrary, all provisions of this Lease applicable to the Demised Land shall apply only to those portions of the Demised Land, vacant possession of which shall have been delivered to the Tenant as provided in the Development Agreement, and, after the delivery of all of the Demised Land, the provisions hereof shall apply to all the Demised Land.

2.03 It is the intention and agreement of the Landlord and the Tenant that, as between the Landlord and the Tenant, the title to and ownership of the Buildings, except the Department Store as it existed at the date of commencement of the Term, and all alterations, additions, changes, substitutions or improvements thereto shall at all times during the Term hereby granted be vested in the Tenant, notwithstanding any rule of law as to immediate vesting of the title to and ownership of the Buildings in the Landlord as owner of the freehold. Except as herein otherwise provided, the title to and ownership of the Buildings, and all alterations, additions, changes, substitutions or improvements thereto shall not pass to or become vested in the Landlord until the termination of this Lease, either by effluxion of time or other termination, and, subject to the rights of any Subtenants and others pursuant to Section 17.05 hereof, upon such termination the Buildings and all alterations, additions, changes, substitutions or improvements thereto shall become the absolute property of the Landlord free from all encumbrances and without compensation to the Tenant. Provided nevertheless that all Subtenants shall have the right to remove their fixtures and the Tenant shall have the right to remove all fixtures installed by it other than equipment, machinery, fixtures and other facilities therein, thereon or used in connection therewith which are necessary to the operation of the Buildings, and the Tenant shall make good any damage or injury

caused to the Buildings that shall have resulted from the installation and removal of such fixtures.

2.04 The Tenant shall have the right, to be exercised as hereinafter provided, to extend the Initial Term of this Lease by the First Renewal Term and the Additional Renewal Terms upon the following terms and conditions:

- (a) That the Tenant is not, at the time of the exercise of such right, in default in the payment of rent hereunder or in default with respect to any other covenant, agreement or condition to be observed or performed by the Tenant hereunder and if as a result thereof the Landlord would be entitled to enter and re-enter upon the Demised Land under Section 17.01 hereof and with respect to which the Landlord has given the Tenant notice of default and the Tenant is not making reasonable efforts to remedy such default;
- (b) That the First Renewal Term shall be for thirty (30) years after the end of the Initial Term and shall be upon the same terms, covenants and conditions as in this Lease except as to the right of further renewal (subject to (c) below), duration and obligations to construct the Buildings as provided in Article III. The Tenant shall exercise its right to the First Renewal Term by notifying the Landlord in writing of its election to exercise such right at least twelve (12) months prior to the expiration of the Initial Term;
- (c) That any Additional Renewal Term shall be for sixty (60) years after the Tenant shall have completed a Major Renovation or Redevelopment of the Property and shall be upon the same terms, covenants and conditions as in this Lease, except as to the right of further renewal and duration (both subject to (d) and (e) below), and obligations to construct the Buildings as provided in Article III. The Tenant shall exercise its right to any

Additional Renewal Term by notifying the Landlord in writing of its election to exercise such right at least six (6) months before commencing a Major Renovation or Redevelopment of the Property and such Additional Renewal Term shall commence upon the date of completion of such Major Renovation or Redevelopment of the Property as such date is certified by the Tenant's architect;

- (d) The Tenant shall have the right to an Additional Renewal Term with respect to each Major Renovation or Redevelopment of the Property;
- (e) If the Tenant shall exercise its right to any Additional Renewal Term prior to the expiration of the Initial Term, the First Renewal Term or of any other Additional Renewal Term, then the Initial Term, the First Renewal Term or any other such Additional Renewal Term, as the case may be, shall end upon the commencement of such Additional Renewal Term, as the case may be, and the right of the Tenant to the First Renewal Term shall, if the Tenant shall have exercised its right to any Additional Renewal Term during the Initial Term, thereupon cease; and
- (f) Notwithstanding any provision of this Article II, in no event shall the duration of the Term exceed one hundred and twenty (120) years.

2.05 The Tenant shall have the right to terminate this Lease upon the date upon which The T. Eaton Company Limited, or any permitted assignee thereof pursuant to the Sublease of the Department Store terminates such Sublease, in accordance with the termination provisions therein contained, but in any event, no sooner than the end of the first thirty (30) years of the term of such Sublease, or on such earlier date (not more than eighteen (18) months before the end of the first thirty (30) years of the term of such Sublease) as may be permitted thereby because of substantial damage to the premises leased thereby. The Tenant may only exercise its right to so terminate this Lease if:

- (a) It gives the Landlord written notice of the termination of the Sublease of the Department Store within thirty (30) days after the Tenant receives notice of termination of the Sublease of the Department Store,
- (b) It gives the Landlord written notice of its intention to exercise such right at least six (6) months prior to the intended date of termination; and
- (c) It gives the Landlord satisfactory evidence that the Tenant has made all reasonable efforts to Sublet the Department Store to another Subtenant who, in the reasonable opinion of the Tenant, is competent to and will use and operate the Department Store as a conventional department store of a type suitable for the market in which it is located.

2.06 If the Development Agreement shall be terminated pursuant to the provisions of clause 9(b) thereof, this Lease shall thereupon be terminated, provided that no such termination shall prejudice any remedies which the Tenant shall have against the Landlord.

ARTICLE III

BUILDINGS

3.01 The Tenant covenants and agrees with the Landlord to construct the Development in accordance with the following terms and conditions:

- (a) The Buildings shall be constructed in accordance with the Design Drawings;
- (b) No construction shall be commenced unless and until the working drawings of such construction have been submitted to the Landlord and the Landlord has determined that they conform to the Design Drawings and except with the prior written consent of the Landlord, no Buildings other than those shown on the Design Drawings shall be erected, nor shall any change be made in the overall dimensions or position of any Building shown on the Design Drawings, except as may be indicated on the Design Drawings;
- (c) The Buildings shall be constructed in accordance with all applicable zoning and building laws, regulations, ordinances and by-laws and all other governmental requirements applicable thereto;
- (d) The Tenant will, within the Demised Land, at its own expense, construct, improve and equip all roadways, parking areas, sidewalks and landscaped areas as shown on the Design Drawings and in sufficient time to enable them to be ready for use when the Buildings have been completed (except such as it may not be practicable to complete at that time);
- (e) The Landlord shall have the right to inspect all work done by the Tenant at any reasonable time (provided that it does so without unduly disrupting the progress of construction and that it does so in accordance with the Tenant's reasonable safety and other construction

rules), and the Tenant shall make all changes required by the Landlord in order to make such construction and work conform to the working drawings which the Landlord has determined conform with the Design Drawings;

(f) (i) Unless the Buildings are constructed and complete in all material respects and ready for use by Subtenants, except for such landscaping as it may not be practicable to complete at that time, in accordance with the Design Drawings by the later of:

(A) five (5) years after the Minister's Approval, or

(B) a date which is later than the date referred to in (A) above by the same period of time that the commencement of the Term is later than May 31, 1981,

the Landlord may terminate this Lease by giving the Tenant written notice to that effect and this Lease shall terminate one hundred and twenty (120) days after the giving of such notice unless within such period of one hundred and twenty (120) days the Tenant shall have so completed the Buildings as above; and

(ii) If this Lease becomes subject to termination pursuant to paragraph (i) above, the Tenant's default or the said cause of termination shall be deemed to have been sufficiently cured if the Mortgagee shall, within ninety (90) days after the giving of the notice of termination, take possession and control of the Demised Land pursuant to its Mortgage and covenant with the Landlord to use its best efforts to perform all

the obligations of the Tenant hereunder (including remedying any default of the Tenant arising prior to the time of going into possession, provided that the Landlord shall have previously given notice of such default to the Mortgagee, within seven (7) days after the same having come to the attention of the Landlord) provided that the Mortgagee shall be given such additional time as may be reasonably necessary to enable the Mortgagee to complete the construction of the Buildings, provided the Mortgagee undertakes to proceed with due diligence. Upon completion of construction of the Buildings, the Mortgagee, upon going out of possession shall be released from any further obligations under this paragraph (ii).

The Landlord covenants to give to the Mortgagee, at the expense and request of the Mortgagee, any necessary assurances so that the Mortgagee may carry out its obligations under this paragraph (ii) and the Landlord hereby represents and warrants that any Mortgagee shall be entitled to rely on the provisions of this paragraph (ii) and to enforce such provisions against the Landlord.

3.02 The Tenant will deposit the Additional Security with the Landlord before obtaining the first building permit for the construction of the Buildings.

3.03 The Landlord acknowledges that the provision by the Tenant of the Additional Security will provide the Landlord with security which, in the opinion of the Landlord, is adequate to ensure that the Buildings which have been commenced will be completed in case of default or abandonment by the Tenant and that the liability of the Tenant to the Landlord for failure to complete

the Development shall not exceed the amount of the Additional Security.

3.04 The Additional Security will be returned to the Tenant promptly after the Tenant's architects have certified to the Landlord that the Buildings are substantially completed and ready for occupancy by Subtenants for fixturing.

3.05 The Tenant shall use all reasonable efforts to cause the Opening Date to be no later than 23 months after the commencement of the Term.

ARTICLE IV

RENTAL

4.01 The Tenant covenants and agrees to pay the Landlord by cheque in Canadian Dollars at the address specified in or pursuant to Section 23.01, rent in accordance with the following provisions:

- (a) From the commencement date of the Term to the Opening Date an amount equal to One Dollar (\$1.00); and
- (b) Thereafter the aggregate of One Dollar (\$1.00) per lease year plus the Participation Rent for the then current year.

The rent shall be payable by the Tenant to the Landlord in four (4) installments in advance on the first day of each quarter of the Operating Year. The Participation Rent payable for each Operating Year shall be estimated in advance by the Tenant acting reasonably. The Tenant will, within ninety (90) days after the end of each Operating Year, provide the Landlord with audited financial statements pertaining to the Property, and, if necessary, the Participation Rent, for the immediately preceding Operating Year shall be adjusted within thirty (30) days of receipt of the audited financial statements. Any dispute as to the quantum or calculation of the Gross Revenue, Operating Costs, Net Participation Income or Participation Rent shall be submitted to arbitration pursuant to Article XXII.

4.02 It is the purpose and intent of the Landlord and the Tenant that the rent shall be absolutely net to the Landlord, so that the Lease shall yield, net, to the Landlord, the rent specified in Section 4.01 in each Operating Year and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Demised Land and the Buildings or in connection with any business carried on therein or thereon (except the taxes of the Landlord referred to in Section 5.02 hereof and any payments on account of any fee mortgage) which may

arise or become due during the Term, shall be paid by the Tenant, and that the Landlord shall be indemnified and saved harmless by the Tenant from and against the same and the Tenant hereby covenants with the Landlord accordingly.

Notwithstanding the provisions of this Section 4.02, the parties hereto agree that any costs payable with respect to any arbitration pursuant to Article XXII hereof shall be paid as provided in Article XXII.

4.03 If, at any time during the Term, the initial permanent Mortgage is refinanced by the Tenant for an amount in excess of the then principal balance outstanding on such initial permanent Mortgage (plus any additional capital investments after the Opening Date which are included in Additional Development Costs) and the Tenant has not paid, by payments of rent as provided in Section 4.01, or by other payments (not including Impositions) to the Landlord an amount equal to the Government Funding, the Tenant will pay to the Landlord the Special Financing Payment which will be equal to such excess multiplied by a fraction, the numerator of which is the Government Funding and the denominator of which is the total of the Government Funding and the Initial Development Costs. The Special Financing Payment shall not exceed the portion of the Government Funding remaining unpaid to the Landlord at the date of payment of the Special Financing Payment.

4.04 The Tenant shall pay without notice, except as may be required in this Lease, without previous demand therefor and without abatement, deduction or set-off, the rent; and the Tenant hereby waives and renounces any and all existing and future claims and set-offs against the rent and agrees to pay such rent regardless of any claim or set-off which may be asserted by the Tenant or on its behalf.

ARTICLE V

PAYMENT OF TAXES, ASSESSMENTS, ETC.

5.01 During the Term hereof the Tenant will pay or cause to be paid (except as hereinafter in Section 5.02 provided) (and by installments if such method of payment is permitted), all Impositions, if and to the extent that such Impositions if not paid by the Tenant would be payable by the Landlord or would create a lien or charge against the Landlord's interest in the Property or would render the Landlord's interest in the Property subject to sale, seizure or forfeiture. In the first and last years of the Term all Impositions shall be appropriately apportioned between Landlord and Tenant having regard to the portions of the Term falling within the periods with respect to which the Impositions are imposed.

5.02 Nothing in this Lease contained shall require or be construed to obligate the Tenant to pay any franchise, excise, estate, inheritance, succession, capital levy or transfer tax of the Landlord or any income, profits or revenue tax upon the income of the Landlord, or any other tax, assessment, charge or levy upon the rent reserved under this Lease.

5.03 Notwithstanding Section 5.02, if at any time during the Term the methods of taxation prevailing at the commencement of the Term shall be altered so that in lieu of or as a substitute of the whole or any part of any Imposition levied, assessed or imposed on real estate there shall be levied, assessed or imposed a tax, levy or assessment on real property rents as such (as opposed to a tax on such rents as part of the income of a landlord) or a tax, levy or assessment based in whole or in part upon the value of the Property and imposed upon the Landlord or a licence fee measured by the rent payable by the Tenant hereunder, then such tax, levy, assessment or fee shall be deemed to be an Imposition for the purposes hereof to the extent that the same would be payable by the Landlord if the Property were the only property of the Landlord subject thereto.

5.04 The Tenant shall have the right from time to time to appeal in its own name or in the name of the Landlord any assessment of the Property or the legality or amount of any Imposition levied in any year or for the cancellation, reduction or refund of any such Imposition, provided that any such appeal shall be at no direct cost to the Landlord. In the event of such appeal by the Tenant, it shall first either pay the Imposition in question under protest, or furnish to the Landlord or to a Mortgagee security (by bond or otherwise) satisfactory to the Landlord or to such Mortgagee for its payment in the event of the failure of such appeal. Notwithstanding the furnishing of such security and the lack of decision of such appeal, the Tenant shall pay such Imposition in each case before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof in which latter two cases the Tenant shall pay such Imposition before the Landlord's interest in the Property becomes subject to sale, seizure or forfeiture. The Landlord shall have the full power and authority to apply or request the application of any security so furnished to payment of any unpaid Imposition to prevent the sale or forfeiture of the Property for non-payment thereof; without liability on the Landlord, however, for any failure so to apply any amount so deposited unless the Tenant in writing requests the application of such amount to the payment of the particular Impositions with reference to which they were deposited. Any surplus remaining in the hands of the Landlord after the Imposition for which the deposit was made has been paid in full shall be repaid to the Tenant unless the Tenant shall be in default in the payment of rent or other charges to be made under the provisions of this Lease and in case of such default such surplus shall be applied thereto. Upon the termination of any such proceedings, the Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which shall have been deferred

during the prosecution of such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith.

5.05 The Tenant will save the Landlord, as a landlord and not as a municipal corporation, harmless with respect to all suits, costs, actions, claims and demands of any kind whatsoever arising out of or in any way in connection with any Impositions or assessments appealed by the Tenant and/or with any such appeal.

5.06 The Tenant, upon request of the Landlord, will, subject to the provisions of Section 5.04, furnish to the Landlord and, if requested by the Landlord, to any fee mortgagee, within thirty (30) days after the date when any Imposition would become overdue, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to the Landlord or such fee mortgagee, evidencing the payment thereof.

ARTICLE VI
INSURANCE

6.01 At all times during the Term, the Tenant shall, without expense to the Landlord, insure and keep insured or cause to be insured and kept insured the Buildings, for not less than ninety per cent (90%) of the Replacement Cost of all the Buildings and against loss or damage by perils insured under an all risks insurance policy, or such other form of policy as may be approved by the Landlord, acting reasonably, and for such additional amounts and against such other perils as a prudent owner would from time to time insure similar buildings, structures or improvements and, without in any way limiting the generality of the foregoing, the Tenant shall maintain insurance on all Buildings in the course of construction against perils insured under an all risks builders' risk broad form policy and in amounts sufficient to ensure that in the case of damage or destruction to such Buildings the proceeds of the insurance policies will be sufficient to restore such Buildings to the state in which they were before such damage or destruction. If the parties are unable to agree as to the amount of insurance or perils against which insurance should be maintained the question shall be determined by arbitration pursuant to Article XXII.

6.02 Any and all policies of insurance referred to in Section 6.01 shall be written in the name of the Landlord, the Minister and the Tenant as named insureds (and may include Subtenants as insureds) with loss payable to the Landlord, the Tenant (and Subtenants if insured) and any Mortgagee as their respective interests may appear.

6.03 For so long as there shall remain outstanding any Mortgage of the leasehold interest or interests created hereby and subject to the proviso in this Section 6.03 contained and to the provisions of Article IX, the whole or any portion of any loss payable under any or all of the policies of insurance referred to in Section 6.01 may at the request of the Mortgagee be paid to the Mortgagee. The Landlord and the Tenant agree in

the case of such request to cause the insurance moneys payable in the event of loss or damage or such portion thereof as may be requested as aforesaid to be made payable to the Mortgagee or otherwise to deal with such policies of insurance in such manner as to enable the insurance moneys to be collected by the Mortgagee and shall from time to time do, sign, execute and endorse all transfers, assignments, cheques, loss claims, receipts, writings and things necessary or desirable for the purposes aforesaid, and for such purposes irrevocably do appoint the Mortgagee their attorney to do, sign, execute and endorse all such transfers, assignments, cheques, loss claims, receipts, writings and things in the name of the Landlord or the Tenant as appropriate and on their behalf as the Mortgagee may deem necessary or desirable, provided that the Mortgagee will first agree with the Landlord that such insurance moneys shall be applied to the extent required by Section 9.02 of this Lease to the restoration, reconstruction or replacement of the loss or damage in respect of which such insurance moneys were paid.

6.04 At all times during the Term the Tenant shall, at its own expense, maintain or cause to be maintained comprehensive general liability insurance against claims for bodily injury, death, property damage and property loss arising out of the use and occupation of the Property by the Tenant and out of all operations of the Tenant, indemnifying and protecting the Landlord the Minister and the Tenant from time to time in reasonable and prudent amounts in the circumstances, but in any event not less than Five Million Dollars (\$5,000,000.00) inclusive limits. Any and all policies of such insurance shall be in the names of the Landlord, the Minister and the Tenant, provided, however, that the Tenant shall have the option of having such policy or policies written for the benefit of the Tenant only if the Tenant shall also maintain in the names of the Landlord and the Minister similar insurance in the same amount under an owner's protective liability insurance policy or policies.

6.05 The Tenant shall pay or cause to be paid all the premiums under the aforesaid policies as they become due and payable and in default of payment by the Tenant the Landlord may pay the same and add the amount so paid to the rent next payable and may collect the same as rent with all rights of distress and otherwise as reserved to the Landlord in respect of rent in arrears.

6.06 All certificates of insurance, in form satisfactory to the Landlord, or other evidence of insurance and continuity of insurance which satisfies the requirements of this Article VI shall be delivered to Landlord (accompanied by a copy of the receipted premium account indicating that the premiums thereon have been paid) not less than fifteen (15) days prior to the expiration of any then current policy.

6.07 Each such policy and certificate thereon issued by the insurer shall contain an agreement by the insurer that such policy shall not be cancelled or amended so as not to satisfy the requirements of this Article VI without at least sixty (60) days prior written notice to the Landlord and to any Mortgagee to whom loss thereunder may be payable.

6.08 All policies of insurance, and certificates thereof to be furnished by the Tenant pursuant to Section 6.06 shall, at the written request of the Landlord, have attached thereto a loss payable clause for the benefit of any fee mortgagee but the right of any Mortgagee or fee mortgagee to payment of insurance proceeds shall, subject to the provisions of Section 6.03 and Article IX, be at all times subject and subordinate to the rights of payment of the Landlord hereunder and the provisions of this Lease. All policies of insurance, and certificates thereof to be furnished by the Tenant, shall have a further provision that no act or omission of the Tenant or any other party other than the Landlord shall have any effect upon or constitute any defence

against any claim made by the Landlord under such insurance policies.

6.09 The Minister shall be a named insured under the policies of insurance referred to above only so long as the Landlord is indebted to the Minister under the ODRP with respect to the Development.

ARTICLE VII
REPAIRS AND MAINTENANCE

7.01 At all times during the Term the management of the Property shall be the responsibility of the Tenant and shall be performed at its own expense by itself or, subject to the provisions of Section 12.03, by such agency or agencies as it may from time to time or at any time during the Term appoint. Subject to any agreement between the Landlord and the Tenant, the Landlord shall, in its capacity as a landlord, not be obliged to furnish any services or facilities or to make repairs or alterations in or to the Property and the Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management thereof.

7.02 The Tenant without cost to the Landlord (except as provided in the calculation of Net Participation Income) shall, subject to the provisions of Section 9.02, during the Term put and keep in good order and condition in a manner commensurate with similar first class projects or shall cause to be put and kept in such good order and condition (reasonable wear and tear only excepted) the Property and the appurtenances and equipment thereof, both inside and outside, including, but not limited to, fixtures, walls, foundations, roofs, elevators, escalators and similar devices (if any), heating and air-conditioning equipment, sidewalks, yards and other like areas, water mains and sewers and connections, water, steam, gas and electric pipes and conduits, parking facilities and all other fixtures installed by or on behalf of the Tenant in the Demised Land and the Buildings and machinery and equipment used or required in the operation thereof whether or not enumerated herein and shall, subject to the provisions of Section 9.02, in the same manner make any and all necessary repairs, replacements, alterations, additions, changes, substitutions and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise and, subject to

Section 8.01, keep the Buildings and aforesaid appurtenances and equipment usable for the purpose for which the Buildings were erected and constructed and the aforesaid appurtenances and equipment were supplied and installed. Such repairs shall in all respects meet the lawful requirements of municipal or other governmental authorities. The Tenant shall not use or occupy or knowingly permit to be used or occupied the Property or any part thereof for any illegal or unlawful purpose or in any manner which will result in the cancellation of any insurance required to be carried by the Tenant under Article VI. At the expiration or other termination of this Lease, the Tenant shall, except as otherwise expressly provided herein, surrender and deliver up the Demised Land with the Buildings thereon and the aforesaid appurtenances and equipment thereof or any replacements thereof or substitutions therefor in good order and condition, reasonable wear and tear excepted.

7.03 Notwithstanding anything contained in this Article VII, the obligations of the Tenant set out in this Article VII shall be subject to the provisions of Article XXVI.

ARTICLE VIII
CHANGES AND ALTERATIONS

8.01 Notwithstanding anything provided in Sections 7.02 and 9.01 hereof, the Tenant shall have the right at any time or times to make any replacements, alterations, additions, changes, substitutions or improvements in or to the Buildings provided that any such construction is performed in accordance with the provisions of Article III except as follows:

- (a) The Tenant shall not be obliged to provide Additional Security;
- (b) The work will be done in accordance with design drawings approved by the Landlord, which approval the Landlord will not unreasonably withhold; and
- (c) If more than one-half of the floor area of the Buildings are to be demolished, the Tenant must satisfy the Landlord (who must act reasonably) of the Tenant's financial ability to complete the reconstruction of the Buildings.

8.02 Such work shall meet the lawful requirements of all municipal, provincial, federal and other governmental or other authorities.

8.03 The Tenant covenants and agrees that any work once begun shall be prosecuted with reasonable diligence to completion in a good and workmanlike manner.

ARTICLE IX
DAMAGE OR DESTRUCTION

9.01 The partial destruction or damage or complete destruction of the Buildings by any cause, against which the Tenant is required to insure pursuant to Article VI, shall not terminate this Lease or entitle the Tenant to surrender possession of the Demised Land or to demand any abatement or reduction of the rent or other charges payable under this Lease, any law or statute now or in the future to the contrary notwithstanding. Provided, however, that the provisions of this Section 9.01 shall not prevent the Tenant from terminating this Lease or surrendering possession of the Demised Land if the Buildings are damaged by any cause against which the Tenant is not required to insure pursuant to Article VI and such damage cannot be repaired within ninety (90) days after the commencement of such repairs.

9.02 The Tenant covenants and agrees that, subject to the provisions of Section 9.01, in the event of damage to or the partial or total destruction of the Buildings, or any of them, the Tenant shall with reasonable diligence:

- (a) Repair such damage or replace such destruction;
- (b) In the event of partial damage or destruction, demolish the damaged portion of the Buildings or any part thereof and restore the remainder; or
- (c) Reconstruct or replace the Buildings (except for any portions thereof erected at the expense of Subtenants) in whole or in part with a new structure;

always provided that in all cases the Tenant shall comply with the provisions of Section 8.01. Notwithstanding the foregoing provisions of this Section 9.02, if the Buildings are so damaged or destroyed within the last eighteen (18) months of the Initial Term, the First Renewal Term or an Additional Renewal Term that they cannot be repaired within ninety (90) days after the commencement of such repair, the Tenant may terminate this Lease by giving the Landlord written notice to that effect together

with an assignment to the Landlord of the Tenant's rights under any applicable policies of insurance with respect to damage to the Buildings on the Demised Land and with payment to the Landlord of any insurance proceeds with respect to damage to the Buildings on the Demised Lands received by the Tenant.

9.03 If the amount of any loss payable under any of the policies of insurance referred to in Section 6.01 in respect of any one loss is not in excess of \$200,000.00 the Landlord shall release its interest in and to any insurance moneys payable under such policies of insurance in respect of any such loss so that the same may be made available to the Tenant (subject to the provisions of Section 6.03) to restore, reconstruct or replace, and/or to compensate the Tenant, in the event that the Tenant paid for the cost of repairing the damage in respect of which the said insurance moneys are payable. If in any calendar year after 1981 the Consumer Price Index for Ontario for such calendar year differs from the Consumer Price Index for Ontario for 1981, the sum of \$200,000 referred to above shall be replaced by an amount equal to \$200,000 multiplied by a fraction the numerator of which is the Consumer Price Index for Ontario for such subsequent year and the denominator of which is the Consumer Price Index for Ontario for 1981. If the Consumer Price Index is replaced by some other index or method of measurement, the above calculation will be made after applying suitable conversion factors.

9.04 If the amount of any loss payable under any of the policies of insurance referred to in Section 6.01 in respect of any one loss is in excess of \$200,000.00 (or such other amount as is calculated pursuant to Section 9.03) the same shall be paid to a trustee satisfactory to the Landlord and the Tenant (subject to the provisions of Section 6.03) to be held by it and paid over to the Tenant upon completion by the Tenant of the work required to be done by the Tenant pursuant to the provisions of Section 9.02, and upon payment by the Tenant of all costs and expenses incidental thereto. Provided that the trustee shall, if requested by

the Tenant, pay any such insurance moneys in installments during the period of, and for costs already incurred for such work, and after receiving such other certificates, evidences and opinions as it shall require for the purpose of being satisfied that such work is being properly proceeded with. Any balance of insurance moneys remaining in the trustee's hands upon completion of such work shall be turned over to the Tenant, provided the trustee is satisfied that the cost of such work has been paid in full or will be paid in full at the time of delivery of such balance.

9.05 Any repair, replacement, demolition, restoration or reconstruction of the Buildings or any part thereof pursuant to the provisions of this Article IX shall be made or done in compliance with the provisions of Articles VII and VIII hereof.

9.06 Unless this Lease has been terminated pursuant to the terms hereof, the Tenant covenants to commence to restore or repair any loss or damage within ninety (90) days after the occurrence thereof.

ARTICLE X

COMPLIANCE WITH LAWS, ORDINANCES, AGREEMENTS, ETC.

10.01 Throughout the Term, the Tenant, at its sole cost and expense, will promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, provincial and municipal governments, departments, commissions, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which are, from time to time, applicable to the Property or to the use or manner of use of the Property or the owners, tenants or occupants thereof, whether or not any such law, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements or interfere with the use and enjoyment of the Property.

10.02 The Tenant shall have the right to contest, after prior written notice to the Landlord, if the contestation is in the name of the Landlord, by appropriate legal proceedings diligently conducted in good faith, in the name of the Tenant or the Landlord or both, without cost or expense to the Landlord, in its capacity as landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 10.01 and the Tenant may delay compliance therewith until the final determination of such proceeding provided such delay does not result in the Landlord incurring any penalty, fine or liability or result in any lien, charge or demolition or other order against the Property, unless, in case of any such penalty, fine, lien or charge, the Tenant furnishes to the Landlord reasonable security against any loss or injury by reason of such contest or delay.

ARTICLE XI

LIENS

11.01 The Tenant shall throughout the Term at its own cost and expense cause any and all statutory liens, mechanics' liens and other liens for labour, services or materials alleged to have been furnished to or to have been charged by or for the Tenant or anyone on its behalf which may be registered against or otherwise affect the Property, to be paid, satisfied, released, cancelled and vacated within thirty (30) days after a claim for lien has been registered or within thirty (30) days after the Tenant has notice that a claim for lien has been made or after the Landlord shall send to the Tenant written notice by registered mail of any claim for any such lien whichever shall be the earliest. Provided, however, that in the event of a bona fide dispute by the Tenant of the validity or correctness of any claim for any such lien, the Tenant shall not be bound by the foregoing, but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into Court the amount claimed and such costs as the Court may direct and registering all such documents as may be necessary to cancel such lien, or providing such other security in respect of such claim as the Landlord may in writing approve, provided that such approval shall not be unreasonably withheld or delayed.

11.02 In all cases where work is being done on the Property or any part thereof, the Tenant shall comply with all statutory requirements as to amounts to be held back out of payments to be made with respect to such work.

ARTICLE XII
USE OF PROPERTY

12.01 The Tenant may not without the prior written consent of the Landlord, which consent may not be unreasonably withheld, use or occupy or allow to be used or occupied, the Property or any part thereof for any uses other than those usual in similar first class commercial and retail projects in similar market areas.

12.02 Subject to the foregoing provisions of Article XII, the Tenant may use or occupy the Property for any and all uses not prohibited by any applicable governmental law, by-law, regulation, ordinance or restriction. The Tenant shall not use or occupy the Property or any part thereof for any unlawful purpose or in any manner which in law may constitute a nuisance or which may make void or voidable any policy of insurance then in force in respect thereof.

12.03 The Tenant will manage, operate and maintain or cause to be managed, operated and maintained the Property in a manner commensurate with similar first class projects. Cadillac Fairview shall manage the Property, on a management fee basis, under a management contract with an initial term of at least three (3) years after the Opening Date, such contract to be in the normal form of such contracts entered into by Cadillac Fairview for projects in which it has a substantial interest. Notwithstanding the foregoing provisions of this Section 12.03, the Tenant shall not be in default hereunder if the Department Store is not being operated as a department store and if the Tenant has used its reasonable best efforts to lease the Department Store to a Subtenant which operates a conventional department store of a type suitable for the market in which the Department Store is located.

12.04 The arrangements between the Tenant and The T. Eaton Company Limited will require that, for at least thirty (30) years after the Opening Date, and for so long thereafter as The T. Eaton Company Limited shall be the Subtenant of the Department Store, The T. Eaton Company Limited will occupy and operate the whole of the Department Store as a typical "Eatons" department store under the name "Eatons", suitable for the market in which it is located, subject to such provisions as are agreed to by Cadillac Fairview and The T. Eaton Company Limited acting prudently on an arms' length basis including provisions regarding assignment and subletting as set out in Schedule "C" hereto.

12.05 The Tenant will use reasonable efforts to incorporate a "Farmers' Market" into the operations of the Property, such market to be on a periodic basis and to be subject to the approval of the operator of the Department Store and the operator of a food supermarket in the Property and provided that such market can be operated without unreasonably disrupting pedestrian or vehicular traffic and that it can be operated without any net cost to the Tenant.

ARTICLE XIII
INDEMNIFICATION OF LANDLORD

13.01 In addition to the obligations of the Tenant set out in Section 4.05, the Tenant will indemnify and save harmless the Landlord against and from all liabilities, obligations, damages, penalties, claims, costs (including reasonable professional fees), fines, suits, demands and actions and causes of action which may be imposed upon or incurred by or asserted against the Landlord by reason of or arising in any way in connection with any breach, violation or non-performance by the Tenant of any covenant, term or provision of this Lease or the occupation of the Property by the Tenant or its servants, agents, employees, Subtenants or assignees. In case any action or proceeding is brought against the Landlord by reason of any such liability, obligation, damage, penalty, claim, costs, fines, suits, demands or actions or causes of action, the Tenant upon written notice from the Landlord will at the Tenant's expense resist or defend such action or proceeding. Nothing in this Article XIII contained shall obligate or require the Tenant to indemnify or save the Landlord harmless from any such liability, obligation, damage, penalty, claim, costs, fines, suits, demands or actions or causes of action incurred by or assessed against the Landlord by reason of or arising in any way in connection with the acts or negligence of the Landlord, its servants, agents or employees.

ARTICLE XIV
CONVEYANCE BY LANDLORD

14.01 If the Landlord or any successor owner of the Demised Land shall convey or otherwise dispose of the Demised Land and turn over to the transferee any funds held by it hereunder in which the Tenant has an interest hereunder, all liabilities and obligations on the part of the Landlord or any successor owner as the Landlord under this Lease accruing after such conveyance or disposal shall terminate upon such conveyance or disposal, if such transferee enters into an agreement, in form satisfactory to the Tenant, by which such transferee agrees to be bound by and perform all of the covenants, provisions and obligations of the Landlord herein contained.

14.02 If the Landlord or any successor owner of the Demised Land shall specifically charge, mortgage or otherwise encumber its interest in the Property, it will require the holder of any such encumbrance to enter into an agreement, in form satisfactory to the Tenant, under which such holder of any such encumbrance agrees that if it becomes a mortgagee in possession it will be bound by and perform all of the covenants, provisions and obligations of the Landlord herein contained.

14.03 The Landlord will not accept any offer to purchase its interest in the Property unless it has first given the Tenant notice of such offer, accompanied by a copy of such offer, offering to sell such interest to the Tenant on the same terms and conditions as are contained in such offer and giving the Tenant thirty (30) days after the giving of such notice within which to accept such offer to sell. If the Tenant accepts the Landlord's offer to sell, the sale shall proceed in accordance with the terms thereof. If the Tenant does not accept the Landlord's offer (either by giving notice of such non-acceptance or by not giving any notice within such thirty (30) day period) the Landlord may complete the transaction of sale and purchase of its interest in the Property in accordance with the terms of such

offer provided that the terms of Section 14.01 are complied with. The foregoing provisions of this Section 14.03 shall not apply to any transfer by the Landlord of its interest in the Property to any person, firm or corporation related in any way to the Landlord.

ARTICLE XV
ASSIGNING AND SUBLETTING

15.01 The Tenant may at any time, and from time to time, Sublet the whole or any part or parts of the Property, all without any consent, approval or permission of the Landlord being required, provided that no such Sublease shall purport to give to the Subtenant any rights or privileges greater than those granted to the Tenant under this Lease.

15.02 Until the expiration of three (3) years after the Opening Date, Cadillac Fairview shall own at least a fifty per cent (50%) undivided interest in the interest in the Property granted to the Tenant under this Lease (which interest in the Property is hereinafter called the "Tenant's Interest in the Property") provided that it may transfer its interest in the Property to an affiliated or subsidiary company so long as Cadillac Fairview continues to guarantee the performance of such affiliate or subsidiary under the Development Agreement and under this Lease, or if any such assignment is as a result of a corporate reorganization of Cadillac Fairview.

Cadillac Fairview may also transfer a twenty-five per cent (25%) interest in the Tenant's Interest in the Property provided that:

- (a) It has supplied the Landlord with evidence satisfactory to the Landlord (acting reasonably) to establish that such transferee is capable of carrying out its proportionate share of Cadillac Fairview's obligations under this Lease (except those set out in Section 12.03) and the Development Agreement;
- (b) Any such transferee has entered into an agreement with the Landlord, in form satisfactory to the Landlord, under which such transferee agrees to observe and perform its proportionate share of all of Cadillac Fairview's covenants and obligations under this Lease (except those set out in Section 12.03); and

- (c) Cadillac Fairview guarantees the performance by any such transferee of its covenants and obligations under this Lease (except those set out in Section 12.03) and the Development Agreement (such guarantee to relate only to matters arising within three (3) years after the Opening Date), provided that no such guarantee shall be required in the case of the acquisition of an interest in the Tenant's Interest in the Property by a financial intermediary which acts as a conventional mortgage lender with assets of over one billion dollars and which acquires such interest as part of the permanent financing of the Property.

15.03 After the expiration of three (3) years after the Opening Date, Cadillac Fairview may at any time or times, when not in default hereunder, assign or otherwise deal with its interest in the Tenant's Interest in the Property provided that, after such assignment, either:

- (a) It is the owner of at least a fifty per cent (50%) undivided interest in the Tenant's Interest in the Property; or
- (b) The Tenant has retained Cadillac Fairview or another corporation as Manager of the Property, provided that any such other manager shall have a good reputation as such and shall have demonstrated competence for managing shopping centres in Canada.

15.04 Subject to the provisions of Section 15.02 and 15.03, Cadillac Fairview may transfer all or any undivided portion of its interest in the Tenant's Interest in the Property provided that any such transfer is of an undivided interest in the Tenant's interest in the Property. If any transferee has provided the Landlord with evidence satisfactory to the Landlord (acting reasonably) as to the financial capability of such transferee to perform Cadillac Fairview's obligations hereunder, and has entered into an agreement with the Landlord, in form satisfactory to the Landlord, under which such transferee agrees

to observe and perform all of Cadillac Fairview's covenants and obligations under this Lease, the Landlord will release Cadillac Fairview from its covenants and obligations under this Lease insofar as they relate to the interest in the Tenant's Interest in the Property transferred to such transferee.

15.05 Properties may transfer all or any portion of its interest in the Tenant's Interest in the Property provided that any such transfer is of an undivided interest in the Tenant's Interest in the Property. If any such transferee has provided the Landlord with evidence satisfactory to the Landlord (acting reasonably) as to the financial capability of such transferee to perform Properties' obligations hereunder, and has entered into an agreement with the Landlord, in form satisfactory to the Landlord, under which such transferee agrees to observe and perform all of Properties' covenants and obligations under this lease, the Landlord will release Properties from its covenants and obligations under this lease insofar as they relate to the interest transferred to such transferee.

ARTICLE XVI

BANKRUPTCY

16.01 If:

- (a) The Term hereby granted shall at any time be seized or taken in execution by any creditor of the Tenant and such execution shall not have been stayed within thirty (30) days;
- (b) The Tenant shall make a general assignment for the benefit of creditors, or if it shall institute proceedings to subject itself to the Winding-Up Act or to be adjudicated a bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against it or shall file an application or petition or answer or consent seeking reorganization or readjustment of its indebtedness under the Bankruptcy Act or the Companies' Creditors Arrangement Act or any present or future law of Canada or any province thereof relating to bankruptcy or insolvency, or shall consent to the filing of any such application or petition, or shall consent to the appointment of a receiver, or if the Tenant or its directors shall pass any resolution authorizing the dissolution or winding-up of the Tenant;
- (c) A receiver, interim receiver, trustee or liquidator of all or substantially all of its property shall be appointed to the Tenant or a substantial part of its property, including the Property, or if a judgment, decree or order shall be entered by a Court of competent jurisdiction adjudging it a bankrupt or insolvent, or subject to the provisions of the Winding-Up Act or Bankruptcy Act, or determining that proceedings for reorganization, arrangement, adjustment, composition, liquidation, dissolution or

winding-up, or any similar relief under the Bankruptcy Act or the Companies' Creditors Arrangement Act or any present or future law of Canada or any province thereof relating to bankruptcy or insolvency have been properly instituted otherwise than by the Tenant and such appointment, decree, order or determination shall not have been discharged or the effect thereof stayed within a period of sixty (60) days; or

- (d) Any action, either voluntary or involuntary, shall be taken or commenced to terminate the corporate existence of the Tenant;

then rent for the three (3) months next ensuing after the then current month shall immediately become due and payable and the Lease shall at the option of the Landlord immediately become terminated, subject to the rights of any Mortgagee pursuant to Article XVIII hereof, and subject to the rights of any sub-tenants pursuant to Section 17.05 hereof. The provisions of Article XVI shall be effective in the case of any such action being taken by or with respect to any of the persons, firms or corporations which may, from time to time, constitute the Tenant.

16.02 The provisions of Section 16.01 shall not apply so as to terminate this Lease if any person, firm or corporation comprising the Tenant is affected by the occurrence of any of the events set out therein if, within forty-five (45) days after the happening of any such event the remainder or any of the persons, firms or corporations comprising the Tenant acquire the interest in this Lease of the persons, firms or corporations affected by any such event.

ARTICLE XVII

DEFAULT

17.01 If the Tenant shall be in default hereunder in the payment of rent or amounts collectable hereunder as rent reserved and in arrears, or shall be in default under any other provision of this Lease (including, without in any way limiting the generality of the foregoing, the obligations of the Tenant under Article X hereof), the Landlord shall give notice to the Tenant and all Mortgagees forthwith upon such default coming to the attention of the Landlord and in such notice the Landlord shall state the nature of the default and require the same to be remedied and the Tenant and the Mortgagees shall have from the receipt of such notice:

- (a) Thirty (30) days in the case of default in insuring or in the payment of rent (or other amounts); or
- (b) Ninety (90) days in the case of default under any other provision,

within which to remedy such default. Provided that such ninety (90) day period shall be reasonably extended if:

- (c) The default is of a nature which cannot be remedied in ninety (90) days and the Tenant upon receipt of such notice commences to rectify the default and proceeds diligently with such rectification; or
- (d) If the default is one which the Tenant has a right to require a Subtenant to rectify and if the Tenant upon receipt of such notice promptly notifies such Subtenant and thereafter takes such action as may be necessary to obtain rectification by such Subtenant or failing rectification by such Subtenant proceeds itself with such rectification diligently.

If, after the expiration of the times above limited the default has not been remedied, the Landlord may thereupon, at its option,

either by itself or its lawfully authorized agent, enter and re-enter into and upon the Demised Land or any part thereof in the name of the whole and have again, repossess and enjoy its former estate free and clear of all claims of the Tenant and, subject to the provisions of Section 18.03, all Mortgages, and this Lease and the Development Agreement shall be terminated, and the Buildings shall be forfeited to and become the property of the Landlord as liquidated damages without compensation therefor to the Tenant or to any Mortgagee.

17.02 The Tenant further covenants and agrees that on the Landlord becoming entitled under the provisions of Section 17.01 to re-enter upon the Demised Land under any of the provisions of this Lease, the Landlord in addition to all other rights shall have the right to enter the Demised Land as the agent of the Tenant either by force or otherwise without being liable for any prosecution therefor and to relet the Demised Land as the agent of the Tenant and to receive the rent therefor and to apply any rent derived from reletting the Demised Land on account of the rent under this Lease and the Tenant shall be liable to the Landlord for the deficiency, if any, provided the Landlord makes reasonable efforts to re-rent on the then existing terms and conditions.

17.03 The Landlord may nevertheless, in addition to the foregoing remedies, sue for rents or both sue for rents and to enforce alleged breaches of any conditions or covenants of this Lease.

17.04 No condoning, excusing or overlooking by the Landlord or the Tenant of any default, breach or non-observance by the Tenant or the Landlord at any time or times in respect of any covenant, proviso or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder respectively in respect of any continuing or subsequent default,

breach or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant in respect of any such continuing or subsequent default or breach and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant save only express waiver in writing. All rights and remedies of the Landlord in this Lease contained shall be cumulative and not alternative.

17.05 The Landlord covenants with the Tenant that, if this Lease shall be terminated for any reason, the Landlord will allow each Subtenant, who is not in default under its Sublease at the time this Lease is so terminated, to remain in possession of the premises demised to it under such Sublease to the end of the term thereof (and any renewals or extensions permitted thereunder) or until such Subtenant is in default thereunder (subject to any rights in such Sublease which such Subtenant may have to cure defaults), whichever shall be the shorter period, and will recognize and adopt all such Subleases and abide by their respective terms to the same extent as though such Subleases had been entered into directly by the Landlord and the Subtenants thereunder, provided that the Landlord shall not be bound or obliged to observe or perform any term or provision of any such Sublease, which term or provision:

- (a) Affects or might affect in any way any lands of the Landlord, other than the Demised Land; or
- (b) Affects or might affect in any way any use to which any lands of the Landlord, other than the Demised Land might be put; or
- (c) Imposes or might impose on the Landlord any obligation in any way in respect of any lands of the Landlord, other than the Demised Land.

The Landlord shall not be bound to give any such acknowledgment with respect to any Sublease which contains any term or provision referred to in (a), (b) or (c) above.

17.06 The Landlord will, upon the request and expense of the Tenant, enter into an agreement with each of the tenant of the Department Store and the Subtenant of the food supermarket confirming the provisions of Section 17.05.

17.07 In the event that a party hereto is prevented from performing any obligation on the date provided for herein by Unavoidable Delay, the date for performance shall, unless otherwise provided herein, be delayed by a period of time equal to the length of such Unavoidable Delay as such length is agreed to by the parties hereto. Each party hereto will notify the others as soon as practicable after becoming aware of any Unavoidable Delay and will, from time to time, notify the other parties as to the expected duration of each such Unavoidable Delay. If the parties hereto are unable to agree on the length of any Unavoidable Delay, the question shall be determined by arbitration pursuant to Article XXII.

17.08 The obligations of the Tenant contained in Articles IV, VI and XVI and the rights of the Landlord arising from breach of any of the said obligations shall not be subject to Unavoidable Delay.

ARTICLE XVIII

MORTGAGE

18.01 The Tenant may, when not in default hereunder, at any time and from time to time mortgage its interest in the Property by Mortgage; provided:

- (a) That such Mortgage
 - (i) covers and includes all of the Tenant's right, title and interest in and to the Property,
 - (ii) provides that any loss under the policies of insurance required to be furnished in accordance with the provisions of Article VI shall be adjusted with the insurance company and the proceeds thereof disposed of in accordance with the provisions of Article IX,
 - (iii) provides that prior to the institution of any proceedings to foreclose the Mortgage or the acceptance of an assignment of this Lease in lieu of the foreclosure of the Mortgage, the Mortgagee shall notify the Landlord in writing to that effect, and the Landlord shall have the right within sixty (60) days after the giving of such notice to purchase the Mortgage and the indebtedness which it secures at a purchase price equal to the full amount then owing to the Mortgagee under the Mortgage, including interest accrued and unpaid and any other sum owing under such Mortgage, the reasonable fees of the solicitors for the Mortgagee, and, in the event any foreclosure proceedings shall have been commenced, costs on a solicitor and client basis; and
- (b) That any such Mortgagee enters into an agreement in form satisfactory to the Landlord to the effect that:

- (i) if and when such Mortgagee becomes a mortgagee in possession (but not before) it will, during such time as it remains a mortgagee in possession, be bound by and use its best efforts to perform all of the covenants, provisoes and obligations of the Tenant herein contained (including remedying any default of the Tenant arising prior to the time of going into possession, provided that the Landlord shall have previously given notice of such default to the Mortgagee, as required by Section 18.02, except for any of such covenants, provisoes and obligations from the performance of which the Mortgagee shall have been exempted in writing by the Landlord, and
- (ii) the Mortgagee will require anyone claiming under it to enter into a similar written agreement with the Landlord.

All such written agreements referred to in subsection (b) above shall provide that, subject to Section 18.04, such Mortgagee or anyone so claiming under such Mortgagee shall be released by the Landlord from its obligations under this Lease if such Mortgagee or anyone claiming under such Mortgagee transfers its interest in this Lease to someone claiming under it who enters into a similar written agreement with the Landlord and if the Landlord is provided with evidence satisfactory to the Landlord as to the financial capability of such person to perform such covenants, provisoes and agreements, any dispute as to whether such evidence is sufficient to satisfy the Landlord as to the financial capability of such person shall be determined by arbitration pursuant to Article XXII.

18.02 If the interest of the Tenant in the Property shall from time to time be conveyed by Mortgage by the Tenant and if the Landlord shall be notified in writing of such Mortgage, then so long as such Mortgage shall continue in force and until

delivery of a title deed or trustee's deed to the purchaser at a sale in foreclosure thereof, notice of default (as is required to be given to the Tenant under Articles XVII and XXVI hereof) shall simultaneously be given to such Mortgagee and the giving of such notice to such Mortgagee shall be a condition precedent to the Landlord's right to exercise its remedies hereunder consequent upon such default, and such Mortgagee shall have the right to take such action as may be necessary to cure or commence to cure any such default to the same extent and with the same effect as though done by the Tenant.

18.03 The Landlord agrees for the benefit of any Mortgagee who shall become entitled to be given notice as provided in Section 18.02, that in case this Lease becomes subject to termination by the Landlord pursuant to Article XVII by reason of the happening of any default or by reason of the happening of any event set out in Article XVI, such cause of termination shall be deemed not to have occurred if the Mortgagee shall, within thirty days after receiving from the Landlord notice of the Landlord's intention to so terminate (and the Landlord covenants not to so terminate this Lease without giving such notice to such Mortgagee), pay all rent past due.

18.04 If for any reason this Lease shall be terminated before the end of the Term, any Mortgagee who shall be entitled to be given notice, as provided in Section 18.02, shall be entitled to enter into a new lease for a period that but for the termination of this Lease would have been the remainder of the Term, such new lease to be effective immediately upon such termination, at the rent and upon all of the terms, provisions, covenants and agreements contained in this Lease, so long as:

- (a) The Mortgagee makes written request to the Landlord for such new lease within thirty (30) days next after the Mortgagee is advised by notice in writing from the Landlord of the termination of this Lease;

- (b) The Mortgagee pays or causes to be paid to the Landlord at the time of the execution and delivery of the new lease all sums which would at the time of the execution and delivery of the new lease be due the Landlord by the Tenant under this Lease but for such termination and in respect of which the Landlord has given notice to the Mortgagee as required by Section 18.02, and all of the costs of the Landlord in connection with such new lease;
- (c) The Mortgagee has otherwise complied with the requirements of Section 18.02; and
- (d) Any such new lease and the leasehold estate in the Demised Land thereby created shall retain the same priority as this Lease with respect to any mortgage, lien, charge or encumbrance created or assumed by the Landlord.

18.05 The Landlord will, at the request and expense of the Tenant, enter into an agreement, in form satisfactory to the Landlord, acting reasonably, confirming the provisions of either or both of Sections 18.02 and 18.03 to such Mortgagee.

18.06 The Landlord hereby represents and warrants that any Mortgagee shall be entitled to rely on the provisions of this Article XVIII and enforce such provisions against the Landlord.

ARTICLE XIX

END OF TERM

19.01 At the end of the Term hereby granted whether by forfeiture, default, effluxion of time or otherwise, the Tenant shall surrender the Demised Land and the Buildings to the Landlord in the condition in which they are required to be kept by the Tenant under the provisions of this Lease except as herein otherwise expressly provided.

19.02 Except as herein provided no surrender of this Lease by the Tenant prior to the end of the Term by effluxion of time shall be valid unless accepted in writing by the Landlord and consented to in writing by any Mortgagee.

19.03 At the end of the Term hereby granted, by effluxion of time but not otherwise, the Landlord shall pay to the Tenant the value of any unexpired insurance premiums upon the Buildings and the parties will pro rata adjust, apportion and allow between themselves all Impositions and items of rents, taxes, water rates and other matters of a similar nature applicable to the Buildings, to the intent and purpose that the Tenant shall bear the burden thereof until it shall deliver up possession of the Demised Land on the termination of the Lease but not afterwards.

ARTICLE XX

OVERHOLDING

20.01 It is agreed that upon the termination of this Lease by effluxion of time and in the event that the Tenant remains in possession of the Demised Land and the Buildings with or without the consent of the Landlord and without any further written agreement, a tenancy from year to year shall not be created by implication of law, but the Tenant shall be deemed to be a monthly tenant only at a rental payable in advance at the rate of one-twelfth (1/12th) of the annual rent immediately theretofore payable and otherwise upon and subject to the same terms and conditions as herein contained.

ARTICLE XXI

DISTRESS

21.01 The Tenant hereby irrevocably waives and renounces the benefit of any present or future legislation of the legislature of the Province of Ontario taking away or diminishing the Landlord's right of distress and agrees with the Landlord that notwithstanding any such enactment, all goods and chattels which are the property of the Tenant and are from time to time on the Demised Land, shall be subject to distress for rent.

ARTICLE XXII

ARBITRATION

22.01 If the Landlord and the Tenant do not agree as to any of the matters which, if no agreement is reached upon them, are by the provisions of this Lease to be determined by arbitration, any such disagreement shall be referred to three (3) arbitrators one of whom shall be chosen by the Landlord, one by the Tenant and the third by the two so chosen. If within thirty (30) days the party who has been notified of a dispute fails to appoint an arbitrator or the two arbitrators appointed by the parties do not agree upon a third arbitrator, then the party or parties not in default in making the required appointment may apply to a Judge of the Supreme Court of Ontario for the appointment by a Judge of the Supreme Court of Ontario of an arbitrator to represent the party or parties in default in making the required appointment or a third arbitrator or both of such arbitrators.

22.02 The arbitration shall be conducted upon the terms and conditions and subject to the provisions of The Arbitrations Act of the Province of Ontario and shall be final and binding on the parties hereto.

ARTICLE XXIII

MISCELLANEOUS

23.01 All notices, demands, approvals, consents and requests which may be or are required to be given by either party to the other shall be in writing and shall be personally served upon the Tenant addressed to Cadillac Fairview at 1200 Sheppard Avenue East, Willowdale, Ontario M2K 2R8 and marked to the attention of the Corporate Secretary of Cadillac Fairview, or on the Landlord, to it at the City Hall, 255 North Christina Street, Sarnia, Ontario, N7T 7N2 marked to the attention of the City Clerk or to such other address as the Landlord or the Tenant may from time to time designate by written notice to the Tenant or the Landlord.

23.02 Any notice, demand, approval, consent or request which shall be given as provided in Section 23.01 upon the Landlord or the Tenant shall be sufficiently given for all purposes hereunder on the day on which it was so personally served.

23.03 The Tenant agrees at any time and from time to time, upon not less than twenty (20) days' prior notice by the Landlord, to execute, acknowledge and deliver to the Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications) and the dates to which the rental, additional rental and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge, information and belief of the signer of such certificate, the Landlord is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the signer may have knowledge, information or belief, it being intended that any such statement may be relied upon by any prospective purchaser of the fee or any mortgagee thereof, or any assignee of any mortgage upon the fee of the Demised Land.

23.04 The Landlord agrees at any time and from time to time, upon not less than twenty (20) days' prior notice by the Tenant, to execute and deliver to the Tenant a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and the dates to which the rental, additional rent, and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge, information and belief of the signer of such certificate the Tenant is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the signer may have knowledge, information or belief, it being intended that any such statement may be relied upon by any prospective assignee of the Tenant's interest in this Lease or any mortgagee thereof or any assignee of any mortgage upon the leasehold estate hereby created. Failure of the Landlord to execute and deliver such statement at time specified shall not relieve the Tenant of the obligation to pay the rent or perform any of the covenants of this Lease.

23.05 Nothing contained in this Lease shall create the relationship of partners or joint venturers between the Landlord and the Tenant.

23.06 The Development Agreement is terminated as of the Opening Date.

23.07 Each party hereto will keep and maintain, at its head office, up-to-date books of account with respect to the aspects of the operation of the Property to be carried on by that party under the terms of this Lease, such books to contain sufficient detail to enable the calculation of all amounts referred to in this Lease which are to be paid by such party or which are to be used in calculating any of such amounts.

23.08 Whenever in this Lease any financial, cost or expense information is to be provided by the Tenant or the Landlord, the party providing the same shall, if requested by the party entitled to receive the same, cause such information to be certified by the independent chartered accountants of the party providing the information. Either the Landlord or the Tenant may, on reasonable notice and during normal business hours, have its independent chartered accounts attend at the offices of the other party to carry out an audit of the books of such other party with respect to the information provided by such other party. If such audit discloses that any such information was inaccurate by at least 3% thereof, the party originally supplying such information shall pay the costs of such audit. Except as hereinbefore provided, any costs of any such audit shall be borne by the party receiving such information.

23.09 Except as herein otherwise provided, no party hereto shall unreasonably withhold or delay any approval or consent requested by any other party hereto with respect to any matter herein. Any such approval or consent shall be deemed not to have been unreasonably delayed if it is given as expeditiously as possible, having regard to the circumstances.

ARTICLE XXIV
CONDITION OF AND TITLE TO PROPERTY

24.01 The Landlord warrants that:

- (a) Its title to and the condition of the Demised Land are such as to enable the Landlord to enter into this Lease, subject to the existing lease to the Toronto-Dominion Bank, and that the Tenant's interest in this Lease will not be adversely affected by any defect therein; and
- (b) The zoning by-laws in force as of the date of the commencement of the Term permit the operation of the Development.

24.02 The Tenant accepts the Demised Land subject to the existing lease to the Toronto-Dominion Bank, assumes all the obligations of the Landlord as landlord thereunder and agrees that the said lease shall be a Sublease for all purposes of this Lease.

24.03 The Tenant acknowledges that any expenses of, or related to, bringing the Property under the provisions of The Certification of Titles Act or The Land Titles Act will be borne by the Tenant.

ARTICLE XXV

QUIET ENJOYMENT

25.01 The Tenant, upon paying the rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Land during the term of this Lease without hindrance or molestation by anyone claiming by, through or under the Landlord as such, subject, however, to the exceptions, reservations and conditions in the other provisions of this Lease.

ARTICLE XXVI

REMEDIES

26.01 If the Tenant shall at any time fail to pay any Imposition in accordance with the provisions of Article V, or to take out, pay for, maintain or deliver any of the insurance policies provided for in Article VI, or shall fail to make any other payment or perform any other act on its part to be made or performed, then (notwithstanding anything to the contrary contained in this Lease) the Landlord, after twenty (20) days' notice to the Tenant and all Mortgagees (or without notice in case of an emergency or in the case of default under the Tenant's covenant to insure) and without waiving or releasing the Tenant from any obligation of the Tenant contained in this Lease, may (but shall be under no obligation to):

- (a) Subject to the provisions of Section 5.04, pay any Imposition payable by the Tenant pursuant to the provisions of Article V;
- (b) Take out, pay for and maintain any of the insurance policies provided for in Article VI; or
- (c) Make any other payment or perform any other act on the Tenant's part to be made or performed as in this Lease provided;

and may enter upon the Property for any such purpose, and take all such action thereon, as may be necessary therefor.

26.02 All sums so paid by the Landlord and all costs and expenses including all reasonable legal fees incurred by the Landlord in connection with the performance of any such act, together with interest thereon at an interest rate per annum equal to four per cent (4%) over the prime rate fixed, from time to time, by the Toronto Dominion Bank in Sarnia from the respective dates of the Landlord's making of each such payment or incurring of each such cost and expense, shall constitute additional rent payable by the Tenant under this Lease and shall

be paid by the Tenant to the Landlord within ten (10) days after demand, and the Landlord shall not be limited, in the proof of any damages which the Landlord may claim against the Tenant arising out of or by reason of the Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by the Tenant and which would have been payable upon such insurance, but the Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss, to the extent of any deficiency in the insurance required by the provisions of this Lease, damages, costs, and expenses of suit suffered or incurred by reason of damage to, or destruction of, the Buildings, occurring during any period when the Tenant shall have failed to provide insurance as aforesaid. However, any such damages so recovered by the Landlord shall be subject to the provisions of Article IX.

26.03 No failure by the Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition.

No covenant, agreement, term or condition of this Lease to be performed or complied with by the Tenant, and no breach thereof, shall be waived, terminated, altered or modified except by a written instrument executed by the Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

26.04 In the event of any breach or threatened breach by the Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, the Landlord shall be entitled to enjoin

such breach or threatened breach and shall have the right to invoke any right or remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

26.05 Each right and remedy of the Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise and shall not preclude the simultaneous or later exercise by the Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE XXVII
LOCHIEL STREET SEWER

27.01 The Tenant acknowledges that the Lochiel Street Sewer is located under the Demised Land and that the title to the Demised Land is, notwithstanding anything to the contrary herein contained, subject to easements in favour of the Landlord:

- (a) For the Lochiel Street sewer;
- (b) to maintain, repair, replace (but only with a sewer of similar size) and operate the said sewer; and
- (c) Generally, through the ramps and driveways of the underground garage for the passage of men and equipment for the purpose of the maintenance, repair and replacement of the said sewer; and, in addition to the easements referred to in (a) and (b) above, the Landlord, in effecting any of such work may store equipment and pile material relative to such work adjacent thereto in a manner consistent both with the efficient carrying out of such work, and minimizing disturbance and inconvenience to the Tenant, both parties acting reasonably.

The locations and dimensions of the said easements referred to in (a) and (b) above are set out in Schedule A hereto.

27.02 Notwithstanding anything to the contrary herein contained, the Tenant will not erect any Building on the Demised Land over the easements for the said sewer or so near thereto as might reasonably be expected to have an adverse effect on the said sewer unless the Landlord has approved the working drawings therefor, which approval may be withheld if the Landlord, acting reasonably, is of the opinion that the construction of any such Building adversely affects the said sewer. If the Tenant does not agree with the opinion of the Landlord, the matter will be

determined by a submission to arbitration pursuant to Article XXII.

27.03 The Landlord shall have the right to inspect all work done by the Tenant over the easements for the said sewer at any reasonable time (providing that it does so without unduly disrupting the progress of construction and that it does so in accordance with the Tenant's reasonable safety and other construction rules) and the Tenant shall make all changes required by the Landlord in order to make such construction and work conform to the working drawings approved by the Landlord.

27.04 If the work done by the Tenant pursuant to this Article XXVII is done:

- (a) In accordance with working drawings as amended from time to time and approved by the Landlord;
and
- (b) Without any negligence on the part of the Tenant, its servants, officers, employees, agents or independent contractors,

then the Tenant shall not be under any liability to the Landlord for damage to, or caused by, the operation of the Lochiel Street Sewer. In the case of any such damage occasioned by a cause which does not satisfy (a) or (b) above, the Tenant will be liable therefor to the Landlord whether or not such damage occurs on the Demised Land. The Tenant will indemnify and save harmless the Landlord with respect to any action, suit, claim, demand or loss of any kind suffered by the Landlord as a result of, or arising in any way in connection with any damage with respect to which the Tenant shall be liable to the Landlord pursuant to the preceding sentence of this Section 27.04.

27.05 The Landlord covenants that the Lochiel Street Sewer is in good repair and operating condition and that it will keep the Lochiel Street Sewer in good repair and operating condition and if, in carrying out its obligation under this Section 27.05, it disturbs or damages any Buildings on the Demised Land, it will,

after the completion of any such work or maintenance, repair or replacement, restore such Buildings, as nearly as practicable, having regard to the availability of materials, to the same condition as they were before it commenced such work on the said sewer. The Landlord will conduct all repair and replacement work on the said sewer in such a manner so as to cause as little disruption as practicable to the operations of the Tenant and its Subtenants.

27.06 If the work done by the Landlord pursuant to Section 27.05 is done without negligence on the part of the Landlord, its servants, officers, employees, agents or independent contractors, then the Landlord shall not be under any liability to the Tenant for any damage caused by the operation of the Lochiel Street Sewer.

27.07 If damage is caused to the Lochiel Street Sewer, or if damage is caused because of the operation of, the Lochiel Street Sewer and if such damage appears to have been caused by an occurrence on or under the Demised Land or in connection therewith and if the parties hereto have not agreed within a reasonable length of time, having regard to the nature of the damage, that the damage was caused by the negligence of either the Landlord or the Tenant (or their respective servants, officers, employees, agents or independent contractors), and the parties hereto are unable, within a reasonable time, having regard to the circumstances (including the urgency with which any repairs should be made) to agree as to how such costs are to borne, the parties hereto will initially on an interim basis, share the costs of such repairs equally and will submit the matter to arbitration pursuant to Article XXII so that a final apportionment of such costs may be made.

27.08 Prior to the Stage 1 Delivery Date, the Landlord and the Tenant will jointly inspect the Lochiel Street Sewer to ascertain the condition thereof and will prepare and sign a memorandum setting out in detail the then condition of that

portion of the said sewer which lies under the Demised Land. The Tenant will pay the costs of all outside consultants engaged by it in connection with such inspection. Within one hundred and eighty (180) days after the Opening Date the Landlord and the Tenant will, at the expense of the Tenant, make a similar inspection of the said sewer and will prepare and sign a memorandum setting out in detail the then condition of that portion of the said sewer which lies under the Demised Land. Any damage to the said sewer which has occurred between the two inspections referred to above will be repaired pursuant to the provisions of this Article XXVII.

ARTICLE XXVIII
PARKING STRUCTURE

28.01 The Parking Structure will be constructed partly on the Demised Lands and partly under that part of Lochiel Street shown as Part 6 on Plan 25R3392. The part of Part 1, Plan 25R3392 above the Parking Structure will be dedicated by the Landlord as part of Seaway Lane.

28.02 The Tenant acknowledges that the Landlord may instal, maintain, repair and replace all utility service deemed necessary by the Landlord under, over or through those parts of the Parking Structure located in the said Parts 1 and 6, Plan 25R3392, provided that such services do not interfere with the construction or operation of the Parking Structure and the Tenant agrees that Part 1, Plan 25R3392 is subject to easements in favour of the Landlord with respect to any such services and agrees that it will, forthwith upon the request and at the expense of the Landlord, execute such documents as may be necessary or desirable to provide registerable or other evidence of the existence of such easements.

28.03 The Tenant covenants with the Landlord to carry out all construction, maintenance, repairs, alterations and other work on, or in connection with, the Parking Structure in such a manner so as to cause the least possible interference with pedestrian and vehicular traffic as is possible in the circumstances and that any such construction, maintenance, repairs, alterations or other work on, or in connection with, the Parking Structure will not prevent the normal use of Seaway Lane or that part of Lochiel Street included in Part 6, Plan 25R3392, except for necessary short-term closings (outside of normal business hours of the premises serviced by Seaway Lane and that part of Lochiel Street included in Part 6, Plan 25R3392) during such construction, maintenance, repairs, alterations or other work.

ARTICLE XXIX

INTEREST IN AND LIABILITY OF THE TENANT

29.01 The interests in the Property, as of the commencement of the Term, of the parties comprising the Tenant are as tenants in common, each as to an undivided interest as follows:

- (a) Cadillac Fairview as to 75%; and
- (b) Properties as to 25%.

29.02 Each of the parties in (a) and (b) of Section 29.01 shall be severally liable for the performance of the Tenant's obligations hereunder and such several responsibility shall be limited to the extent of their respective interests herein. The liability of Properties, (or of The T. Eaton Company Limited or any other subsidiary or affiliated company of The T. Eaton Company Limited, which owns any part of Properties' original interest in the Property) shall, insofar as it only relates to the original twenty-five per cent (25%) interest in this Lease held by Properties at the commencement of the Term, be limited to its undivided tenant in common interest in the Property; such limited liability shall not extend to a successor or assign of Properties which successor or assign is not a subsidiary or affiliate of The T. Eaton Company Limited, nor shall such limited liability extend to any interest in the Property in addition to or different from the original twenty-five per cent (25%) interest of Properties.

29.03 In the event that the Landlord shall have any valid claim, as determined by a court of competent jurisdiction, against Properties, with respect to Properties' liability relating to its original twenty-five per cent (25%) interest in this Lease, Properties shall grant to the Landlord a charge on Properties' undivided interest in this Lease. Such charge shall rank subsequent to any financing by the Tenant for the construction of the Development and to any collateral charge between Properties and Cadillac Fairview granted as collateral security for their respective obligations against each other.

The rights of the Landlord under any such charge shall not include the rights of foreclosure or sale but shall be limited to the right to appoint a receiver or to petition a court of competent jurisdiction to appoint a receiver of the interest of Properties in this Lease.

29.04 Nothing in this Article XXIX shall in any way affect the rights of the Landlord with respect to the Initial Deposit or the Additional Security.

ARTICLE XXX
SUCCESSORS AND ASSIGNS

30.01 The covenants and agreements herein contained shall bind and enure to the benefit of the Landlord, its successors and permitted assigns, and the Tenant, its successors and permitted assigns, except as otherwise provided herein, and cannot be changed or terminated orally.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

THE CORPORATION OF THE CITY OF
SARNIA

Marcel Saddy
MAYOR

John K. ...
CLERK

THE CADILLAC FAIRVIEW CORPORATION
LIMITED

George Hawley
VICE-PRESIDENT

John K. ...
SECRETARY

EATON PROPERTIES LIMITED

John K. ...
DIRECTOR

SECRETARY

SCHEDULE "A"

PART 1

STAGE 1 LAND

ALL AND SINGULAR those certain parcels or tracts of land and premises in the City of Sarnia, County of Lambton and Province of Ontario composed of the following:

- (a) Part of Lot 1 according to Registered Plan Number 664 for the City of Sarnia, designated as Part 7 on Reference Plan 25R-3518; and
- (b) Part of Lot 10 according to Registered Plan Number 664 for the City of Sarnia, designated as Part 8 on Reference Plan 25R-3518; and lying at and below a plane having an elevation of 597.20 feet along the most easterly limit of said Part 8, said plane inclining to an elevation of 597.00 feet along the westerly limit of said Part 8; elevations herein are referred to City of Sarnia datum.

Subject to an easement for an existing storm sewer located in part of Lochiel Street and part of former Lochiel Street (now closed by By-Law Number 8188 of the City of Sarnia, registered as Instrument Number 488095 for the County of Lambton), according to Registered Plan 14 for the City of Sarnia, now known as part of Lots 1, 5 and 10 Plan 664 for the City of Sarnia, designated as Parts 2 and 5 on Reference Plan 25R-3477;

And subject to an easement for access to said storm sewer, for excavation and working, for maintenance, repair, restoration and replacement purposes over parts of Lochiel Street and former Lochiel Street (closed as aforesaid), according to Registered Plan 14 for the City of Sarnia, now known as part of Lots 1, 5 and 10 Plan 664 for the City of Sarnia, designated as Parts 1, 2 and 3 on Reference Plan 25R-3477 from and below the level of Lochiel Street, as the same may exist from time to time; and over parts of the former Lochiel Street (closed as aforesaid) and the former Victoria Street (also closed as aforesaid), according to Registered Plan 14 for the City of Sarnia, now known as part of Lots 1, 5 and 10 Plan 664 for the City of Sarnia, designated as Parts 4, 5 and 6 on Reference Plan 25R-3477 at and below the basement floor level of the Parking Structure as the same may exist from time to time.

And subject to an easement through the ramps and drive-ways of the Parking Structure for the passage of men and equipment for the purpose of the maintenance, repair or replacement of the said storm sewer; and the Landlord, for the purpose of the said easements, may store equipment and pile material relative to such maintenance, repair or replacement adjacent thereto in a manner consistent both with the efficient carrying out of the work, and minimizing disturbance and inconvenience to the Tenant, both parties acting reasonably.

SCHEDULE "A"

PART 2

STAGE 2 LAND

ALL AND SINGULAR those certain parcels or tracts of land and premises in the City of Sarnia, County of Lambton and Province of Ontario composed of the following:

Part of Lot 1, according to Registered Plan 664 for the City of Sarnia, designated as Part 12 on Reference Plan 25R-3518.

SCHEDULE "A"

PART 3

STAGE 3 LAND

ALL AND SINGULAR those certain parcels or tracts of land and premises in the City of Sarnia, County of Lambton and Province of Ontario composed of the following:

Parts of Lot 1, according to Registered Plan 664 for the City of Sarnia, designated as Parts 2 and 3 on Reference Plan 25R-3518;

Subject to an easement for the benefit of the owners and occupants from time to time of Lot 9, according to Registered Plan 664 for the City of Sarnia for the passage of pedestrians and vehicles over said Part 3 on Reference Plan 25R-3518;

And subject to an easement to maintain and repair a manhole, storm sewer connections and that part of a storm sewer lying north of said manhole, located within said Part 3 on Reference Plan 25R-3518.

SCHEDULE "A"

PART 4A

STAGE 4A LAND

ALL AND SINGULAR those certain parcels or tracts of land and premises in the City of Sarnia, County of Lambton and Province of Ontario composed of the following:

- (a) Part of Lot 1, according to Registered Plan 664 for the City of Sarnia, designated as Part 4 on Reference Plan 25R-3518; and
- (b) Part of Lot 1, according to Registered Plan 664 for the City of Sarnia, designated as Part 6 on Reference Plan 25R-3518 (at basement level only).

SCHEDULE "A"

PART 4B

STAGE 4B LAND

ALL AND SINGULAR those certain parcels or tracts of land and premises in the City of Sarnia, County of Lambton and Province of Ontario composed of the following:

- (a) Part of Lot 1, according to Registered Plan 664 for the City of Sarnia, designated as Part 5 on Reference Plan 25R-3518; and
- (b) Part of Lot 1, according to Registered Plan 664 for the City of Sarnia, designated as Part 6 on Reference Plan 25R-3518 (not including the basement level).



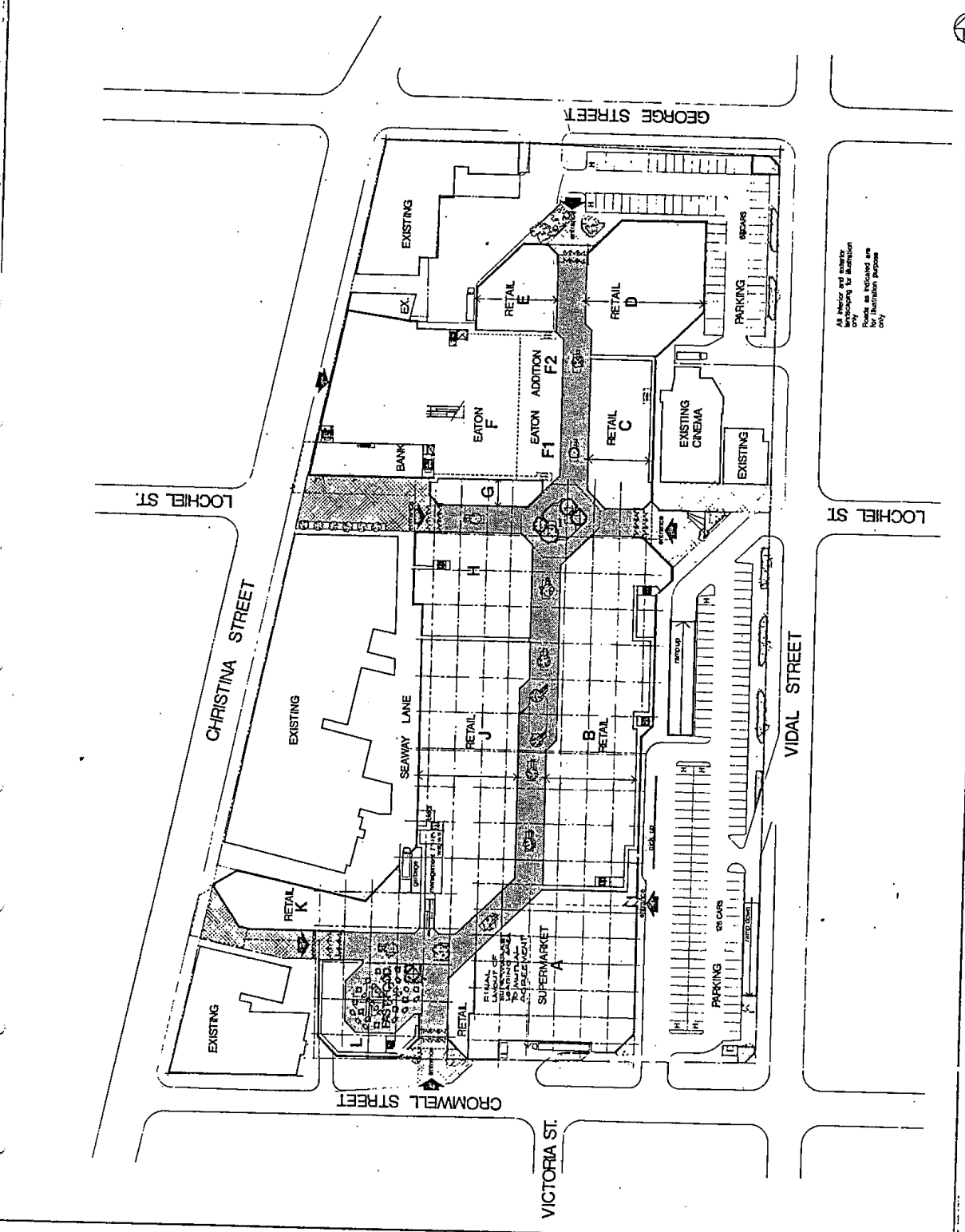
DATE: 11/12/2011
PROJECT: SARNIA EATON CENTRE

NOT TO SCALE
FOR INFORMATION ONLY
DO NOT CONSTRUCT
WITHOUT THE APPROVAL OF THE
MUNICIPALITY OF SARNIA

SARNIA
EATON
CENTRE

GROUND
FLOOR PLAN
MAJOR
ENTRANCES

DATE: 11/12/2011
DRAWN BY: J.M.B.



All areas of public
access are shown
only as indicated, are
for illustration purposes
only.

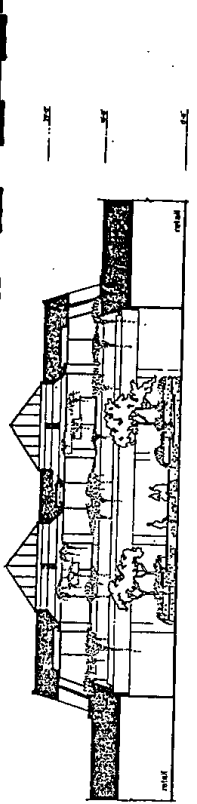


REVISIONS

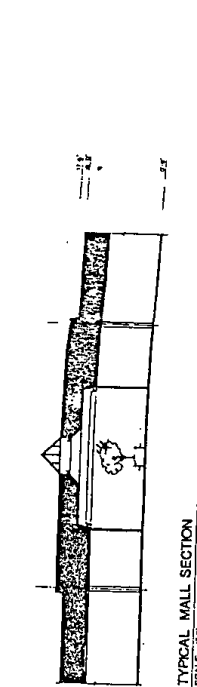
SARNIA
EATON
CENTRE

SECTIONS &
ELEVATIONS

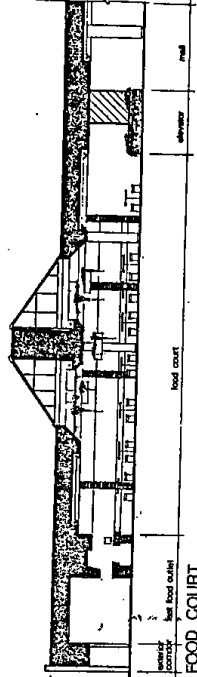
DATE: 11/20/00
DRAWN: JANKS



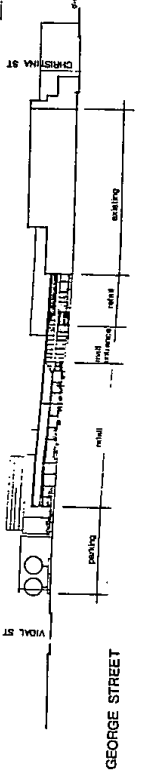
TYPICAL MALL SECTION
SCALE 1/8"



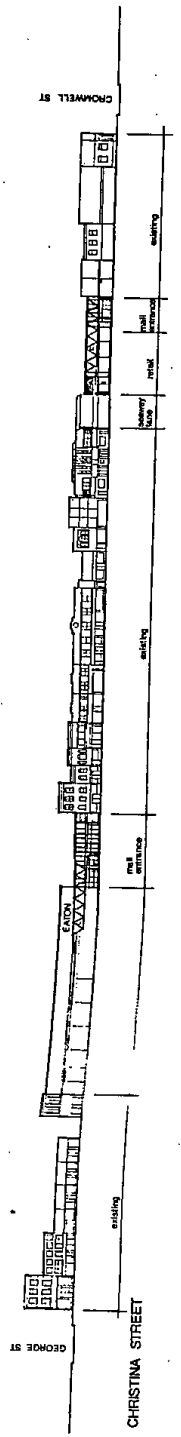
NORTH COURT
SCALE 1/8"



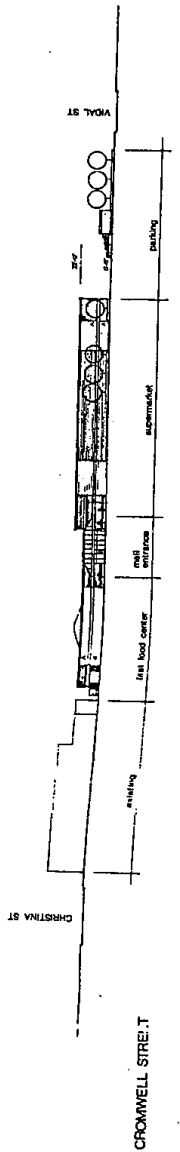
FOOD COURT
SCALE 1/8"



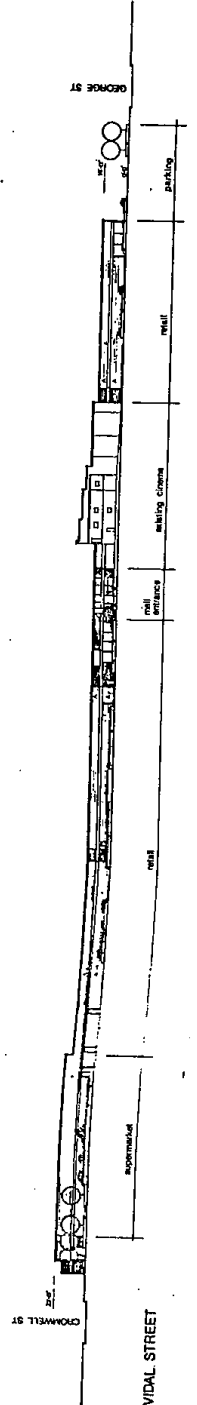
GEORGE STREET
SCALE 1/8"



CHRISTINA STREET
SCALE 1/8"



CROMWELL STREET
SCALE 1/8"



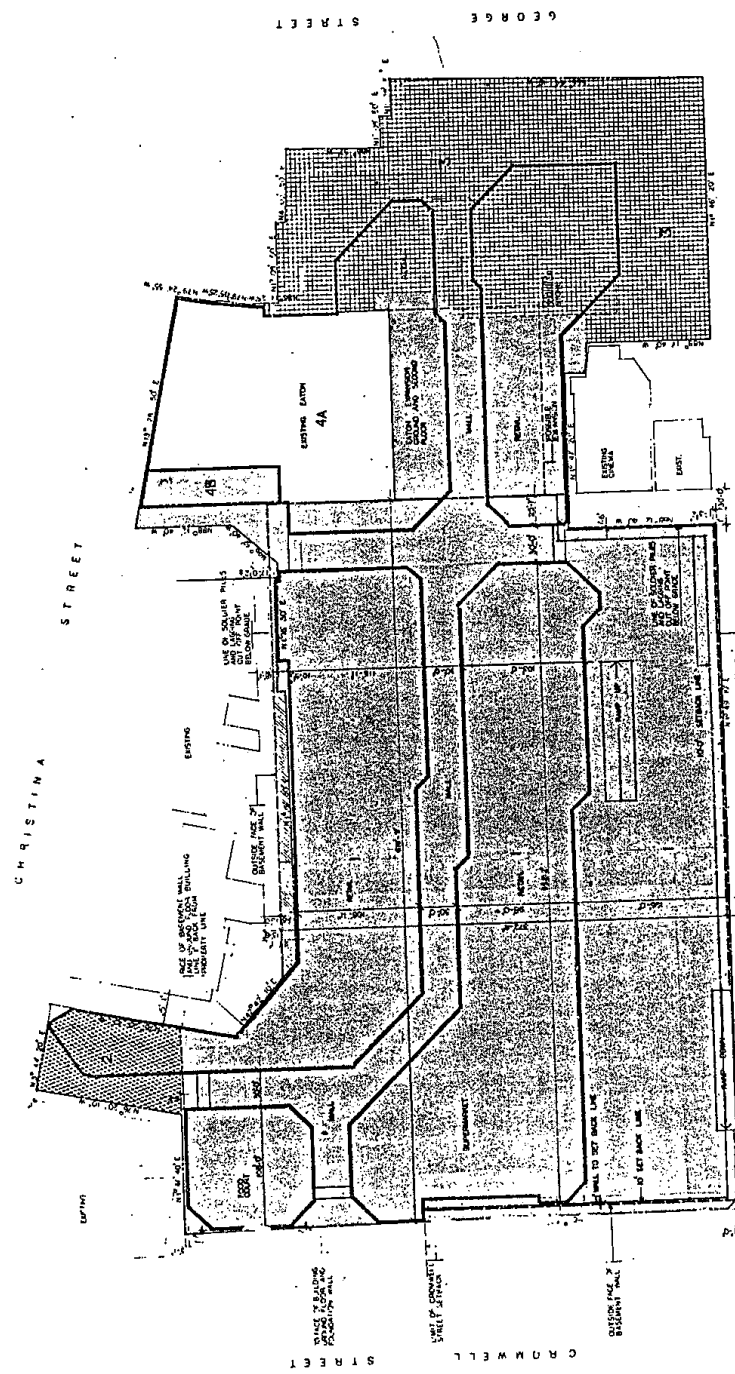
VIDAL STREET
SCALE 1/8"

Symbol	Material
A	Red brick
B	Lead glass and aluminum frames
C	Cast stone
D	Cast stone

Note: All materials to be installed in accordance with manufacturer's instructions and approved by the City of Sarnia.

SCHEDULE "B"

REVISED BY: []	DATE: []	BY: []	FOR: []
SCHEDULE "B"		SARNIA EATON CENTRE	
LAND DELIVERY SCHEDULE		[]	




LEGEND

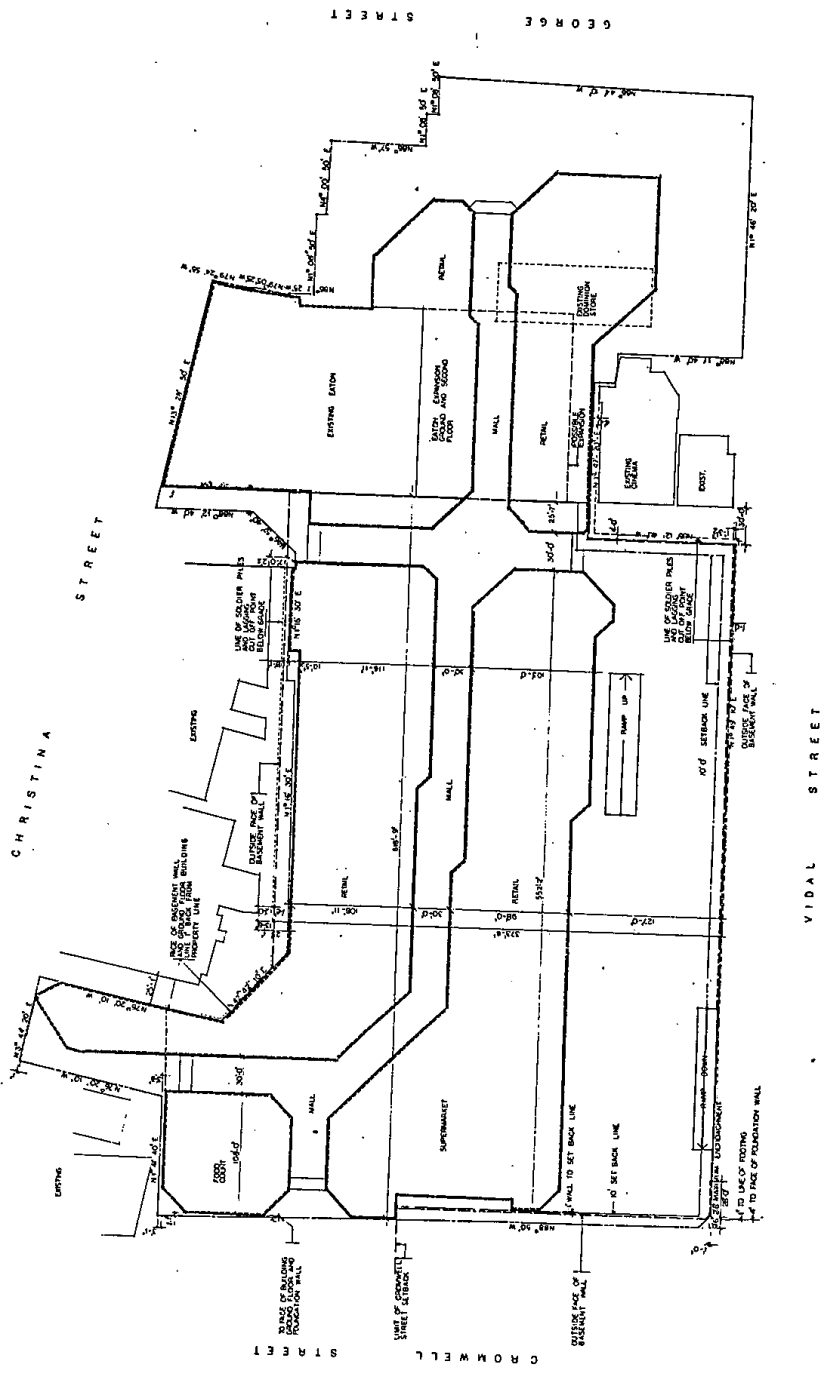
[Hatched Box]	STAGE 1 FOUNDATION
[Hatched Box]	STAGE 1 100' X 100' BELLING
[Hatched Box]	STAGE 1 100' X 100' BELLING
[Hatched Box]	STAGE 2
[Hatched Box]	STAGE 3
[Hatched Box]	STAGE 4
[Hatched Box]	STAGE 5
[Hatched Box]	STAGE 6


SCHEDULE "E"
Use existing structure

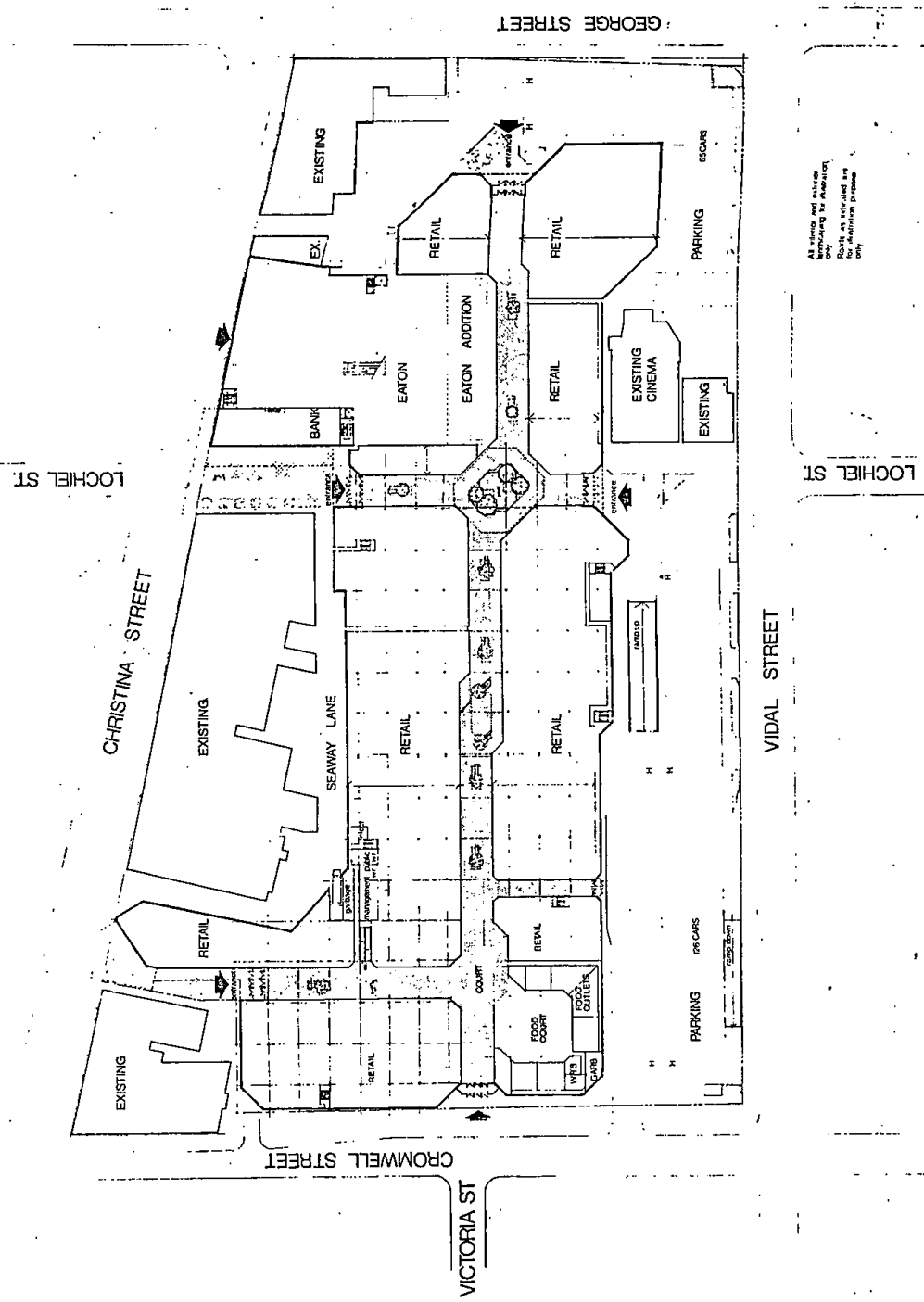


DATE: []

	Project No. 100-100-100-100	Scale 1/8" = 1'-0"
Client: SARNIA EATON CENTRE	Architect: [Faded]	Date: [Faded]
SET BACK AND BUILDING DIVISION PLAN		
[Faded text]		



	<p>DATE: 12/17/17 DRAWN BY: [Name] CHECKED BY: [Name] PROJECT: SARNIA EATON CENTRE</p>	<p>NO. 12/17/17 SHEET NO. 12/17/17 TOTAL SHEETS: 12/17/17</p>	<p>SARNIA EATON CENTRE</p> <p>GROUND FLOOR PLAN ENTRANCES</p>
---	---	---	--



SCHEDULE "C" TO GROUND LEASE

EATON LEASE ASSIGNMENT PROVISIONS

(1) The T. Eaton Company Limited (hereinafter called the "Eaton Company") shall not have the right to assign the sublease (the "Eaton's Lease") of the Eatons department store (the "Eaton's Store) or sublet the whole or any part of the Eaton's Store except with the prior written consent of Cadillac Fairview (which consent may be arbitrarily and unreasonably withheld) except in the following cases:

(a) Eaton Company shall have the right to grant concessions and licenses:

(i) without the qualifications as to use set forth in (ii) below, in respect of a maximum in the aggregate of 20% of the gross leasable area of the Eaton's Store; and

(ii) in respect of a maximum in the aggregate of an additional 15% of the gross leaseable area of the Eaton's Store provided that no such additional space shall be operated under the same name as is employed outside of department stores or by an operator who operates retail stores outside of department stores, and such additional space is so operated in comparable "Eaton's" department stores in Ontario;

and provided that, in so doing, the Eaton's Store continuously appears to be operated as a single integrated merchandising unit; it is understood that such licensees or concessionaires may be identified by signs, advertising or branded merchandise without such in itself breaching the foregoing proviso;

(b) at any time and from time to time, within the Eaton's corporate family, provided that Cadillac Fairview receives adequate assurances that the assignee shall remain within the Eaton's corporate family;

- (c) at any time and from time to time, to the purchaser of substantially all of the "Eaton's" department store operations in Ontario provided that the purchaser carries on a department store business with substantially similar merchandising, service and operating practices to those carried on by Eaton Company; and
- (d) at any time (but only one time and only by Eaton's) after the tenth anniversary of the Opening Date on not less than 12 months prior notice to Cadillac Fairview, on the following terms:
 - (i) the assignee or subtenant shall carry on a department store business with substantially similar merchandising, service and operating practices to that carried on by Eaton Company in the Eaton's Store in accordance with the operating covenant set forth in paragraph 17 of an agreement dated as of the 15th day of January, 1980 (hereinafter called the "Heads of Agreement");
 - (ii) the assignee or subtenant shall satisfy paragraph (2)(b);
 - (iii) Eaton Company shall not make such assignment or sublease pursuant to this paragraph (1)(d):
 - (A) if Eaton's has opened another department store within the Canadian portion of the Sarnia retail market area within a period of four years prior to such notice; and
 - (B) unless prior thereto Eaton Company shall have offered to Cadillac Fairview the opportunity to accept a surrender of the Eaton's Lease in lieu of an assignment by Eaton Company pursuant to this paragraph (1)(d); and
 - (iv) if Eaton Company completes the assignment pursuant to this paragraph (1)(d) or Cadillac

- 3 -

Fairview accepts a surrender of the Eaton's Lease, Eaton's shall not open another "Eaton's" department store within the Canadian portion of the Sarnia retail market area for a period expiring 10 years after the date of such assignment or surrender or at the end of the initial term of the Eaton's Lease, whichever is earlier.

(2) After the initial term of the Eaton's Lease, the consent of Cadillac Fairview to any proposed assignment or sublease shall not be withheld if the proposed assignee or subtenant:

(a) carries on a department store business with substantially similar merchandising, service and operating practices to that carried on by Eaton Company in the Eaton's Store in accordance with the operating covenant set forth in paragraph 17 of the Heads of Agreement; and

(b) is then in a position to borrow money on a long term basis at an interest rate no less favourable than that which would then be available to Eaton Company.

(3) If any permitted assignment takes place as described in paragraph (1)(c), to a purchaser who satisfies paragraph (2)(b), or if Cadillac Fairview accepts a surrender of the Eaton's Lease pursuant to paragraph 1(d), or if any permitted assignment takes place after the conclusion of the initial term of the Eaton's Lease, Cadillac Fairview shall forthwith release Eaton Company from all its covenants, conditions, obligations and agreements arising under the Eaton's Lease after such permitted assignment or surrender. No permitted assignment during the initial term shall release or lessen any liability of Eaton Company under the Eaton's Lease except as aforesaid.

The Land Transfer Tax Act, 1974

AFFIDAVIT OF RESIDENCE AND OF VALUE OF THE CONSIDERATION

MATTER OF THE CONVEYANCE OF (insert brief description of land) Those certain parcels or tracts of land and premises, situate in the City of Sarnia, in the County of Lambton, are particularly described in Schedule "A" attached hereto.

(insert names of all transferors in full) THE CORPORATION OF THE CITY OF SARNIA

(insert instruction 1 and print names of all transferees in full) THE CADILLAC FAIRVIEW CORPORATION LIMITED and EATON PROPERTIES LIMITED

(insert instruction 2 and print name(s) in full) George Lawtey

OATH AND SAY THAT:

(place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent(s): (see instruction 2)

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for (insert name(s) of principal(s))

(e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for (insert name(s) of corporation(s)) THE CADILLAC FAIRVIEW CORPORATION LIMITED, one of the transferees

described in paragraph(s) (a), (b), (c) above. (strike out references to inapplicable paragraphs)

(f) I a transferee described in paragraph () (insert only one of paragraph (a), (b) or (c) above, as applicable) and am making this affidavit on my own behalf and on behalf of (insert name of spouse)

who is my spouse described in paragraph () (insert only one of paragraph (a), (b) or (c) above, as applicable)

As such, I have personal knowledge of the facts herein deposed to.

I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses f and g of subsection 1 of section 1 of the Act. (see instruction 3)

The following persons to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed are non-resident persons within the meaning of the Act. (see instruction 4) None

TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:

Monies paid or to be paid in cash	\$ 591,800.00	
Mortgages (i) Assumed (show principal and interest to be credited against purchase price)	\$ Nil	
(ii) Given back to vendor	\$ Nil	
Property transferred in exchange (detail below)	\$ Nil	
Securities transferred to the value of (detail below)	\$ Nil	
Liens, legacies, annuities and maintenance charges to which transfer is subject	\$ Nil	
Other valuable consideration subject to land transfer tax (detail below)	\$ Nil	
VALUE OF LAND, BUILDING, FIXTURES AND GOODWILL SUBJECT TO LAND TRANSFER TAX (TOTAL OF (a) to (f))	\$ 591,800.00	\$ 591,800.00
VALUE OF ALL CHATTELS - items of tangible personal property		\$ 4554.40
Retail Sales Tax is payable on the value of all chattels unless exempt under the provisions of The Retail Sales Tax Act, R.S.O. 1970, c.415, as amended		\$ Nil
Other consideration for transaction not included in (g) or (h) above		\$ Nil
TOTAL CONSIDERATION		\$ 591,800.00

ALL BLANKS MUST BE FILLED IN. INSERT "NIL" WHERE APPLICABLE.

Consideration is nominal, describe relationship between transferor and transferee and state purpose of conveyance. (see instruction 5) N/A

Remarks and explanations, if necessary N/A

Subscribed before me at the City of North York Municipality of Metropolitan Toronto on the 14th day of June 19 81

(Signature of Commissioner for taking Affidavits, etc.)

(Signature of George Lawtey)
GEORGE LAWTEY (signature(s))

PROPERTY INFORMATION RECORD

Describe nature of instrument: Ground Lease
 Address of property being conveyed (if available): not available
 Assessment Roll No. (if available): n/a
 Mailing address(es) for future Notices of Assessment under The Assessment Act for property being conveyed (see instruction 6): Cadillac Fairview Corporation Limited, 1200 Sheppard Avenue East Willowdale, Ontario M2K 2R8
 Registration number for last conveyance of property being conveyed (if available): n/a
 Legal description of property conveyed: Same as in D.(f) above. Yes No Not Known
 Name(s) and address(es) of each transferee's solicitor: SMITH, LYONS, TORRANCE, STEVENSON, & MAYER, 100 Box 38, Toronto-Dominion Centre, Toronto, Ontario M5C 1C7

For Land Registry Office use only	
REGISTRATION NO.	
Land Registry Office No.	
Registration Date	

SCHEDULE "A"

ALL AND SINGULAR those certain parcels or tracts of land and Premises situate, lying and being in the City of Sarnia, in the County of Lambton and Province of Ontario composed of the following:

Part 1:

Part of Lot 1, according to Registered Plan No. 664 for the City of Sarnia, designated as Part 7, on Reference Plan 25R-3518; and

Part of Lot 10, according to Registered Plan Number 664, designated as Part 8 on Reference Plan 25R-3518.

Part 2:

Part of Lot 1, according to Registered Plan 664, designated as Part 12 on Reference Plan 25R-3518.

Part 3:

Parts of Lot 1, according to Registered Plan 664, designated as Parts 2 and 3 on Reference Plan 25R-3518.

Part 4A:

Part of Lot 1, according to Registered Plan 664, designated as Part 4 on Reference Plan 25R-3518; and

Part of Lot 1, according to Registered Plan 664, designated as Part 6 on Reference Plan 25R-3518 (at basement level only).

Part 4B:

Part of Lot 1, according to Registered Plan 664, designated as Part 5 on Reference Plan 25R-3518; and

Part of Lot 1, according to Registered Plan 664, designated as Part 6 on Reference Plan 25R-3518 (not including the basement level).

The Land Transfer Tax Act, 1974

AFFIDAVIT OF RESIDENCE AND OF VALUE OF THE CONSIDERATION

IN THE MATTER OF THE CONVEYANCE OF *(insert brief description of land)* Those certain parcels or tracts of land and premises, situate in the City of Sarnia, in the County of Lambton more particularly described in Schedule "A" attached hereto.

BY *(print names of all transferors in full)* THE CORPORATION OF THE CITY OF SARNIA
TO *(see instruction 1 and print names of all transferees in full)* THE CADILLAC FAIRVIEW CORPORATION LIMITED and EATON PROPERTIES LIMITED
I, *(see instruction 2 and print name(s) in full)* MICHAEL SPOHN

MAKE OATH AND SAY THAT:

- I am *(place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent(s); (see instruction 2)*
 - (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
 - (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
 - (c) A transferee named in the above-described conveyance;
 - (d) The authorized agent or solicitor acting in this transaction for *(insert name(s) of principal(s))* described in paragraph(s) (a), (b), (c) above; *(strike out references to inapplicable paragraphs)*
 - (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for *(insert name(s) of corporation(s))* described in paragraph(s) (a), (b), (c) above. *(strike out references to inapplicable paragraphs)*
 - (f) A transferee described in paragraph () *(insert only one of paragraph (a), (b) or (c) above, as applicable)* and am making this affidavit on my own behalf and on behalf of *(insert name of spouse)* who is my spouse described in paragraph () *(insert only one of paragraph (a), (b) or (c) above, as applicable)*
- I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses f and g of subsection 1 of section 1 of the Act. *(see instruction 3)*
- The following persons to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed are non-resident persons within the meaning of the Act. *(see instruction 4)* None

4. THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:

(a) Monies paid or to be paid in cash	\$ 591,800.00	
(b) Mortgages (i) Assumed <i>(show principal and interest to be credited against purchase price)</i>	\$ Nil	
(ii) Given back to vendor	\$ Nil	
(c) Property transferred in exchange <i>(detail below)</i>	\$ Nil	
(d) Securities transferred to the value of <i>(detail below)</i>	\$ Nil	
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	\$ Nil	
(f) Other valuable consideration subject to land transfer tax <i>(detail below)</i>	\$ Nil	
(g) VALUE OF LAND, BUILDING, FIXTURES AND GOODWILL SUBJECT TO LAND TRANSFER TAX (TOTAL OF (a) to (f))	\$ 591,800.00	\$ 591,800.00
(h) VALUE OF ALL CHATTELS - Items of tangible personal property <i>(Retail Sales Tax is payable on the value of all chattels unless exempt under the provisions of The Retail Sales Tax Act, R.S.O. 1970, c. 415, as amended)</i>		
(i) Other consideration for transaction not included in (g) or (h) above	\$ Nil	
(j) TOTAL CONSIDERATION	\$ Nil	\$ Nil
	\$ 591,800.00	\$ 591,800.00

ALL BLANKS
MUST BE
FILLED IN.
INSERT "NIL"
WHERE
APPLICABLE.

If consideration is nominal, describe relationship between transferor and transferee and state purpose of conveyance. *(see instruction 5)*
N/A

Other remarks and explanations, if necessary N/A

SWORN before me at the City of Toronto
in the Municipality of Metropolitan Toronto
this 22 day of July 19 81
Commissioner for taking Affidavits, etc.

(Signature)
Michael Spohn

PROPERTY INFORMATION RECORD

Describe nature of instrument: Ground Lease

Address of property being conveyed *(if available)*: not available

Assessment Roll No. *(if available)*: n/a

Address(es) for future Notices of Assessment under The Assessment Act for property being conveyed *(see instruction 6)*: Eaton Properties Limited, 1 Dundas St. W., Toronto, Ontario M5B 1C8

Registration number for last conveyance of property being conveyed *(if available)*: n/a

Legal description of property conveyed: Same as in D.(f) above. Yes No Not Known

Address(es) of each transferee's solicitor: SMITH, LYONS, TORRANCE, STEVENSON & MAYER,
Box 38, Toronto-Dominion
Toronto, Ontario

For Land Registry Office use only

REGISTRATION NO.

Land Registry Office No.

Registration Date

SCHEDULE "A"

ALL AND SINGULAR those certain parcels or tracts of land and Premises situate, lying and being in the City of Sarnia, in the County of Lambton and Province of Ontario composed of the following:

Part 1:

Part of Lot 1, according to Registered Plan No. 664 for the City of Sarnia, designated as Part 7, on Reference Plan 25R-3518; and

Part of Lot 10, according to Registered Plan Number 664, designated as Part 8 on Reference Plan 25R-3518.

Part 2:

Part of Lot 1, according to Registered Plan 664, designated as Part 12 on Reference Plan 25R-3518.

Part 3:

Parts of Lot 1, according to Registered Plan 664, designated as Parts 2 and 3 on Reference Plan 25R-3518.

Part 4A:

Part of Lot 1, according to Registered Plan 664, designated as Part 4 on Reference Plan 25R-3518; and

Part of Lot 1, according to Registered Plan 664, designated as Part 6 on Reference Plan 25R-3518 (at basement level only).

Part 4B:

Part of Lot 1, according to Registered Plan 664, designated as Part 5 on Reference Plan 25R-3518; and

Part of Lot 1, according to Registered Plan 664, designated as Part 6 on Reference Plan 25R-3518 (not including the basement level).

DATED as of April 15th, 1981.

495101

THE CORPORATION OF THE CITY OF
SARNIA

- and -

THE CADILLAC FAIRVIEW
CORPORATION LIMITED and EATON
PROPERTIES LIMITED

L E A S E

WEIR & FOULDS,
330 University Avenue,
Toronto, Ontario.

1981 AUG -5 PM 2 25
REGISTRY OFFICE

495101

Registry Division of Lambton (No. 25)
CERTIFY that this instrument is registered as of

2:25 P.M. in the

Land Registry Office AUG -5 1981

at Sarnia,
Ontario.

Am Doan LAND REGISTRAR

City

1 M. 40
4554.

LI.



Exhibit "C"

**Fourth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated June 5, 2014**

September 17, 2013 Order to Remedy



ORDER TO REMEDY UNSAFE BUILDING

Pursuant to Subsection 15.9 (4) of the Building Code Act, 1992

Date of Inspection September 17, 2013	Time 1:00pm	Permit No. N/A
Location of building / structure / System (Municipal Address) 150 – 202 , Christina Street North, (Bayside Mall)		
Owner Bayside Mall Ltd.		
Occupant / Person in possession A John Page & Associates Inc. / Larlyn Property Management Ltd.		

THE ABOVE NOTED BUILDING HAS BEEN FOUND TO BE IN AN UNSAFE CONDITION AS DEFINED BY SUBSECTION 15.9 (2) OF THE BUILDING CODE ACT, 1992. YOU ARE HEREBY ORDERED TO UNDERTAKE THE FOLLOWING REMEDIAL STEPS TO CORRECT THE UNSAFE CONDITIONS:

Description of Unsafe Condition	Location	Section Reference
columns and beam in lower level parking garage show signs of decay and damage, concrete has fractured and showing signs of being over stressed	REG COMP PLAN 664 PT LOT 1;PT LOT 10 RP 25R3518 PARTS; 2,3,7,8 12 (Parking Garage)	15.9 (1) & 15.9 (2)

Required Remedial Steps

- 1) Provide an engineer report regarding the condition of the structure in the area of the entrance ramp (South-East corner) specifically addressing the following; **(Required Sept. 30th)**
 - a. structural integrity.
 - b. time line if repairs are required.
 - c. advise if shoring in this area is required
 - d. advise if restricted use of this area is required

- 2) Under the direction and supervision of a profession engineer conduct weekly inspections of the parking garage to monitor and identify any concerns or deficiencies in the building or structure. Any concerns or deficiencies noted by the Engineer are to be reported to the CBO of the City of Sarnia immediately. Inspections are to remain in place until repairs have been completed with quarterly reports from the engineer being submitted to the CBO of the City of Sarnia. **(Required Immediately and to remain until repairs complete)**

- 3) Provide engineers report to confirm if both live and dead loads are accounted for in shoring which would allow use of north section of the parking structure. If parking is to remain restricted, Owner is to install non movable parking barriers as determined by the Engineer. **(Required Sept. 30th)**

- 4) Engineer to conduct monthly inspections of temporary shoring/bracing currently in place. Any concerns or deficiencies noted by the Engineer are to be reported to the CBO of the City of Sarnia immediately. Inspections are to remain in place until repairs have been completed with quarterly reports from the engineer being submitted to the CBO of the City of Sarnia. **(Required Immediately and to remain until repairs complete)**

- 5) As per Halsall Associates "Garage Condition Evaluation Report" (Ref# 13Y125-035) repair Strategy 1 is to be commenced no later than June 1st 2014. *Building Permits and other approvals must be obtained as required.* **(Required June. 1st 2014)**

Please note this order rescinds and replaces prior orders dated August 10th, 2012 and June 24th, 2013

YOU ARE HEREBY ORDERED TO CARRY OUT THE SPECIFIED REMEDIAL ACTION ON OR BEFORE:

DATE (See dates above) TIME

10F2

ORDER ISSUED BY:

Name: Alan Shaw, Building inspector.....**BCIN #:**15584.....

Signature: _____ **Telephone No.:** 519-332-0330

Order Respecting Occupancy - If an order of an *inspector* under subsection (3) is not complied with within the time specified in it, or where no time is specified, within a reasonable time, the *chief building official* may by order prohibit the use or *occupancy* of the *building*; and may cause the *building* to be renovated, repaired or *demolished* to remove the unsafe condition or take such other action as he or she considers necessary for the protection of the public. ss. 15.9 (6)

Municipal Lien - If the *building* is in a *municipality*, the *municipality* shall have a lien on the land for the amount spent on the renovation, repair, demolition or other action under clause (6) (b) and the amount shall have priority lien status as described in section 1 of the Municipal Act, 2001. 2002, c17, Sched. C, s.4(1)

Prohibition - No person shall obstruct the visibility of an order and no person shall remove a copy of any order posted under this Act unless authorized to do so by an *inspector* or officer. 1997, c. 24, s. 224(14). sec 20

OTRUB-June2006.



Exhibit "D"

**Fourth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated June 5, 2014**

Garage Condition Evaluation Update

GARAGE CONDITION EVALUATION UPDATE

For

Bay Side Mall, 150 Christina St., Sarnia

Prepared for

A. John Page & Associates Inc.
100 Richmond St. W., Suite 447
Toronto, ON M5H 3K6

Attn: John Page FCPA, FCA

ajpage@ajohnpage.com



Prepared by:

Halsall Associates
2300 Yonge Street, Suite 2300
Toronto, ON
M4P 1E4
(416) 487-5256

13Y125-035

September 18, 2013
(Revised May 8, 2014)

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APPENDICES

- Appendix A – Photographs
- Appendix B – Opinion of Cost
- Appendix C – Evaluation Techniques
- Appendix D – Repair and Renewal Techniques
- Appendix E – Limitations



EXECUTIVE SUMMARY

In the Garage Condition Evaluation we described a "Repair Strategy One" to address immediate concerns with leaking expansion joints, localized roof slab membrane and drain leakage and corresponding concrete deterioration. We recommended that Repair Strategy One be completed in the near term but if the work is deferred beyond summer 2014 we recommended that the garage be reassessed.

The Order to Remedy said "Repair Strategy One is to be commenced no later than June 1st 2014"

In our opinion, Repair Strategy One should be completed in the near term, but if the work is deferred beyond December 2014, we recommend that the garage be reassessed. Therefore, based on our experience, and in our opinion, we do not believe it is essential from a safety perspective that work on implementing Repair Strategy One be commenced on or before June 1, 2014.



1. INTRODUCTION

1.1 Authorization

The following garage condition evaluation update was prepared at the request of John Page of A. John Page & Associates Inc. in accordance with our proposal dated March 4, 2014.

1.2 Purpose

Enable The purpose of our update is to review the current condition of the garage, having regard to the City of Sarnia – Order to Remedy dated September 17, 2013, recent communications from MIG Engineering, and update our Garage Condition Evaluation dated September 18, 2013 so that we can see whether, with shoring and regular inspections in place, there is any immediate need to commence repairs or with continued monitoring and temporary shoring in place, deferring such repairs is possible

In order to complete this, we:

- ▶ Reviewed City of Sarnia – Order to Remedy, dated September 17th, 2013
- ▶ Reviewed all correspondence provided to us from MIG Engineering, and your Property Manager.
- ▶ Return to site for one day to visually review the current condition of the garage, including hammer tapping areas of the soffit to confirm concrete deterioration.
- ▶ Document any new or further deterioration.
- ▶ Revise and update our previous report to include current information and observations

1.3 Methodology

Work performed for this update evaluation included:

- ▶ Reviewed received documentation
- ▶ Visually reviewed the parking garage, hammer sounding soffit areas at leakage locations, column bases, beam faces and beside expansion joints for hollow sounding areas that would identify embedded reinforcing steel corrosion.; and
- ▶ Reviewing drawings and structural information related to the roof slab.

Information made available for our review as part of our evaluation was as follows:

Date	Description/Title	Author
March 4 th , 2014	MIG Engineering – Inspection #6 – Bayside Mall Parking Garage	Richard Twose
March 4 th , 2014	MIG Engineering – Temporary Shoring Recommendation – Bayside Mall Parking Garage	Richard Twose
February 10 th , 2014	MIG Engineering – Inspection #5 – Bayside Mall Parking Garage	Richard Twose
January 20 th , 2014	MIG Engineering – Inspection #4 – Bayside Mall Parking Garage	Richard Twose



January 17 th , 2014	MIG Engineering – Quarterly Inspection Report #1 (October 2013- December 2013) – Bayside Mall Parking Garage	Richard Twose
December 9 th , 2013	MIG Consulting Engineering – Inspection #3 – Bayside Mall Parking Garage	Richard Twose
November 15, 2013	MIG Consulting Engineering – Inspection #2 – Bayside Mall Parking Garage	Richard Twose
October 21, 2013	A.John Page Email Chain	Alan Shaw, Michael Holmes, John Page
October 7, 2012(Should be 2013)	MIG Consulting Engineering – Structural Inspection – Bayside Mall Parking Garage	Richard Twose
September 17, 2013	Order to Remedy Unsafe Building – supersedes all other orders.	City of Sarnia
June 24, 2013	Order to Remedy Unsafe Building – 2 nd Order	City of Sarnia
August 12, 2012	Order to Remedy Unsafe Building – 1 st Order	City of Sarnia
August 31, 2012	Limited Parking Garage Deck Review	Exp Services Inc.
January to June 2013	Various Structural Review Letters	Robert E Dale
1981	Structural Drawings S1, S3A and S3B	Bergman + Hamann
1981	Architectural Drawings A1 to A10-2	Bergman + Hamann

Limitations that apply to this evaluation and report are included in the Appendix.

1.4 General Description

Bayside Mall (150 Christina St.) was constructed about 1981 (based on the date of the drawings reviewed). Parking for the shopping mall is provided by a single-level underground parking garage with below grade parking for about 600 vehicles. The structure consists of a cast-in-place, conventionally reinforced concrete roof slab supported on concrete columns and poured concrete foundation walls.

The parking garage extends beyond the footprint of the shopping mall on the east side of the building. The buried roof slab is generally covered by concrete paving to allow for surface parking with about 145 parking stalls. The architectural drawings indicate that the garage roof slab is protected by an asphalt based waterproofing membrane (type unconfirmed).

There is an expansion joint across the centre of the roof slab (dividing the roof slab into North and South sections). According to the drawings, the expansion joint consists of a foam compression seal, with a bead of polyurethane sealant at grade level.

1.5 Performance and History

Based on our discussions and review of previous notes (by previous Bayside Mall General Manager), we understand the following:



- ▶ On August 7, 2012, the Ministry of Labour reviewed the site and requested the most recent copy of the Building Condition Evaluation.
- ▶ On August 12, 2012, The City of Sarnia issued an Order to Remedy Unsafe Building
- ▶ Following this, a joint meeting between City of Sarnia, Ministry of Labour and previous building Owners, it was agreed to close the north portion of the garage roof deck and install shoring below the east-west expansion joint until a full structural review was completed to evaluate the need for concrete repairs.
- ▶ On June 21, 2013, Robert E Dale issued a letter regarding new structural concerns.
- ▶ On June 24, 2013, The City of Sarnia issued a second Order to Remedy Unsafe Building.
- ▶ On June 26, 2013, Robert E Dale issued a follow up letter stating that the area of concern had been off-loaded of traffic and no longer a concern.

Following our September 18, 2013 report -

- ▶ City of Sarnia delivered an order to remedy unsafe building dated September 17, 2013, City of Sarnia requested comments on the following:
 - Engineer Report on the South East Corner of the Entrance Ramp
 - Weekly Inspections to identify any concerns and/or deficiencies in the structure
 - Engineers Report to confirm if both live and dead loads are accounted for in shoring which would allow use of north section of parking structure
 - Engineer to perform monthly inspections
 - Garage Repair Strategy 1 to commence no later than June 1, 2014
- ▶ MIG Engineering visited the site on September 11th, 2013 and prepared their inspection report – localized leaking from the roof slab around drains is causing localized embedded reinforcing steel corrosion. MIG recommends loose concrete be removed to reduce the risk of falling hazards and that shoring installed should remain in place pending a structural design and rehabilitation program.
- ▶ Vehicle height restriction bars were installed in the month of October to limit large vehicular access to the roof deck area.
- ▶ MIG Engineering visited the site on October 30th, 2013 – No changes were observed in garage condition since September 11th, 2013 visit. Based on visual observations, no immediate rehabilitation are required.
- ▶ MIG Engineering visited the site on November 26th, 2013 – No changes were observed in parking garage condition since October 30th, 2013 visit. Based on visual observations, no immediate rehabilitation are required.
- ▶ MIG Engineering summarized their visits in a quarterly report – In summary, MIG recommended that temporary shoring remain in place, loose concrete be removed to reduce the risk of falling hazards and in MIG Engineering's opinion, the general garage condition is fair to good.
- ▶ MIG Engineering visited the site on January 15, 2014 – no significant changes since MIG Engineering's visit on November 26th, 2013. Temporary shoring to remain in place and based on their observations, no immediate rehabilitation is required.
- ▶ MIG Engineering visited the site on February 6th, 2014 – Cracking and concrete delamination was observed beside parking space #72 at the cast-in-place concrete foundation wall supporting the beam. Concrete spalling along the entrance ramp west concrete wall. MIG recommended that temporary shoring may be required for the beam at parking space #72. Design review be performed immediately. No significant changes were observed other than above.



-
- ▶ MIG Engineering based on their February 6th, 2014 visit recommended a review of the beam and foundation wall area beside parking space #72 be reviewed to check if temporary shoring is required. Based on MIG Engineering's analysis, they recommended that temporary shoring be installed to support the concrete beam.
 - ▶ MIG Engineering visited the site on March 3rd, 2014 – Two areas of spalled concrete below the exit and entrance ramps. No significant deterioration observed
 - ▶ Halsall Visited the site on March 7th, 2014
 - ▶ MIG visited the site on March 17th to perform an inspection of the additional shoring required and identified in MIG Engineering Report dated March 4th, 2014. MIG Engineering reports that shoring has been installed as per MIG Engineering recommendations.

We are not aware of any previous restoration work completed on the parking garage.



2. KEY FINDINGS

2.1 Based on our Site Visit on March 7th, 2014, Halsall Key Findings from September 18, 2013 Report are Not Changed, City of Sarnia Order to Remedy is being followed

As recommended in our September 18, 2013 report, the building owner has retained MIG Engineering to perform monthly visual reviews and monitor the parking garage condition. Based on our visit, the parking garage has isolated areas of concrete deterioration caused by embedded reinforcing steel corrosion. We observed concrete deterioration on the roof slab below areas exposed to de-icing salts and isolated column bases throughout the parking garage. The expansion joints and areas beside roof slab drains continue to have active leakage. As identified by MIG Engineering, there are areas that have concrete deterioration and in MIG Engineering's opinion have reduced the load carrying capacity and temporary shoring was installed. Based on MIG Engineering, the shoring is designed to provide temporary support until the concrete and structural systems are repaired. Therefore, based on MIG Engineering reporting and our current observations, the areas of immediate structural concern are shored and there are no other significant areas that require immediate attention, however, there are areas of isolated concrete deterioration that will require repair.

MIG Engineering reported on February 10th that an area beside Parking space #72 required further review and potential shoring in this area. MIG Engineering reported on March 4th that temporary shoring is recommended near parking space #72. The temporary shoring was installed after Halsall visited the site on March 7th, 2014. The property manager confirmed the installation with photographs.

2.2 Order to Remedy

Based on our review, the Owner has taken the required remedial steps outlined in the City of Sarnia Order including but not limited to the following:

1. Provide an engineer's report regarding the area of the entrance ramp (South-East corner) - The Garage Condition Evaluation addresses this area and was provided to the City in September 2013
2. Ongoing inspections - The property manager is undertaking weekly inspection under the direction and supervision of MIG Engineering (2001) Ltd. consulting engineers ("MIG")
3. Provide engineer's report to indicate if both live and dead loads were accounted for in shoring that would allow use of the north section of the parking structure - Email report submitted by Robert E. Dale Limited, consulting engineers dated August 21, 2013.
4. If parking is to remain restricted, non movable parking barriers to be installed. Height restriction barriers have been installed and, subject to the limitations caused by those barriers, the previously closed off roof slab has been opened for parking
5. Engineer to conduct monthly inspections - MIG are conducting monthly inspections
6. Repair Strategy One to be commenced by June 1, 2014 - The need to commence repair strategy one by June 1, 2014 is addressed in this report



2.3 Expansion Joint Waterproofing Seals Have Failed Resulting in Deteriorated Concrete on the Beam Below

The parking garage includes an expansion joint that runs east to west, roughly through the centre of the garage roof slab, essentially dividing the garage roof slab into a north and south portion. Based on Architectural Drawing A3.5A, the expansion joint is waterproofed as detailed below:

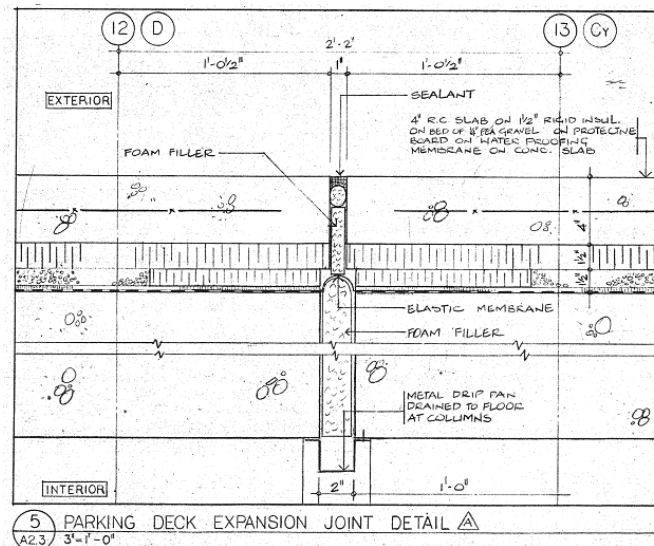


Figure 1 - Garage Roof Slab Expansion Joint

During our initial site visit (February 28, 2013), we noted active water leakage through the expansion joint. During our follow-up site visit (May 13, 2013), we observed significant evidence of leakage through the expansion joint. Based on the amount of leakage visible, the joint seal has failed allowing water to enter the structure and drain through the expansion joint. During winter months, chlorides (de-icing salts) applied to the garage roof deck enter the parking garage through the failed expansion joint seal. Chlorides significantly increase the rate of corrosion of the embedded reinforcing steel resulting in concrete deterioration.

The east-west expansion joint beam is currently shored. We understand that this shoring was installed at the direction of Robert E Dale. We also understand that that the shoring is to remain in place until the structural repairs are completed on the east-west expansion joint beam. Concrete repairs should be completed in the near term in order to minimize further water ingress and long term deterioration. However, so long as shoring is maintained and the garage is regularly inspected, this area does not present an immediate safety concern.



2.4 Localized Concrete Cracking Was Observed, However the Cracking does Not Pose a Structural Risk

We reviewed cracking and we did not note any visible evidence of differential movement or evidence of leakage which would indicate a structural issue. The cracking observed appears to be consistent with normal concrete cracking, we would expect as a result of regular live loading/unloading cycles.

We do not believe that concrete repairs are required in the near term at concrete cracking areas. However, it is important the slab waterproofing be maintained to minimize the risk of water and chlorides (i.e. de-icing salts in the winter) entering the cracks and accelerating deterioration. Waterproofing replacement should be planned for in the long term (see Management Strategy 2 in Section 3.2) in order to minimize the risk of water ingress and long term deterioration. However, so long as the garage is regularly inspected, where reviewed, the concrete cracking does not present an immediate safety concern, nor is shoring required.

2.5 Roof Slab Waterproofing is Generally Effective with Minimal Evidence of Leakage

Based on our visual review of the underside of the garage roof slab, the waterproofing membrane is generally effective and in serviceable condition. In total, we observed about 8m² of leakage staining through the garage roof slab, which is less than a tenth of a percent of the total roof slab area.

We are unable to confirm if the roof slab waterproofing is original, however, based on roof slab test pit photos (reviewed as part of exp Services' report) and discussions with site staff, the garage roof slab waterproofing is likely original to building construction. Exp completed 17 cores as part of their limited roof slab evaluation. Exp reported that "in general, the condition of the waterproofing membrane at all of the core locations was found to be good," meaning that the membrane was flexible and appeared effective. Exp did however note that the membrane bond the roof deck ranged from fair to poor.

Garage roof slab waterproofing generally has a service life of 25 to 30 years when installed below pavement and exposed to de-icing salts. The membrane at your building has surpassed this service life but can likely be maintained for the near term. However, we do recommend that complete replacement of the roof slab waterproofing be planned for in the next 5 to 7 years.

2.6 Minimal Localized Concrete Deterioration Was Observed, Likely Due to Effectiveness of the Waterproofing

2.6.1 Column Concrete Deterioration

There are localized areas of deteriorated concrete, generally located along the expansion joint. As noted above in Key Finding 2.1, the beam below the expansion joint is deteriorating due to water and chlorides entering the slab through the failed expansion joint. This has also lead to deterioration of the columns below the expansion joint (see Photos 4 and 5 in Appendix A). We recommend that that these areas of deteriorated concrete be addressed as part of Management Strategy 1 (see Section 3.2 below, which includes a budget for vertical concrete repairs).



2.6.2 Drain Leakage Deterioration

There are five garage roof slab drains located on the roof slab, generally along the east side of the parking garage. The waterproofing around all of the drains has failed, causing significant corrosion of the steel drain bodies (see Photo 6) and the adjacent concrete. This deterioration is likely due to the chloride laden water entering the roof deck around the perimeter of the drain bodies. We recommend that the drains be replaced (and tied into adjacent waterproofing) in order to minimize further deterioration.

3. MANAGEMENT STRATEGIES

3.1 Temporary Measures

We did not note any loose concrete that would pose a risk to falling and public safety. However, we recommend that Building Maintenance continue to monitor the garage at least weekly and remove loose concrete as they appear. We recommend monthly reviews until such that a concrete restoration program is implemented (minimum Management Strategy 1).

3.2 Restoration Solutions

We present the following strategies with opinions of cost. These include solutions to address the identified problems and promote adequate performance over the identified service life. Opinion of cost breakdowns are presented in Appendix B. Note that if this work is deferred beyond December 2014, we recommend the garage be reassessed including investigative test openings through the concrete topping to expose the roof slab top surface in four areas. Weekly and Monthly reviews need to continue on a regular basis until repairs are completed.

Based on our experience, we anticipate that embedded reinforcing steel will continue to corrode causing more concrete deterioration. Therefore, we recommend increasing the Management Strategy 1 budget and proceeding with Management Strategy 1 by December 2014. The longer the work in Management Strategy 1 is deferred, there is a risk that concrete deterioration may increase and therefore, repair costs may increase

STRATEGY 1 – LOCALIZED GARAGE ROOF DECK WATERPROOFING REPAIRS		\$400,000 - \$600,000
<p>This approach addresses immediate concerns with leaking expansion joints, localized roof slab membrane and drain leakage and corresponding concrete deterioration.</p> <p>Based on our understanding of your desire to manage this property with lower initial cost, we expect this management strategy will best serve your needs. Until this work is completed, the beam should remain shored. We would recommend the shoring be reviewed monthly by in-house staff and once a quarter by an Engineer.</p>		
TIMELINES		
Recommended Project Timing:	by December 2014	
Predicted Time Before General Renewal or Replacement:	7 to 10 years	



Benefits & Advantages		Risks & Disadvantages
<ul style="list-style-type: none"> ▶ Minimizes ongoing deterioration; ▶ Addresses current leakage and improves aesthetics; ▶ Addresses City of Sarnia Order to Comply 		<ul style="list-style-type: none"> ▶ Only targets current areas of deterioration. Further repairs will be required in future
SCOPE OF WORK		
Item	Description	
1	Concrete Repairs	
1.1	Localized Concrete Repairs	
1.2	Supply and install new reinforcing steel at localized concrete repair areas	
1.3	Perform local concrete repairs and re seal column base perimeters.	
2	Localized Expansion Joint Seal Repairs	
2.1	Remove overburden to expose expansion joint	
2.2	Replace new preformed expansion joint seals	
2.3	Reinstate overburden	

STRATEGY 2 - GARAGE ROOF DECK WATERPROOFING REPLACEMENT		\$1,250,000
<p>This approach involves the full removal and replacement of the existing roof slab waterproofing system, expansion joints (both east-west (40m) and north-south (about 115m)) and overburden. While this strategy is not intended as an immediate solution, it should be considered for long-term maintenance and budgeting.</p>		
TIMELINES		
Recommended Project Timing:		7-10 years
Projected Time Until Further Repairs:		22-25 years
Benefits & Advantages		Risks & Disadvantages
<ul style="list-style-type: none"> ▶ Long term repair solution; ▶ Addresses current leakage and improves aesthetics. 		<ul style="list-style-type: none"> ▶ Higher cost solution; ▶ Disruptive to mall tenants and patrons.
SCOPE OF WORK		
Item	Description	
1	Concrete Repairs	
1.1	Localized Concrete Repairs	
1.2	Supply and install new reinforcing steel at localized concrete repair areas	
1.3	Perform local concrete repairs and re seal column base perimeters.	
2	Waterproofing	
2.1	Remove 100% of existing overburden and roof slab waterproofing	
2.2	Install new preformed expansion joints	
2.3	Install new waterproofing system	
3	Replace Overburden	



3.3 Garage Reassessment

We recommend that Strategy 1 be completed in the near term. If this work is deferred beyond December 2014, we recommend that the garage be reassessed including test openings through the concrete topping exposing the roof slab top surface in four areas. Our recommended budget to reassess the condition of the parking garage is **\$12,500 (including contractor allowances)**.

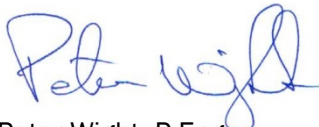
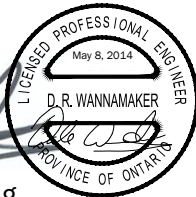
4. CLOSURE

Based on our understanding of your desire to manage this property with lower initial cost, we expect Strategy 1 will best serve your needs.

Respectfully submitted,
HALSALL ASSOCIATES



Dale Wannamaker, P.Eng.
Project Manager



Peter Wight, P.Eng.
Project Principal





Photo 1: Parking Garage Roof Deck at Bayside Mall



Photo 2: Location of Garage Roof Deck Expansion Joint (red arrows).





Photo 3: Leaking Expansion Joint From Garage Roof Slab Underside



Photo 4: Concrete Deterioration Caused by Leakage Through the Expansion Joint



Photo 5: Column Concrete Deterioration Caused by Leakage Through the Expansion Joint



Photo 6: Typical Corrosion Deterioration at Garage Roof Slab Drain



Photo 7: Staining and Deterioration Caused by Localized Garage Roof Slab Leakage



Photo 8: Staining and Deterioration Caused by Localized Roof Slab Leakage



APPENDIX B OPINION OF COST

The following costs are our opinion of value of the remedial work described in this report. They are calculated using quantities obtained during our evaluation and information we have obtained from similar projects. Actual costs will vary depending upon the time of tender, schedule of work and conditions under which the work must be carried out. Halsall has not investigated the presence of pollutants, contaminants and hazardous materials that may be encountered during the work. Depending on the materials present, additional funds may be required for remediation measures.

As every project has its own peculiarities, actual costs can only be established by obtaining bids, preferably on the basis of competitive tenders, from specialized contractors. The costs provided herein should only be used for comparison of options and general budgeting purposes.

4.1 Strategy 1 - Expansion Joint Replacement and Localized Repairs

No.	Description	Opinion of Cost
1.0	GENERAL	
1.1	Mobilization / Demobilization	\$ 40,000
2.0	STRUCTURAL REPAIR	
2.1	Concrete Repair	
a)	Top Surface Repairs (along expansion joint)	\$ 24,000
c)	Vertical Surface Repairs (Columns)	\$ 36,000
b)	Concrete Beam Repairs	\$ 41,000
d)	Soffit Repairs	\$ 3,000
e)	Through Slab Repairs	\$ 4,000
2.1	Reinforcing Steel	
a)	Supply and Install new Epoxy Coated reinforcing Steel	\$ 9,000
b)	Splice Welding	
	i) mobilization to site	\$ 1,000
	ii) allowance for splice weld reinforcement	\$ 4,000
3.0	Overburden	
3.1	Remove and replace overburden over necessary localized repairs	\$ 25,000
4.0	WATERPROOFING	
4.1	Expansion Joints	
a)	Remove and replace roof slab expansion joints	\$ 72,000
5.0	DRAINAGE	
5.1	Install new garage roof bi-level drains	\$ 6,000
5.2	Install new Cast Iron Piping	\$ 11,000
6.0	CASH ALLOWANCES	
6.1	Building Permit	\$ 10,000
6.2	Cash Allowance for Testing	\$ 10,000
6.3	Contingency Allowance for Unexpected Repairs	\$ 20,000
7.0	ALL OTHER ITEMS	
7.1	Contractor's Overhead, Profit and All Other Items	\$ 60,000
7.2	Bonding	\$ 3,000
	Sub-Total - Estimated Construction Cost	\$ 379,000
8.0	CONSULTING & DESIGN SERVICES	
8.1	Design, Specifications and Tendering	\$ 8,000
8.2	Construction Review and Contract Administration	\$ 50,000
	Total Estimated Project Budget (Current Dollar Value)	\$ 437,000



4.2 Strategy 2 - Full Removal and Replacement of Roof Slab Waterproofing System

No.	Description	Opinion of Cost
1.0	GENERAL	
1.1	Mobilization / Demobilization	\$ 65,000
1.2	Shoring	
a)	Shoring Installation - Design & Review	\$ 3,000
b)	Shoring Installation - General	\$ 20,000
2.0	STRUCTURAL REPAIR	
2.1	Concrete Repair	
a)	Top surface removal and replacment	\$ 90,000
b)	Local Through Slab repairs	\$ 24,000.00
c)	Soffit Repairs	\$ 4,000.00
d)	Concrete Ledge Repairs	\$ 63,000.00
2.2	Reinforcing Steel	
a)	Allowance to supply and install new Epoxy Coated reinforcing Steel	\$ 20,000.00
3.0	WATERPROOFING	
3.1	Bonded Asphalt - General Application	\$ 419,000.00
3.2	Install new Preformed Expansion Joints - "W" type gland	\$ 55,000
3.3	Reinstate all traffic markings and parking stall lines	\$ 4,000
4.0	Lighting	
4.1	Remove and replace pole mounted lights	\$ 22,000
5.0	DRAINAGE	
5.1	Install new garage roof bi-level drains	\$ 8,000
5.2	Install new Cast Iron Piping	\$ 17,000
6.0	CASH ALLOWANCES	
6.1	Building Permit	\$ 8,000
6.2	Cash Allowance for Testing	\$ 10,000
6.3	Contingency Allowance for Unexpected Repairs	\$ 50,000
6.4	Contingency Allowance for M& E Repairs	\$ 15,000
7.0	ALL OTHER ITEMS	
7.1	Contractor's Overhead, Profit and All Other Items	\$ 100,000
7.2	Bonding	\$ 10,000
	Sub-Total - Estimated Construction Cost	\$ 1,007,000
8.00	CONSULTING & DESIGN SERVICES	
8.10	Design, Specifications and Tendering	\$ 10,000
8.20	Construction Review and Contract Administration	\$ 100,000
	Total Estimated Project Budget (Current Dollar Value)	\$ 1,117,000



APPENDIX C PARKING STRUCTURES EVALUATION TECHNIQUES

This appendix presents the techniques used to evaluate parking structures.

1. STRUCTURAL SYSTEM

1.1 Visual Survey

Visual surveys are carried out to quantify and locate areas of deterioration within a parking garage or to record the type of equipment within a parking facility.



Photo 1

1.2 Sounding Survey - Chain Drag

Steel chains are dragged over the surface of the slab to detect delaminations (see Photos below). Delaminations sound hollow. They are marked and the area measured to determine the present extent of physical damage. The results obtained must be carefully interpreted. An existing waterproofing topping can debond from the membrane, or the membrane system can debond from the concrete slab; either condition will produce a hollow sound. Hollow sounding areas associated with the waterproofing do not represent structural damage. Delaminations on the underside of slabs or on vertical surfaces are generally identified by visual inspection and sounding with a hammer in local areas.



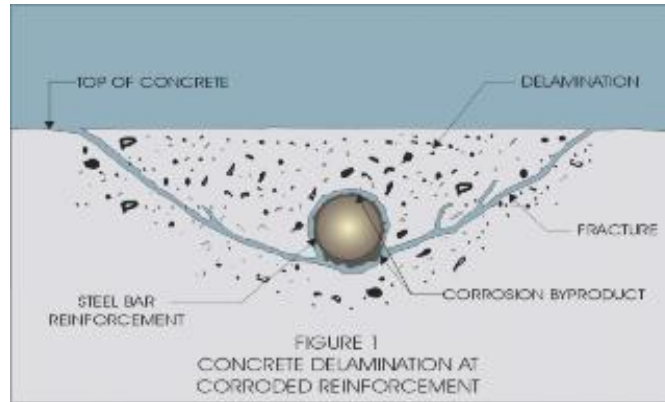


Photo 2

1.3 Sounding Survey - Hammer Tapping or Rod Sounding

Vertical Surfaces such as columns are hammer sounded to detect areas of delaminated concrete. In parking garages, the bases of columns or walls are usually targeted for such sounding surveys.



Photo 3

Soffits of suspended parking slabs or ramps are sounded with rods to detect delaminated concrete.



Photo 4



APPENDIX D PARKING STRUCTURES REPAIR & RENEWAL TECHNIQUES

This appendix presents the techniques available to repair or renew deteriorated parking structures.

1. STRUCTURAL SYSTEM

The structural system of most parking garages is conventionally reinforced concrete, post-tensioned concrete or precast concrete. When repairing a structure which has undergone structural distress the type of structure must be considered. Repair and renewal techniques for conventionally reinforced concrete are different than those used for post-tensioned or precast.

1.1 Reinforcing Existing Structure

There are a variety of ways to reinforce existing structural parking garage components including the use of fibre-reinforced polymer (FRP), external post-tensioned cables and new reinforced concrete toppings.

Wrapping concrete with FRP is a high strength, light weight option. FRP can function as either the primary or secondary reinforcing in the concrete. If it is the primary reinforcing, adequate fire protection must be installed. Another option to reinforce existing precast beams or slabs is to install external post-tensioned cables. These cables are secured at one end and tensioned on site at the opposite end to provide structural support where the existing components are weak. The cables can be left exposed to the elements or enclosed with conduits.

Where the installation of FRP or post-tensioned cables is not feasible, the design and placement of new reinforcing steel within a strengthened concrete topping may be an option. As shown in the photo below, an innovative design can allow for loading to be distributed away from deteriorated components.



Photo 1:



2. CONCRETE

2.1 Local Concrete Repairs

2.1.1 Concrete Removals

The minimum level of concrete removal performed in garage repairs includes only the areas of delaminated concrete. We term this a "patch repair". This leaves sections of steel remaining with active corrosion, and some of these areas will delaminate in the future. The extent and timing of this future delamination is unknown given present technology. To minimize the potential for future corrosion damage, concrete can also be removed in areas which may not have delaminated but which have corrosion readings above the level associated with delamination formation. We term this "potential-based removal". See Photo 2 below for an example of a typical area with delaminations and larger regions of active corrosion.

In the areas selected for removal, the concrete is taken out down to and around the corroding steel. Much of the corrosion activity occurs on the underside of the bars, so the new concrete should totally encase the steel.

Top surface concrete is usually removed through jack hammering or by high pressure water ("hydrodemolition"). Hydrodemolition is faster and quieter than jack hammering. It does less damage to the base concrete which remains, and patches generally bond better to the substrate. However, hydrodemolition is approximately 33% more expensive, is only suited for larger areas, and produces large volumes of contaminated water.

Concrete removal at delaminations on the underside (soffit) of a garage slab is usually completed using small jack hammers from below. The alternative is to remove the concrete for the full depth of the slab, from above, in the area corresponding to the soffit delamination. Soffit repairs are generally only patch repairs because of the high cost of removal. Delaminations should be expected in the future at locations of past leakage unless leakage is corrected.

Column and wall delaminations will be removed by jackhammer, the steel cleaned and coated, and new patching mortar placed.

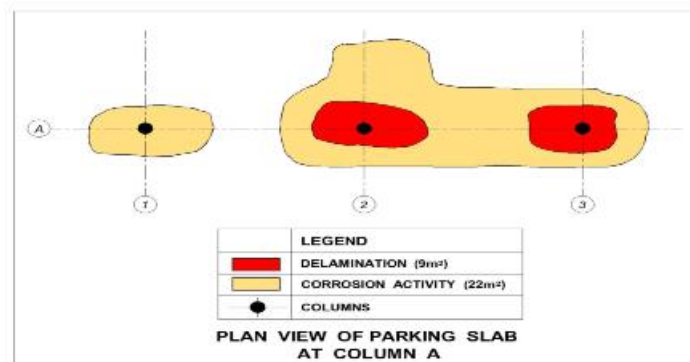


Photo 2:

2.1.2 Repair of Steel Embedded in Concrete

Corroded reinforcement is cleaned, usually by sandblasting, and coated with a protective epoxy coating prior to patching. The epoxy coating is important in terms of reducing the potential for accelerated corrosion of reinforcing steel embedded in concrete outside the patch. If the cross-sectional area of reinforcement lost to corrosion is unacceptable, the steel affected is removed and replaced using a welded splice and/or new coated steel.

2.2 Full Topside Slab Replacement

Where there are large areas of concrete deterioration and high chloride contamination levels in the upper half of the suspended slab, extensive repair is required. Top surface concrete can be removed using jack hammering, however in full topside slab replacement projects hydrodemolition is a very feasible option. Compared to full slab replacement, this option minimizes the amount of waste and new material required to restore the slab.



Photo 3:

2.3 Full Slab Replacement

Full slab replacement is implemented where there is extensive concrete deterioration and widespread chloride contamination levels throughout the suspended slab. Removal of the concrete can be done using jack hammers, hydrodemolition or saw cutting the slab into panels for removal. This option has the highest initial cost, creates the most waste and requires the most new material, but the short term maintenance needs of the garage are eliminated.

3. ADVANCED CORROSION MITIGATION SYSTEMS

Corrosion mitigation systems work to preserve the integrity of steel embedded in concrete by slowing corrosion or removing products from the concrete that facilitate corrosion. It involves applying an external system that alters the chemistry of the concrete to impede the natural tendency of steel to corrode (corrosion current). Corrosion mitigation systems have been used extensively in North America since the 1980s to prolong the serviceable life of concrete structures. Due to different conditions and requirements these systems may be temporary or permanent; surfaced-applied or embedded in the concrete; externally-powered or self-sustaining; or electrochemical or galvanic. They may restore concrete to previous conditions or maintain current conditions. The initial upfront cost of these systems can be offset by longer intervals between concrete restorations.

Corrosion mitigation systems may be considered for concrete structures that have:

- ▶ Low pH levels;
- ▶ Embedded aggressive ions, or
- ▶ Subject to corrosive environments.

Low pH levels attacks the inherent passive layer composed of iron hydroxides on the surface of reinforcing steel in new concrete. Embedded aggressive ions such as chlorides dissolve the passive layer of reinforcing steel and can increase the corrosion current in concrete. Corrosive environments include areas that are exposed to aggressive ions such as coastal areas and concrete structures that receive deicing salts.

Each system has its relative advantages and disadvantages.

3.1 Electrochemical Treatments

3.1.1 Realkalization

This process reinstates concrete's natural ability to resist corrosion by increasing the pH level of conventionally reinforced concrete. When the pH level of the concrete level is raised, a passive oxide layer forms on the outside of the reinforcing steel preventing galvanic corrosion.

The system consists of a temporary coating saturated with an alkaline electrolyte applied to the existing concrete and a temporary high voltage direct current DC power supply. The negative terminal of the DC power supply is connected to the reinforcing steel of the concrete structure and the positive terminal is connected to the temporary concrete coating.

Realkalization uses two different simultaneous mechanisms to lower raise the concrete pH. The charge applied to the concrete produces a continuous electrochemical reaction at the surface of the embedded reinforcing steel which generates hydroxyl (OH) ions. The ions are continuously produced at, and repelled from the surface of the embedded reinforcing steel;

- ▶ The alkaline solution on the surface of the concrete is drawn into the concrete, to chemically stabilize the high pH effect, thereby reversing carbonation.

This system is frequently used on generally sound concrete that is exposed to environments with high concentrations of carbon dioxide or acid rain such as parking garages and balconies.

Once the system is installed the treatment takes approximately one week.

3.1.2 Chloride Extraction

This propriety electrochemical process removes harmful chloride ions from concrete and realkalizes the concrete as described above at the same time.

The system requires the same set-up as the realkalization system described above. A temporary power source is used to apply a voltage between the embedded reinforcing steel and an electrode mounted to the surface of the concrete. The applied current imposes a negative charge on concrete reinforcing steel. As a result of this current flow the negatively charged chloride ions are repelled away from the embedded reinforcing steel and are attracted (drawn) towards the electrode on the surface of the concrete. The chlorides are drawn out of the concrete into a cellulose medium which is disposed at the conclusion of this process.

The system is frequently used in structures that are subject to chloride contaminated environments such as parking garages and bridges or to concrete structures that were cured with chloride additives.

The process can take anywhere from 7 days to 28 days in any given area, depending on the depth of the chloride penetration and the properties of the concrete.

3.2 Galvanic Current Systems

Galvanic current systems use a sacrificial anode (usually zinc) installed in or on the surface of a concrete structure and electrically connected to the reinforcing steel in the concrete. The sacrificial anode will deteriorate preferentially to the reinforcing steel, thereby extending the life of the reinforcing steel by slowing its rate of corrosion. Galvanic systems, depending on the condition of the concrete, last between 15 and 20 years. To ensure their effectiveness galvanic systems may be monitored.

Galvanic protection systems vary greatly, as a result systems can be designed to meet specific or varied needs and budgets. The following is a number of options available:

- ▶ **Patch Anodes:** Patch anodes are installed locally at the perimeter of concrete patches. They are generally used to control the corrosion cells (and concrete deterioration) that may develop when new concrete is placed. Depending on the size of the patch, these anodes may be small pucks or long flexible cylinders. These anodes are often installed in parking garages, bridges, piers and balconies.
- ▶ **Embedded Anodes:** Embedded anodes are installed into sound concrete either locally or distributed. They serve the same purpose as patch anodes in that they provide galvanic protection to reinforcing steel in concrete.
- ▶ **Encapsulated Anodes:** Encapsulated anodes are patch anodes that will not fit in the existing patch (for instance on columns where stirrups may restrict access). The structure instead is over built to encapsulate the installed anodes thereby providing the same localized anode benefits. This type of system is currently being utilized on columns in the Toronto Subway system.

- ▶ **Arc-Spray Zinc:** Arc-Spray Zinc is a surface mounted system. It consists of a thin layer of molten zinc spray applied to the concrete surface. This system is used to provide distributed galvanic protections to structures with large surface areas. Arc-spray zinc is a rapidly applied system, but generates considerable dust and noise. Arc-spray zinc has been installed on bridges, highways, piers and parking garages.
- ▶ **Zinc-sheet:** Zinc sheet is a thin-layer of zinc with an adhesive conductive coating on one side. The sheet can be rolled on to a number of surfaces including balconies and columns. The zinc sheet operates similar to arc-spray zinc but is cleaner, slower to apply and more expensive.

4. SHEETING EXPANSION JOINTS

4.1 Local Joint Replacement

The repair consists of cutting out and replacing local lengths of the looped sheeting and rubberized asphalt. Achieving good adhesion at the tie-in between the new and existing sheet membrane joint can be problematic because surface cleaning and preparation of the existing looped sheeting is difficult and the long term material compatibility between the sheeting material and the hot-applied rubberized asphalt membrane (used as the 'glue' and waterproofer) is suspect.

As with preformed joints, local repairs may not necessarily address all the breached joints because water that enters through a joint breach does not always show-up directly under the breach. This repair should only be considered if there are few isolated locations of leakage.

4.2 Complete Joint Replacement

This repair is composed of replacing all sheeting expansion joints in a structure.

The full length of joint should be replaced between all leaking locations. This reduces the risk of the leaks reoccurring in the immediate vicinity of the currently leaking locations, because it:

- ▶ limits the number of tie-ins between the new and existing joint, thus reducing the number of weak points; and
- ▶ limits the possibility that the waterproofing defect allowing the leakage is not addressed (since water may be entering at a different location from where it manifests itself on the slab underside due to the slope of the slab).

LIMITATIONS

- ▶ The scope of our work and related responsibilities related to our work are defined in our project authorization (“Conditions of Assignment”).
- ▶ Any user accepts that decisions made or actions taken based upon interpretation of our work are the responsibility of only the parties directly involved in the decisions or actions.
- ▶ No party other than the Client shall rely on the Consultant’s work without the express written consent of the Consultant, and then only to the extent of the specific terms in that consent. Any use which a third party makes of this work, or any reliance on or decisions made based on it, are the responsibility of such third parties. Any third party user of this report specifically denies any right to any claims, whether in contract, tort and/or any other cause of action in law, against the Consultant (including Sub-Consultants, their officers, agents and employees). The work reflects the Consultant’s best judgement in light of the information reviewed by them at the time of preparation. It is not a certification of compliance with past or present regulations. Unless otherwise agreed in writing by Halsall, it shall not be used to express or imply warranty as to the fitness of the property for a particular purpose. No portion of this report may be used as a separate entity; it is written to be read in its entirety.
- ▶ Only the specific information identified has been reviewed. No physical or destructive testing and no design calculations have been performed unless specifically recorded. Conditions existing but not recorded were not apparent given the level of study undertaken. Only conditions actually seen during examination of representative samples can be said to have been appraised and comments on the balance of the conditions are assumptions based upon extrapolation. Therefore, this work does not eliminate uncertainty regarding the potential for existing or future costs, hazards or losses in connection with a property. We can perform further investigation on items of concern if so required.
- ▶ The Consultant is not responsible for, or obligated to identify, mistakes or insufficiencies in the information obtained from the various sources, or to verify the accuracy of the information.
- ▶ No statements by Halsall are given as or shall be interpreted as opinions for legal, environmental or health findings. Halsall is not investigating or providing advice about pollutants, contaminants or hazardous materials.
- ▶ The Client and other users of this report expressly deny any right to any claim against Halsall, including claims arising from personal injury related to pollutants, contaminants or hazardous materials, including but not limited to asbestos, mould, mildew or other fungus.
- ▶ Budget figures are our opinion of a probable current dollar value of the work and are provided for approximate budget purposes only. Accurate figures can only be obtained by establishing a scope of work and receiving quotes from suitable contractors.
- ▶ Time frames given for undertaking work represent our opinion of when to budget for the work. Failure of the item, or the optimum repair/replacement process, may vary from our estimate.





Exhibit "E"

**Fourth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated June 5, 2014**

May 27, 2014 Order to Remedy



City of Sarnia

BUILDING DEPARTMENT

255 Christina Street N, Sarnia, ON. N7T 7N2

p 519- 332-0330 f 519-332-0776

ORDER TO REMEDY UNSAFE BUILDING

Pursuant to Subsection 15.9 (4) of the Building Code Act, 1992

Date of Inspection May 27, 2014	Time 1:00pm	Permit No. N/A
Location of building / structure / System (Municipal Address) 150 – 202 , Christina Street North, (Bayside Mall)		
Owner Bayside Mall Ltd.		
Occupant / Person in possession A John Page & Associates Inc. / Larlyn Property Management Ltd.		

THE ABOVE NOTED BUILDING HAS BEEN FOUND TO BE IN AN UNSAFE CONDITION AS DEFINED BY SUBSECTION 15.9 (2) OF THE BUILDING CODE ACT, 1992. YOU ARE HEREBY ORDERED TO UNDERTAKE THE FOLLOWING REMEDIAL STEPS TO CORRECT THE UNSAFE CONDITIONS:

Description of Unsafe Condition	Location	Section Reference
columns and beam in lower level parking garage show signs of decay and damage, concrete has fractured and showing signs of being over stressed	REG COMP PLAN 664 PT LOT 1;PT LOT 10 RP 25R3518 PARTS; 2,3,7,8 12 (Parking Garage)	15.9 (1) & 15.9 (2)

Required Remedial Steps

- 1) Under the direction and supervision of a professional engineer the owner is to conduct weekly inspections of the parking garage to monitor and identify any concerns or deficiencies in the building or structure. Any concerns or deficiencies noted are to be reported to the CBO of the City of Sarnia immediately. These inspections are to remain in place until repairs have been completed with quarterly reports from the engineer being submitted to the CBO of the City of Sarnia. **(to continue until repairs are complete)**
- 2) Engineer to conduct monthly inspections of temporary shoring/bracing. Any concerns or deficiencies noted by the engineer are to be reported to the CBO of the City of Sarnia immediately. Shoring/bracing to remain in place until repairs have been completed with quarterly reports from the engineer being submitted to the CBO of the City of Sarnia. **(to remain until repairs complete)**
- 3) As per Halsall Associates letter dated May 14th 2014” (Ref# 13y125-035B);
 - a) Provide confirmation that a professional engineer has been engaged to proceed with design, specifications and tendering of garage repairs. This is to include reassessment of the parking garage condition, including but not limited to investigative openings, visual review, hammer sounding, testing and analysis. **(Required December 1st 2014).**
 - b) Submit Engineering documents (Design drawings, Specifications) to obtain permit for repair work to the city building department. **(Required March 1st 2015).**
 - c) Commence repairs as set out in Engineered submission for permit **(Required May 1st 2015).**

Please note this order rescinds and replaces the previous order dated September 17, 2013

YOU ARE HEREBY ORDERED TO CARRY OUT THE SPECIFIED REMEDIAL ACTION ON OR BEFORE:

DATE (See dates above) TIME

ORDER ISSUED BY:

Name: Alan Shaw, CBO.....BCIN #:15584.....

Signature:  Telephone No.: 519-332-0330

Order Respecting Occupancy - If an order of an *inspector* under subsection (3) is not complied with within the time specified in it, or where no time is specified, within a reasonable time, the *chief building official* may by order prohibit the use or *occupancy* of the *building*; and may cause the *building* to be renovated, repaired or *demolished* to remove the unsafe condition or take such other action as he or she considers necessary for the protection of the public. ss. 15.9 (6)

Municipal Lien - If the *building* is in a *municipality*, the *municipality* shall have a lien on the land for the amount spent on the renovation, repair, demolition or other action under clause (6) (b) and the amount shall have priority lien status as described in section 1 of the Municipal Act, 2001. 2002, c17, Sched. C, s.4(1)

Prohibition - No person shall obstruct the visibility of an order and no person shall remove a copy of any order posted under this Act unless authorized to do so by an *inspector* or officer. 1997, c. 24, s. 224(14). sec 20



Exhibit "F"

**Fourth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated June 5, 2014**

Confidential Marketing Memorandum

Confidential Exhibit

Filed Separately



Exhibit "G"

**Fourth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated June 5, 2014**

**Confidential Memorandum re the Status of
Negotiations with the City and the County**

Confidential Exhibit

Filed Separately



Exhibit "H"

**Fourth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated June 5, 2014**

Statement of Receipts and Disbursements

Bayside Mall - Statement of Receipts and Disbursements - ETD

05/12/2012 through 05/06/2014 (in Canadian Dollars) (Cash Basis)

05/06/2014

Page 1

Category Description	05/12/2012- 05/06/2014
INCOME	
HST on Sales	7,435.24
Interest	3,320.87
Receivables	19,447.91
Receiver's Certificate Borrowing	750,000.00
Rent and Other Income	2,445,068.80
TOTAL INCOME	3,225,272.82
EXPENSES	
Consulting Fees	55,773.41
HST Control	8,362.60
HST Input	13,212.57
Insurance	219,454.47
Larlyn Expenses	
Cleaning	154,540.00
Engineering Inspections	23,893.94
Management Fees	106,518.68
Misc HST Exempt	140.00
Other	108,258.74
Repairs & Maintenance	210,704.43
Snow Removal	72,590.00
Temporary Shoring	78,175.00
Utilities	571,676.55
Wages	493,164.24
Water	28,586.78
TOTAL Larlyn Expenses	1,848,248.36
Legal Fees	258,865.58
Misc.	6,027.14
OSB Filing Fee	70.00
Receiver's Fees	528,006.78
TOTAL EXPENSES	2,938,020.91
OVERALL TOTAL	287,251.91