

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

SIXTH REPORT OF THE COURT APPOINTED RECEIVER  
OF BAYSIDE MALL LIMITED

Dated January 21, 2015

**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 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 its leasehold interest in a 245,598 leasable square foot shopping mall ("**Bayside Mall**", "**the 'Mall'**" or "**the Building**") located at 150-202 Christina St. N., Sarnia, Ontario on leased land ("**the Land**") owned by the City of Sarnia ("**the City**") pursuant to a land lease.

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, 2014 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 subsequent bankruptcy of SAMAK 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 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 major tenant of the Mall, The County of Lambton (“**the County**”). 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 and its 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 Statement

of Receipts and Disbursements contained in the Third Report, together with the fees and expenses of the Receiver and its counsel to September 30, 2013 were also approved.

On June 5, 2014 the Receiver made its Fourth Report to the Court (**“the Fourth Report”**). A copy of the body of the Fourth Report is attached as ***Exhibit “B”***.

By order of the Honourable Mr. Justice McEwan dated June 16, 2014 (**“the June 16, 2014 Order”**) the activities of the Receiver set down in the Fourth Report were approved. The Statement of Receipts and Disbursements contained in the Fourth Report together with the fees and expenses of the Receiver and its counsel to May 31, 2014 were also approved.

The June 16, 2014 Order also ordered and directed the Receiver to proceed in accordance with Alternatives 1 and 5 as set down in the Fourth Report.

On August 11, 2014 the Receiver made its Fifth Report to the Court (**“the Fifth Report”**). A copy of the body of the Fifth Report is attached as ***Exhibit “C”***.

By order of the Honourable Mr. Justice Hainey dated August 20, 2014 (**“the August 20, 2014 Order”**) the activities of the Receiver set down in the Fifth Report were approved. The Statement of Receipts and Disbursements contained in the Fifth Report together with the fees and expenses of the Receiver and Gardiner Roberts to July 31, 2014 were also approved. The Receiver’s borrowing limit was increased by \$250,000 to \$1 million. An agreement between the Receiver and the City with respect to the joint marketing of the Land and Building was approved. The Receiver was also authorised to enter into a lease agreement with the County substantially in accordance with a confidential term sheet attached to the Fifth Report. A copy of the August 20, 2014 Order is attached as ***Exhibit “D”***.

### **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.

All capitalized terms used herein and not otherwise defined are as defined in the Fourth and Fifth Reports.

## **Background**

The copies of the bodies of the Fourth Report and the Fifth Report, attached as *Exhibits "B" and "C"*, provide relatively current background information on the Mall and the Receivership. They also provide details of the challenges that faced the Receiver in the spring of 2014 that lead the Receiver to seek the advice and directions of the court and subsequent developments leading up to the issuance of the Fifth Report.

## **Purpose of this Report**

- To provide the court with information on the activities of the Receiver since its Fifth Report
- To authorize the Receiver to enter into agreements for certain repairs to the Mall parking garage
- To seek approval of the activities of the Receiver and its Statement of Receipts and Disbursements as described in this Report and in particular the entering into a new lease with the County and the signing of a listing agreement with CBRE Limited.
- To seek approval for the fees and disbursements of the Receiver and the Receiver's independent legal counsel, Gardiner Roberts, for the period from August 1 – December 31, 2014 and of Heath Whiteley from June 1 to December 31, 2014 as set down in fee affidavits.

## **The Receiver's Go Forward Strategy**

As detailed in the Fifth Report, as at August 2014 our go forward strategy was to endeavour to proceed, with court approval where appropriate, generally as follows:

- To enter into the Sharing Formula Agreement with the City
- To borrow an additional \$250,000 from the Bank
- To finalize our negotiations of a lease extension agreement with the County in a manner that addressed the parking garage repair concern
- To then engage a professional engineer and move towards completing certain parking garage repairs
- To select and engage a listing broker for a joint sale of the Land and the

#### Building

- To assist that broker with the preparation of marketing materials and assembly of a comprehensive data room
- To have that broker market the Land and the Building together

### **The Sharing Formula Agreement**

The August 20, 2014 Order authorized the Receiver to enter into the Sharing Formula Agreement with the City. The Sharing Formula Agreement provides for the joint sale of the Land and Building with a pre agreed division of the proceeds of such a sale. The Sharing Formula Agreement also provides that the City will be supplied information on the credentials, experience, vision and financial strength of a potential purchase and allows the City a veto over whether an offer from that purchaser is acceptable. The City will also be provided with information as to whether an offer will likely mean that the City will receive more or less than a threshold set by them.

The Formalized Sharing Formula Agreement has now been executed by both the City and the Receiver.

### **The County of Lambton**

The County is the largest tenant in the Mall occupying approximately a quarter of the space. Through the winter and early spring of 2014 we had been in negotiations with the County regarding an extension to their lease that, among other things, would include a mechanism for funding certain repairs to the Mall parking garage. At the date of the Fourth Report we had put those negotiations on hold pending seeing if an agreement could be reached with the City for a joint sale of the Land and the Building. This was because the County had indicated that any lease extension would be conditional on us reaching such an agreement with the City.

Once we had reached the agreement with the City described in the Fifth Report as the Sharing Formula Agreement we reopened negotiations with the County. We and County staff reached an agreement in principle in accordance with a term sheet dated July 31, 2014 ("**the Term Sheet**") that was attached as a confidential exhibit to the Fifth Report. The August 20, 2014 Order authorized us to enter into a lease extension agreement on behalf of Bayside with the County substantially in accordance with the terms set out in the Term Sheet.

As noted in the Fifth Report, since time was of the essence we had sought approval

for the Term Sheet prior to it being approved by the County council. Obtaining that approval and negotiating a form of lease agreement with the County substantially in accordance with the terms of the Term Sheet has been more problematic and time consuming than we had initially anticipated. The County and their council had a number of concerns that had to be addressed before council would give its approval. We understand Council gave its approval on October 1, 2014. A new lease with the County ("**the New County Lease**"), substantially in accordance with the Term Sheet, was fully executed on November 11, 2014. We have attached a copy of the New County Lease as confidential ***Exhibit "E"***. The New County Lease contains commercially sensitive information and we are asking that it be sealed.

### **The Parking Garage**

As noted in the Fourth Report, the Bayside Mall parking garage is subject to the May 27, 2014 Order to Remedy issued by the City Building Department. Larlyn Property Management Ltd. ("**Larlyn**"), our property manager, have been ensuring that the periodic inspections required under the May 27, 2014 Order to Remedy have continued to be performed and we are not aware of any serious concerns emanating from those inspections that require prompt action.

The May 27, 2014 Order to Remedy also lists as a "Required Remedial Step" that an professional engineer be engaged by December 1, 2014 to proceed with the design, specifications and tendering of certain garage repairs. It is our understanding that the repairs the City Building Department is referring to are those described as "Repair Strategy One" in the Garage Condition Evaluation Update dated May 8, 2014 prepared by our engineers, Halsall Associates ("**Halsall**"). We will define these repairs to be the "**Parking Garage Repairs**".

The Term Sheet and then the New County Lease require that the Parking Garage Repairs be completed and state that the County will provide funding for the Parking Garage Repairs. Such funding is to be repaid, with interest, through a deduction from the rent payable over an approximately 30 month period.

Immediately after being advised that the County council had approved a form of lease extension substantially in accordance with the terms of the Term Sheet we moved to engage Halsall to undertake design and tender services with respect to the Parking Garage Repairs. Our engagement with Halsall was formalized on October 28, 2014, over a month ahead of the December 1, 2014 deadline in the May 27, 2014

Order to Remedy.

Since that time Halsall have completed the design plans and put the Parking Garage Repairs out to tender to six construction companies. We also understand that they have submitted those design plans to the City Building Department and have obtained a building permit for the Parking Garage Repairs.

Halsall provided us with their reporting letter dated December 22, 2014 in which they recommended that we engage SMID Construction Limited ("**SMID**"). We attach a copy of the reporting letter as *Exhibit "F"*.

The bid package issued by Halsall re the Parking Garage Repairs had been worded as if this were a normal contract. A post tender addendum ("**the Post Tender Addendum**") was issued to the top two bidders, SMID and Maxim Group Contracting Limited ("**Maxim**") to reflect the fact that Bayside is in receivership. Both SMID and Maxim were asked to reaffirm their bids and their estimated duration of work from the date that is one day after court approval. The Post Tender Addendum also provided for a \$10,000 bonus if the work is fully completed on or before the estimated full completion date. This bonus was added to the Post Tender Addendum by the Receiver because, within the context of the ongoing marketing process, it is essential that the Parking Garage Repairs are performed as quickly as possible and completed prior to any sale of the Mall being closed. This bonus gives the contractor an added incentive to expedite their work to that end.

Both SMID and Maxim reaffirmed their bids. The Receiver has therefore signed a contract with SMID ("**the SMID Contract**"), subject to court approval, for the performance of the role of "Contractor" with respect to the Parking Garage Repairs. A copy of the SMID Contract is attached as *Exhibit "G"*.

The Receiver has also signed a contract with Halsall ("**the Halsall Contract**"), also subject to court approval, for the performance of the role of "Consultant" with respect to the Parking Garage Repairs. A copy of the Halsall Contract together with a breakdown prepared by Halsall showing how they calculated their fee is attached as *Exhibit "H"*. The Receiver has reviewed these documents and regards Halsall's fee quote as reasonable. Halsall have significant knowledge of the state of the parking garage and of the Parking Garage Repairs. The Receiver does not recommend delaying the commencement of the Parking Garage Repairs in order to get alternative quotes for the work to be performed by Halsall. In fact any such delay could be quite

prejudicial to the successful marketing and sale of the Mall.

The Receiver is asking the Court to approve both the SMID Contract and the Halsall Contract.

### **Marketing the Property**

In late August 2014 we sent out a request for proposals (“RFP”) to market the Land and Building to the following five realtors:

- Royal LePage (London),
- CBRE Limited (“CBRE”)(Toronto),
- Colliers International (London),
- Gleed Commercial (London) and
- DTZ Barnicke (“DTZ”) (London and Sarnia).

We attach a copy of the RFP as *Exhibit “I”*. We gave the realtors until September 9, 2014 to provide us with their proposals. We obtained responses from four of the five, the fifth, DTZ, indicated they had a conflict as they were acting for a potential buying group. We reviewed the proposals and selected CBRE. We signed a listing agreement with them dated September 17, 2014. We attach a copy of the listing agreement as *Exhibit “J”*. We have subsequently agreed with CBRE to offer cooperating brokers a fee of 1.5%.

We have worked with CBRE to assemble documents for their web based data room and to draft a flier and a confidential information memorandum promoting the Land and Building.

In particular we have had Halsall update the Building Condition Report they had prepared in 2013 and have had a copy of the updated Building Condition Report posted in the CBRE data room.

The marketing was launched on November 20, 2014 and is ongoing.

We will provide further information on the marketing of the Land and Building in a subsequent report.

### **Other Tenants and Leasing Generally**

We continue to not be actively attempting 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.

We were however approached by an existing tenant, Anjema Eye Institute ("Anjema"), who wanted more space and a five year lease commitment. Anjema's lease with the Mall had expired and they were renting a 2,755 square foot unit on a month to month basis at a net rent of \$10 psf pa. We have signed a new five year leasing arrangement with them for an expanded 3,111 square feet of space at an increased net rental rate of \$13.50 psf pa. As part of our agreement with them we have contracted to pay for approximately \$17,000 of leasehold improvement work, an amount that will be recovered from increased rent in just over a year. This lease renewal enhances the value of the Mall and, with the County renewal and the planned parking garage repairs, sends a signal to the existing tenants and other interested parties that the Mall has a future.

### **Larlyn and Operations Generally**

Larlyn are continuing to act as property manager of the Mall.

### **Media Enquiries**

The receivership of the mall continues to be news in the Sarnia area and we have undertaken a number of newspaper interviews on its status.

### **Property Taxes**

Property taxes due and unpaid as at January 31, 2015 are \$978,299.58. We have made no payments to the City on account of property taxes to date.

We were able to get the taxes reduced by \$54,969.29 on account of our 2013 vacancy rebate application. We are having our property tax consultants, Altus Group, file a similar rebate application for 2014. Altus Group are also overseeing the appeal that we had them file of the MPAC Property Assessment for 2013 – 2016. We understand that a pre-hearing conference call has been scheduled for mid May 2015 to discuss the appeal.

### **Fees and Expenses of the Receiver and its Legal Counsel**

The fees and expenses of the Receiver and the Receiver's independent counsel,

Gardiner Roberts, relating to their activities from August to December 2014 and of Heath Whiteley from June to December 2014 were as follows:

A. John Page & Associates Inc.

<b>Month</b>	<b>Hours</b>	<b>Fees</b>	<b>HST</b>	<b>Total</b>
August 2014	64.60	\$21,777.00	\$2,831.01	\$24,608.01
September 2014	105.19	38,751.23	5,037.66	43,788.89
October 2014	116.90	43,259.58	5,623.75	48,883.33
November 2014	108.11	39,934.93	5,191.54	45,126.47
December 2014	71.18	26,771.22	3,480.26	30,251.48
	<b>465.98</b>	<b>\$170,493.96</b>	<b>\$22,164.22</b>	<b>\$192,658.18</b>

Heath Whiteley

<b>Period Covered</b>	<b>Fees</b>	<b>HST</b>	<b>Total</b>
June, 2014	\$10,760.00	\$1,398.80	\$12,158.80
July, 2014	12,520.00	1,627.60	14,147.60
August, 2014	9,000.00	1,170.00	10,170.00
September, 2014	4,600.00	598.00	5,198.00
October, 2014	7,400.00	962.00	8,362.00
November/December 2014	8,200.00	1,066.00	9,266.00
	<b>\$52,480.00</b>	<b>\$6,822.40</b>	<b>\$59,302.40</b>

Gardiner Roberts

<b>Month</b>	<b>Fees</b>	<b>Disbursements</b>	<b>HST</b>	<b>Total</b>
August, 2014	\$3,635.50	\$381.35	\$522.19	\$4,539.04
September, 2014	17,012.50	182.25	2,235.32	19,430.07
October, 2014	6,180.50	378.25	852.64	7,411.39
November, 2014	3,564.00	75.27	473.11	4,112.38
December, 2014	8,452.00	118.75	1,114.20	9,684.95
	<b>\$38,844.50</b>	<b>\$1,135.87</b>	<b>\$5,197.46</b>	<b>\$45,177.83</b>

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 and the Receiver's Statement of Receipts and**

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 “K”** is a copy of the Receiver's Interim Statement of Receipts and Disbursement from December 5, 2012 to January 20, 2015 combining the three accounts (“**the R&D**”). The R&D does not include any transactions flowing through the Larlyn Royal Account after November 30, 2014 as these have yet to be reported to us.

The fees and disbursements of the Receiver, Mr. Whiteley and Gardiner Roberts through to December 2014 are included as disbursements in the R&D. We are asking the court to approve the R&D.

In the Fourth Report we noted that the Receiver's cash position had been deteriorating. We indicated that we were very concerned that we would have insufficient funds to carry on with the receivership for very much longer. As authorized by the August 20, 2014 Order the Receiver borrowed an additional \$250,000 from the Bank. The receivership cash flow is also about to benefit from increased rental receipts from the New County Lease. Therefore the Receiver no longer has an immediate potential shortage of cash with which to cover monthly receivership costs including normal operating expenses.

\*\* \*\* \*

All of which is respectfully submitted this 21st day of January, 2015

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



A. John Page FCPA, FCA, CIRP  
President

**Exhibits to the Sixth Report of A. John Page & Associates Inc.  
as Court Appointed Receiver of Bayside Mall Limited  
dated January 21, 2015**

Initial Order	A
Fourth Report (without exhibits)	B
Fifth Report (without exhibits)	C
The August 20, 2014 Order	D
Confidential Exhibit - The New County Lease	E
Halsall Bid Reporting Letter dated December 22, 2014	F
SMID Contract	G
Halsall Contract	H
Realtor Request for Proposals	I
CBRE Listing Agreement	J
Statement of Receipts and Disbursements	K

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**Exhibit "A"**

**Sixth Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated January 21, 2015**

**Initial Order**

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

THE HONOURABLE MR. ) WEDNESDAY, THE 5<sup>th</sup> 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](http://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.

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 REVÊTUE DU Sceau de la Cour Supérieure de Justice à Toronto, est une copie conforme du document conservé dans ce bureau

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

REGISTRAR

GREFFIER



*W. / Hon - L.J.*

ENTERED AT / INSCRIT A 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:

**B E T W E E N:**

**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@whiteleylitigation.com](mailto:heath@whiteleylitigation.com)

310 Stouffville Road  
Richmond Hill, Ontario  
L4E 3P4

Lawyer for the Applicant



Exhibit "B"

**Sixth Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated January 21, 2015**

**Fourth Report (without exhibits)**

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 1<sup>st</sup> 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
<b>Total</b>	<b>620.80</b>	<b>\$208,777.51</b>	<b>\$27,141.07</b>	<b>\$235,918.58</b>

### 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
<b>Total</b>	<b>\$47,880.00</b>	<b>\$261.00</b>	<b>\$6,241.82</b>	<b>\$54,382.82</b>

### 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 5<sup>th</sup> 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 "C"

**Sixth Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated January 21, 2015**

**Fifth Report (without exhibits)**



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

FIFTH REPORT OF THE COURT APPOINTED RECEIVER  
OF BAYSIDE MALL LIMITED

Dated August 11, 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 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 ("**Bayside Mall**", "**the Mall**" or "**the Building**") located at 150-202 Christina St. N., Sarnia, Ontario on leased land ("**the Land**") owned by the City of Sarnia ("**the**

City”) pursuant to a land lease (“**the Land Lease**”).

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, 2014 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 subsequent bankruptcy of SAMAK 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 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 major tenant of the Mall, The County of Lambton (“**the County**”). 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 and its 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 and its counsel to September 30, 2013 were also approved.

On June 5, 2014 the Receiver made its Fourth Report to the Court (“**the Fourth Report**”).

By order of the Honourable Mr. Justice McEwan dated June 16, 2014 (“**the June 16, 2014 Order**”) the activities of the Receiver set down in the Fourth Report were approved. The Statement of Receipts and Disbursements contained in the Fourth Report together with the fees and expenses of the Receiver and its counsel to May 31,

2014 were also approved. A copy of the June 16, 2014 Order is attached as *Exhibit “B”*.

The June 16, 2014 Order also ordered and directed the Receiver to proceed in accordance with Alternatives 1 and 5 as set down in the Fourth Report, (collectively “the Thirty Day Strategy”).

### 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.

All capitalized terms used herein and not otherwise defined are as defined in the Fourth Report.

### Background

We attach as *Exhibit “C”* a copy of the body of the Fourth Report which provides relatively current background information on the Mall and the Receivership. It also provides details of the Thirty Day Strategy.

### **Purpose of this Report**

- To provide the court with information on the activities of the Receiver since its Fourth Report and in particular with respect of the Thirty Day Strategy
- To seek an increase in the Receiver's borrowing limit by \$250,000 to \$1 million
- To authorize the Receiver to enter into an agreement with the City regarding the joint sale of the Land and the Building
- To authorize the Receiver to enter into a lease extension agreement with the County on behalf of Bayside
- 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 June 1 – July 31, 2014 as set down in fee affidavits.

### **The Activities of the Receiver in proceeding with the Thirty Day Strategy**

The June 16, 2014 Order directed the Receiver to proceed with the Thirty Day Strategy namely to proceed with Alternatives 1 and 5 as set down in the Fourth Report.

Alternative 1 was to:

- 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.
- 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.

- Scale down the Receiver and its counsel's activities to the bare minimum to conserve resources.
- 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.
- 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.
- 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.

Alternative 5 was to:

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

We took the following steps to comply with the June 16, 2014 Order:

**The Conditional LOI Purchaser** - As detailed in the Fourth Report, the Bank had indicated that they would support us approaching the potential purchaser that had submitted the highest (on face value) of the conditional LOIs earlier

in the year and giving them 30 days to “firm up a deal”. As ordered and directed in the June 16, 2014 Order we communicated this opportunity to the Conditional LOI Purchaser. Colliers responded, indicating that they were acting for the Conditional LOI Purchaser. We note that in May 2013 we had signed a listing agreement with Colliers, that Colliers had marketed the Building for us and were privy to the LOIs we had received and our assessment of those LOIs. We had let the Colliers listing agreement lapse in February 2013 and the over holding period in the listing agreement had only ended a few days earlier. We emailed back to Colliers, expressing concern over this conflict of interests but also repeating the purpose of our communications with the Conditional LOI Purchaser. We asked that the Conditional LOI Purchaser immediately contact us to discuss the opportunity to firm up a deal further. We copied the Conditional LOI Purchaser on that email. We did not receive any response from either the Conditional LOI Purchaser or from Colliers and have concluded that the Conditional LOI Purchaser was not interested in the prospect of quickly firming up a deal for the Building at that time.

**The Sharing Formula** – Immediately after the June 16, 2014 court hearing we hosted a meeting between ourselves, counsel for the Bank and counsel for the City to discuss whether it would be possible to bridge the gap between the two positions on a “Sharing Formula” that would set out how the proceeds of any joint sale of the Land and the Building would be divided between the City and the Receiver. A tentative agreement was reached relating to the Sharing Formula and the joint marketing of the Land and the Building that was refined and then affirmed by the City council on June 30, 2014 and supported by the Bank (“**the Sharing Formula Agreement**”). We provide further details later

in this report.

**A Sale to Either the City or the County** – We asked both the City and the County if they wished to make an offer to buy the Building in the 30 days after the June 16, 2014 court date. Both indicated to us that they did not.

**Reassessment of Alternatives** – We reviewed the situation in mid July 2014. As noted earlier we had reached an important agreement with the City, supported by the Bank, regarding the joint sale of the Land and Building. As detailed later we had also secured a commitment from the Bank to provide us with additional funding that would address our short term cash crisis.

We therefore decided to endeavour to move forward, with court approval where appropriate, generally as follows:

- Formalize and seek court approval of the Sharing Formula Agreement
- Seek court approval to an increase in the borrowing capacity of the Receiver to \$1 million
- Borrow an additional \$250,000 from the Bank
- Attempt to conclude a lease extension agreement with the County in a manner that addressed the parking garage repair concern
- Select a listing broker for a joint sale of the Land and the Building
- Assist that broker with the preparation of marketing materials and assembly of a comprehensive data room
- Market the Land and the Building together



## The Sharing Formula Agreement

The Sharing Formula Agreement provides for the joint sale of the Land and Building with a pre agreed division of the proceeds of such a sale. The Sharing Formula Agreement also provides that the City will be supplied information on the credentials, experience, vision and financial strength of a potential purchaser and allows the City a veto over whether an offer from that purchaser is acceptable. The City will also be provided with information as to whether an offer will likely mean that the City will receive more or less than a threshold set by them.

The Sharing Formula Agreement has now been formalized (“**the Formalized Sharing Formula Agreement**”). A copy of the Formalized Sharing Formula Agreement is attached as *Exhibit “D”*. City council approved the Formalized Sharing Formula Agreement at a council meeting on July 21, 2014, subject receipt of satisfactory written confirmation of support from the Bank. The Bank subsequently confirmed in writing that they supported and agreed with our application for authorization to execute the Formalized Sharing Formula Agreement.

As detailed in the Fourth Report, interest in the Building alone had been underwhelming and we attributed much of that lack of serious interest to the uncertainties caused by the Land Lease. It was and is our view that a joint sale of the Land and the Building should be in the best interests of all stakeholders. We think that the Formalized Sharing Formula Agreement, providing as it does for a joint sale of the Land and the Building, is a reasonable balance between these interests. It has been agreed to by the two key stakeholders, the City and the Bank. We are therefore seeking an order approving the Formalized Sharing Formula Agreement and

authorizing the Receiver entering into it so that we can proceed and attempt to market the Land with the Building.

### **The County of Lambton**

As noted in the Fourth Report and earlier in this Report, the County is the largest tenant in the Mall. Through the winter and early spring of 2014 we had been in negotiations with the County regarding an extension to their lease that, among other things, would include a mechanism for funding certain repairs to the Mall parking garage. At the date of the Fourth Report we had put those negotiations on hold pending seeing if a Sharing Formula agreement with the City could be reached. This was because the County had indicated that any lease extension would be conditional on us reaching such an agreement with the City.

As noted earlier we have now reached an agreement with the City. We therefore reopened negotiations with the County. We and County staff have reached an agreement in principle in accordance with a term sheet ("**the Term Sheet**") attached as confidential *Exhibit "E"*. The Term Sheet contains commercial sensitive information and we are asking that it be sealed. The Term Sheet is subject to approval by the County council and by the court.

The two key County council committees will be asked to "approve" the Term Sheet at meetings on August 21, 2014. If approved, the full County council will be asked on September 3, 2014 to pass a formal resolution authorizing County staff to enter into a lease with Bayside Mall Limited substantially in accordance with the terms set down in the Term Sheet.

Normally we would not seek court approval to enter into a lease until after County council had indicated that it had “approved” the Term Sheet. However time is of the essence so we are seeking court approval in parallel to the Term Sheet being presented to council for approval.

A lease substantially in accordance with the terms on the Term Sheet is, in our opinion, of great benefit to the Mall. It provides a guaranteed income stream from a major tenant for an extended period of time while also providing a mechanism for undertaking certain parking garage repairs.

We are therefore asking for court to authorize and approve us entering into a lease, on behalf of Bayside Mall Limited, substantially in accordance with the terms on the Term Sheet, providing the County council has given its approval.

### **Other Tenants and Leasing Generally**

Two smaller tenants, Hogan’s Pharmacy and Vinnis, are in the process of vacating their units. We have agreed to a one year lease extension with another smaller tenant, Beanzz. We are in the process of finalizing a new five year leasing arrangement with an existing tenant, Anjema Eye Institute, that will see them take on a slightly larger unit. We anticipate needing to undertake a limited amount of construction work to facilitate this move.

We continue to not be actively attempting 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. However we have had a few larger expressions of

interest. We have indicated to those parties that we might entertain a simple, quick turnkey leasing arrangement if it could be put in place prior to our remarketing the property without any significant build out costs. In the alternative we have indicated that, if the interested party was prepared to wait, we would refer their interest to a purchaser of the Mall.

### **The Parking Garage**

As noted in the Fourth Report the Bayside Mall parking garage is subject to the May 27, 2014 Order to Remedy issued by the City Building Department. Larlyn, our property manager, have been ensuring that the periodic inspections required under the May 27, 2014 Order to Remedy have continued to be performed and we are not aware of any serious concerns emanating from those inspections that require action.

The May 27, 2014 Order to Remedy also lists as a “Required Remedial Step” that an professional engineer be engaged by December 1, 2014 to proceed with the design, specifications and tendering of certain garage repairs. At the present time, if the County Term Sheet is approved by both the County council and the court and if a new lease is promptly entered into substantially in accordance with the terms of the Term Sheet then we will be in a position to engage a professional engineer prior to December 1, 2014 and move to complete the parking garage repairs in question.

### **Fees and Expenses of the Receiver and its Legal Counsel**

In the Fourth Report we commented that, in light of the fact that the Bank and the City had been unable to agree upon a satisfactory Sharing Formula, we had expanded the use of our independent counsel, Gardiner Roberts. We also commented that, in

light of this and of our lack of funds we thought it inappropriate to continue to pay Mr. Whiteley's fees from the funds held by us as Receiver.

In light of the fact that we now have a Sharing Formula Agreement with the City supported by the Bank and, in addition, a funding commitment given by the Bank (see later), we think that we will be able to reduce the time required by Gardiner Roberts and think it is appropriate to revert to the practice of paying Mr. Whiteley's fees from the Receivership account, given that much of his activity is in assisting us and for the benefit of the receivership. The Bank have indicated that this method of paying Mr. Whiteley is acceptable to them.

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

A. John Page & Associates Inc.

Month	Hours	Fees	HST	Total
June 2014	92.49	\$30,288.19	\$3,937.46	\$34,225.65
July 2014	93.48	33,831.14	4,398.05	38,229.19
<b>Total</b>	185.97	\$64,119.33	\$8,335.51	\$72,454.84

Heath Whiteley

Period	Fees	HST	Total
June 2014	\$10,760.00	\$1,398.80	\$12,158.80
July 2014	12,520.00	1,627.60	14,147.60
<b>Total</b>	<b>\$23,280.00</b>	<b>\$3,026.40</b>	<b>\$26,306.40</b>

Gardiner Roberts

Period	Fees	Disbursements	HST	Total
June 2014	\$12,305.00	\$902.13	\$1,716.93	\$14,924.06
July 2014	10,731.50	132.50	1,412.32	12,276.32
<b>Total</b>	<b>\$23,036.50</b>	<b>\$1,034.63</b>	<b>\$3,129.25</b>	<b>\$27,200.38</b>

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 Potential 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 "F"* is a copy of the Receiver's Interim Statement of Receipts and

Disbursement from December 5, 2012 to August 11, 2014 combining the three accounts (“the R&D”). The R&D does not include any transactions flowing through the Larlyn Royal Account after June 30, 2014 as these have yet to be reported to us. The funds shown as being on hand are deceptively large because they include \$89,509 of prepaid rent and a reserve held by Larlyn of approximately \$66,000 to cover uncashed cheques and unpaid liabilities incurred by them to June 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 were to disengage as Receiver. It also has an outstanding HST deemed trust claim of about \$24,000 and has to finalize and settle the HST accounting for its period of operations.

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

In the Fourth Report we noted that the Receiver’s cash position had been deteriorating. We indicated that we were very concerned that we would have insufficient funds to carry on with the receivership for very much longer. In light of the Sharing Formula Agreement with the City, the Bank has agreed to provide us with an additional \$250,000 to permit us to continue with the receivership and to jointly market the Land with the Building. The Initial Order permits us to borrow up to \$750,000. Since we have already borrowed that amount from the Bank we are asking the Court to increase our borrowing limit to \$1,000,000.

Page 16  
Fifth Report to the Court  
August 11, 2014

All of which is respectfully submitted this 11<sup>th</sup> day of August, 2014

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

per:

A handwritten signature in black ink, appearing to read "A. John Page". The signature is written in a cursive, flowing style with a large initial "A" and a long, sweeping underline.

A. John Page FCPA, FCA, CIRP  
President



**Exhibits to the Fifth Report of A. John Page & Associates Inc.  
as Court Appointed Receiver of Bayside Mall Limited  
dated August 11, 2014**

Initial Order	A
June 16, 2014 Order	B
The Fourth Report (without exhibits)	C
Formalized Sharing Formula Agreement	D
Confidential Exhibit - County Term Sheet	E
Statement of Receipts and Disbursements	F

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Exhibit "D"

**Sixth Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated January 21, 2015**

**The August 20, 2014 Order**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

THE HONOURABLE  
JUSTICE **HAINES**

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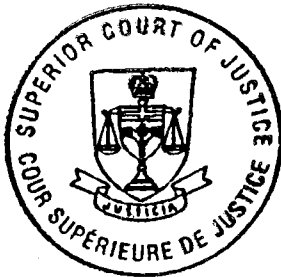
WEDNESDAY, the 20<sup>th</sup> DAY  
OF AUGUST, 2014

BETWEEN:

ICICI BANK CANADA

Applicant

and



BAYSIDE MALL LIMITED

Respondent

ORDER  
(Fifth Report of the Receiver)

THIS MOTION, made by A. John Page & Associates Inc., in its capacity as the Court-appointed Receiver (the "Receiver") of certain of the undertaking, property, and assets of BAYSIDE MALL LIMITED (the "Debtor") for an order approving the Fifth Report of the Receiver dated August 11, 2014 (the "Fifth Report") and approving the conduct and activities of the Receiver as described in that report, increasing the Receiver's borrowing limit by \$250,000, approving an agreement between the Receiver and the City of Sarnia, authorising the Receiver to enter into a lease extension agreement with the County of Lambton, approving the Receiver's

Statement of Receipts and Disbursements, sealing Confidential Exhibit E to the Fifth Report, and approving the fees and expenses of the Receiver and its counsel to July 31, 2014, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report and on hearing the submissions of counsel for the Receiver, the Applicant, and other counsel appearing on the motion, no one appearing for any other person on the service list although properly served as appears from the affidavit of Jeffrey Rosekat sworn August 12<sup>th</sup>, 2014, filed:

1. **THIS COURT ORDERS** that Fifth Report and the actions and activities of the Receiver as set forth in the Fifth Report are hereby approved.
2. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements as contained in the Fifth Report is hereby approved.
3. **THIS COURT ORDERS** increasing the Receiver's borrowing limit by \$250,000 to \$1,000,000;
4. **THIS COURT ORDERS** that the agreement between the Receiver and the City of Sarnia with respect to the joint marketing of the Land and Building is approved and the Receiver is authorized to enter into that agreement.
5. **THIS COURT ORDERS** that the Receiver is authorised to enter into a lease extension agreement on behalf of Bayside Mall Limited with the County of Lambton substantially

in accordance with the terms set out in the Term Sheet attached to the Fifth Report as Confidential Exhibit E.

6. **THIS COURT ORDERS** that, until further order of this Court, Confidential Exhibit E to the Fifth Report of the Sales Officer shall be sealed by this Court, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.
7. **THIS COURT ORDERS** that the fees of the Receiver for the period ending July 31, 2014 as set forth in the affidavit of A. John Page sworn August 6, 2014, and the exhibits attached thereto are hereby approved and allowed.
8. **THIS COURT ORDERS** that the fees of the Receiver's counsel for the period ending July 31, 2014 as set forth in the affidavit of Timothy Duncan sworn August 11, 2014, and the exhibits attached thereto are hereby approved and allowed.
9. **THIS COURT ORDERS** that the fees of Heath Whiteley for the period ending July 31, 2014 as set forth in the affidavit of Heath Whiteley sworn August XX, 2014, and the exhibits attached thereto are hereby approved and allowed.

411

*Hainey J*

BRUNSON, J. J. TORONTO  
ON 11/11/14  
RECEIVED

AUG 21 2014

*J*

ICICI BANK CANADA  
Applicant

-and- BAYSIDE MALL LIMITED  
Respondent

Court File No. CV-12-9111-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT  
TORONTO

ORDER

**GARDINER ROBERTS LLP**

Lawyers

Scotia Plaza

40 King Street West, Suite 3100

Toronto ON M5H 3Y2

Jonathan H. Wigley (20120P)

jwigley@gardiner-roberts.com

Tel: (416) 865-6655

Fax: (416) 865-6636

Lawyers for the Receiver,  
A. John Page & Associates Inc.



**Exhibit "E"**

**Sixth Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated January 21, 2015**

**Confidential Exhibit - The New County Lease**

Confidential Exhibit

Filed Separately





Exhibit "F"

**Sixth Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated January 21, 2015**

**Halsall Bid Reporting Letter dated December 22,  
2014**



13Y125-035C

December 22, 2014

Bayside Mall Limited  
c/o A. John Page and Associates Inc.  
As Receiver of Bayside Mall Limited  
100 Richmond St. W., Suite 447  
Toronto, ON M5H 3K6

Attn: Mr. John Page, President

E-mail: [ajpage@ajohnpage.com](mailto:ajpage@ajohnpage.com)

Dear John,

Re: 150 Christina St., Sarnia – Garage Roof Deck Expansion Joint Repairs  
Results Letter and Bid Summary

We completed the bid process for the above project. Based on the competitive bid process, we report on the results as follows:

## 1. SUMMARY OF BIDS

### 1.1 Base Bid

The Base Bid included localized roof slab expansion joint replacement and associated concrete repairs at 150 Christina Street, Sarnia. The Base Bid work is to commence in Spring of 2015, with Optional Pricing to complete as winter work beginning in January 2015.

Our table showing a detailed results breakdown is attached. Based on the tendering process, the Contractors' Base Bids are summarized as follows:

Rank	Contractor	Base Bid (Taxes Excluded)	Estimated Start Date	Estimated Duration
1	SMID CONSTRUCTION LIMITED	\$348,800	March 21, 2015	11 weeks
2	MAXIM GROUP CONTRACTING LTD.	\$360,560	TBD	12 to 14 weeks
3	STRUCTURAL CONTRACTING LTD.	\$392,645	Spring 2015	12 weeks
4	DELBRIDGE CONTRACTING LTD.	\$398,340	Spring 2015	12 to 14 weeks
5	CANMAR CONTRACTING LTD.	\$407,050	Spring 2015	12 to 14 weeks
6	MACDERO CONSTRUCTION LTD.	\$419,800	Spring 2015	20 to 22 weeks

### 1.2 Optional Work

In addition to the base scope of work, we included the following optional items for your consideration:

1.2.1 *Optional Item X1 – Complete Base Scope of Work as Winter Work:* Optional Item X1 is to provide a cost premium to perform the scope of work as winter work (starting January 2015) in lieu of starting in Spring 2015, including all necessary enclosures and heating to facilitate cold weather work.

Five of the six bidders provided a price for this Optional Item, with the average price about \$29,000. The low bidder (SMID) also provided the lowest cost premium (\$10,000).

#### Halsall Associates

2300 Yonge Street, Suite 2300, Toronto, ON M4P 1E4 [www.halsall.com](http://www.halsall.com) T: 416.487.5256 F: 416.487.9766  
VANCOUVER • CALGARY • SUDBURY • BURLINGTON • TORONTO • OTTAWA • WASHINGTON, DC

A Parsons Brinckerhoff Halsall Inc. Company

Optional Item X1 can be included at your discretion, based on your overall timelines and budget. However, we understand that you would prefer to start this work as soon as possible, and based on the competitive price submitted by SMID, we have included this Optional Item in our recommended budget table below.

- 1.2.2 *Optional Item X2 - Power Wash Work Area:* Optional Item X2 is to power wash work areas including all slabs, walls, ceilings and piping (assume power washing to extend one parking bay on either side of all work areas).

The low bidder (SMID) submitted the second lowest price for this Optional Item (\$3,500), while the average of all the bidders is about \$3,800. As this is primarily an aesthetic item, inclusion is at your discretion. We have not included it in our Recommended Budget Table below.

## 2. EVALUATION

In our Garage Evaluation Report (dated May 8, 2014), we recommended a budget of \$400,000 to \$600,000 to complete this work. Based on the competitive tendering process, we find the pricing for this project to be fair and competitive for the scope of work specified.

We understand that you are currently reviewing the conditions of the CCDC 4 contract that this project was tendered under. We understand that you may choose to issue a Post-Tender Addendum to the two low bidders (SMID and Maxim) in order to obtain pricing based on revised (or new) contract conditions. Our fee to issue a post-tender addendum would be \$1,200 + HST.

## 3. RECOMMENDATION

We await your direction on if you would like to proceed with a Post-Tender Addendum. However, in order to provide a budget to assist with your decision making, our recommendation for the total project budget (based on the CCDC4 contract conditions tendered under) is as follows:

Item	Estimate Budget
Estimated Contract Amount - Base Bid	\$348,800
Optional Item "X1" - Cost Premium Winter Work	\$10,000
Construction Contingency (15%)	\$65,000
<b>Contractors Sub-Total</b>	<b>\$423,800</b>
Construction Review and Contract Administration Fees	\$47,000
Reimbursable Expense Allowance	\$10,000
<b>Sub-Total</b>	<b>\$480,800</b>
<b>TOTAL RECOMMENDED BUDGET (Rounded, exc. HST)</b>	<b>\$485,000</b>

Our fee is based on an 11 week construction schedule. Should the schedule be extended past 14 weeks, an additional fee of \$1,800/week will be charged to cover the additional labour required on our part. We check the contractor's progress against schedule and ask them to adjust personnel or equipment where possible to control the outcome where additional fees are charged.

Should there be any questions, please call. We await your instructions as to how you wish to proceed.



Yours very truly,

**HALSALL ASSOCIATES**

A Parsons Brinckerhoff Company



Dustin Ducharme, P.Eng.  
Project Manager



Dale Wannamaker, P.Eng.  
Project Principal

**Attachments:**

1. Bid Summary
2. Halsall Scope of Work – Services During Construction
3. Owner's Construction Advisory

13Y125-035C.Results Letter Owner Warning.docx





# HALSALL ASSOCIATES BID SUMMARY

Bayside Mall Limited  
c/o A. John Page and Associates Inc.  
as Receiver of Bayside Mall Limited  
100 Richmond St. W., Suite 447  
Toronto, ON M5H 3K6

Project #: 13Y125-035C

Project: 150 Christina St., Sarnia  
Garage Roof Deck Expansion Joint Repairs

Date: December 22, 2014

Base Bid and Schedule Summary	SMID CONSTRUCTION LIMITED	MAXIM GROUP GENERAL CONTRACTING LIMITED	STRUCTURAL CONTRACTING LTD.	DELBRIDGE CONTRACTING LIMITED	CANMAR CONTRACTING LTD.	MACDERO CONSTRUCTION (ONTARIO) LTD.
<b>TOTAL BASE BID (Excluding Taxes)</b>	<b>\$348,800</b>	<b>\$360,560</b>	<b>\$392,645</b>	<b>\$398,340</b>	<b>\$407,050</b>	<b>\$419,800</b>
ESTIMATED START DATE	March 21, 2015	TBD	SPRING 2015	SPRING 2015	SPRING 2015	SPRING 2015
ESTIMATED DURATION (in weeks)	11	12 TO 14	12	12 TO 14	12 TO 14	20 TO 22
FULL TIME WORK FORCE TO BE PROVIDED (persons)	5	3 TO 4	4 TO 6	4 TO 5	4 TO 5	3 TO 4

Item No.	Base Bid Breakdown	Estimated Quantity	Unit	SMID CONSTRUCTION LIMITED	MAXIM GROUP GENERAL CONTRACTING LIMITED	STRUCTURAL CONTRACTING LTD.	DELBRIDGE CONTRACTING LIMITED	CANMAR CONTRACTING LTD.	MACDERO CONSTRUCTION (ONTARIO) LTD.
<b>A</b>	<b>General</b>								
A1	Mobilization/Demobilization	1	Lump Sum	\$55,000	\$28,650	\$68,400	\$72,150	\$67,500	\$50,000
<b>B</b>	<b>Concrete Repair</b>								
B1	Concrete removal, steel and concrete preparation, concrete replacement, finishing and curing.								
a)	on top surface of slab	60	m <sup>2</sup>	\$13,200	\$18,000	\$12,900	\$14,700	\$16,500	\$24,000
b)	soffit of slab	5	m <sup>2</sup>	\$2,500	\$2,000	\$3,650	\$3,800	\$3,675	\$5,000
c)	through slab	15	m <sup>2</sup>	\$7,500	\$6,000	\$9,375	\$9,000	\$11,025	\$15,000
d)	concrete/ledge beam (assume full height of beam, 300mm wide)	60	m	\$57,000	\$18,000	\$69,000	\$70,500	\$67,500	\$90,000
e)	vertical (columns)	50	m2	\$35,000	\$22,500	\$41,000	\$41,250	\$42,500	\$40,000
B2	Supply and install new epoxy coated reinforcing steel, as directed by the Consultant.	5000	kg	\$5,000	\$17,500	\$16,250	\$17,500	\$16,250	\$25,000
B3	Supply and install new epoxy coated dowels with minimum 200 mm embedment epoxy adhesive anchors.	40	dowels	\$2,400	\$1,400	\$2,400	\$1,960	\$3,200	\$4,000
B4	Splice Welding								
a)	Mobilization to site	4	mob	\$800	\$800	\$1,300	\$1,200	\$1,200	\$4,000
b)	Welding time on-site	20	/hr	\$2,000	\$2,700	\$2,000	\$2,000	\$2,500	\$5,000
<b>C</b>	<b>Waterproofing</b>								
C1	Complete Expansion Joint Replacement: Remove existing overburden minimum 3 m wide centred at expansion joint. Replace expansion joint waterproofing. Replace existing waterproofing minimum 2 metres wide centred at expansion joint. Tie-in to existing waterproofing.	1	Lump Sum	\$48,000	\$78,450	\$55,350	\$62,180	\$52,000	\$52,000
C2	Install new overburden as per PD-1, to match existing grades and finishes, including existing traffic markings.	1	Lump Sum	\$35,000	\$24,560	\$29,470	\$43,200	\$37,500	\$24,000
<b>D</b>	<b>Drainage</b>								
D1	As directed by Consultant, supply and install new bi-level pavement area drains.	6	drains	\$24,000	\$7,200	\$23,100	\$13,200	\$27,300	\$10,800
D2	Supply and install new drainage piping connected to new drains.	80	m	\$20,000	\$10,000	\$16,400	\$16,800	\$15,600	\$12,000
<b>E</b>	<b>Miscellaneous Repairs</b>								
E1	Remove and store exisiting shoring on garage roof deck	1	Lump Sum	\$1,500	\$2,800	\$1,800	\$1,700	\$3,000	\$3,500
<b>F</b>	<b>Cash and Contingency Allowances</b>								
F1	Cash Allowance for Testing	1	Allowance	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
F2	Cash Allowance for Permits (may be deleted at option of Owner if obtained prior to mobilization)	1	Allowance	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000
F3	Contingency Allowance for Electrical and Mechanical Repairs	1	Allowance	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000
F4	Contingency Allowance for T&M Items	1	Allowance	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000
<b>G</b>	<b>Bonding (this may be deleted at the option of the Owner)</b>	1	Lump Sum	\$5,900	\$3,500	\$5,800	\$5,200	\$4,800	\$4,500
<b>H</b>	<b>All Other Items</b>	1	Lump Sum	\$12,000	\$94,500	\$12,450		\$13,000	\$29,000



**HALSALL ASSOCIATES**  
**BID SUMMARY**

Bayside Mall Limited  
c/o A. John Page and Associates Inc.  
as Receiver of Bayside Mall Limited  
100 Richmond St. W., Suite 447  
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Item No.	Optional Item Breakdown	Estimated Quantity	Unit	SMID CONSTRUCTION LIMITED	MAXIM GROUP GENERAL CONTRACTING LIMITED	STRUCTURAL CONTRACTING LTD.	DELBRIDGE CONTRACTING LIMITED	CANMAR CONTRACTING LTD.	MACDERO CONSTRUCTION (ONTARIO) LTD.
X1	Winter Work: Cost premium to complete the scope of work as winter work (starting January 2015) in lieu of Spring 2015. Include for all necessary enclosures and heating to facilitate cold weather work.	1	Lump Sum	\$10,000	\$35,500	\$26,000	\$22,730		\$48,000
X2	Power Wash: Following completion of the work power wash work area, including all slabs, walls, ceilings and piping. Assume power washing extends one parking bay on either side of all work areas.	1	Lump Sum	\$3,500	\$4,850	\$3,000	\$3,900	\$3,500	\$4,000

**Notes/Qualifications:**

1) None Received

## SCOPE OF WORK SERVICES DURING CONSTRUCTION

### 1. PROJECT MANAGEMENT SERVICES

Halsall's management services involve implementing the control systems required to manage scope, cost, schedule, quality and impact on facility operations for the duration of the project. We create solutions and give direction for minimizing problems. These efforts are communicated to you on an ongoing basis.

- ▶ Chair site meetings with Owner and Contractor at agreed upon intervals.
- ▶ Prepare and coordinate required documentation for building permit application.
- ▶ Manage the project budget and cash flow.
- ▶ Obtain required documentation from the Contractor regarding liability, insurance, workplace safety, Workplace Safety and Insurance Board Certificates, materials data, schedule etc.
- ▶ Provide periodic evaluation of the project impact on facility operations by creating solutions and giving advice for minimizing problems.
- ▶ Obtain closeout documentation (warranties, etc.) for the Owner.

### 2. ENGINEERING SERVICES

#### 2.1 Construction Review

Our construction review services include the following general tasks aimed at evaluating the quality of the work done and providing the necessary technical guidance:

- ▶ Review samples of work in progress for compliance with the technical requirements of the specifications during periodic visits to the site.
- ▶ Provide written reports to the Contractor highlighting non-compliant aspects and recommended corrective actions.
- ▶ Check that deviations from the contract requirements are being addressed by the Contractor.
- ▶ Advise the Contractor on the interpretation of the project drawings and specifications.
- ▶ Issue supplementary instructions (if required).
- ▶ Perform a final review of the work with the Owner and Contractor at completion of the project.

#### 2.2 Contract Administration

- ▶ Prepare the construction contract documents and get them executed.
- ▶ Review Contractor's progress applications and issue Certificates for Payments.
- ▶ Review and advise on the validity of claims for additions or deletions; issue Change Orders.
- ▶ Issue Substantial Performance certification in compliance with lien legislation.

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# OWNER'S CONSTRUCTION ADVISORY LIST FOR REPAIR PROJECTS

## 1. POSSIBLE EXTRAS TO CONTRACT

We suggest that a contingency be included in your budget to account for possible extras. We will not include the contingency in the Contract so that the contractor will not automatically assume he should be receiving the extra payments.

The following are some, but not all, of the types of conditions which may lead to extra costs when working on existing buildings:

- ▶ breaking through electrical conduit or other hidden services embedded in the structure or buried in the ground;
- ▶ substandard existing materials found during removals;
- ▶ increase in quantity of some unit price items over estimated quantities in Contract;
- ▶ changes required because conditions encountered differ from those shown on building plans or otherwise concealed;
- ▶ additional measures required to control the impact of odours, dust and noise arising from restoration activities as they cannot always be fully predicted.

## 2. SAFETY

The Contract requires the Contractor be responsible for appropriate precautions to maintain safety for his workers and the public during the project. However, legislation and legal precedent assigns some responsibility to the building Owner. This typically relates to the obligation to maintain the building in a safe condition, and to provide a safe workplace to the Contractor.

Halsall has not been engaged to monitor or review safety measures applied by the Contractor and Owner. We will identify concerns for corrective action that we may notice during our site review. Construction meetings will provide an opportunity for all parties to coordinate the work and identify actions that may be necessary. In our experience, these efforts to address safety are appropriate and acceptable for most Owners. For improved risk management, a safety consultant could be retained to conduct specialty review and reporting on the project; this is not included in the current project plan.

## 3. DISRUPTION TO BUILDING OPERATIONS

Construction activities in most projects create a disruption to users of the facility and traffic patterns. Minimizing the impact of these requires cooperation from Property Management, Contractor and Engineer. We provide input based on our periodic review of the site, however, the responsibility for the Contractor's daily activities is his own. Should any aspect of his performance give you cause for concern, please contact our office immediately.





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**4. INSURANCE**

The insurance policy generally provided by the contractor for this type of repair does not cover any damages related to pollutants/hazardous materials encountered on the site.

**5. SCHEDULE DELAYS**

While the tenders are valid for a period of 60 days, in our experience Contractors cannot always hold their schedules/work force over this period. The tendered services are based on the Contractors' current and expected work volumes at the time of submission and may change as other contracts are awarded.





**Exhibit "G"**

**Sixth Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated January 21, 2015**

**SMID Contract**

## CCDC 4

## Unit Price Contract

2 0 1 1

150 Christina St., Sarnia  
Garage Repairs  
15Y125-008B

Apply a CCDC 4 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 4 - 2011 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE  
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

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CCDC 4 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 4 can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 4.

**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

For use when unit prices are the primary basis of payment.

This Agreement made on the 21 day of January in the year 2015

by and between the parties

A. John Page & Associates Inc., as Receiver of Bayside Mall Limited and in its personal capacity

hereinafter called the *Owner*

and

SMID CONSTRUCTION LIMITED

hereinafter called the *Contractor*

The *Owner* and the *Contractor* agree as follows:

**ARTICLE A-1 THE WORK**

The *Contractor* shall:

- 1.1 perform the *Work* required by the *Contract Documents* for

Garage roof slab expansion joint repairs (as more particularly set out in Schedule "B" attached hereto)

located at

*insert above the name of the Work*

150 Christina Street, Samia, Ontario

for which the Agreement has been signed by the parties, and for which

*insert above the Place of the Work*

Parsons Brinckerhoff Halsall Inc. (hereinafter called "Halsall Associates") Attn: Dustin Ducharme

is acting as and is hereinafter called the "*Consultant*" and

*insert above the name of the Consultant*

- 1.2 do and fulfill everything indicated by the *Contract Documents*, and

- 1.3 Commence the Work by the date being one (1) business day after notification to the Contractor of the issuance by the Ontario Superior Court of Justice of approval of this contract (the "Start Date") and, subject to the adjustment in Contract Time as provided for in the Contract Documents, attain

Substantial Performance of the Work, by the date being 10 and 6 days after the Start Date.

CCDC 4 – 2011

This contract is protected by copyright. Use of a CCDC 4 document not containing a CCDC 4 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 4 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 4 – 2011 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

## ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 The *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Work*, including the bidding documents that are not expressly listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS.
- 2.2 The *Contract* may be amended only as provided in the *Contract Documents*.
- 2.3 Schedules "A" (Overriding Clauses) and "B" (Bid Documents and Specifications) are integral to and form part of this Contract
- 2.4 Included within Schedule "B" are five pages (entitled "Supplementary Conditions") of various terms, conditions and other provisions revising this CCDC 4 contract form as indicated.
- 2.5 In the case of any inconsistency or conflict between any of the provisions set out in Schedules "A", "B" and/or any of the provisions set out in this CCDC form of contract, the following hierarchy of governing interpretation (in the following order) shall override, govern and PREVAIL, in all such cases, notwithstanding anything to the contrary elsewhere in this contract:
  - (i) Schedule "A"
  - (ii) Schedule "B"
  - (iii) This form of CCDC contract

## ARTICLE A-3 CONTRACT DOCUMENTS

3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement - THE WORK:

- Agreement between *Owner* and *Contractor*
- Definitions
- The General Conditions of the Unit Price Contract

\*  
See Schedules "A" (Overriding Clauses) and "B" (Bid Documents and Specifications) attached.

\* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents e.g. supplementary conditions; information documents, specifications, giving a list of contents with section numbers and titles, number of pages and date, material finishing schedules; drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date)

# **ARTICLE A-4 CONTRACT PRICE**

- 4.1 The *Schedule of Prices* forms the basis for determining the *Contract Price*. Quantities for *Unit Price* items in the *Schedule of Prices* are estimated.

Schedule of Prices					
Item No.	Description of Work	* Unit of Measure	* Estimated Quantity (EQ)	Unit Price (UP)	Amount (EQ x UP)
Page Subtotal Carried Forward from Page					\$
	*** (see bid form attached as Schedule "B") ***			\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
Page Sub-total					\$

\* Lump sum items are denoted as lump sum (LS) as the unit of measure and have a quantity of one (1).

Page of



Schedule of Prices					
Item No.	Description of Work	* Unit of Measure	* Estimated Quantity (EQ)	Unit Price (UP)	Amount (EQ x UP)
Page Subtotal Carried Forward from Page					\$
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
				\$	\$ 0.00
Total Amount					\$

\* Lump sum items are denoted as lump sum (LS) as the unit of measure and have a quantity of one (1).

Page of

- 4.2 The estimated *Contract Price*, which is the total amount indicated in the *Schedule of Prices*, and which excludes *Value Added Taxes*, is:

Three Hundred, Fifty-Eight Thousand, Eight Hundred.....00 /100 dollars \$ 358,800.00

- 4.3 *Value Added Taxes* (of 13 %) payable by the *Owner* to the *Contractor*, based on the estimated *Contract Price*, are:

Forty-Six Thousand, Six Hundred and Forty-Four.....00 /100 dollars \$ 46,644.00

- 4.4 Total estimated amount payable by the *Owner* to the *Contractor* for the construction of the *Work* is:

Four Hundred, Five Thousand, Four Hundred Forty-Four.....00 /100 dollars \$ 405,444.00

- 4.5 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

- 4.6 All amounts are in Canadian funds.

#### ARTICLE A-5 PAYMENT

- 5.1 Subject to the provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of Ten percent ( 10 %), the *Owner* shall:

- .1 make progress payments to the *Contractor* on account of the *Contract Price* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payments, and
- .2 upon *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, pay to the *Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

- 5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Contractor* in accordance with the provisions of GC 11.1 – INSURANCE.

- 5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:

(1) 2% per annum above the prime rate for the first 60 days.

(2) 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

Royal Bank of Canada

(Insert name of chartered lending institution whose prime rate is to be used)

for prime business loans as it may change from time to time.

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

## ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 6.1 *Notices in Writing* will be addressed to the recipient at the address set out below. The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender. A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day. A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof. An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

### Owner

A. John Page & Associates Inc., as Receiver of Bayside Mall Limited and not in its personal capacity

*name of Owner\**

100 Richmond Street West, Suite 447  
Toronto, ON M5H 3K6

*address*

(416) 364-4869

*Facsimile number*

ajpage@ajohnpage.com

*e-mail address*

### Contractor

SMID CONSTRUCTION LIMITED

*name of Contractor\**

460 Finley Avenue  
Ajax, ON L1S 2E3

*address*

(905) 686-2708

*Facsimile number*

scott@smid.ca

*e-mail address*

### Consultant

Parsons Brinckerhoff Halsall Inc.

*name of Consultant\**

2300 Yonge Street, Suite 2300  
Toronto, ON M4P 1E4

*address*

(416) 487-9766

*Facsimile number*

DDucharme@halsall.com

*e-mail address*

*\* If it is intended that the notice must be received by a specific individual, that individual's name shall be indicated.*

CCDC 4 - 2011

*This contract is protected by copyright. Use of a CCDC 4 document not containing a CCDC 4 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 4 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 4 2011 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.*

#### ARTICLE A-7 LANGUAGE OF THE CONTRACT

- 7.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English/~~French~~\* language shall prevail.

\* *Complete this statement by striking out inapplicable term.*

- 7.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

ARTICLE A-8 SUCCESSION

8.1 The Contract shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED  
in the presence of:

WITNESS



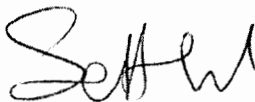
signature

DEREK PAGE  
name of person signing

signature

name of person signing

WITNESS



signature

name of person signing HAVING AUTHORITY TO BIND THE CORPORATION

SCOTT WOOD

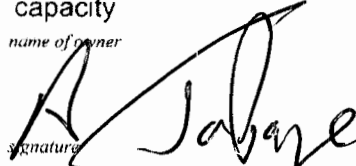
signature

name of person signing

OWNER

A. John Page & Associates Inc., as Receiver of  
Bayside Mall Limited and not in its personal  
capacity

name of owner



signature

A. John Page, President  
name and title of person signing

signature

name and title of person signing

CONTRACTOR

SMID CONSTRUCTION LIMITED

name of Contractor



signature

**GURJIT HAYER, VICE PRESIDENT**

name and title of person signing HAVING AUTHORITY TO BIND THE CORPORATION

signature

name and title of person signing

N.B. Where legal jurisdiction, local practice or Owner or Contractor requirement calls for  
(a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or  
(b) the affixing of a corporate seal, this Agreement should be properly sealed.

## DEFINITIONS

The following Definitions shall apply to all *Contract Documents*.

### Change Directive

A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Contractor* to proceed with a change in the *Work* within the general scope of the *Contract Documents* prior to the *Owner* and the *Contractor* agreeing upon an adjustment in *Contract Price* and *Contract Time*.

### Change Order

A *Change Order* is a written amendment to the *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Contractor* stating their agreement upon:

- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.

### Construction Equipment

*Construction Equipment* means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

### Consultant

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Work*. The term *Consultant* means the *Consultant* or the *Consultant's* authorized representative.

### Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

### Contract Documents

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS and amendments agreed upon between the parties.

### Contract Price

The *Contract Price* is the sum of the products of each *Unit Price* stated in the *Schedule of Prices* multiplied by the appropriate actual quantity of each *Unit Price* item that is incorporated in or made necessary by the *Work*, plus lump sums, if any, and allowances, if any, stated in the *Schedule of Prices*.

### Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement - THE WORK from commencement of the *Work* to *Substantial Performance of the Work*.

### Contractor

The *Contractor* is the person or entity identified as such in the Agreement. The term *Contractor* means the *Contractor* or the *Contractor's* authorized representative as designated to the *Owner* in writing.

### Drawings

The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

### Notice in Writing

A *Notice in Writing*, where identified in the *Contract Documents*, is a written communication between the parties or between them and the *Consultant* that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

### Owner

The *Owner* is the person or entity identified as such in the Agreement. The term *Owner* means the *Owner* or the *Owner's* authorized agent or representative as designated to the *Contractor* in writing, but does not include the *Consultant*.

### Place of the Work

The *Place of the Work* is the designated site or location of the *Work* identified in the *Contract Documents*.

### Product

*Product* or *Products* means material, machinery, equipment, and fixtures forming the *Work*, but does not include *Construction Equipment*.

**Project**

The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.

**Provide**

*Provide* means to supply and install.

**Schedule of Prices**

The *Schedule of Prices* is the schedule included in Article A-4 - CONTRACT PRICE and, subject to adjustments as provided in the *Contract Documents*, identifies:

- the items of work;
- the units of measure, estimated quantity, and *Unit Price* for each *Unit Price* item;
- the price for each lump sum item, if any; and
- allowances, if any.

**Shop Drawings**

*Shop Drawings* are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Contractor* provides to illustrate details of portions of the *Work*.

**Specifications**

The *Specifications* are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Work*.

**Subcontractor**

A *Subcontractor* is a person or entity having a direct contract with the *Contractor* to perform a part or parts of the *Work* at the *Place of the Work*.

**Substantial Performance of the Work**

*Substantial Performance of the Work* is as defined in the lien legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Consultant*.

**Supplemental Instruction**

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents* as required for the performance of the *Work*.

**Supplier**

A *Supplier* is a person or entity having a direct contract with the *Contractor* to supply *Products*.

**Temporary Work**

*Temporary Work* means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the execution of the *Work* but not incorporated into the *Work*.

**Unit Price**

A *Unit Price* is the amount payable for a single *Unit Price* item as stated in the *Schedule of Prices*.

**Value Added Taxes**

*Value Added Taxes* means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which, have been imposed on the *Contractor* by the tax legislation.

**Work**

The *Work* means the total construction and related services required by the *Contract Documents*.

**Working Day**

*Working Day* means a day other than a Saturday, Sunday, statutory holiday or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.

## GENERAL CONDITIONS OF THE UNIT PRICE CONTRACT

### PART 1 GENERAL PROVISIONS

#### GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products* and services necessary for the performance of the *Work* by the *Contractor* in accordance with these documents. It is not intended, however, that the *Contractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- 1 the *Owner* and a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
  - 2 the *Consultant* and the *Contractor*, a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.6 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Contractor* in dividing the work among *Subcontractors* and *Suppliers*.
- 1.1.7 If there is a conflict within the *Contract Documents*:
- 1 the order of priority of documents, from highest to lowest, shall be
    - the Agreement between the *Owner* and the *Contractor*,
    - the Definitions,
    - Supplementary Conditions,
    - the General Conditions,
    - Division 1 of the *Specifications*,
    - technical *Specifications*,
    - material and finishing schedules,
    - the *Drawings*.
  - 2 *Drawings* of larger scale shall govern over those of smaller scale of the same date.
  - 3 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
  - 4 later dated documents shall govern over earlier documents of the same type.
- 1.1.8 The *Owner* shall provide the *Contractor*, without charge, sufficient copies of the *Contract Documents* to perform the *Work*.
- 1.1.9 *Specifications*, *Drawings*, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property, with the exception of the signed *Contract* sets, which shall belong to each party to the *Contract*. All *Specifications*, *Drawings* and models furnished by the *Consultant* are to be used only with respect to the *Work* and are not to be used on other work. These *Specifications*, *Drawings* and models are not to be copied or altered in any manner without the written authorization of the *Consultant*.
- 1.1.10 Models furnished by the *Contractor* at the *Owner's* expense are the property of the *Owner*.

#### GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

#### GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.



- 1.3.2 No action or failure to act by the *Owner*, *Consultant* or *Contractor* shall constitute a waiver of any right or duty afforded any of them under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

### PART 2 ADMINISTRATION OF THE CONTRACT

#### GC 2.1 AUTHORITY OF THE CONSULTANT

- 2.1.1 The *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.1.2.
- 2.1.2 The duties, responsibilities and limitations of authority of the *Consultant* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner*, the *Contractor* and the *Consultant*.
- 2.1.3 If the *Consultant's* employment is terminated, the *Owner* shall immediately appoint or reappoint a *Consultant* against whom the *Contractor* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Consultant*.

#### GC 2.2 ROLE OF THE CONSULTANT

- 2.2.1 The *Consultant* will provide administration of the *Contract* as described in the *Contract Documents*.
- 2.2.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the work and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
- 2.2.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the *Contractor*.
- 2.2.4 The *Consultant* will promptly inform the *Owner* of the date of receipt of the *Contractor's* applications for payment as provided in paragraph 5.3.1.1 of GC 5.3 – PROGRESS PAYMENT.
- 2.2.5 Based on the *Consultant's* observations and review of the *Contractor's* applications for payment, the *Consultant* will determine the amounts owing to the *Contractor* under the *Contract* and will issue certificates for payment as provided in Article A-5 of the Agreement - PAYMENT, GC 5.3 - PROGRESS PAYMENT and GC 5.7 - FINAL PAYMENT.
- 2.2.6 The *Consultant* will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations or general construction practice. The *Consultant* will not be responsible for the *Contractor's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of or be responsible for the acts or omissions of the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees or any other persons performing portions of the *Work*.
- 2.2.7 Except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER, the *Consultant* will be, in the first instance, the interpreter of the requirements of the *Contract Documents*.
- 2.2.8 Matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents* shall be initially referred in writing to the *Consultant* by the party raising the question for interpretations and findings and copied to the other party.
- 2.2.9 Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents*. In making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Contractor*.
- 2.2.10 The *Consultant's* interpretations and findings will be given in writing to the parties within a reasonable time.
- 2.2.11 With respect to claims for a change in *Contract Price*, the *Consultant* will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

- 2.2.12 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees or other persons performing any of the *Work*.
- 2.2.13 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Contractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Contractor*.
- 2.2.14 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other *Contractor's* submittals, in accordance with the *Contract Documents*.
- 2.2.15 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 2.2.16 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* as provided in GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK.
- 2.2.17 All certificates issued by the *Consultant* will be to the best of the *Consultant's* knowledge, information and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.2.18 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Contractor* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.

### GC 2.3 REVIEW AND INSPECTION OF THE WORK

- 2.3.1 The *Owner* and the *Consultant* shall have access to the *Work* at all times. The *Contractor* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.
- 2.3.2 If work is designated for measurement for payment, tests, inspections or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or by the laws or ordinances of the *Place of the Work*, the *Contractor* shall give the *Consultant* reasonable notification of when the work will be ready for measurements, tests, inspections and approvals. The *Contractor* shall arrange for and shall give the *Consultant* reasonable notification of the date and time of inspections by other authorities.
- 2.3.3 The *Contractor* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.3.4 If the *Contractor* covers, or permits to be covered, work that has been designated for measurement for payment, tests, inspections or approvals before such measurements, tests, inspections or approvals are made, given or completed, the *Contractor* shall, if so directed, uncover such work, have the measurements, tests, inspections, or approvals satisfactorily completed, and make good covering work at the *Contractor's* expense.
- 2.3.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Contractor* shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.
- 2.3.6 The *Contractor* shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the *Contract Documents* to be performed by the *Contractor* or is designated by the laws or ordinances applicable to the *Place of the Work*.
- 2.3.7 The *Contractor* shall pay the cost of samples required for any test or inspection to be performed by the *Consultant* or the *Owner* if such test or inspection is designated in the *Contract Documents*.

### GC 2.4 DEFECTIVE WORK

- 2.4.1 The *Contractor* shall promptly correct defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Contractor*.
- 2.4.2 The *Contractor* shall make good promptly other contractors' work destroyed or damaged by such removals or replacements at the *Contractor's* expense.

- 2.4.3 If, in the opinion of the *Consultant*, it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Contractor* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Owner* and the *Contractor* do not agree on the difference in value, they shall refer the matter to the *Consultant* for a determination.

### **PART 3 EXECUTION OF THE WORK**

#### **GC 3.1 CONTROL OF THE WORK**

- 3.1.1 The *Contractor* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Contractor* shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work* under the *Contract*.

#### **GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

- 3.2.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform work with own forces.
- 3.2.2 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall:
- .1 provide for the co-ordination of the activities and work of other contractors and *Owner's* own forces with the *Work* of the *Contract*;
  - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
  - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*;
  - .4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 - INSURANCE and co-ordinate such insurance with the insurance coverage of the *Contractor* as it affects the *Work*; and
  - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors or the *Owner's* own forces.
- 3.2.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Contractor* shall:
- .1 afford the *Owner* and other contractors reasonable opportunity to store their products and execute their work;
  - .2 cooperate with other contractors and the *Owner* in reviewing their construction schedules; and
  - .3 promptly report to the *Consultant* in writing any apparent deficiencies in the work of other contractors or of the *Owner's* own forces, where such work affects the proper execution of any portion of the *Work*, prior to proceeding with that portion of the *Work*.
- 3.2.4 Where the *Contract Documents* identify work to be performed by other contractors or the *Owner's* own forces, the *Contractor* shall co-ordinate and schedule the *Work* with the work of other contractors and the *Owner's* own forces as specified in the *Contract Documents*.
- 3.2.5 Where a change in the *Work* is required as a result of the co-ordination and integration of the work of other contractors or *Owner's* own forces with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 3.2.6 Disputes and other matters in question between the *Contractor* and other contractors shall be dealt with as provided in Part 8 of the General Conditions - DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Contractor* shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the *Owner* contains a similar agreement to arbitrate.

#### **GC 3.3 TEMPORARY WORK**

- 3.3.1 The *Contractor* shall have the sole responsibility for the design, erection, operation, maintenance, and removal of *Temporary Work*.
- 3.3.2 The *Contractor* shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by law or by the *Contract Documents* and in all cases where such *Temporary Work* is of such a nature that professional engineering skill is required to produce safe and satisfactory results.

- 3.3.3 Notwithstanding the provisions of GC 3.1 - CONTROL OF THE WORK, paragraph 3.3.1 and paragraph 3.3.2 or provisions to the contrary elsewhere in the *Contract Documents* where such *Contract Documents* include designs for *Temporary Work* or specify a method of construction in whole or in part, such designs or methods of construction shall be considered to be part of the design of the *Work* and the *Contractor* shall not be held responsible for that part of the design or the specified method of construction. The *Contractor* shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the *Work*.

#### **GC 3.4 DOCUMENT REVIEW**

- 3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* shall be to the best of the *Contractor's* knowledge, information and belief and in making such review the *Contractor* does not assume any responsibility to the *Owner* or the *Consultant* for the accuracy of the review. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies or omissions in the *Contract Documents*, which the *Contractor* did not discover. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

#### **GC 3.5 CONSTRUCTION SCHEDULE**

- 3.5.1 The *Contractor* shall:
- .1 prepare and submit to the *Owner* and the *Consultant* prior to the first application for payment, a construction schedule that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time*;
  - .2 monitor the progress of the *Work* relative to the construction schedule and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
  - .3 advise the *Consultant* of any revisions required to the schedule as the result of extensions of the *Contract Time* as provided in Part 6 of the General Conditions - CHANGES IN THE WORK.

#### **GC 3.6 SUPERVISION**

- 3.6.1 The *Contractor* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representative shall not be changed except for valid reason.
- 3.6.2 The appointed representative shall represent the *Contractor* at the *Place of the Work*. Information and instructions provided by the *Consultant* to the *Contractor's* appointed representative shall be deemed to have been received by the *Contractor*, except with respect to Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

#### **GC 3.7 SUBCONTRACTORS AND SUPPLIERS**

- 3.7.1 The *Contractor* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
- .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
  - .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
  - .3 be as fully responsible to the *Owner* for acts and omissions of *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Contractor*.
- 3.7.2 The *Contractor* shall indicate in writing, if requested by the *Owner*, those *Subcontractors* or *Suppliers* whose bids have been received by the *Contractor* which the *Contractor* would be prepared to accept for the performance of a portion of the *Work*. Should the *Owner* not object before signing the *Contract*, the *Contractor* shall employ those *Subcontractors* or *Suppliers* so identified by the *Contractor* in writing for the performance of that portion of the *Work* to which their bid applies.
- 3.7.3 The *Owner* may, for reasonable cause, at any time before the *Owner* has signed the *Contract*, object to the use of a proposed *Subcontractor* or *Supplier* and require the *Contractor* to employ one of the other subcontract bidders.
- 3.7.4 If the *Owner* requires the *Contractor* to change a proposed *Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the differences occasioned by such required change.
- 3.7.5 The *Contractor* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to which the *Contractor* may reasonably object.

- 3.7.6 The *Owner*, through the *Consultant*, may provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor's* or *Supplier's* work which has been certified for payment.

### **GC 3.8 LABOUR AND PRODUCTS**

- 3.8.1 The *Contractor* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.
- 3.8.3 The *Contractor* shall maintain good order and discipline among the *Contractor's* employees engaged on the *Work* and shall not employ on the *Work* anyone not skilled in the tasks assigned.

### **GC 3.9 DOCUMENTS AT THE SITE**

- 3.9.1 The *Contractor* shall keep one copy of current *Contract Documents*, submittals, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and the *Consultant*.

### **GC 3.10 SHOP DRAWINGS**

- 3.10.1 The *Contractor* shall provide *Shop Drawings* as required in the *Contract Documents*.
- 3.10.2 The *Contractor* shall provide *Shop Drawings* to the *Consultant* to review in orderly sequence and sufficiently in advance so as to cause no delay in the *Work* or in the work of other contractors.
- 3.10.3 Upon request of the *Contractor* or the *Consultant*, they shall jointly prepare a schedule of the dates for provision, review and return of *Shop Drawings*.
- 3.10.4 The *Contractor* shall provide *Shop Drawings* in the form specified, or if not specified, as directed by the *Consultant*.
- 3.10.5 *Shop Drawings* provided by the *Contractor* to the *Consultant* shall indicate by stamp, date and signature of the person responsible for the review that the *Contractor* has reviewed each one of them.
- 3.10.6 The *Consultant's* review is for conformity to the design concept and for general arrangement only.
- 3.10.7 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Contractor* for approval.
- 3.10.8 The *Contractor* shall review all *Shop Drawings* before providing them to the *Consultant*. The *Contractor* represents by this review that:
- .1 the *Contractor* has determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
  - .2 the *Contractor* has checked and co-ordinated each *Shop Drawing* with the requirements of the *Work* and of the *Contract Documents*.
- 3.10.9 At the time of providing *Shop Drawings*, the *Contractor* shall expressly advise the *Consultant* in writing of any deviations in a *Shop Drawing* from the requirements of the *Contract Documents*. The *Consultant* shall indicate the acceptance or rejection of such deviation expressly in writing.
- 3.10.10 The *Consultant's* review shall not relieve the *Contractor* of responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Contract Documents*.
- 3.10.11 The *Contractor* shall provide revised *Shop Drawings* to correct those which the *Consultant* rejects as inconsistent with the *Contract Documents*, unless otherwise directed by the *Consultant*. The *Contractor* shall notify the *Consultant* in writing of any revisions to the *Shop Drawings* other than those requested by the *Consultant*.
- 3.10.12 The *Consultant* will review and return *Shop Drawings* in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the *Work*.

### **GC 3.11 USE OF THE WORK**

- 3.11.1 The *Contractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees and *Subcontractors* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.
- 3.11.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

### **GC 3.12 CUTTING AND REMEDIAL WORK**

- 3.12.1 The *Contractor* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly.
- 3.12.2 The *Contractor* shall co-ordinate the *Work* to ensure that the cutting and remedial work is kept to a minimum.
- 3.12.3 Should the *Owner*, the *Consultant*, other contractors or anyone employed by them be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 3.12.4 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

### **GC 3.13 CLEANUP**

- 3.13.1 The *Contractor* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other contractors or their employees.
- 3.13.2 Before applying for *Substantial Performance of the Work* as provided in GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK, the *Contractor* shall remove waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees, and shall leave the *Place of the Work* clean and suitable for use or occupancy by the *Owner*. The *Contractor* shall remove products, tools, *Construction Equipment*, and *Temporary Work* not required for the performance of the remaining work.
- 3.13.3 Prior to application for the final payment, the *Contractor* shall remove any remaining products, tools, *Construction Equipment*, *Temporary Work*, and waste products and debris, other than those resulting from the work of the *Owner*, other contractors or their employees.

## **PART 4 ALLOWANCES**

### **GC 4.1 CASH ALLOWANCES**

- 4.1.1 The *Contract Price* includes the cash allowances, if any, stated in the *Contract Documents*. The scope of work or costs included in such cash allowances shall be as described in the *Contract Documents*.
- 4.1.2 The *Contract Price*, and not the cash allowances, includes the *Contractor's* overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner* through the *Consultant*.
- 4.1.4 Where the actual cost of the *Work* under any cash allowance exceeds the amount of the allowance, the *Contractor* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Contract Documents*. Where the actual cost of the *Work* under any cash allowance is less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Contractor's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the amount of each cash allowance and the actual cost of the work under that cash allowance.
- 4.1.6 The value of the work performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Contractor* and the *Consultant* shall jointly prepare a schedule that shows when the *Consultant* and *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

### **GC 4.2 CONTINGENCY ALLOWANCE**

- 4.2.1 The *Contract Price* includes the contingency allowance, if any, stated in the *Contract Documents*.
- 4.2.2 The contingency allowance includes the *Contractor's* overhead and profit in connection with such contingency allowance.
- 4.2.3 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.

## PART 5 PAYMENT

### GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- 5.1.1 The *Owner* shall, at the request of the *Contractor*, before signing the *Contract*, and promptly from time to time thereafter, furnish to the *Contractor* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall give the *Contractor Notice in Writing* of any material change in the *Owner's* financial arrangements to fulfill the *Owner's* obligations under the *Contract* during the performance of the *Contract*.

### GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- 5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement - PAYMENT may be made monthly as the *Work* progresses.
- 5.2.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 5.2.3 As of the last day of the payment period, the amount claimed shall be:
1. the value of *Unit Price* work performed, being the sum of the products of each *Unit Price* stated in the *Schedule of Prices* multiplied by the appropriate actual quantity of each *Unit Price* item that is incorporated in or made necessary by the *Work*; plus
  2. the value of lump sum work performed, proportionate to the amount of the lump sum item, plus
  3. the value of *Products* delivered to the *Place of the Work*.
- 5.2.4 The *Contractor* shall submit to the *Consultant*, at least 15 calendar days before the first application for payment, a schedule of values for the lump sum items of work, aggregating the total amount of each lump sum item, so as to facilitate evaluation of applications for payment.
- 5.2.5 The schedule of values for lump sum items of work shall be made out in such form and supported by such evidence as the *Consultant* may reasonably direct and when accepted by the *Consultant*, shall be used as the basis for applications for payment for lump sum items, unless it is found to be in error.
- 5.2.6 The *Contractor* shall include with each application for payment:
1. a statement based on the schedule of values for the lump sum items of work; and
  2. quantity measurements and other evidence as requested by the *Consultant* for each *Unit Price* item.
- 5.2.7 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.

### GC 5.3 PROGRESS PAYMENT

- 5.3.1 After receipt by the *Consultant* of an application for payment submitted by the *Contractor* in accordance with GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT:
1. the *Consultant* will promptly inform the *Owner* of the date of receipt of the *Contractor's* application for payment,
  2. the *Consultant* will issue to the *Owner* and copy to the *Contractor*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly advise the *Contractor* in writing giving reasons for the amendment,
  3. the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement - PAYMENT on or before 20 calendar days after the later of:
    - receipt by the *Consultant* of the application for payment, or
    - the last day of the monthly payment period for which the application for payment is made.
- 5.3.2 Where the basis of payment for an item is by *Unit Price*, quantities in progress payments shall be considered approximate until all work required by that *Unit Price* item is complete.



#### GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.4.1 When the *Contractor* considers that the *Work* is substantially performed, or if permitted by the lien legislation applicable to the *Place of the Work* a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Contractor* shall, within one Working Day, deliver to the *Consultant* and to the *Owner* a comprehensive list of items to be completed or corrected, together with a written application for a review by the *Consultant* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*. Failure to include an item on the list does not alter the responsibility of the *Contractor* to complete the *Contract*.
- 5.4.2 The *Consultant* will review the *Work* to verify the validity of the application and shall promptly, and in any event, no later than 20 calendar days after receipt of the *Contractor's* list and application:
- .1 advise the *Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or
  - .2 state the date of *Substantial Performance of the Work* or a designated portion of the *Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Contractor*.
- 5.4.3 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish a reasonable date for finishing the *Work*.

#### GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor* shall:
- .1 submit an application for payment of the holdback amount,
  - .2 submit CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Contractor* in the *Substantial Performance of the Work* and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.
- 5.5.2 After the receipt of an application for payment from the *Contractor* and the statement as provided in paragraph 5.5.1, the *Consultant* will issue a certificate for payment of the holdback amount.
- 5.5.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate holdback account, the *Owner* shall, 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Contractor*.
- 5.5.4 In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.
- 5.5.5 In the Province of Quebec, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days after the issuance of the certificate. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.

#### GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

- 5.6.1 In the common law jurisdictions, where legislation permits and where, upon application by the *Contractor*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Contractor* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the first calendar day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Work*. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.



- 5.6.2 In the Province of Quebec, where, upon application by the *Contractor*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Contractor* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, no later than 30 calendar days after such certification by the *Consultant*. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.
- 5.6.3 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the *Contractor* shall ensure that such subcontract work or *Products* are protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

#### **GC 5.7 FINAL PAYMENT**

- 5.7.1 When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment.
- 5.7.2 The *Consultant* will, no later than 10 calendar days after the receipt of an application from the *Contractor* for final payment, review the *Work* to verify the validity of the application and advise the *Contractor* in writing that the application is valid or give reasons why it is not valid.
- 5.7.3 When the *Consultant* finds the *Contractor's* application for final payment valid, the *Consultant* will promptly issue a final certificate for payment.
- 5.7.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 - WORKERS' COMPENSATION, and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Contractor* as provided in Article A-5 of the Agreement - PAYMENT.

#### **GC 5.8 WITHHOLDING OF PAYMENT**

- 5.8.1 If because of climatic or other conditions reasonably beyond the control of the *Contractor*, there are items of work that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such remaining work.

#### **GC 5.9 NON-CONFORMING WORK**

- 5.9.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Work* or *Products* which are not in accordance with the requirements of the *Contract Documents*.

### **PART 6 CHANGES IN THE WORK**

#### **GC 6.1 OWNER'S RIGHT TO MAKE CHANGES**

- 6.1.1 The *Owner*, through the *Consultant*, without invalidating the *Contract*, may make:
- .1 changes in the *Work* consisting of additions, deletions or other revisions to the *Work* by *Change Order* or *Change Directive*, and
  - .2 changes to the *Contract Time* for the *Work*, or any part thereof, by *Change Order*.
- 6.1.2 The *Contractor* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive*.

#### **GC 6.2 CHANGE ORDER**

- 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* will provide the *Contractor* with a written description of the proposed change in the *Work*. The *Contractor* shall promptly present, in a form acceptable to the *Consultant*, a method of adjustment or an amount of adjustment for the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change in the *Work*.

- 6.2.2 The method of adjustment or the amount of adjustment to the *Contract Price* presented by the *Contractor* may be one of or a combination of the following:
- .1 Change to the estimated quantities for *Unit Price* items listed in the *Schedule of Prices* that are applicable to the change in the *Work*;
  - .2 Lump sum quotation for the change in the *Work*;
  - .3 *Unit Price* quotation for the change in the *Work*;
  - .4 Cost of the *Contractor's* actual expenditures attributable to the change plus a fee for the *Contractor's* overhead and profit as agreed by the parties;
  - .5 Cost of the *Contractor's* actual savings attributable to the change.
- 6.2.3 When the *Owner* and *Contractor* agree to the adjustments in the *Contract Price* and *Contract Time* or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in the application for progress payment.

### GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Contractor* to proceed with a change in the *Work* prior to the *Owner* and the *Contractor* agreeing upon the corresponding adjustment in *Contract Price* and *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the change in the *Work*.
- 6.3.5 For the purpose of valuing *Change Directives*, changes in the *Work* that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Contractor's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with paragraph 6.3.7 and as follows:
- .1 If the change results in a net increase in the *Contractor's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Contractor's* cost, plus the *Contractor's* percentage fee on such net increase.
  - .2 If the change results in a net decrease in the *Contractor's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Contractor's* cost, without adjustment for the *Contractor's* percentage fee.
  - .3 The *Contractor's* fee shall be as specified in the *Contract Documents* or as otherwise agreed by the parties.
- 6.3.7 The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Contractor* under a salary or wage schedule agreed upon by the *Owner* and the *Contractor*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Contractor*, for personnel
    - (1) stationed at the *Contractor's* field office, in whatever capacity employed;
    - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
    - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings, and coordination drawings; or
    - (4) engaged in the processing of changes in the *Work*.
  - .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Contractor* and included in the cost of the work as provided in paragraphs 6.3.7.1;
  - .3 travel and subsistence expenses of the *Contractor's* personnel described in paragraphs 6.3.7.1;
  - .4 all *Products* including cost of transportation thereof;
  - .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Contractor*;
  - .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Contractor* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
  - .7 all equipment and services required for the *Contractor's* field office;
  - .8 deposits lost;

- .9 the amounts of all subcontracts;
  - .10 quality assurance such as independent inspection and testing services;
  - .11 charges levied by authorities having jurisdiction at the *Place of the Work*;
  - .12 royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Contractor's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 - PATENT FEES;
  - .13 any adjustment in premiums for all bonds and insurance which the *Contractor* is required, by the *Contract Documents*, to purchase and maintain;
  - .14 any adjustment in taxes, other than *Value Added Taxes*, and duties for which the *Contractor* is liable;
  - .15 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the *Work*;
  - .16 removal and disposal of waste products and debris; and
  - .17 safety measures and requirements.
- 6.3.8 Notwithstanding any other provisions contained in the General Conditions of the *Contract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by any failure on the part of the *Contractor* to exercise reasonable care and diligence in the *Contractor's* attention to the *Work*. Any cost due to failure on the part of the *Contractor* to exercise reasonable care and diligence in the *Contractor's* attention to the *Work* shall be borne by the *Contractor*.
- 6.3.9 The *Contractor* shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the work attributable to the *Change Directive* and shall provide the *Consultant* with copies thereof when requested.
- 6.3.10 For the purpose of valuing *Change Directives*, the *Owner* shall be afforded reasonable access to all of the *Contractor's* pertinent documents related to the cost of performing the work attributable to the *Change Directive*.
- 6.3.11 Pending determination of the final amount of a *Change Directive*, the undisputed value of the work performed as the result of a *Change Directive* is eligible to be included in progress payments.
- 6.3.12 If the *Owner* and *Contractor* do not agree on the proposed adjustment in the *Contract Time* attributable to the change in the *Work*, or the method of determining it, the adjustment shall be referred to the *Consultant* for determination.
- 6.3.13 When the *Owner* and the *Contractor* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order*.

#### **GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

- 6.4.1 If the *Owner* or the *Contractor* discover conditions at the *Place of the Work* which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
  - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
- then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than *5 Working Days* after first observance of the conditions.
- 6.4.2 The *Consultant* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 - CHANGE ORDER or GC 6.3 - CHANGE DIRECTIVE.
- 6.4.3 If the *Consultant* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Consultant* will report the reasons for this finding to the *Owner* and the *Contractor* in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS, GC 9.3 - ARTIFACTS AND FOSSILS and GC 9.5 - MOULD.

## GC 6.5 DELAYS

- 6.5.1 If the *Contractor* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.
- 6.5.2 If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.
- 6.5.3 If the *Contractor* is delayed in the performance of the *Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Contractor* is a member or to which the *Contractor* is otherwise bound),
  - .2 fire, unusual delay by common carriers or unavoidable casualties,
  - .3 abnormally adverse weather conditions, or
  - .4 any cause beyond the *Contractor's* control other than one resulting from a default or breach of *Contract* by the *Contractor*,
- then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Consultant* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.2.13 of GC 2.2 - ROLE OF THE CONSULTANT, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.

## GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 If the *Contractor* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim against the *Contractor* for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party and to the *Consultant*.
- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
- .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
  - .2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the *Consultant* a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the *Consultant* may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 The *Consultant's* findings, with respect to a claim made by either party, will be given by *Notice in Writing* to both parties within 30 *Working Days* after receipt of the claim by the *Consultant*, or within such other time period as may be agreed by the parties.
- 6.6.6 If such finding is not acceptable to either party, the claim shall be settled in accordance with Part 8 of the General Conditions - DISPUTE RESOLUTION.

## GC 6.7 QUANTITY VARIATIONS

- 6.7.1 The provisions of GC 6.7 - QUANTITY VARIATIONS apply to the estimated quantities identified in the *Schedule of Prices*, or where the estimated quantities have been amended by *Change Order*, the provisions apply to the amended estimated quantities.
- 6.7.2 The *Owner* or the *Contractor* may request an adjustment to a *Unit Price* contained in the *Schedule of Prices* provided the actual quantity of the *Unit Price* item in the *Schedule of Prices* exceeds or falls short of the estimated quantity by more than 15%.
- 6.7.3 Where the actual quantity exceeds the estimated quantity by more than 15%, a *Unit Price* adjusted pursuant to paragraph 6.7.2 shall apply only to the quantity that exceeds 115% of the estimated quantity.
- 6.7.4 Where the actual quantity falls short of the estimated quantity by more than 15%, a *Unit Price* adjusted pursuant to paragraph 6.7.2 shall apply to the actual quantity of the *Unit Price* item. The adjusted *Unit Price* shall not exceed a *Unit Price* that would cause the payment amount to exceed that derived from the original *Unit Price* and estimated quantity.
- 6.7.5 The party that intends to request for an adjustment to a *Unit Price* shall give timely *Notice in Writing* to the other party and to the *Consultant*.
- 6.7.6 The *Consultant's* findings, with respect to a claim made by either party, will be given by *Notice in Writing* to both parties within 30 *Working Days* after receipt of the claim by the *Consultant*, or within such other time period as may be agreed by the parties.
- 6.7.7 If such finding is not acceptable to either party, the claim shall be settled in accordance with Part 8 of the General Conditions - DISPUTE RESOLUTION.

## PART 7 DEFAULT NOTICE

### GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

- 7.1.1 If the *Contractor* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Contractor's* insolvency, or if a receiver is appointed because of the *Contractor's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Contractor's* right to continue with the *Work*, by giving the *Contractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.1.2 If the *Contractor* neglects to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract* to a substantial degree and if the *Consultant* has given a written statement to the *Owner* and *Contractor* that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Contractor Notice in Writing* that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Contractor* shall be in compliance with the *Owner's* instructions if the *Contractor*:
- .1 commences the correction of the default within the specified time, and
  - .2 provides the *Owner* with an acceptable schedule for such correction, and
  - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.1.4 If the *Contractor* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Contractor* provided the *Consultant* has certified such cost to the *Owner* and the *Contractor*, or
  - .2 terminate the *Contractor's* right to continue with the *Work* in whole or in part or terminate the *Contract*.

- 7.1.5 If the *Owner* terminates the *Contractor's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall be entitled to:
- .1 take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense, and
  - .2 withhold further payment to the *Contractor* until a final certificate for payment is issued, and
  - .3 charge the *Contractor* the amount by which the full cost of finishing the *Work* as certified by the *Consultant*, including compensation to the *Consultant* for the *Consultant's* additional services and a reasonable allowance as determined by the *Consultant* to cover the cost of corrections to work performed by the *Contractor* that may be required under GC 12.3 - WARRANTY, exceeds the unpaid balance of the *Contract Price*; however, if such cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* the difference, and
  - .4 on expiry of the warranty period, charge the *Contractor* the amount by which the cost of corrections to the *Contractor's* work under GC 12.3 - WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Contractor* the difference.
- 7.1.6 The *Contractor's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Contractor* up to the time of termination shall continue after such termination of the *Contract*.

## **GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT**

- 7.2.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Work* should be suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Contractor* or of anyone directly or indirectly employed or engaged by the *Contractor*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Contract* by giving the *Owner Notice in Writing* to that effect.
- 7.2.3 The *Contractor* may give *Notice in Writing* to the *Owner*, with a copy to the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Contractor*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
  - .2 the *Consultant* fails to issue a certificate as provided in GC 5.3 - PROGRESS PAYMENT, or
  - .3 the *Owner* fails to pay the *Contractor* when due the amounts certified by the *Consultant* or awarded by arbitration or court, or
  - .4 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Consultant*, except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Contractor* that sufficient cause exists.
- 7.2.4 The *Contractor's Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, suspend the *Work* or terminate the *Contract*.
- 7.2.5 If the *Contractor* terminates the *Contract* under the conditions set out above, the *Contractor* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the termination of the *Contract*.

## **PART 8 DISPUTE RESOLUTION**

### **GC 8.1 AUTHORITY OF THE CONSULTANT**

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the *Consultant* as provided in GC 2.2 - ROLE OF THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions - DISPUTE RESOLUTION.
- 8.1.2 If a dispute arises under the *Contract* in respect of a matter in which the *Consultant* has no authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of GC 8.2 - NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.3 - RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.

- 8.1.3 If a dispute is not resolved promptly, the *Consultant* will give such instructions as in the *Consultant's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Contractor* costs incurred by the *Contractor* in carrying out such instructions which the *Contractor* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

## **GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION**

- 8.2.1 In accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, the parties shall appoint a Project Mediator
- .1 within 20 *Working Days* after the *Contract* was awarded, or
  - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Consultant* under GC 2.2 - ROLE OF THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.2.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing.
- 8.2.5 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.2.4 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner*, the *Contractor* and the *Consultant*.
- 8.2.6 By giving a *Notice in Writing* to the other party and the *Consultant*, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the Rules for Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.2.8 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.2.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be
- .1 held in abeyance until
    - (1) *Substantial Performance of the Work*,
    - (2) the *Contract* has been terminated, or
    - (3) the *Contractor* has abandoned the *Work*,whichever is earlier; and
  - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

## **GC 8.3 RETENTION OF RIGHTS**

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions - DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of GC 8.1 – AUTHORITY OF THE CONSULTANT.



- 8.3.2 Nothing in Part 8 of the General Conditions - DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.6 of GC 8.2 - NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

## PART 9 PROTECTION OF PERSONS AND PROPERTY

### GC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Contractor* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Contractor's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*;
  - .2 acts or omissions by the *Owner*, the *Consultant*, other contractors, their agents and employees.
- 9.1.2 Before commencing any work, the *Contractor* shall determine the location of all underground utilities and structures indicated in the *Contract Documents* or that are reasonably apparent in an inspection of the *Place of the Work*.
- 9.1.3 Should the *Contractor* in the performance of the *Contract* damage the *Work*, the *Owner's* property, or property adjacent to the *Place of the Work*, the *Contractor* shall be responsible for making good such damage at the *Contractor's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Contractor* is not responsible, as provided in paragraph 9.1.1, the *Contractor* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 - OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.

### GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- ~~9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.~~ GH
- 9.2.2 Prior to the *Contractor* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
  - .2 provide the *Consultant* and the *Contractor* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substances exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Contractor* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Contractor* commencing the *Work*.
- 9.2.5 If the *Contractor*
- .1 encounters toxic or hazardous substances at the *Place of the Work*, or
  - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Contractor* or anyone for whom the *Contractor* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Contractor* shall
  - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and
  - .4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.
- 9.2.6 If the *Owner* and *Contractor* do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Contractor*.



~~9.2.7 If the Owner and Contractor agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the Work by the Contractor or anyone for whom the Contractor is responsible, the Owner shall promptly at the Owner's own expense:~~

- ~~.1 take all steps as required under paragraph 9.2.4;~~
- ~~.2 reimburse the Contractor for the costs of all steps taken pursuant to paragraph 9.2.5;~~
- ~~.3 extend the Contract time for such reasonable time as the Consultant may recommend in consultation with the Contractor and the expert referred to in 9.2.6 and reimburse the Contractor for reasonable costs incurred as a result of the delay; and~~
- ~~.4 indemnify the Contractor as required by GC 12.1 - INDEMNIFICATION.~~

9.2.8 If the Owner and Contractor agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the place of the Work by the Contractor or anyone for whom the Contractor is responsible, the Contractor shall promptly at the Contractor's own expense:

- .1 take all necessary steps, in accordance with applicable legislation in force at the Place of the Work, to safely remove and dispose the toxic or hazardous substances;
- .2 make good any damage to the Work, the Owner's property or property adjacent to the place of the Work as provided in paragraph 9.1.3 of GC 9.1 - PROTECTION OF WORK AND PROPERTY;
- .3 reimburse the Owner for reasonable costs incurred under paragraph 9.2.6; and
- .4 indemnify the Owner as required by GC 12.1 - INDEMNIFICATION.

9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions - Dispute Resolution. ~~If such disagreement is not resolved promptly, the parties shall not immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2~~

~~TOXIC AND HAZARDOUS SUBSTANCES.~~

### GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the Place or Work shall, as between the Owner and the Contractor, be deemed to be the absolute property of the Owner.
- 9.3.2 The Contractor shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the Consultant upon discovery of such items.
- 9.3.3 The Consultant will investigate the impact on the Work of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the Contractor's cost or time to perform the Work, the Consultant, with the Owner's approval, will issue appropriate instructions for a change in the Work as provided in GC 6.2 - CHANGE ORDER or GC 6.3 CHANGE DIRECTIVE.

### GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 Subject to paragraph 3.2.2.2 of GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, the Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.

### GC 9.5 MOULD

- 9.5.1 If the Contractor or Owner observes or reasonably suspects the presence of mould at the Place of the Work, the remediation of which is not expressly part of the Work,
  - .1 the observing party shall promptly report the circumstances to the other party in writing, and
  - .2 the Contractor shall promptly take all reasonable steps, including stopping the Work if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and
  - .3 if the Owner and Contractor do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the Owner shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the Owner and Contractor.
- 9.5.2 If the Owner and Contractor agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the Contractor's operations under the Contract, the Contractor shall promptly, at the Contractor's own expense:
  - .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
  - .2 make good any damage to the Work, the Owner's property or property adjacent to the Place of the Work as provided in paragraph 9.1.3 of GC 9.1 - PROTECTION OF WORK AND PROPERTY, and
  - .3 reimburse the Owner for reasonable costs incurred under paragraph 9.5.1.3, and
  - .4 indemnify the Owner as required by paragraph 12.1 of GC 21.1 - INDEMNIFICATION.

- 9.5.3 ~~If the Owner and Contractor agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the Contractor's operations under the Contract, the Owner shall promptly, at the Owner's own expense:~~
- ~~.1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and~~
  - ~~.2 reimburse the Contractor for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the Work as provided in paragraph 9.1.4 of GC 9.1 - PROTECTION OF WORK AND PROPERTY, and~~
  - ~~.3 extend the Contract Time for such reasonable time as the Consultant may recommend in consultation with the Contractor and the expert referred to in paragraph 9.5.1.3 and reimburse the Contractor for reasonable costs incurred as a result of the delay, and~~
  - ~~.4 indemnify the Contractor as required by paragraph 12.1.~~
- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions - DISPUTE RESOLUTION. ~~If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have.~~

## PART 10 GOVERNING REGULATIONS

### GC 10.1 TAXES AND DUTIES

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the Owner to the Contractor as stipulated in Article A-4 of the Agreement - CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the Contractor due to changes in such included taxes and duties after the time of the bid closing shall increase or decrease the *Contract Price* accordingly.

### GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Work*.
- 10.2.2 The Owner shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Contract Documents* specify as the responsibility of the Contractor.
- 10.2.3 The Contractor shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The Contractor shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The Contractor shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the Contractor shall advise the Consultant in writing requesting direction immediately upon such variance or change becoming known. The Consultant will make the changes required to the *Contract Documents* as provided in GC 6.1 - OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 10.2.6 If the Contractor fails to advise the Consultant in writing; and fails to obtain direction as required in paragraph 10.2.5; and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes; the Contractor shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 - CLAIMS FOR A CHANGE IN CONTRACT PRICE.

### GC 10.3 PATENT FEES

10.3.1 The Contractor shall pay the royalties and patent licence fees required for the performance of the Contract. The Contractor shall hold the Owner harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention by the Contractor or anyone for whose acts the Contractor may be liable.

*GH* 10.3.2 ~~The Owner shall hold the Contractor harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the Contract, the model, plan or design of which was supplied to the Contractor as part of the Contract Documents.~~

### GC 10.4 WORKERS' COMPENSATION

10.4.1 Prior to commencing the Work, Substantial Performance of the Work and the issuance of the final certificate for payment, the Contractor shall provide evidence of compliance with workers' compensation legislation at the Place of the Work, including payments due thereunder.

10.4.2 At any time during the term of the Contract, when requested by the Owner, the Contractor shall provide such evidence of compliance by the Contractor and Subcontractors.

## PART 11 INSURANCE AND CONTRACT SECURITY

### GC 11.1 INSURANCE

*GH* 11.1.1 Without restricting the generality of GC 12.1 - INDEMNIFICATION, the Contractor shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 - CCDC Insurance Requirements in effect at the time of bid closing except as hereinafter provided:

1. General liability insurance in the name of the Contractor and include, or in the case of a single, blanket policy, be endorsed to name, the Owner and the Consultant as insureds but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the Contractor with regard to the Work. General liability insurance shall be maintained from the date of commencement of the Work until one year from the date of Substantial Performance of the Work. Liability coverage shall be provided for completed operations hazards from the date of Substantial Performance of the Work, as set out in the certificate of Substantial Performance of the Work, on an ongoing basis for a period of 6 years following Substantial Performance of the Work.
2. Automobile Liability Insurance from the date of commencement of the Work until one year after the date of Substantial Performance of the Work.
3. Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the Work
4. "Broad form" property insurance in the joint names of the Contractor, the Owner and the Consultant. The policy shall include as Insureds all Subcontractors. The "Broad form" property insurance shall be provided from the date of commencement of the Work until the earliest of:
  - (1) 10 calendar days after the date of Substantial Performance of the Work;
  - (2) on the commencement of use or occupancy of any part or section of Work unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the Work;
  - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
5. Boiler and machinery insurance in the joint names of the Contractor, the Owner and the Consultant. The policy shall include as Insureds all Subcontractors. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of Substantial Performance of the Work.
6. The "Broad form" property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the Owner and the Contractor as their respective interests may appear. In the event of loss or damage:
  - (1) the Contractor shall act on behalf of the Owner for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the Contractor shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of either party under the Contract except that the Contractor shall be entitled to such reasonable extension of Contract Time relative to the extent of the loss or damage as the Consultant may recommend in consultation with the Contractor;

*the City of Sarnia, the County of Lambton, Bayside Mall Limited, Larch Property Management Ltd.*

- (2) the *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Contractor's* interest in the restoration of the *Work*; and
- (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces, or another contractor, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, shall pay the *Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.
- .7 *Contractors' Equipment Insurance* from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
- 11.1.2 Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Contractor* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*.
- 11.1.3 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Contract*.
- 11.1.4 If the *Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Contractor* and the *Consultant*. The *Contractor* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from the amount which is due or may become due to the *Contractor*.
- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.6 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Contractor's* insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.7 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Owner* may request the increased coverage from the *Contractor* by way of a *Change Order*.
- 11.1.8 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – INSURANCE REQUIREMENTS.

## GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Contractor* shall, prior to commencement of the *Work* or within the specified time, provide to the *Owner* any *Contract* security specified in the *Contract Documents*.
- 11.2.2 If the *Contract Documents* require surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

## PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

### GC 12.1 INDEMNIFICATION

- 12.1.1 Without restricting the *Owner's* obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:

.1 caused by:

- (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
- (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and

2. made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.2.2 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnify for claims other than those provided for in this Contract.

- 12.1.2 The obligation of ~~either party~~ <sup>the Contractor GH</sup> to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

1. In respect to losses suffered by the ~~Owner and the Contractor~~ <sup>the Contractor GH</sup> for which insurance is to be provided by ~~either party~~ <sup>the Contractor GH</sup> pursuant to GC 11.1 – INSURANCE, the general liability insurance limit for one occurrence as referred to in CCDC 41 in effect at the time of bid closing.
2. In respect to losses suffered by the ~~Owner and the Contractor~~ <sup>the Contractor GH</sup> for which insurance is not required to be provided by ~~either party~~ <sup>the Contractor GH</sup> in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
3. In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

- 12.1.3 The obligation of ~~either party~~ <sup>the Contractor GH</sup> to indemnify the ~~other~~ <sup>Owner GH</sup> as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.

- 12.1.4 The ~~Owner and the Contractor~~ <sup>the Contractor GH</sup> shall indemnify and hold harmless the ~~other~~ <sup>Owner GH</sup> from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of ~~their~~ <sup>the Contractor's GH</sup> obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

- ~~12.1.5 The Owner shall indemnify and hold harmless the Contractor from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:~~

1. as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES; and
2. arising out of the ~~Contractor's~~ <sup>the Contractor's GH</sup> performance of the Contract which are attributable to a lack of or defect in title or an alleged ~~lack of or defect in title to the Place of the Work.~~

- 12.1.6 In respect to any claim for indemnity or to be held harmless by the ~~Owner or the Contractor:~~ <sup>GH</sup>

1. *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known; <sup>by the Owner GH</sup>
2. ~~should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.~~

## GC 12.2 WAIVER OF CLAIMS

- 12.2.1 Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the Contractor waives and releases the Owner from all claims which the Contractor has or reasonably ought to have knowledge of that could be advanced by the Contractor against the Owner arising from the Contractor's involvement in the Work, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:

1. claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the Owner from the Contractor no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*; and <sup>GH</sup>
2. ~~indemnification for claims advanced against the Contractor by third parties for which a right of indemnification may be asserted by the Contractor against the Owner pursuant to the provisions of this Contract;~~
3. claims for which a right of indemnity could be asserted by the Contractor pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of GC 12.1 – INDEMNIFICATION; and
4. claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.

- ~~12.2.2 The Contractor waives and releases the Owner from all claims referenced in paragraph 12.2.1.4 except for those referred in paragraphs 12.2.1.2 and 12.2.1.3 of GC 12.1 – INDEMNIFICATION and claims for which Notice in Writing of claim has been received by the Owner from the Contractor within 395 calendar days following the date of Substantial Performance of the Work.~~

- 12.2.3 Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Owner* waives and releases the *Contractor* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Contractor* arising from the *Owner's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Contractor* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
  - .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Contractor* pursuant to the provisions of this *Contract*;
  - .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Contractor* pursuant to the provisions of paragraph 12.1.4 of GC 12.1 - INDEMNIFICATION;
  - .4 damages arising from the *Contractor's* actions which result in substantial defects or deficiencies in the *Work*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
  - .5 claims arising pursuant to GC 12.3 - WARRANTY; and
  - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.4 The *Owner* waives and releases the *Contractor* from all claims referred to in paragraph 12.2.3.4 except claims for which *Notice in Writing* of claim has been received by the *Contractor* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Work*; or
  - .2 if the *Place of the Work* is the Province of Quebec, then Article 2118 of the Civil Code of Quebec.
- 12.2.5 The *Owner* waives and releases the *Contractor* from all claims referenced in paragraph 12.2.3.6 except for those referred in paragraph 12.2.3.2, 12.2.3.3 and those arising under GC 12.3 – WARRANTY and claims for which *Notice in Writing* has been received by the *Contractor* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.6 "Notice in Writing of claim" as provided for in GC 12.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;
  - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
  - .3 a statement of the estimated quantum of the claim.
- 12.2.7 The party giving "Notice in Writing of claim" as provided for in GC 12.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.2.8 Where the event or series of events giving rise to a claim made under paragraphs 12.2.1 or 12.2.3 has a continuing effect, the detailed account submitted under paragraph 12.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.2.9 If a *Notice in Writing* of claim pursuant to paragraph 12.2.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*. If a *Notice in Writing* of claim pursuant to paragraph 12.2.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

## GC 12.3 WARRANTY

- 12.3.1 Except for extended warranties as described in paragraph 12.3.6, the warranty period under the *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.3.2 The *Contractor* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.

- 12.3.3 The *Owner*, through the *Consultant*, shall promptly give the *Contractor Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the *Contractor* shall correct promptly, at the *Contractor's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.
- 12.3.5 The *Contractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Contractor's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.



## SCHEDULE "A"

### OVERRIDE CLAUSES

The Owner and the Contractor acknowledge, covenant and agree as follows:

#### 1. Interpretation

This Schedule forms an integral part of the Unit Price Contract (the "Contract") to which it is attached and is incorporated into the Contract. **In the case of any inconsistency or conflict between any of the provisions set out in this Schedule and any of the other provisions set out in the Contract, the provisions set out in this Schedule shall override, govern and prevail in all such cases, notwithstanding anything whatsoever to the contrary set out elsewhere in the Contract.**

#### 2. Court Approval Required

This Contract is conditional (for the sole benefit of the Owner) upon the Owner obtaining the approval by Ontario's Superior Court of Justice in regard to: (a) this Contract and (b) the Owner's contract with the Consultant.

#### 3. Commencement of the Work

The Contractor shall commence the Work on the date being one (1) business day after notification to the Contractor of the issuance of the Court approval referenced in Section 2 of this Schedule.

#### 4. Confirmation of Contract Price Including Winter Work Option

The Winter Work option referenced in Section "B" has been elected by the Owner. The estimated total Contract Price referenced in Section 4.2 of Article A-4 (namely, **\$358,800**) includes any and all Winter Work cost/price premiums referenced in or otherwise contemplated by Schedule "B". No Winter Work price/cost premiums whatsoever shall apply in regard to this Contract.

#### 5. Timely Completion Bonus

The Contractor shall use its best efforts to duly and fully complete the Work by no later than **seventy-seven (77)** calendar days after the Start Date (the "**Targeted/Required Completion Date**"). In the event that the Contractor duly and fully completes the Work by or before the Targeted/Required Completion Date, then the contract price otherwise payable to the Contractor under this Contract shall be increased by \$10,000. Such Target/Required Completion Date, however, is a "hard target" required completion date. No delay (howsoever caused) shall apply under any circumstances whatsoever for purposes of application of such additional payment of \$10,000 or any part thereof.

#### 6. No Personal Liability by Receiver

The party identified in the Contract as being the Owner is A. John Page & Associates Inc. in its capacity as the Court-appointed Receiver of Bayside Mall Limited and not in its personal capacity. A. John Page & Associates Inc. is a party to the Contract only in (and only to the extent of (not beyond)) its capacity as such Court-appointed Receiver. A. John Page & Associates Inc. is not personally a party to or liable or obligated under the Contract in any regard whatsoever.



### 7. No Representations or Warranties by Owner

The Owner makes no binding representation or warranty (of any nature or kind whatsoever) to or in favour of the Contractor in regard to the status or condition of the Place of Work (or any part thereof). Any purported representation or warranty in any such regard shall be deemed to be null and void for all purposes.

### 8. No Guarantees or Indemnities by Owner

The Owner makes no binding guarantee or indemnity (of any nature or kind whatsoever) to or in favour of the Contractor in, under or pursuant to the Contract (or any part thereof). Any purported guarantee or indemnity in any such regard shall be deemed to be null and void for all purposes.

### 9. Contractor's Insurance

The liability insurance referenced in GC 11.1 INSURANCE to be provided and maintained by the Contractor under the Contract shall include public liability insurance, written on a comprehensive basis, with coverage against third party-party claims for bodily injury (including but not limited to death) and property damage (including but not limited to personal injury liability, blanket contractual liability, employers liability, owners & contractors protective liability) with such coverage to include the activities and operations conducted by the Contractor (or for which the Contractor is legally liable) and/or any other person performing any work on behalf of the Contractor as well as those for whom the Contractor is responsible at law. Such insurance shall also include comprehensive coverage in regard to weakening and removal of structural support, underpinning and caisson work and excavation work in regard to or otherwise involving the Work. All insurance policies obtained by the Contractor in regard to the Contract shall: (i) include cross-liability and severability-of-interest; (ii) be primary and non-contributory to any other insurance available to the Owner or the Consultant; (iii) not be invalidated with respect to the interests of the Owner or the Consultant by reason of any breach, default or violation by the Contractor of any warranties, representations, declarations or conditions contained in such insurance policies; and (iv) contain an undertaking by the insurer(s) to notify the Owner and the Consultant, in writing, within not less than sixty (60) days prior to any material change, cancellation or termination in regard to any such insurance policy. All policies of insurance written pursuant to the insurance obligations of the Contractor under the Contract shall contain a waiver of any and all subrogation rights which the Contractor's insurer(s) may otherwise have as against the Owner or the Consultant. The revisions to s. 11.1.1.4 and s. 11.1.1.6 of GC 11.1 INSURANCE contemplated in Schedule "B" of the Contract shall **not** apply.

 GH


**SCHEDULE "B"**  
**BID DOCUMENTS AND SPECIFICATIONS**  
**FOR**  
**150 CHRISTINA ST., SARNIA**  
**GARAGE ROOF SLAB EXPANSION JOINT REPAIRS**

*Prepared for:*  
Bayside Mall Limited  
c/o A. John Page & Associates Inc.  
As Receiver of Bayside Mall Limited  
(and not in its personal capacity)  
100 Richmond St. W., Suite 447  
Toronto, ON M5H 3K6  
Attention: John Page, President

*Prepared by:*  
**Halsall Associates**  
2300 Yonge St., Suite 2300  
Toronto, ON M4P1E4  
416-487-5256  
Attention: Dustin Ducharme, P.Eng.

13Y125-035C

November 28, 2014

<p>The undersigned has reviewed and takes responsibility for this design:</p> <p>NAME: Dustin Ducharme, P.Eng.</p> <p>SIGNATURE:</p> 	
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*These documents shall not be used by any party for any project in which Halsall Associates is not the Consultant under the terms of the CCDC document.*

<b>BID DOCUMENTS</b>			<u>Pages</u>
Section	00 11 16	Invitation to Bid	1-2
Section	00 21 13	Instruction to Bidders	1-2
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## **SPECIFICATIONS**

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Section	22 14 26.01	Garage Plumbing and Drainage	1-3
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## **DRAWINGS**

### **EMBEDDED DETAILS**

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	EL1-A1	Construction Protection System
	EL1-A2	Construction Protection System
	EL1-A3	Construction Protection System
	EL1-A7	Portable Fence Barrier

Section	03 01 30.30	Concrete Removal
	EST1-A3	Through Slab Concrete Removal Extents
	EST1-A1	Soffit Concrete Repair
	EST1-A4	Delamination Typical Repair
	EST1-D1	Top Surface Concrete Repair at Wall or Column
	EST1-D3	Unit Measurement for Corner Repair
Section	03 01 30.40	Reinforcing Steel
	EST1-F1	Welding of Splice Bars
Section	07 14 13	Hot-Applied Membrane Waterproofing
	EST3-C5	Waterproofing at Junction with Wall
	EST3-C6	Waterproofing Downturn
	EST3-E10	Waterproofing at Cracks
	EST3-E11	Membrane Tie-in
	EST3-B4	Waterproofing at Slab Expansion Joint
	EST3-B5	Waterproofing at Slab-Wall Expansion Joint

#### APPENDED DETAILS

PROJECT PLANS  
PROJECT DETAILS

### 1.1 Invited Bids

Bids will be accepted only from invited Contractors.

### 1.2 Briefing Meeting

There will be a briefing meeting at 150 Christina St., Sarnia (meet at garage exit ramp) on **Tuesday, December 2, 2014 at 12:30PM.**

The site is fully accessible during business hours.

### 1.3 Delivery and Opening of Bids

In order to submit your electronic Bid Form copy you **MUST** submit to the following email: **etenders@halsall.com** prior to **2:30 p.m. local time on Thursday, December 18, 2014.** Be sure to include the Halsall Project Number, the Project Address and Project Description in your subject line. The Bid Form **MUST** adhere to the following naming convention - ***“Contractor Name.150 Christina Street. Expansion Joint Repairs.xls”***.

**Failure to provide the requested file in the prescribed naming convention, may result in your bid not being received by etenders.** You will receive an email receipt confirmation from etenders. In the event of technical difficulties, please contact our office.

Faxed copies may be accepted.

An original copy of the Bid shall be delivered to Halsall within 24 hours of closing. If the electronic Bid Forms and the original hard copy Bid Form differ in any way, the bids will be disqualified. Submit the hard copy in a sealed envelope, clearly marked with the Bidder's Name, the Project Name, and the Closing Date and Time to:

HALSALL ASSOCIATES  
2300 Yonge Street, Suite 2300  
Toronto, Ontario, M4P 1E4  
ATTN: Dustin Ducharme, P.Eng.

Bids shall be signed and sealed by the Bidder, and shall be attached to the Bid Documents.

**End of Section 00 11 16**

## **PART 1 - GENERAL**

### **1.1 Description of the Work**

A general description of the Work to be carried out is given in SECTION 01 11 00. The specific requirements of the required work are given in the drawings, details and specifications.

It shall be the Bidder's responsibility to ensure that all items have been included, without repetition, in the submitted bid.

### **1.2 Examination of Site**

It is the responsibility of each Bidder to conduct sufficient investigation of the site of the Work and obtain all required information about local conditions to be met with during the Work (including, but not limited to the size of slabs, depth of overburden, slab-on-grade surface to roof slab soffit clearances and all other dimensions as required) prior to submitting the Bid. The Bidders shall make their own estimates of the facilities and difficulties to be encountered. Bidders may not claim at any time after submission of the bid that there was any misunderstanding of the terms and conditions of the Contract relating to site conditions evident or apparent during the bid period. The Owner, the Consultant and their employees will not be held responsible for the Bidders failure to obtain such information.

### **1.3 Omissions and Discrepancies**

Bidders shall ensure that their copy of the documents contains all the pages listed in the Table of Contents. Should a Bidder find discrepancies in, or omissions from the drawings or specifications, or be in doubt as to their meaning, the Bidder shall notify the Consultant. An addendum may then be issued to all Bidders.

### **1.4 Interpretations**

No oral interpretations made to a Bidder as to the meaning of any of the bid documents or specifications shall modify any of the provisions of the bid documents. Oral requests for interpretation shall be made to the Consultant no later than 24 hours before the tender closing date and all Bidders will receive written clarification. Bidders may be advised by telephone of all such written clarifications as they are being prepared in order that they become aware of any changes as quickly as is possible. The written clarifications will govern the contract.

### **1.5 Instructions and Addenda**

The Instructions to Bidders and all Addenda to the Bid Documents and Specifications which may be sent to the Bidders during the time of preparation of bids shall be considered as part of the Contract Documents.

#### **1.6 Acceptance or Rejection of Bids**

The Owner shall not be responsible for any liabilities, costs, expenses, loss or damage incurred, sustained or suffered by any Bidder prior or subsequent to or by reason of the acceptance or the non-acceptance by the Owner of any bid or by reason of any delay in the acceptance of a bid save as provided in the contract. The Owner reserves the right to reject any or all bids and the lowest or any bid will not necessarily be accepted.

#### **1.7 CCDC Document**

The CCDC Standard Construction Document specified in Contract Conditions shall apply to this Project. The Form of Agreement, General Conditions and Definitions shall all apply.

#### **1.8 Prices and Method of Quotation**

An Estimated Contract Price will be arrived at by summing prices quoted for the individual Items, and including selected optional Items, if provided. Prices shall include all labour, materials, costs for the co-ordination between the Items, clean-up, temporary removal and replacement of items which will affect the Work, making good finishes affected by the Work, overhead, profit and statutory charges. Breakdown of Work into sections is only for the purpose of assessing bids. In the case of an error in extending the unit prices, the unit price shall be deemed correct and used to determine the correct price.

#### **1.9 Bonds**

Refer to "Section 01 32 19 – Submittals" for instructions.

#### **1.10 Submittals**

As part of the tender submission, bidders shall submit all documents identified in Section 01 32 19 – Submittals "Submit with Tender".

#### **1.11 Completion Dates**

The Bidder shall state the time frame required to complete the Project in working weeks. The site is available January 2015 (Optional Item) or upon favorable weather in Spring 2015.

#### **1.12 Electronic Tendering**

Bidders shall ensure that sealed, hard copies of their Bids are consistent with submitted electronic bids. Discrepancies between the documents will result in disqualification.

Each bidder must password protect their electronic bid so that it cannot be modified. Instructions are given on the electronic version of Section 00 41 00.

**End of Section 00 21 13**

Bid By:	SMID CONSTRUCTION LIMITED
Place of Business at:	460 FINLEY AVENUE AJAX, ONTARIO L1S 2E3
Having Head Office at:	SAME AS ABOVE

(hereinafter called the "Bidder"), herein offers to:

Byside Mall Limited c/o A. John Page and Associates Inc.  
As Receiver of Bayside Mall Limited  
100 Richmond St. W., Suite 447  
Toronto, ON M5H 3K6

hereinafter called the Owner, that:

We the undersigned, having carefully examined the site, investigated the conditions pertaining to the Work, the Information for Bidders, the Form of Agreement, the Definitions, the General Conditions, the Supplementary Conditions, the Bid Documents, the Specifications and the Drawings, including Addenda Nos.

0 to 1 (herein collectively called the "Contract" or "Contract Documents") for:

150 Christina Street, Sarnia

Expansion Joint Replacement

(herein called the "Work") will provide and pay for all materials, labour, tools, equipment and plant necessary for the execution of the Work as called for by the said Contract Documents in the manner prescribed therein and in accordance with the requirements of the Consultant (as defined in the Contract) in accordance with the following Statements:

Bidder: SMID CONSTRUCTION LIMITED



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### STATEMENT A – BID AGREEMENT

If this bid is accepted by the Owner:

1. The Bidder will perform the Work as specified in accordance with the terms of the Contract for the amounts given in Statement B and C, using the subcontractors listed in Statement D.
2. The Bidder will carry out any additional or extra work (including the supply of any additional materials or equipment pertaining thereto) or will delete any Work as may be required by the Consultant in accordance with the Contract.
3. The carrying out of any Work referred to in Paragraph 1 above or the issuance by the Consultant of a Change Order relating to such Work or the acceptance by the Bidder of such Change Order shall not, except as expressly stated in such Change Order, waive or impair any of the terms of the Contract or of any Change Order previously issued by the Consultant or any of the rights of the Owner or the Consultant under the Contract.

By submitting this bid, the Bidder agrees that:

- i) This bid is made without any connection, comparison of figures or arrangements with, or knowledge of, any other corporation, firm or person making a bid for the same Work except for prices submitted for subcontracts, and is in all respects fair and without collusion or fraud.
- ii) This bid will be left open for acceptance for a period of 60 days from the date of closing.
- iii) The drawings and specifications have been examined and there are no materials or methods indicated to which the Bidder objects or for which the Bidder would be unwilling or unable to accept responsibility. The Bidder agrees that after signing the Contract, full responsibility for the performance of the Work will rest with the Bidder and the Owner is in no way to be held liable.

Bidder: SMID CONSTRUCTION LIMITED

### STATEMENT B - BID

**Notes:**

**Unit Price Quantities** : Accurate quantities for portions of the Contract cannot be pre-determined; they will be established as part of the Work. The estimated quantities below are approximate and serve to establish the Estimated Contract Price.

**Taxes and Overhead** : The prices are for the completed work, including all overhead, profit and other Contractor related expenses. All pricing is to **exclude Value Added Taxes**.

**All Other Items** : Costs for items that are not specifically itemized and described below, but are required to complete the work in accordance with the Drawings and/or Specifications, and whose quantities can be pre-determined, are to be included under "All Other Items".

#### 1. BASE BID: REPLACE ROOF SLAB EXPANSION JOINT

NO.	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	PRICE FOR ITEM
<b>A</b>	<b>General</b>			
A1	Mobilization/Demobilization	1 Lump Sum		\$ 55,000.00
<b>B</b>	<b>Concrete Repair</b>			
B1	Concrete removal, steel and concrete preparation, concrete replacement, finishing and curing.			
a)	on top surface of slab	60 m <sup>2</sup>	220 /m <sup>2</sup>	\$ 13,200.00
b)	soffit of slab	5 m <sup>2</sup>	500 /m <sup>2</sup>	\$ 2,500.00
c)	through slab	15 m <sup>2</sup>	500 /m <sup>2</sup>	\$ 7,500.00
d)	concrete/ledge beam (assume full height of beam, 300mm wide)	60 m	950 /m	\$ 57,000.00
e)	vertical (columns)	50 m <sup>2</sup>	700 /m <sup>2</sup>	\$ 35,000.00
B2	Supply and install new epoxy coated reinforcing steel, as directed by the Consultant.	5000 kg	1 /kg	\$ 5,000.00
B3	Supply and install new epoxy coated dowels with minimum 200 mm embedment epoxy adhesive anchors.	40 dowels	60 /dowel	\$ 2,400.00
B4	Splice Welding			
a)	Mobilization to site	4 mob	200 /mob	\$ 800.00
b)	Welding time on-site	20 /hr	100 /hr	\$ 2,000.00
<b>C</b>	<b>Waterproofing</b>			
C1	Complete Expansion Joint Replacement: Remove existing overburden minimum 3 m wide centred at expansion joint. Replace expansion joint waterproofing. Replace existing waterproofing minimum 2 metres wide centred at expansion joint. Tie-in to existing waterproofing.	1 Lump Sum	Lump Sum	\$ 48,000.00
C2	Install new overburden as per PD-1, to match existing grades and finishes, including existing traffic markings.	1 Lump Sum	Lump Sum	\$ 35,000.00
<b>D</b>	<b>Drainage</b>			
D1	As directed by Consultant, supply and install new bi-level pavement area drains.	6 drains	4,000 /ea	\$ 24,000.00
D2	Supply and install new drainage piping connected to new drains.	80 m	250 /m	\$ 20,000.00
<b>E</b>	<b>Miscellaneous Repairs</b>			
E1	Remove and store existing shoring on garage roof deck	1 Lump Sum	Lump Sum	\$ 1,500.00

**\*\*OUR PRICE INCLUDES FOR A PREFORMED EXPANSION JOINT AND A 10 YEAR WARRANTY**

Bidder: SMID CONSTRUCTION LIMITED

**STATEMENT B – BID**

**Notes:**

**Unit Price Quantities** : Accurate quantities for portions of the Contract cannot be pre-determined; they will be established as part of the Work. The estimated quantities below are approximate and serve to establish the Estimated Contract Price.

**Taxes and Overhead** : The prices are for the completed work, including all overhead, profit and other Contractor related expenses. All pricing is to **exclude Value Added Taxes**.

**All Other Items** : Costs for items that are not specifically itemized and described below, but are required to complete the work in accordance with the Drawings and/or Specifications, and whose quantities can be pre-determined, are to be included under "All Other Items".

F	Cash and Contingency Allowances			
F1	Cash Allowance for Testing	1	Allowance	\$ 2,000.00
F2	Cash Allowance for Permits (may be deleted at option of Owner if obtained prior to mobilization)	1	Allowance	\$ 4,000.00
F3	Contingency Allowance for Electrical and Mechanical Repairs	1	Allowance	\$ 4,000.00
F4	Contingency Allowance for T&M Items	1	Allowance	\$ 12,000.00
G	Bonding (this may be deleted at the option of the Owner)	1	Lump Sum	\$ 5,900.00
F	All Other Items	1	Lump Sum	\$ 12,000.00
ESTIMATED TOTAL BASE BID (Excluding Tax)				\$ 348,800.00
ESTIMATED START DATE: 03/21/15 (month/day/year)				
CONTRACT DURATION: 11 (weeks)				
FULL TIME SITE WORK FORCE TO BE PROVIDED: 5 persons				

**\*\*OUR PRICE INCLUDES FOR A PREFORMED EXPANSION JOINT AND A 10 YEAR WARRANTY**

Bidder: SMID CONSTRUCTION LIMITED

## 2. OPTIONAL ITEMS

Optional items shall be priced as stand-alone items, including allowances for increases in bonding, access, mobilization and demobilization, supervision and permits. Optional items may be included in the base contract or may be included after award, by Change Order, if required.

NO.	OPTIONAL ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	PRICE FOR ITEM	CONTRACT SCHEDULE EXTENSION
X1	Winter Work: Cost premium to complete the scope of work as winter work (starting January 2015) in lieu of Spring 2015. Include for all necessary enclosures and heating to facilitate cold weather work.	1 Lump Sum		\$ 10,000.00	1 weeks
X2	<del>Power Wash: Following completion of the work power wash work area, including all slabs, walls, ceilings and piping. Assume power washing extends one parking bay on either side of all work areas.</del>	<del>1 Lump Sum</del>		<del>\$ 3,500.00</del>	<del>0 weeks</del>

Bidder: SMID CONSTRUCTION LIMITED

### STATEMENT C – CHANGES IN WORK

The following hourly rates (which are to include overhead and profit) will be applicable for this contract:

NO.	DESCRIPTION	LABOUR/MATERIAL RATE
1.	Foreman	100 /hr
2.	Journeyman	95 /hr
3.	Labourer	90 /hr
4.	Welder	125 /hr
5.	Project Manager	110 /hr
6.	Other:	\$ /hr

**STATEMENT D**  
**LIST OF PROPOSED SUBCONTRACTORS, SUPPLIERS AND PRODUCTS**

The name of each proposed subcontractor or supplier must be given in the following list. If the Bidder proposes to sublet a part of the work, which is not listed below, the subtrade and the proposed subcontractor's name shall be added to the list. Failure by a Bidder to comply with the foregoing requirements may result in the bid being rejected as an informal bid.

Failure to supply name of proposed subcontractor and product at the time of the bid shall indicate that work will be performed by the bidding contractor's own forces. Subcontractors not proposed at the time of bid shall not be permitted to perform work in this contract without the Owner's/Consultant's approval.

SUBTRADE	PROPOSED SUBCONTRACTOR OR SUPPLIER	PROPOSED SPECIFIED PRODUCT
Membrane Waterproofing	OWN FORCES	AS SPECIFIED
Ready-Mixed Concrete	LAFARGE	AS SPECIFIED
Polymer Modified Mortar	OWN FORCES	AS SPECIFIED
Electrical	TBD	AS SPECIFIED
Traffic Marking	TBD	AS SPECIFIED
Painting Concrete	OWN FORCES	AS SPECIFIED
Plumbing and Drainage	TBD	AS SPECIFIED
Others:		

Bidder: SMID CONSTRUCTION LIMITED

Dated at   AJAX   this   18   day of   DECEMBER  , 2014.

SMID CONSTRUCTION LIMITED  
NAME OF COMPANY

\_\_\_\_\_  
SIGNATURE OF WITNESS

\_\_\_\_\_  
SIGNATURE OF BIDDER

GURJIT HAYER  
NAME

VICE PRESIDENT  
TITLE

(SEAL)

**Notes:**

1. If the bid is submitted by or on behalf of a Corporation, it must be signed in the name of such Corporation by the duly authorized officers and the seal of the Corporation must be affixed. If the bid is submitted by or on behalf of an individual or a partnership, the signature of the individual or partnership must be witnessed.
2. Attach Agreement to Bond.

**End of Section 00 41 00**

Bidder: SMID CONSTRUCTION LIMITED

## **PART 1 - GENERAL CONDITIONS**

This Contract shall be governed by the General Conditions, CCDC Standard Construction Document #4 – UNIT PRICE CONTRACT (2011), except as such conditions are amended by these Supplementary Conditions.

## **PART 2 - SUPPLEMENTARY CONDITIONS**

### **2.1 Supplements to General Conditions**

All articles contained within these Conditions of the Contract shall be read in conjunction with, and apply to, the General Conditions of the Construction Contract.

### **2.2 Article A-3 Contract Documents**

The Conditions of the Contract shall be a part of the Contract Documents.

### **2.3 Definitions**

The following definitions shall apply to the Contract:

- .1 **Contract Time:** add "All time limits stated in the Contract documents are of the essence of the Contract."
- .2 **Estimated Quantity:** The quantity of a unit price item initially assumed in calculating the Contract Prices.
- .3 **Pay Quantity:** The actual quantity of the unit price item that was required to be completed as part of the work.
- .4 **Unit Price Measurement:** The units or dimensions necessary to calculate the pay quantity.

### **2.4 GC 2.3 Review and Inspection of Work**

- .1 Add 2.3.8: "The Contractor shall only proceed with unit price work with Consultant approval."
- .2 Add 2.3.9: "The final Contract Price shall not exceed the initial estimated Contract Price without Owner approval."
- .3 Add 2.3.10: "The methods of measurement for determining Unit Price Item pay quantities shall be agreed to by the Consultant."
- .4 Add 2.3.11: "The Contractor shall keep accurate records of Unit Price Item measurements, pay quantities and their locations."



- .5 Add 2.3.12: "For Unit Price Items involving repair, measurements and pay quantities shall be determined and agreed to after removal/preparation is complete, but prior to placement of repair materials."
- .6 Add 2.3.13: "If the Owner and Consultant agree, the Consultant may designate one or more project representatives to assist the Consultant in the timely recording of the data necessary to confirm agreement with the pay quantities. The duties, responsibilities and limitations of authority of a project representative shall be set forth in writing to the Contractor and Owner."

## **2.5 GC 3.4 Document Review**

Add 3.4.2: "Errors, inconsistencies, or omissions which could have been reasonably identified and accounted for when pricing the work shall not be the basis for claiming a change in the Contract price."

## **2.6 GC 3.5 - Construction Schedule**

In 3.5.1.1, replace: "prior to the first application for payment" with "before the Work commences."

Add 3.5.1.4: "Once approved this schedule shall not be altered without approval from the Owner and Consultant."

## **2.7 GC 3.10 - Shop Drawings**

Add to 3.10.12: "Unless otherwise agreed to, the schedule for the Consultant to review and return Shop Drawings shall not be less than 10 working days."

## **2.8 GC 3.11 - Use of the Work**

Add 3.11.3: "The Owner or Consultant may direct the Contractor to suspend work that causes excessive disruption pending development and implementation of acceptable solutions that allow the work to proceed."

## **2.9 GC 4.1 - Cash Allowance**

In 4.1.5, delete "by Change Order".

## **2.10 GC 4.2 - Contingency Allowance**

- .1 Delete 4.2.3 and replace with the following:

"Expenditures made under the contingency allowance shall be authorized by the Consultant. Work shall be valued in accordance with GC 6.2.1 Change Order or GC 6.3 Change Directive, and shall not exceed the contingency allowance".

- .2 In 4.2.4, delete "by Change Order".

## **2.11 GC 5.2 - Applications for Progress Payment**

- .1 In 5.2.3.1, change: " the value of Products delivered to the Place of the Work" to "the value of Products incorporated into the Work"
- .2 Delete 5.2.7 and add new 5.2.7: "The Contractor shall submit, with each application for payment after the first, including application for release of holdback:
  - .1 a statutory declaration by the Contractor on a copyright sealed form CCDC Document 9A-2001, to the effect that all payments for wages and salaries, all payments due to sub-contractors, all payments for materials furnished, and all other accounts have been paid in full as required by the contract up to and including the latest progress payment received;
  - .2 an updated schedule, and;
  - .3 a current Workplace Safety & Insurance Board Clearance Certificate."
- .3 Add 5.2.8: "Before final inspection is completed and before applying for release of holdback, the Contractor shall submit to the Owner/Consultant:
  - .1 all specified written guarantees, bonds, records, certificates and maintenance and operation manuals (including instructions to the Owner's staff in the operation of any plant or equipment);
  - .2 the name, address, telephone number, and contact person of the general contractor, sub-contractors, material manufacturers and material suppliers.

## **2.12 GC 5.3 Progress Payment**

- .1 To 5.3.1.1, add "if requested to do so by the Owner,"
- .2 Change 5.3.1.3 to: "the Owner shall make payment to the Contractor as provided in Article A-5 of the Agreement - Payment, on or before 30 calendar days after receipt of the Consultant certificate for payment."

## **2.13 GC 6.2 - Change Order**

- .1 In 6.2.2.4, replace: "as agreed by the parties" with: "fixed at 15%".

## **2.14 GC 6.3 - Change Directive**

- .1 Add 6.3.6.4: "The Contractor's fee shall be 15 percent."
- .2 In 6.3.7.5 and 6.3.7.6, "tools", "Construction Equipment" and "hand tools" shall only include those that have a new purchase value that is greater than \$500.

## 2.15 GC 6.7 – Quantity Variations

- .1 In 6.7.2, 6.7.3, and 6.7.4 replace: “15%” with: “30%”
- .2 In 6.7.3, replace: “115%” with: “130%”
- .3 In 6.7.4, replace: “The adjusted Unit Price shall not exceed a Unit Price that would cause the payment amount to exceed *that* derived from the original Unit price and estimated quantity”;

with: “The adjusted Unit Price shall not exceed a Unit Price that would cause the payment amount to exceed *70% of the value* derived from the original Unit Price and estimated quantity.

- .4 In 6.7.7 add: “The Contractor shall proceed with the work while the matter is subject to final determination PART 8 – DISPUTE RESOLUTION. Pending such settlement, payment for the work performed shall be made as determined by the Consultant and included within certificates for payment.

## 2.16 GC 9.4 - Construction Safety

- .1 Add 9.4.2: “No comments, suggestions or instructions from the Owner or Consultant are to be relied upon or assumed to reduce or replace the Contractor’s responsibility for construction safety.”
- .2 Add 9.4.3: “The Contractor shall indemnify and hold harmless the Owner and the Consultant, their agents and employees from and against claims, demands, losses, costs, damages, actions suits or proceedings by third parties that arise out of, or are attributed to, the Contractor’s safety performance.”

## 2.17 GC 9.5 - Mould

In 9.5.2.4 replace: “GC 21.1 – INDEMNIFICATION” with: “GC 12.1 – INDEMNIFICATION”

In 9.5.3.4 replace: “as required by paragraph 12.1” with: “as required by GC 12.1 - INDEMNIFICATION”

## 2.18 GC 10.4 - Workers’ Compensation

In 10.4.1: replace “and the issuance of *the final* certificate for payment” with: “and the issuance of *each* certificate for payment.”

## 2.19 GC 11.1 - Insurance

- .1 Delete 11.1.1.3: “Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the work.”
- .2 Delete 11.1.1.4: “Broad form” property insurance” in its entirety.

.3 Delete 11.1.1.5: "Boiler and Machinery Insurance" in its entirety.

.4 Delete 11.1.1.6 in its entirety.

.5 Delete 11.1.6 in its entirety.

#### **2.20 GC 12.1 – Indemnification**

In 12.1.2.2, replace "\$2,000,000" with \$5,000,000".

#### **2.21 GC 12.2 – Waiver of Claims**

.1 In 12.2.2 delete: "of GC 12.1 - INDEMNIFICATION"

#### **2.22 GC 12.3 - Warranty**

.1 In 12.3.1, 12.3.3, 12.3.4, and 12.3.6 replace: "one year" with: "two years."

**End of Section 00 73 04**

## **PART 1 - GENERAL**

### **1.1 General**

- .1 Accept instructions only from the Consultant and/or sources designated by the Consultant.
- .2 The building shall remain in use in areas not immediately affected by the work. Ensure that normal building operations and maintenance may be carried out without disruption, except as otherwise noted herein or stated in the Bid.
- .3 Work shall be allowed from 7a.m. to 7p.m., Monday to Friday. The work shall be performed according to the start date and duration given in the Bid Document.

### **1.2 Protection of Work, Property and Persons**

- .1 Interior: Full height polyethylene plastic barrier (dust protection)
- .2 Exterior: portable chain link fence as per L1-A3;
- .3 Maintain all emergency and service access routes clear at all times. Provide barricades and signs necessary to direct vehicular and pedestrian traffic around construction areas at all times.
- .4 Before commencing work, identify all paths for dust, fumes or odours generated by the work to penetrate interior spaces. These shall include make-up air intakes, ventilation/exhaust openings for service rooms such as generator or hydro vault rooms, doors, windows, and pipe or cable penetrations. Take measures such as enclosing, sealing and/or providing sustained negative pressure to prevent dust, fume or odour ingress. If required, coordinate temporary shut-down of mechanical equipment by Owner.
- .5 Be responsible for damage caused or clean-up required by dispersion of dust generated by the work.
- .6 Before commencing work, inspect all building components, including drains, lights, windows, screens, doors, etc. within the area of the work. Submit a written list if there is existing damage, or items not functioning.
- .7 Receive, be responsible for, and promptly arrange all details of compensation for all damage existing after the work which was not recorded prior to the work. Unless dealt with promptly by the Contractor, the Contractor will be responsible for costs for time of Owner's or Consultant's personnel and other costs incurred for claims not handled by the Contractor. This includes costs for correction of deficiencies paid for by the Owner.
- .8 The Contractor shall assume all responsibility for any damage resulting from the use of the building's drainage system to dispose of construction water irrespective of the drain system condition.
- .9 Ensure the building envelope affected by the work is made water-tight prior to adverse weather, and at the end of each day, to prevent interior leakage.

### **1.3 Progress of Work and Schedule**

- .1 Monitor compliance with the contract schedule on an ongoing basis.
- .2 At no time shall the size of the work crew be decreased from the size indicated on the project schedule.
- .3 If unit price items increase by more than 30%, or should unusual weather or other unforeseen conditions affect the project schedule, submit a revised schedule to reflect approved changes to the project schedule.
- .4 If the Owner or Consultant, at any time, considers the number of workers, equipment or materials to be insufficient to maintain the Contract schedule, the Owner, through the Consultant, may, in writing, order the Contractor to work weekends/and or additional hours or provide additional workers, equipment, or materials as the Owner and Consultant may think necessary and in such longer period as may be fixed by any such order at no additional cost to the Owner in order that the Work be performed according to the terms of the Contract. Should the Contractor fail to comply with the order, the Contractor shall be considered to be in default of the Contract.
- .5 Should the Contractor fail to meet the project schedule as a result of conditions under their control, the Owner reserves the right to deduct costs for additional time required by the Consultant from amounts owed to the Contractor.
- .6 Where temperature sensitive work must take place and environmental conditions are not likely to be within the specified limits, and where it is not feasible to provide heat (as agreed to by the Contractor and Consultant), and where the Manufacturer has provided the Contractor with approval to proceed with the work, proceed only with written authorization from the Consultant. At least five days before the work is to take place, submit Manufacturer's written instructions to the Consultant. The Manufacturer's written instructions must include the revised environmental condition limits, details of required modifications to products or application procedures, and risks associated with proceeding under the revised conditions. The Consultant is not obliged to authorize the change.

### **1.4 Project Supervision and Coordination**

- .1 Ensure that a qualified foreman, capable of communicating effectively in the English language, familiar with the requirements of these specifications, is on site at all times, including during subcontractors' activities.
- .2 Be aware that the breakdown of the specification into sections does not represent any actual division of the work. Be responsible for coordination between items of work which would be covered under separate specification sections. Coordinate and be responsible for the work of the various sub-trades.
- .3 Take reasonable measures to control noise, dust, smoke, and odours during construction. Control execution of all work to minimize interference of occupants' use of the building. Be responsible for workers' activities while on the site.

- .4 Conform to all By-Laws and all Legislated requirements including those related to labour, noise and the environment.
- .5 Maintain at the job site one copy, including all amendments, of each of the following:
  - .1 Contract drawings and specifications
  - .2 Site Visit Reports issued by Consultant
  - .3 Additional Drawings issued by Consultant
  - .4 Contemplated Change Orders and Change Orders
  - .5 Material Test Reports
  - .6 Accurate daily records of all work performed, weather and labour force
  - .7 Manufacturer's specifications for all products to be used
  - .8 Proof of WHMIS training for all site personnel
  - .9 Product data sheets to meet the WHMIS requirements
  - .10 Occupational Health and Safety Act and Site Specific Safety Plan
  - .11 Shoring Design
- .6 Notify all staff and sub-contractors that the Contractor is entirely responsible for site safety. No actions or lack of action by the Owner or Consultant shall be deemed to be an instruction related to safety of the workplace.
- .7 Drawings are, in part, diagrammatic and are intended to convey the scope of work and indicate general and approximate locations and arrangement of work. Obtain more accurate information about locations, arrangements and sizes from actual conditions on site.
- .8 When site conditions require reasonable changes to the drawings, obtain the Consultant's approval prior to making such changes.

#### **1.5 Applicable Laws, Regulations and Standards**

- .1 Perform all work in accordance with current Code requirements and local and municipal by-laws.
- .2 All Standards referred to shall be the current editions as amended at the date of issue of Contract Documents.
- .3 The Contractor is responsible for obtaining and paying for all building permits, street permits, power line protection, damage deposits, etc., as required.
- .4 The Contractor is responsible for notifying the proper municipal inspector in advance (as specified by the inspector) to complete review of any project component the local municipal authority requires. Ensuring that correct municipal reviews are completed shall be solely the Contractor's responsibility. Additional work to expose or re-do uninspected work shall be completed by the Contractor at their expense.

## **1.6 Substitutions**

- .1 Submit in writing, using the Request for Substitution form approved by the Consultant, any requests for substitutions to materials and/or installations specified and/or stated in the bid documents, at least ten working days prior to the intended application.
- .2 Submit information regarding the proposed substitution, including the reason for the change, the benefit to the Owner, manufacturer data sheets, independent test reports, performance differences compared with the specifications, and the amount of credit offered.
- .3 Should the number of Requests for Substitutions be unreasonable, the Consultant may refuse to consider further requests unless the Contractor agrees to pay for the Consultant's evaluation. The agreed fee will be deducted by the Owner from the amounts owed to the Contractor and paid to the Consultant.

## **1.7 Project Meetings**

- .1 At least one week prior to start of work, attend a meeting between the Consultant, the Owner and /or Owner's representative and the Contractor's Project Manager and Site Superintendent to discuss the work.
- .2 Attend regular site meetings with the Consultant, the Owner and /or Owner's representative at a mutually agreeable time for the discussion of progress of the work and to resolve any difficulties.

## **1.8 Quality Assurance**

- .1 Make all measurements required to perform the work. Determine site dimensions and levels so that all new work is installed to correct sizes.
- .2 Maintain all work completed or in progress in its condition as accepted.
- .3 All work shall meet or exceed the more stringent of the manufacturer's requirements or the requirements of this Specification.

## **1.9 Construction Review**

- .1 The Contractor shall notify the Consultant and inspection and testing agents not less than 48 hours prior to each part of work being ready for review or testing. Work which requires review or testing shall not be performed on weekends or holidays unless previously agreed to.
- .2 The Contractor shall be responsible for payment of costs if the work is not ready when stated and if the Consultant and inspection and testing agency are not given sufficient notice of such delay.



- .3 The Owner reserves the right to deduct from the Contractor amounts for extra inspection and testing by the Consultant as required for certification of payment of work done to repair a deficiency.

#### **1.10 Temporary Facilities**

- .1 Provide a means of direct communication with the site to permit continuous contact on a daily basis.
- .2 Provide temporary sanitary facilities and maintain in a sanitary condition. Site facilities shall not be used by the Contractor's forces.
- .3 Temporary electrical power for hand held equipment will be provided free of charge by the Owner. Arrange and pay for any usage and connection costs required for all other equipment. Do not connect to the building's power supply without written permission of building management.
- .4 The existing water supply from existing hose bibs at the site may be used free of charge. Any water required in excess of this supply shall be metered and paid for by the Contractor. Be responsible for connecting to the existing services. Do not use fire system without written permission of building management. Advise Building Operations/Property Management of any procedures that may cause fire alarms to activate.
- .5 With the exception of safety/instruction signs and notices, no signs or advertising shall be permitted on the site or equipment except as authorized by the Owner. Safety/instruction signs and notices shall be posted in accordance with current Code requirements and local and municipal by-laws. Maintain approved signs and notices in good condition for duration of work.

#### **1.11 Materials and Equipment**

- .1 Deliver all materials to the site in their original unopened containers, with labels intact. Where applicable, check material expiry dates. Immediately dispose of all materials older than their expiration date away from the site.
- .2 Store all materials and equipment in accordance with manufacturer's written requirements, and in a dry, secure and protected manner which will not overload the structure and shall prevent vandalism or unauthorized use. Storage locations shall be approved in advance by the Owner.
- .3 Be responsible for the security of all materials and equipment. Make no claims for theft or damage to the Owner.
- .4 Non-specified materials shall not be brought to site. Remove any non-specified materials from site within 24 hours upon request by the Consultant.

### **1.12 Waste Management**

- .1 Unless otherwise specified, salvaged material resulting from the Construction shall become the property of the Contractor who must dispose of it away from the site in a timely manner. Storage locations shall be approved in advance by the Owner.
- .2 Separate recyclable and toxic waste materials from the waste stream. Deliver to a local waste management facility.

### **1.13 Deficiencies**

For any deficiencies in the work, the Contractor shall submit a written proposal for the repair of the deficiency. If engineering design is required, a qualified Professional Engineer shall be engaged by the Contractor. All testing required shall be paid for by the Contractor.

### **1.14 Project Closeout**

- .1 Flush clear all drains affected by the work.
- .2 Clean site of all materials and debris created by the Construction. Power wash all ceilings, walls and floors adjacent to the work of dust and materials generated during the work. Remove all caulking, paints, cementitious material or the like from windows. Damaged or scratched windows must be replaced at the Contractor's cost.
- .3 Submit written acceptance that utility companies have inspected services to their satisfaction.
- .4 Attend a final walk-through with the Owner and Consultant. The Consultant will record identified incomplete and deficient work on a punchlist.
- .5 Make good all known deficiencies in the work.
- .6 Notify Consultant of readiness for final inspection only after completion of these items.
- .7 The Consultant will review completion of punchlist items during one review. Additional reviews required to check un-rectified deficiencies or work that remains incomplete will be charged back to the Contractor. These charges will be deducted by the Owner from the Contractor's progress payments and paid from those funds to the Consultant.

### **1.15 Emergencies**

- .1 In an emergency affecting or threatening the safety of life, the work or adjoining property, the Owner and Consultant have authority to stop the progress of the work.
- .2 Provide the Owner and Consultant with the name and telephone number of a person that is available and may be contacted during off hours, weekends and holidays in case of emergency.

**1.16 Cash Allowances**

- .1 Expend cash allowances only on written instructions from the Consultant. Use only Testing Agencies approved by Consultant.
- .2 Include in each expenditure from cash allowances, applicable taxes as specified in the General Conditions of the Contract.
- .3 Payment shall be made only for actual charges and only at the rate for work performed during normal business hours. No overhead or profit for the Contractor will be included in these amounts. Charges for stand by time or non-productive visits caused by the Contractor or the Contractors' forces will be the Contractors' responsibility.
- .4 Cash allowances for permits shall be used only for the cost of the permit. All other costs associated with obtaining any permit shall be included elsewhere.

**End of Section 01 00 00**

## 1. OBJECTIVE

Work under this contract is to complete roof slab expansion joint and associated concrete repairs at 150 Christina Street, Sarnia in order to maintain property standards. As part of the work, all necessary concrete repairs to the exposed portions of the roof slab will be completed to facilitate the waterproofing repair.

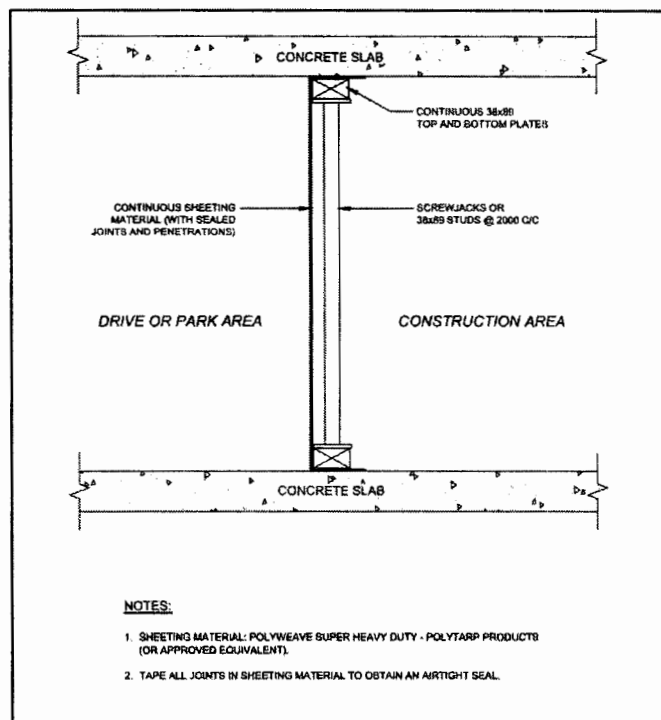
Note that there is existing shoring in place along the length of the expansion joint and the garage roof deck accessible beyond the expansion joint has been closed. This shoring is to be maintained until concrete repairs have been completed.

## 2. SCOPE OF WORK

The work includes, but is not limited to, the following:

### 2.1 General (Section 01 00 00 and 01 35 13.01)

- .1 **Interior Construction Barrier:** Supply, install and maintain a construction barrier to enclose the interior work area at all times. Provide secure framing and seal all joints. Construct as per detail below.



L1-A3: Construction Protection System

- .2 **Exterior Construction Barrier:** Supply, install and maintain a construction barrier around the exterior work area at all times, including protecting against unauthorized access. Provide 6ft tall chain link fencing as per detail L1-A5.
- .3 **Phasing:** The work is to be completed in phases. Garage exit and access must be maintained at all times.
- .4 **Traffic Flow:** Access for garbage removal, emergency routes and parking in areas not affected by the work must be maintained at all times. Supply, install and maintain traffic lights, signage and mirrors as necessary to ensure smooth traffic flow through the garage.
- .5 **Site Preparation:** Remove, store and protect existing soffit mounted light fixtures and all other appliances mounted to the slab underside that are at risk of damage. Provide temporary lighting and facilities to maintain lighting, alarms, etc. as required to facilitate the performance of the work and so as to maintain operation of the systems beyond the work areas. Following the completion of the structural repairs, reinstall fixtures to their original location and arrange for third party inspection to re-verify the function of all systems (i.e. ESA, fire safety inspection, etc.).
- .6 **Existing Shoring:** Remove and store existing structural shoring on garage roof deck (for pick-up by others). Provide your own shoring, to match existing, until project is complete. Phase installation so that the beam remains fully shored at all times. Include for design and review of replacement shoring by an Engineer licensed to work in the Province of Ontario. Existing shoring consists of:



Photo 1: Garage Roof Deck Closed Above Expansion Joint



Photo 2: Existing Shoring Blow Expansion Joint



Photo 3: Existing Shoring Along Expansion Joint

- .7 **Shoring (related to concrete repairs):** Provide shoring drawings for repairs as required by the technical sections herein, and as otherwise necessary to complete the work. Drawings shall be prepared by a professional engineer licensed to practice in the province. Include for field review by the Shoring Design Engineer and submit written acceptance for the installation.

## **2.2 Concrete Repairs**

Repair concrete in conformance with Sections 03 01 30.30, 30 01 30.40, 03 01 30.50 and 03 01 30.60 and all details referenced below.

- .1 **Mark-out Concrete Repairs:** Identify and mark all delaminated concrete on the roof slab topside, underside and ledge beam. Do not proceed with the removals until reviewed by the Consultant.
- .2 **Repair Concrete:** Repair concrete designated by the Consultant as per EST1-A3, EST1-A1, EST1-A4, EST1-D1.

Repair large soffit delaminations as through-slab, as directed by the Consultant.

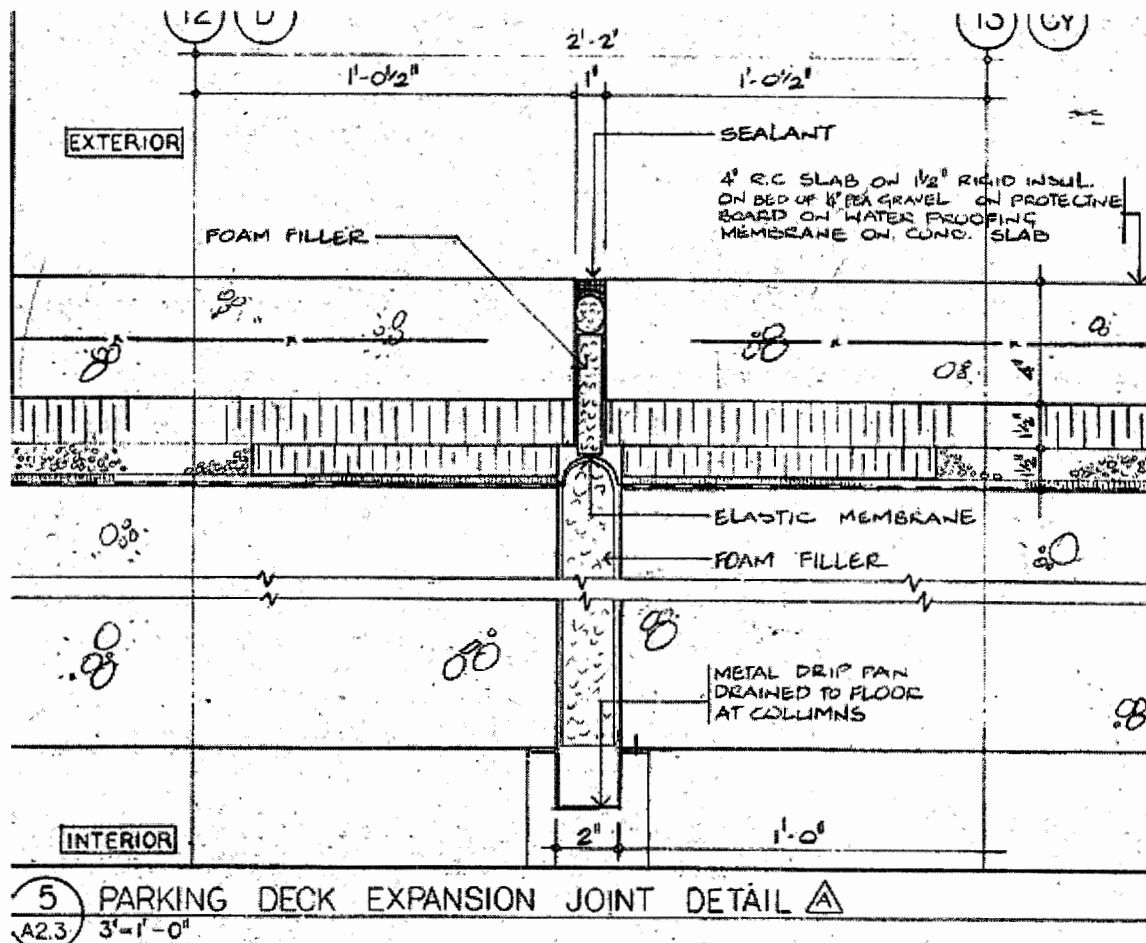
- .3 **Level Rough Surfaces:** Where approved by the Consultant, repair all rough or pitted surfaces with epoxy mortar or polymer modified mortar

## **2.3 Reinforcing Steel Repairs**

- .1 **Steel Preparation:** Clean and field apply epoxy coating to reinforcing steel remaining after removals.
- .2 **Install new Reinforcing Steel:** As directed by the Consultant, supply and install new epoxy coated reinforcing steel.
- .3 **Splicing of Reinforcing Steel:** Where required and as agreed to by the Consultant, splice weld new steel onto the existing in accordance with Section 03 01 30.40 and as per EST1-F1.
- .4 **Install Dowels:** As directed by the Consultant, supply and install new black steel dowels. Use Hilti HIT-RE500 adhesive with minimum 200mm embedment into parent concrete. Exposed portion of dowel (not in parent concrete) to be epoxy coated on site.

## **2.4 Waterproofing**

- .1 **Waterproof Expansion Joints:** Remove and dispose of overburden materials a minimum of 3 meters wide centered on the expansion joint. Include for removal of the existing waterproofing system from the roof slab at locations shown on SP-1. Remove and dispose of existing drainage trays/drip pans below the existing expansion joint. Based on original drawings, the existing overburden consists of:



Prepare surface and install a new hot applied rubberized asphalt membrane and looped expansion joint seal as per Detail EST3-B4 a minimum 1 metre on both sides of the expansion joint. Include tie-in to existing waterproofing system.

- .2 **Water Test:** Upon completion of repairs and the installation of new drains, re-water test repair area to confirm the completeness and effectiveness of the waterproofing. Make good all deficiencies.
- .3 **Replace Overburden:** Install new overburden as per PD-1 and to existing grades and finished levels. Reinforcing steel in new reinforced concrete topping to match steel configuration in existing topping. Reinstate all traffic markings affected by the work.

## 2.5 Miscellaneous Repairs

- .1 **Replace Bi-Level Drains:** On Consultant's approval, supply and install new bi-level pavement area drains to replace deteriorated existing drains. Include all waterproofing around drain to tie into existing waterproofing system. Provide new drain piping, as required, including connection to existing drainage system.



- .2 **Other Minor Repairs:** Complete minor repairs to address unanticipated conditions as found to be necessary and as directed by the Consultant in writing. Payment for this work shall be from a Contingency Allowance on the basis of time and materials or quoted fixed price, as agreed to prior to work proceeding.

## **2.6 Optional Work**

- .1 **Complete Scope of Work as during Winter 2015:** Provide a cost premium to complete the scope of work as winter work (starting January 2015) in lieu of Spring 2015. Include for all necessary enclosures and heating to facilitate cold weather work.
- .2 **Power Wash Garage:** Following completion of the work power wash entire garage, including all slabs, walls, ceilings and piping.

**End of Section 01 11 00**

## **PART 1 - GENERAL**

### **1.1 General**

- .1 The term "Engineered" refers to a submittal designed/reviewed by a Professional Engineer who is technically knowledgeable in the area of work and is registered to practice in the place of work. Drawings must be sealed and signed by the Professional Engineer.
- .2 Samples reviewed by the Owner/Consultant will be the standard for those materials. Material substitutions without prior written acceptance are not permitted. Allow extra time in the submitted schedule for colour matching materials, approval of samples and mock-ups, and delivery of accepted products to site.
- .3 Do not proceed with ordering the materials or fabrication until approval is received in writing. In the case of shop drawings submitted for review, do not proceed with fabrication until the drawings have been returned as "reviewed as Noted" or "Reviewed". If the Contractor proceeds with the work before approval is received, the Contractor is responsible to correct any damage or defects at no cost to the Owner.
- .4 Engineers preparing any design, including shop drawings required by these specifications are required to have Professional Liability Insurance in the amount of at least \$1 Million Dollars. The Contractor shall submit proof of their Engineer's Insurance and a copy of their Certificate of Authorization with the project start-up documents.

### **1.2 For Shop Drawings:**

- .1 Review of drawings by the Consultant does not relieve the Contractor of responsibility for the design adequacy and safety.
- .2 Drawings shall be clearly legible and are to illustrate all components that are a part of the system, such as the overall size and openings of the assembly. Where necessary, provide plans, vertical and horizontal sections and enlarged details to clearly illustrate components and other associated information. Information in shop drawings shall include material, thickness of all components, anchorages, construction method and finishes.
- .3 When required by the Consultant, the Contractor shall attend a meeting at the Consultant's office to discuss the shop drawings and to review their content. The shop drawings shall be submitted a minimum of one week prior to the meeting. The intent of the meeting will be to discuss/confirm the shop drawing and project requirements.
- .4 If required, revise the shop drawings as noted/discussed. Proceed with the mock-up once revised drawings are approved by the Consultant.
- .5 After the meeting and the completion of the mock-up, revise shop drawings as required and submit three copies of shop drawings.

**PART 2 - REQUIRED SUBMITTALS**

Related Section		Description	Time
N/A	N/A	<b>Outline of Construction Safety Manual</b>	Before Mobilizing on Site
N/A	N/A	<b>Names of Trained Site Safety Personnel</b>	Before Mobilizing on Site
N/A	N/A	<b>Proof of WHMIS Training for Site Personnel</b>	Before Mobilizing on Site
N/A	N/A	<b>Names of Project Superintendent and Site Foreman</b>	Before Mobilizing on Site
N/A	N/A	<b>Emergency Telephone Number</b>	Before Mobilizing on Site
N/A	N/A	<b>List of Proposed Hazardous Materials</b>	Before Mobilizing on Site
N/A	CCDC	<b>Automobile Liability Certificate of Insurance</b>	Before Mobilizing on Site
00 21 13	Instruction to Bidders	<b>Agreement to Bond</b> in the amount of 100% of the Estimated Contract Price plus Tax for Performance. The Standard Agreement to Bond Form must be executed on behalf of the Surety Company by its authorized officers under the company's corporate seal. Surety bonds shall be provided by a company licensed to provide Bonds in the Place of Work.	Submit with Tender
00 21 13	Instruction to Bidders	<b>Performance Bond</b> (Original document required) The Performance Bond shall remain in effect for a period of 2 years from the date of Substantial Performance as defined in the governing lien legislation (or, where no definition exists, the date when work is ready for use or is being used for the purpose intended).	Before Mobilizing on Site
01 00 00	General Requirements	<b>Schedule</b> with details of each aspect of the work	Before Each Progress Draw (Used to Verify Quantities)
01 00 00	General Requirements	<b>Building Permit</b>	Before Mobilizing on Site
01 00 00	General Requirements	<b>Professional Liability Insurance</b> and Certificate of Authorization for Engineer's Engaged by the Contractor (If applicable)	Before Mobilizing on Site
01 00 00	General Requirements	<b>Pre-existing Deficiencies</b> in work areas. If one is not submitted, the Contractor is responsible for addressing the deficiencies if the Consultant suspects the deficiency may have been caused by the work.	Before Mobilizing on Site

Related Section	Description	Time	
03 01 30.30	Concrete Removals	<b>Letter Acknowledging that the Contractor has met with the Owner's Electrician</b> and/or representative and identified services known to be embedded in the slab and to identify all services mounted on the underside of all slabs in the work area.	Before Mobilizing on Site
03 01 30.30	Concrete Removals	<b>As-Built Drawings for Concrete Repairs</b> showing the locations and approximate size for each type of concrete repair (i.e. top surface, thru slab or soffit).	Before Each Progress Draw (Used to Verify Quantities)
03 01 30.30	Concrete Removals	<b>Concrete Removal Shoring Drawing(s)</b> prepared by a Professional Engineer providing shoring requirements for the slabs including design assumptions. Drawings submitted must show the design criteria, including limits of concrete slab, column and wall removal and the procedural sequence to be followed for shoring installation. Drawings shall also include header and sill plates, which are acceptable to the Consultant, at each post shore or tower shore support. Engineer to confirm that floors supporting shoring will not be overloaded.	Before Commencing on the Respective Work
03 01 30.30	Concrete Removals	<b>Shoring Installation Review Letter</b> submitted by the shoring design engineer confirming they have visited the site and verify the installation conforms to the respective shop drawings.	Before Commencing on the Respective Work
03 01 30.50	Concrete Replacement	<b>Concrete Mix Design</b> identifying the concrete properties .	Before Commencing on the Respective Work
03 01 30.50	Concrete Replacement	<b>Concrete Installation Records/Drawing</b> indicating the time, date, delivery slip serial number, location and ambient temperature at time of each concrete pour, and identify related strength test cylinders. These records are to remain on site for the duration of the project. Also record the date of form work removal.	At Project Completion (Prior to Final Progress Draw)
03 01 30.60	Polymer Modified Mortar	<b>Sample Mortar Cube Test Results</b> showing satisfactory strength of proposed method and mixing methods. Cast molds in the presence of the Consultant.	Before Commencing on the Respective Work
07 14 13	Hot Applied Membrane Waterproofing	<b>Hot-Applied Membrane Waterproofing Manufacturer Review Letter</b> certifying that the materials supplied, preparation and application of the membrane is in accordance with the manufacturer's specifications.	During General Installation
07 92 13.01	Traffic Surface Sealants	<b>Traffic Surface Sealant Manufacturer Review Letter</b> certifying that the materials supplied, preparation and installation of the sealant is in accordance with the manufacturer's specifications.	After Start of Installation
31 11 00	Bases and Paving	<b>Concrete Mix Design</b> identifying the concrete properties.	Before Commencing on the Respective Work

End of Section 01 32 19

## **PART 1 - GENERAL**

### **1.1 General**

- .1 Provide temporary protection, heat and ventilation to facilitate progress of work, to provide a safe working environment and to protect work and materials from cold/heat and moisture during all phases of the work. Do not use direct-fired heaters discharging into work areas unless approved by the Consultant.
- .2 If work requires normal garbage removal facilities to be obstructed, provide and pay for storage and removal of the Owner's garbage. Coordinate with and obtain approval from the Owner prior to commencement of the work.
- .3 If work by the Owner's electrician is required to repair unexpected conditions encountered during the work, coordinate access and allow sufficient time to conduct the necessary work.

### **1.2 Additional Protection Requirements**

- .1 Protect existing mechanical, electrical, telephone and similar services from damage. Have utility companies locate all services prior to working in the area, define protection they require and obtain their acceptance of current status of service. Before commencing work in a protected area, test protection to ensure adequacy.
- .2 Prior to commencement of work, verify the condition of all grates, catch basins, drains, pipes, etc. that will be affected by the work. Disconnect, protect and seal all drains, as listed above, to prevent entry of debris.
- .3 During work, ensure that utility companies review and provide written acceptance of contractor procedures and conditions of their services during the work and before they are re-covered. Have utilities provide written verification of satisfactory inspection of their services.
- .4 Prior to beginning any concrete removals, meet with the Owner's electrician and/or representative to identify and map-out all known main electrical conduits or other systems embedded in the slab and to identify all services mounted to the soffits of all slabs within the work areas. The Contractor shall confirm in writing that this has been completed.
- .5 Where necessary to complete the work, remove existing electrical fixtures and provide temporary lighting as required. Re-install fixtures following the repair. Remove and /or protect all services as required to complete the work.
- .6 Concrete repairs are expected to generate dust that contains silica. The Contractor shall take adequate precautions to contain dust, to collect and dispose of dust in a safe manner, and to provide protection to persons exposed to the dust. This shall include compliance with:

Project: 150 Christina St., Sarnia – Expansion Joint Repairs

Page 2

Project No: 13Y125-035C **SPECIAL PROJECT PROCEDURES - PARKING STRUCTURE – SECTION 01 35 13.01**

- .1 Ontario Health and Safety Guidelines for "Silica on Construction Projects" April 2011
- .2 Regulation for Construction Projects, Ont. Reg. 213/91
- .3 WHMIS Regulation R.R.O 1990, Reg.860

**End of Section 01 35 13.01**

## **PART 1 - GENERAL**

### **1.1 Description**

This Section specifies the work required for removal of concrete from around embedded steel known or believed to be corroding.

### **1.2 Environmental Conditions**

Not applicable.

### **1.3 Inspection and Testing**

Notify the Consultant for field review of the following:

- .1 identification of all delaminated concrete
- .2 completion of removals within the designated areas
- .3 completion of surface preparation

## **PART 2 - MATERIALS AND PRODUCTS**

### **2.1 Pneumatic Hammers**

- .1 For removal of surface concrete to depth of embedded steel, maximum 14kg (30 pounds) total weight.
- .2 For removal of concrete at and beyond embedded steel. maximum 7kg (15 pounds) total weight.
- .3 Rivet Busters shall not be permitted.

## **PART 3 - EXECUTION**

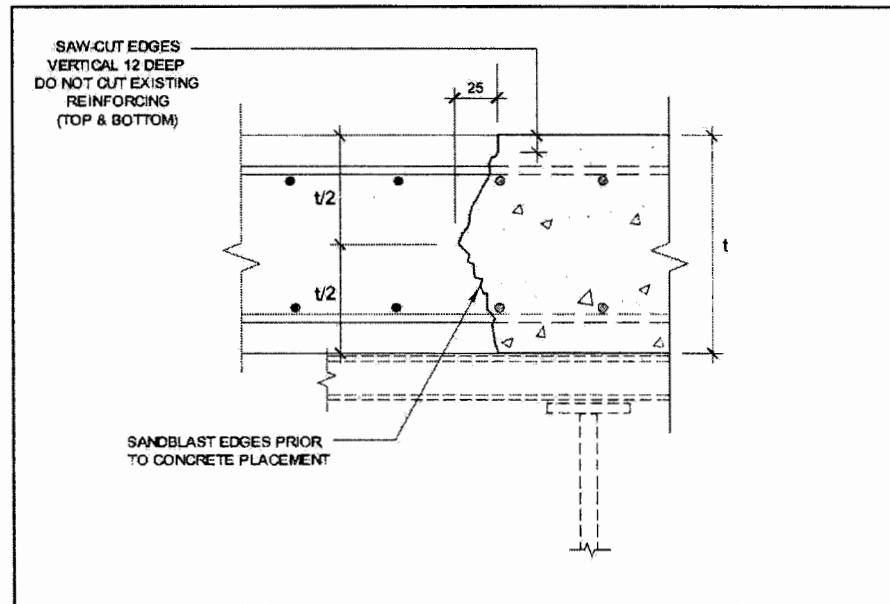
### **3.1 Extent**

- .1 The extent of unsound concrete on the top surface and underside of suspended slabs shall be determined and clearly marked by the Contractor in red paint for review by the Consultant. Unsound concrete includes spalling and/or delaminated concrete which produces a hollow sound when hit with a steel hammer or when a chain is dragged across its surface. In areas where delamination has occurred, concrete shall be removed from around all reinforcement 100mm beyond the extent of corrosion on the steel.
- .2 Obtain Consultant's approval prior to removing concrete.

- .3 The Consultant may require that sound concrete also be removed in the vicinity of the approved repair areas. This may be required in order to minimize the number of small patches, or to eliminate areas of unrepaired concrete projecting into patches or to investigate the condition of the steel.

### 3.2 Soffits

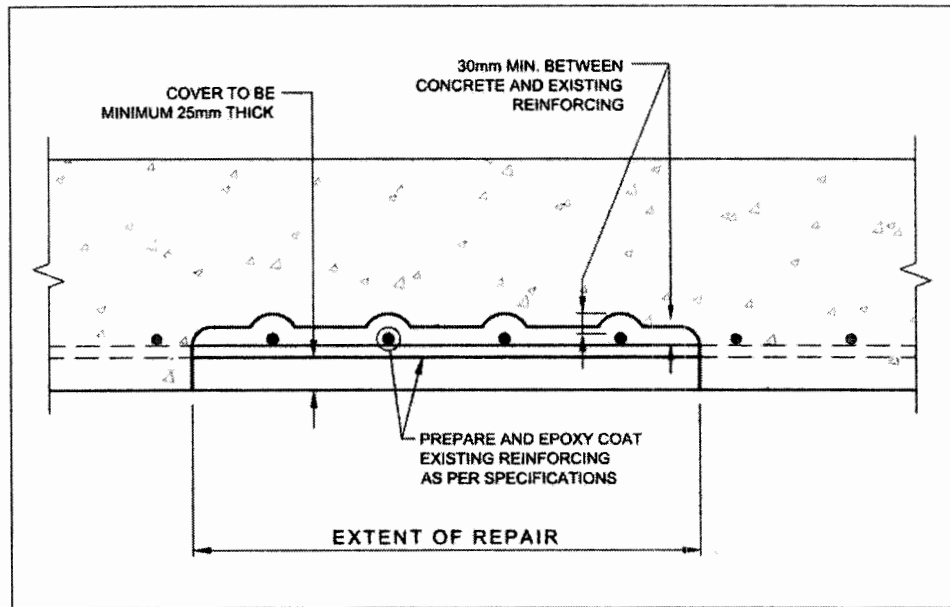
- .1 Remove all existing troughing and/or sheeting from the soffit below the work areas. Store on site or dispose of as directed by the Consultant.
- .2 Prior to working on the top surface, mark soffit delaminations. Remove all loose material. Soffit delaminations larger than 1m<sup>2</sup> are to be repaired by through-slab removal unless directed otherwise by the Consultant. At the perimeter of the through-slab patches, slope repair edges as shown on detail below. Transfer soffit delamination markings to the top surface of the slab. These areas shall be marked to distinguish them from top surface removal areas.



EST1-A3: Through Slab Concrete Removal Extents

- .3 Any damage to soffits outside areas so marked shall be repaired at the Contractor's expense in the same manner as soffit delaminations unless damage can be attributed to lack of cover on bottom reinforcing steel, or poorly consolidated or cracked concrete.
- .4 Soffit delaminations smaller than 1m<sup>2</sup> shall generally be repaired by removing concrete from below as per detail below.





EST1-A1 - Soffit Concrete Repair

- .5 Remove all efflorescence or mineral deposits from the soffit using wire brushes or light sandblast. Where existing surfaces are painted, repaint with paint approved by Consultant to match adjacent surfaces.

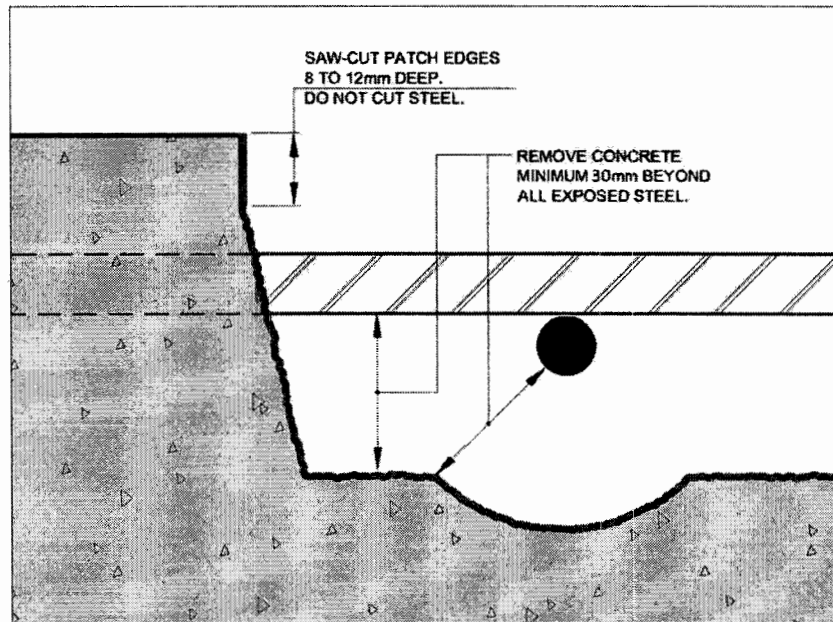
### 3.3 Electrical Conduit

- .1 Mark out all locations of electrical services contained in or attached to the slab where locations are known prior to commencing removals.
- .2 The Contractor will not be responsible for damage to embedded conduit whose location is unknown. Be responsible for contacting Owner's Contractor when conduit has been located in slab.
- .3 When new electrical conduit for lighting is included in contract, coordinate work to maintain lighting levels during the repair.

### 3.4 Removal

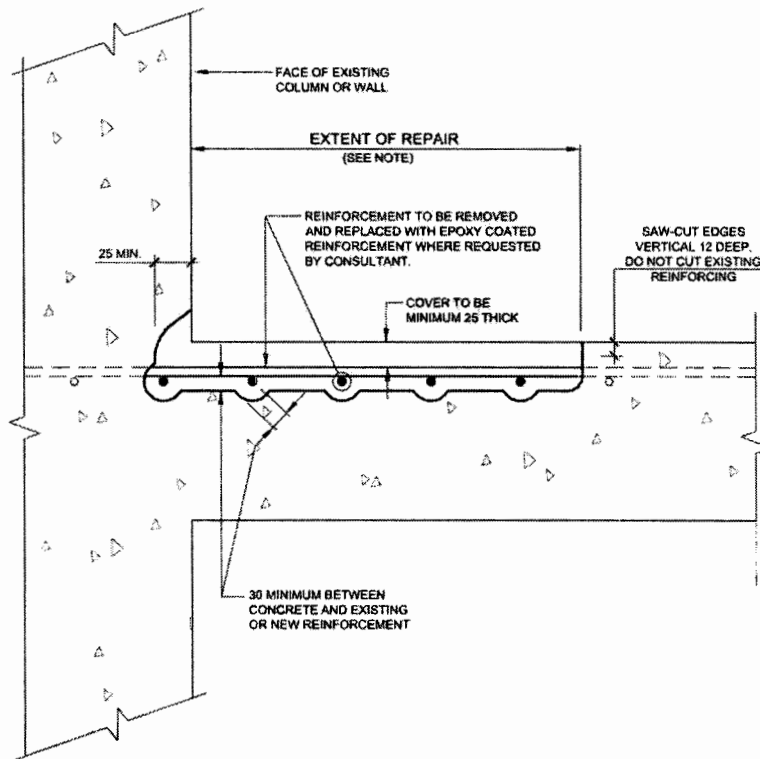
- .1 Removal methods shall minimize damage to sound concrete which remains. Take measures to prevent damage to reinforcing steel, drains or mechanical and electrical services.
- .2 Where concrete is to be removed by pneumatic hammers, saw cut limit of repair areas 12mm deep. Mechanically roughen and sandblast saw cut edge. If reinforcing steel is encountered during sawing, stop work immediately, contact Consultant before proceeding in this area.

- .3 Within the areas designated for repair, concrete shall be removed for 30mm around the deepest layer of reinforcing steel as per detail below.



EST1-A4 – Delamination Typical Repair

- .4 Clean chipped material and dust from surface of slab daily.
- .5 Do not commence preparation of the repair surfaces until all delaminations and other material specifically located by the Consultant have been located and prepared. Be responsible for ensuring that all designated concrete has been removed.
- .6 At intersections with columns and walls, extend the removals 25mm into the vertical element as per detail below.



**NOTES:**

1. SEE SPECIFICATION FOR DETAILS.
2. WHERE THE REPAIR IS ADJACENT TO THE COLUMN/WALL, PROVIDE 25mm (MIN.) KEY AROUND THE PERIMETER OF THE COLUMN/WALL FACE TO THE FULL DEPTH OF THE PATCH.
3. FIELD CONDITIONS MAY DIFFER FROM THE INFORMATION SHOWN ON THIS DETAIL FOR NUMBER AND LOCATION OF REINFORCING.
4. PAY UNIT = m<sup>2</sup>.
5. SHORING DESIGN PROFESSIONAL TO REVIEW EACH INSTALLATION AND ISSUE SATISFACTORY SITE VISIT REPORT PRIOR TO COMMENCING REMOVALS.

EST1-D1: Top Surface Concrete Repair at Wall or Column

### **3.5 Shoring**

- .1 Shoring shall be required and designed by a Professional Engineer to support the weight of the slab and construction loads.
- .2 Shoring for columns or other vertical elements shall be provided as required for the extent of concrete removal necessary. Shoring drawings shall clearly show the allowable limits of concrete removal.
- .3 Maintain shoring until repair concrete has attained 75% of the specified 28-day strength.

### **3.6 Final Preparation**

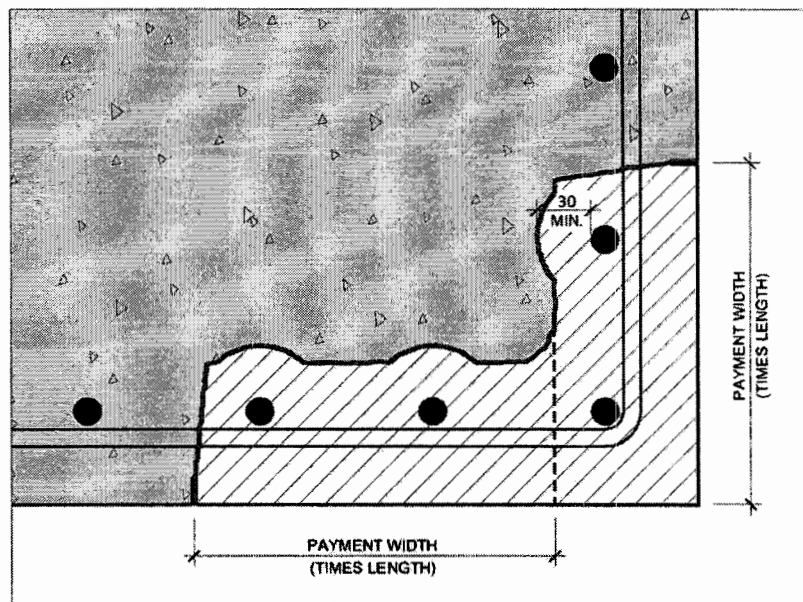
- .1 Sound entire surface of each section of concrete where removal has been carried out to locate any fractures or loose concrete remaining. Remove all such material without creating new fractures by pneumatic hammers, or blast entire surface of chipped concrete with high pressure water.

Repeat process until an entirely sound surface has been produced.

- .2 Remove all contaminants or corrosion products from surface to expose clean, fresh concrete. Maintain in this state until new patch material is applied.
- .3 Remove all loose dust or dirt from surface of concrete prior to placing patch. Use clean compressed air (with oil trap in line).

### **3.7 Payment Concepts**

Unless otherwise defined, repairs at the corners of concrete elements shall be measured as per detail below.



EST1-D3 – Concrete Removals – Unit Measurement for Corner Repair

**End of Section 03 01 30.30**

## **PART 1 - GENERAL**

### **1.1 Description**

This Section specifies the work required for preparation of reinforcing steel prior to coating, installation of new steel and splicing of existing steel.

### **1.2 Environmental Conditions**

- .1 Air and surface temperatures during application and curing of Amerlock 400 and manufacturer approved touch-up coatings shall not be less than +4 °C. Surface temperatures must be at least 3 °C above dew point.
- .2 Should temperatures be expected to drop below +4 °C during application or curing of epoxy coatings, use Amerlock 2 in lieu of Amerlock 400. Seek approval from the steel provider for touch-up coating. At freezing temperatures, surface must be free of ice.

### **1.3 Inspection and Testing**

- .1 Inspection of welding of reinforcing steel by an independent agency will include:
  - .1 Checking of certification of firm employed for welding under C.S.A. Standard W186-M1990;
  - .2 Checking of welder's C.W.B. Certification; and
  - .3 Visual checking of welded connections including checking of joint preparation and fit up.
- .2 Notify the Consultant for final review of preparation of steel.
- .3 Notify the Consultant for final review of all epoxy coating. The Consultant shall review the coating for voids and other defects discernible without magnification. The dry film thickness of the cured membrane shall be randomly tested by non-destructive means.

## **PART 2 - MATERIALS AND PRODUCTS**

### **2.1 Reinforcing Steel**

- .1 New material shall conform to the ASTM A775/A775M97e2. All bars 10M and greater shall be deformed and of Yield Strength 400 MPa unless otherwise noted on the drawings.
- .2 All epoxy coated reinforcing steel must be supplied cut and bent by facilities that are currently certified by the Concrete Reinforcing Steel Institute Voluntary Certification Program for Fusion-Bonded Epoxy Coating Applicator Plants. Certified epoxy applicators include:

- .1 Harris Rebar; and
- .2 Teme Rebar Concepts
- .3 Fabricate reinforcement to the requirements of CSA CAN3-A23.1M.
- .4 New reinforcement shall have factory applied fusion bonded epoxy coating unless noted otherwise, or unless the reinforcing is to be welded. Coating shall conform to the requirements of O.P.S.S. 1442 and 1443 (M.T.O.). The epoxy coating shall be of a colour which contrasts sharply with reinforcing steel and rust colours. Brown and grey are not acceptable.
- .5 Reinforcing steel used for dowels shall be black steel.

## **2.2 Mechanical Couplers**

- .1 Approved mechanical couplers for connecting new reinforcing steel to existing bars:
  - .1 BAR-LOCK S/CA series mechanical coupler by Dayton Superior; or
  - .2 Lenton Lock S-Series by Erico International Corporation
- .2 For connecting new reinforcing steel bars between phases/concrete pours use:
  - .1 Lenton Form Saver or Lenton Standard Couplers (Tapered Thread) mechanical couplers by Erico International Corporation
  - .2 DBR Coupler System or Taper – Lock Standard Coupler by Dayton Superior
- .3 Alternate products may be considered to meet special project requirements.
- .4 Thread reinforcing steel, as required, to fit threaded couplers. Threading shall be performed by the steel manufacturer.

## **2.3 Accessories**

Provide bar supports conforming to the requirements of Manual of Standard practice of the Reinforcing Steel Institute of Ontario. In exposed concrete locations, supports shall be plastic, precast concrete or plastic protected steel, all of the same colour as the concrete. Use coated tie wire.

## **2.4 Field Coating**

- .1 The approved product for field coating existing reinforcement is Amerlock 400 High-Solids Epoxy by Amercoat Canada Inc. The epoxy coating shall be applied in two coats. The colour shall contrast sharply with steel, concrete, or rust colours.
- .2 The cure recoat/drying/cure/ time for Amerlock 400 will exceed 24 hours when temperatures drop below 10°C. Amerlock 2 is an acceptable fast cure alternative to Amerlock 400 for use in colder weather. Please note that if this product is applied during temperatures that will exceed 10°C, the useful pot life of Amerlock 2 will be less than 1.5 hours.

- .3 If required, touch-ups to factory applied coatings of new steel are to be made in conformance with Paragraph 3.6.7.

## **2.5 Adhesive**

Epoxy Adhesive for setting of dowels shall be HIT-RE 500 or HIT-HY 200 by Hilti Canada.

## **PART 3 - EXECUTION**

### **3.1 General**

- .1 Do not remove any existing reinforcing steel without prior review by the Consultant.
- .2 Where corrosion has resulted in a significant reduction of the cross-sectional area of the existing reinforcing, the Consultant may require the replacement or repair of the reinforcing steel.
- .3 As instructed by the Consultant, remove deteriorated reinforcing steel and replace with new epoxy coated bars of equal or larger cross-sectional area. New reinforcing steel is to be 20% greater in length than existing. Alternatively, the existing steel can be replaced with 20% more steel as directed by the Consultant. Note: New epoxy-coated reinforcing steel is to have a lap length 20% longer than the equivalent black steel lap length.
- .4 Contain sandblast materials and debris within the work area. Do not generate or allow dust to migrate from work area.

### **3.2 Preparation of Existing Steel**

- .1 Remove all existing exposed tie-wire and bar supports.
- .2 Straighten all bent reinforcing bars to their original shape. Do not heat the steel. Bend bars or modify formwork to provide specified cover.
- .3 Clean existing reinforcing of concrete, corrosion products and dirt by abrasive blast cleaning in accordance with SSPC-SP7 (Brush-off Blast Cleaning). \*\* for balconies: by mechanical methods in accordance with SSPC-SP3 (Power Tool Cleaning)\*\*.
- .4 Where existing steel extends into columns, walls, beams, portions of slab which are to remain or other structures, and new steel will need to be connected to the existing to maintain development, take care to ensure steel is cut to maintain sufficient lap lengths. Leave sufficient steel projecting to enable lap splicing new steel to the existing in accordance with CAN3-A23.3. Alternatively, only if directed by the Consultant, cut steel to allow for weld splicing of the new steel. See EST1-F1 for minimum length of existing steel to remain for welding.



### **3.3 Welding/Coupling of Reinforcement**

When designated by the Consultant, weld new reinforcing steel to the existing steel as per Detail EST1-F1 or couple new reinforcing steel to the existing steel as per manufacturer's recommendations.

#### **.1 Welding of Reinforcement**

- .1 Conform to CSA W186-M1990 and to CSA W59-1989.
- .2 All welding shall be done by firms certified by Canadian Welding Bureau for type of Work specified.
- .3 Do not weld when temperature is below 0°C.
- .4 Do not weld when surfaces are wet or damp.
- .5 Preheat reinforcing bars at locations to be welded immediately before welding.
- .6 Chip off slag and clean all welds prior to sandblasting.

#### **.2 Mechanical Couplers**

- .1 Mechanical couplers will be permitted provided a minimum of 25mm concrete cover is maintained over the outside diameter of mechanical coupler.
- .2 Install couplers in accordance with Manufacturer recommendations.

### **3.4 Dowels**

- .1 Drill and clean holes in parent concrete for dowels as per the adhesive manufacturers recommendations.
- .2 Embed black steel in parent concrete to depth directed by Consultant (minimum embedment 200mm), adhered with approved epoxy adhesive.
- .3 Field epoxy coat exposed portion of dowel (portion not embedded in parent concrete) in accordance with section below "Epoxy Coating Existing Reinforcing".

### **3.5 Epoxy Coating Existing Reinforcing**

- .1 The cleaned reinforcement shall be coated before oxidation of the surface discernible to the unaided eye occurs, or else the procedure shall be repeated.
- .2 Apply epoxy in accordance with the manufacturer's written instructions to completely cover all steel which does not have a factory applied coating. After curing, the coating shall be free of holes, voids, cracks, damaged areas, contamination, and deficient areas that are discernible without magnification. Dry Film Thicknesses of the coating to be between 0.20 mm and 0.35 mm (8 mils and 14 mils). A minimum of two coats will be required in order to achieve the specified DFT. The DFT of the coating will be randomly tested with a DFT gauge.
- .3 Apply epoxy in advance of placing concrete so as to achieve the manufacturer's written recommended curing time.

### **3.6 New Steel**

- .1 Handling of epoxy coated reinforcing steel shall be in accordance with ASTM A775.
- .2 Store new reinforcement on timber racks or skids that are spaced to prevent sags in bundles of steel. Bars shall be protected from dirt and maintained in its fabricated form.
- .3 Coated bars or bundles shall not be dropped and dragged in any manner that may cause damage to the coating.
- .4 Place and support new steel so as not to damage epoxy coating. Place new steel to provide the same concrete cover as the existing steel to a minimum of 25mm cover.
- .5 Securely tie reinforcing steel together with coated tie wire to prevent displacement during concrete placing and vibrating. Turn the ends of ties towards the interior of the concrete.
- .6 Do not use Amerlock 400 to patch damaged areas of factory applied coatings. All cut ends of coated bars shall be coated with the same patching material that the coating applicator or the reinforcing steel fabricator used for the repair of the damaged coating prior to delivery to site.
- .7 If the factory applied coating is damaged, touch-up with the same patching material used by the coating applicator or the reinforcing steel fabricator. Approved products include:
  - .1 Green Epoxal Ester Primer by Niagara Protective Coatings
  - .2 Green, two component, patch compound
    - .1 Part A, 1765-3225
    - .2 Part B, 1905-3226 by Serif Coatings and Chemicals Inc. or
  - .3 an equivalent patching material that conforms to OPSS 1443 recommended in writing by the coating applicator or the reinforcing steel fabricator.
- .8 All repairs to coated reinforcing steel shall be in strict accordance with the patching material manufacturer's written recommendations. Prepare steel surface to provide mechanical adhesion of patch material.
- .9 Coated bars shall not be stored unprotected for greater than 30 days. Total storage time of coated reinforcing steel shall not exceed 120 days from the date of coating as shown on the identification tags.
- .10 A coated bar will be rejected and shall be removed from the site when the amount of repaired damage exceeds any of the following:
  - .1 1% of the total surface area in each meter of bar, not including the cut ends, or
  - .2 5% of the total bar surface area.



## **PART 1 - GENERAL**

### **1.1 Description**

This Section specifies materials and methods for the replacement of structural concrete at delamination repair areas.

### **1.2 Environmental Conditions**

Take the necessary precautions whenever the air temperature falls below +5 °C or exceeds +27 °C. Make preparations in advance of placing concrete. Shelter surfaces from direct sun and wind by erecting appropriate sun shades and wind breaks. Do not place concrete whose temperature falls below +10 °C or exceeds +30 °C. Do not place concrete in the rain.

### **1.3 Inspection and Testing**

- .1 Notify the Consultant for review of placement of concrete, including application of slurry coat or bonding agent.
- .2 Conform to CSA Standard A23.2-04.
- .3 Concrete testing for ready-mixed concrete shall be by an independent agency and is to include:
  - .1 A standard strength test for each 15m<sup>3</sup> of concrete placed (approximately 100m<sup>2</sup> of slab repair), but not less than one test for concrete placed each day. Each strength test sample will consist of three cylinders with proper identification and field data. One specimen will be tested at 7 days and two at 28 days. Store cylinders in the field for a minimum of 20h prior to transporting to the testing laboratory for curing in accordance with CSA Standard A23.2-3C.
  - .2 If concrete is being placed when there is a probability of the air temperature falling below 5 °C during the curing period, each test sample shall include one additional “field-cured” cylinder for each 15m<sup>3</sup> of concrete placed (reference CSA A23.2-3C), to be stored as near to the placed concrete as possible. These extra cylinders shall receive the same protection from the elements as the concrete that they represent. These cylinders shall be stored in the field for the full 5-day cure period prior to being transported to the testing laboratory for a 7-day compressive strength test. Specimens shall not be removed from the moulds until after the 5-day cure period; if the Contractor wishes to test “field-cured” cylinders earlier, for removal of formwork, additional samples should be prepared at the Contractor’s expense.
  - .3 One standard air entrainment test for each standard strength test in accordance with CSA A23.2-4C or A23.2-7C.
  - .4 Temperature of the fresh concrete shall be measured in accordance with ASTM C1064M-99.

- .5 One standard slump (or slump flow) test with each standard strength test in accordance with CSA A23.2-5C. The Consultant may require additional testing for each truck load placed, as deemed necessary.
- .4 Concrete may be rejected prior to placement if:
  - .1 Concrete fails to conform with the specified mix design.
  - .2 The concrete placement does not begin within 1-1/2 hours from batch time where set retarding admixtures are not employed or the concrete is older than 2 hours from batch time.
  - .3 Where set retarding admixtures are employed, concrete placement extends beyond the maximum placement/working times stipulated by the supplier on the mix design submission.
- .5 Concrete will be considered under strength if:
  - .1 The average of any day's compressive strength tests of each class of concrete is below specified strength.
  - .2 Any single compressive strength test result is more than 3.5 MPa below the specified strength.

In case of dispute, and at the discretion of the consultant, the Contractor may have three 100mm DIA. cores from the concrete drilled and tested at his own expense for each result below the required strength, in accordance with CSA Standard A23.2-14C. The results shall be evaluated in accordance with CSA Standard A23.1-04.

**.6 Bond Tests**

The Consultant may request tensile capacity tests perpendicular to the plane of the interface between the patch material and the parent material. The average bond strength shall exceed 1.5 MPa (220 psi). Any patch with a bond test result less than 1.0 MPa shall be rejected.

Further testing, subsequent to any failure shall be paid for by the Contractor.

- .7 The Consultant may require additional testing as deemed necessary.

**PART 2 - MATERIALS AND PRODUCTS**

**2.1 Cement**

Normal Portland cement, conforming to CSA A3001-03, Type GU.

## **2.2 Water**

Mixing water: Clear and free from deleterious substances.

## **2.3 Aggregates**

Conform to CSA Standard A23.1-04. Coarse aggregate maximum nominal size:

- .1 10mm for patches
- .2 20mm for through slab

## **2.4 Admixtures**

- .1 All air-entraining agents and chemical admixtures used in the same mix shall be from the same manufacturer, but dispensed separately into the mix. Comply with the manufacturer's instructions.
- .2 Air-entraining agents shall conform to the requirements of ASTM Standard C260-06.
- .3 Water reducing agents shall conform to ASTM Standard C494/C494M-05a.
- .4 Superplasticizers shall conform to ASTM Standard C494/C494M-05a, Types A & F.
- .5 Fibre Reinforcement shall conform to ASTM Standard C1116-03.
- .6 Set retarding admixtures shall conform to ASTM Standard C494/C494M-05a, Types B & D.

## **2.5 Proportioning Concrete**

- .1 Conform to CSA Standard A23.1-04, Table 2, Class C-1 Exposure subjected to de-icing chemicals.
- .2 Provide concrete for repairs to delaminated and chipped out areas with the following properties:

Class C1 Concrete	
Minimum Compressive Strength	35 MPa at 28 days
Range In Total Air Content	6% - 9% for 10mm aggregate 5% - 8% for 20mm aggregate

- .3 Polypropylene fibre reinforcement added at a rate to control shrinkage cracking.
- .4 Re-tempering, or the addition of water to restore loss of workability due to the evaporation of mix water while in transit will be permitted only under the direction of the concrete supplier, and provided re-tempering is completed within 1 hour from the time of batching.
- .5 Re-tempering shall only be permitted to restore lost workability to the designed slump. Any increases to workability above the design slump shall be achieved by re-dosing of superplasticizer or water reducers and only under the direction of the concrete supplier.

- .6 If re-tempering is completed, measure and document volume of water added to the concrete, the location where concrete is placed, and sample additional compressive strength cylinders if requested by the Consultant.

## **2.6 Production of Concrete**

- .1 Concrete shall be supplied by a member of the Provincial Ready-Mixed Concrete Association that has been issued a seal of Special Quality Concrete attesting that its coefficient of variation is less than 12 percent.
- .2 Site-mixed concrete may be considered for use as an alternative to ready-mixed concrete for some specific applications. By submitting a request to use site-mixed concrete (including pre-bagged concrete repair products), the contractor agrees to assume 50% of the cost of concrete testing to compensate the Owner for additional testing expenses.

## **2.7 Cement Slurry**

- .1 Conform to CSA Standard A23.1-04, Section 7.6.4.2.
- .2 1:1 Cement/Sand mortar, mixed to a cream-like consistency, with maximum water to cement ratio of 0.40.

## **2.8 Formwork Lumber**

Formwork materials shall conform to A23.1-04. Plywood and wood formwork to be new or otherwise clean and free of any laitance materials.

## **2.9 Form Ties**

- .1 For concrete not designated architectural, use removable or snap ties, fixed or adjustable length, free of devices leaving holes larger than 25mm (1") dia. in concrete surface.

## **2.10 Pre-Bagged Concrete Repair Products**

Pre-bagged concrete repair products may be used for small repair areas where approved by the Consultant. Acceptable materials are King Concrete Repair Mix (FA-S10), Master Patch 240 or an approved equivalent.

# **PART 3 - EXECUTION**

## **3.1 Formwork Construction**

- .1 Construct formwork so as to achieve the quality of finish specified.
- .2 Design formwork and falsework for construction loads and fluid pressures without overstressing the material and without excessive deflection.

- .3 Make forms tight and flush faced to prevent the leakage of mortar and the creation of unspecified fins or panel outlines.
- .4 Construct all formwork so that it can be readily removed without damage or shock to the concrete or spalling of edges. Apply a form coating and release agent uniformly to the contact surface of formwork panels before reuse.
- .5 Be responsible for the safety of the structure before and after forms are removed. In no case shall forms and supporting shores be removed until members can support their own weight and superimposed construction loads without excessive stress, deflection or distortion. Obtain authorization from the Consultant before removing formwork. Provide all necessary information.

### **3.2 Placement of Concrete**

- .1 Comply with the requirements of CSA Standard A23.1-04 and with the epoxy material specifications.
- .2 Maintain substrate continuously moist a minimum of 24 hours before placement of new material. Remove all standing water and allow surface to become practically dry.
- .3 Work cement slurry into dampened concrete surfaces with a stiff brush.
- .4 Place concrete in each patch in a single continuous operation. Finish to lines and levels of adjacent concrete. Ensure reinforcing is maintained in its position as placed. Vibrate the concrete using plastic-coated vibrators to avoid damage to epoxy coating. Slope the top surface of slabs toward drains. Take care to maintain a minimum concrete cover to the reinforcing steel of 25mm. If a 25mm cover cannot be provided notify Consultant for direction.

### **3.3 Protection Requirements and Methods for Cold Weather Concreting**

The following cold weather concreting protection measures shall apply when the air temperature is at or below 5 °C, or when there is a probability of its falling below 5 °C within 24 hour of placement:

- .1 Provide temporary plant and equipment for heating concrete materials and forms. Protect, insulate and maintain the proper temperature and humidity of the concrete during curing in compliance with CSA Standard A23.1-04.

Equipment shall be available, installed and tested ready for use at least one week before it is proposed to produce heat for concrete.

- .2 Frozen lumps of aggregate shall not be added to the concrete. The method of heating aggregate stockpiles shall be such as to produce uniform conditions without local hot spots. The method of heating shall not affect the moisture content.
- .3 The concrete temperature at the time of placing shall be between 5 °C and 35 °C according to the following schedule.



Element Thickness	Concrete Temperature
less than 300mm	10-35 °C
300-1000mm	10-30 °C
1000-2000mm	5-25 °C

- .4 Cold weather concreting shall be inclusive to the Optional Pricing tendered and no further or separate payment will be made. As a minimum, include for installation of 3" polystyrene insulation on the underside of the slab extending a minimum 1m beyond all repair areas and insulating blankets on topside. Digital thermometers are to be installed within the insulating blankets to confirm temperature remains above 10C.

### **3.4 Finish and Curing**

- .1 Slab: Finish surface to the lines and levels of adjacent concrete, with a tolerance of 3mm in 3m. Provide level markings on columns or walls and grade markers at areas away from columns or walls, as necessary, to ensure proper slopes. Top surfaces shall be sloped away from walls and columns. Provide a finish suitable for the applications of the protective overlay or sealant as follows:
- .1 Float finish: For asphaltic traffic deck systems and sealer protected concrete
- .2 Do not use a power float adjacent to the edges of the patches. Prevent cement paste from bridging joint of repair patch to existing concrete.
- .3 Vertical surfaces: formed finish flush with adjacent surfaces.
- .4 Wet curing must begin as soon as finishing is completed on any area. Cover fresh concrete with wet burlap and keep continuously moist. Wet curing shall continue for at least 5 full days.
- .5 The use of curing sealing compounds will not be permitted.
- .6 Do not pile, store or transport materials over repaired areas until concrete has been in place for at least 7 days.
- .7 Where adjacent surfaces are painted, paint concrete repair locations with exterior grade latex paint for concrete in accordance with Section 09 91 23.01.

**End of Section 03 01 30.50**

## **PART 1 - GENERAL**

### **1.1 Description**

This section specifies materials and methods for the treatment of deteriorated soffits and vertical surfaces.

### **1.2 Environmental Conditions**

- .1 Minimum ambient and surface temperature at installation 7 °C.
- .2 Store materials in a dry location at temperatures between 18 °C - 27 °C.

### **1.3 Inspection and Testing**

- .1 Notify the Consultant for review of placement of mortar, including application of slurry coat.
- .2 Mortar Testing
  - .1 Testing will be performed by an independent testing agency designated by the Consultant. Testing procedures in accordance with Canadian Standards Association (CSA) A23.1-00 and A23.2-00, as well as relevant ASTM standards.
  - .2 Provide six standard cubes per day for testing compressive strength of polymer modified mortar. Samples will be taken randomly from batches of mortar being placed. Two specimens will be tested at 7 days. Four specimens will be tested at 28 days to determine compliance with the requirements of these specifications.
- .3 Testing for Mortars with Aggregate Extension
  - .1 Testing will be performed by an independent testing agency designated by the Consultant.
  - .2 Polymer Modified Mortar (p.m.m.) testing will include:
    - .1 One standard strength test per day. Each strength test sample will consist of three cylinders with proper identification and field data. One specimen will be tested at 7 days and two at 28 days. Store cylinders in a protected area free from vibrations and tampering; maintaining a temperature of  $20 \pm 5^{\circ}\text{C}$  for a minimum of 20h prior to transporting to the testing laboratory for curing in accordance with CSA Standard A23.2-3C.

- .2 If p.m.m. is being placed when there is a probability of the air temperature falling below 5 °C during the curing period, each test sample shall include one additional “field-cured” cylinder (reference CSA A23.2-3C) to be stored as near to the placed concrete as possible, and shall receive the same protection from the elements as the concrete that it represents. This cylinder shall be stored in the field for the full 5-day cure period prior to being transported to the testing laboratory for a 7-day compressive strength test. Specimens shall not be removed from the moulds until after the 5-day cure period, if the Contractor wishes to test “field-cured” cylinders earlier for removal of formwork, additional samples should be prepared at the Contractor’s expense.

**.4 Mortar Test Compressive Strength Results**

Mortar will be considered under strength if:

- .1 The average of any day's tests is below the specified strength.
- .2 Any single test result is more than 3.5 MPa below the specified strength for cylinder samples or less than 80 percent of the specified strength for cube samples.

In case of dispute, and at the discretion of the consultant, the Contractor may have two 100mm dia. x 100mm long cores from the concrete drilled and tested, at his own expense for each result below the required strength, in accordance with CSA Standard A23.2-14C. The results shall be evaluated in accordance with the CSA Standard A23.1-00.

**PART 2 - MATERIALS AND PRODUCTS**

**2.1 Polymer Modified Mortar**

- .1 Provide manufacturer's minimum specified strength.
- .2 For repairs to soffit and vertical surfaces:

Manufacturer	Product	MPa
BASF Building Systems	MasterEmaco N400	40 MPa
BASF Building Systems	MasterEmaco N425	46.5 MPa
CPD Construction Products	Fastcrete Ultra	58 MPa
Euclid Canada Inc.	Verticoat Supreme	40 MPa
Mapei	Planitop XS, Planitop 12 or Planitop 23	44 MPa
Sika Canada Inc.	SikaTop No.123 Plus	48 MPa
WR Meadows	Meadow-Crete GPS	46 MPa

- .3 The following polymer modified mortars will be permitted in cold weather applications at smaller/shallower repair areas:

Manufacturer	Product	Minimum Application Temperature
BASF	MasterEmaco N400	4 °C
Euclid Canada Inc.	VersaSpeed	-7 °C
Sika Canada Inc.	Sikatop 122 Plus (Winter Grade)	-5 °C
WR Meadows	Meadow-Crete H c/w Hydraset-Free (non-chloride set accelerator)	-4 °C

## **2.2 Formwork Lumber**

Formwork materials shall conform to A23.1-00. Plywood and wood formwork to be new or otherwise clean and free of any laitance materials.

## **PART 3 - EXECUTION**

### **3.1 Formwork Construction**

- .1 Construct formwork so as to achieve the quality of finish specified.
- .2 Design formwork and falsework for construction loads and fluid pressures without overstressing the material and without excessive deflection.
- .3 Make forms tight and flush faced to prevent the leakage of mortar and the creation of unspecified fins or panel outlines.
- .4 Construct all formwork so that it can be readily removed without damage or shock to the concrete or spalling of edges. Apply a form coating and release agent uniformly to the contact surface of formwork panels before reuse.
- .5 Be responsible for the safety of the structure before and after forms are removed. In no case shall forms and supporting shores be removed until members can support their own weight and superimposed construction loads without excessive stress, deflection or distortion. Obtain authorization from the Consultant before removing formwork. Provide all necessary information.

### **3.2 Preparation**

- .1 Comply with Sections 03 01 30.30 - Concrete Removal, and 03 01 30.40 - Reinforcing Steel.
- .2 Notify the Consultant for review of placement of repair mortar including application of slurry coat or bonding agent.

### **3.3 Polymer Modified Mortar Placement**

- .1 Mix and apply polymer modified mortar in strict accordance with the manufacturer's written specifications. Provide saturated surface dry substrate prior to applying slurry coats. Prepare and scrub slurry coat into concrete patch substrate prior to placing mortar as required by the manufacturer. For Sika products, Sikatop Armatec 110 EPOCEM may be used as a bonding agent.
- .2 Ensure that sufficient time is allowed for curing prior to material being disturbed. All defective repairs shall be replaced at the Contractor's expense.
- .3 Place polymer modified mortar on top horizontal surfaces in a single pour, and in layers on vertical or overhead surfaces.

### **3.4 Finishing**

- .1 Finish to lines and levels of adjacent concrete. Edges shall be flush. Light steel trowel finish.
- .2 Wet curing must begin as soon as finishing is completed on any area. Cover fresh polymer modified mortar with wet burlap and keep continuously moist or keep moist by mist spray of water. Wet curing shall continue for at least 5 full days. Use an approved curing sealing compound which will not inhibit the bond of the new paint in lieu of wet curing in difficult areas. The use of curing sealing compounds will not be permitted in areas where repairs are to be waterproofed.
- .3 Remove all evidence of leakage from the repair areas. If adjacent surfaces are painted, repaint the areas with exterior grade latex paint approved by the Consultant.

**End of Section 03 01 30.60**

**PART 1 - GENERAL****1.1 Description**

This Section specifies slab and foundation wall waterproofing materials and application, including surface preparation using a reinforced two-layer application.

**1.2 Environmental Conditions**

- .1 Store, handle, mix, apply and cure materials in accordance with the applicable manufacturer's written specifications.
- .2 Do not apply waterproofing when the ambient temperature is below 5 °C or over 30 °C.
- .3 The moisture content of the slab shall be recorded at the time of application and shall be acceptable to the Consultant and manufacturer for the materials applied.

**1.3 Inspection and Testing**

- .1 All Work of this section shall be subject to inspection and testing by the Consultant and/or testing agency. Repair all cut tests at no extra cost.
- .2 It is the Contractor's responsibility to advise the Consultant prior to commencement, or re-starts and completion of Work.
- .3 Have manufacturer's technical representative visit the site before applying any material, in order to approve general surface preparation, and at least twice during the waterproofing operation.
- .4 Establish that the surfaces are waterproof by water testing prior to placing overburden.

**PART 2 - MATERIALS AND PRODUCTS****2.1 Waterproofing System Requirements**

The protective system as applied shall be a fully bonded system. The system must be fully bonded to the concrete surface and all components of the system must be fully bonded to each other.

**2.2 Membrane**

Hot-applied rubberized asphalt membrane materials conforming to O.P.S.S. 1213:

Manufacturer	Product
Bakor	Bakor 790-11 MTO Grade
Tremco	TREMproof 6100 BM

**2.3 Concrete Primer**

Asphalt based, conforming to CGSB 37-GP-9M:

Manufacturer	Product
Bakor	Bakor 930 - 18 Primer
Tremco	TREMprime WB Primer

**2.4 Elastomeric Reinforcement**

.1 At Upturns and Cracks (>1.5mm in width)

Manufacturer	Product
Bakor	Neoflash
Tremco	Uncured Neoprene Sheeting (60mils)

At Expansion Joints

Manufacturer	Product
Bakor	Neoflash
Tremco	Uncured Neoprene Sheeting (60mils)

**2.5 Fabric Reinforcement**

Spunbonded polyester fabric as recommended by the membrane manufacturer.

**2.6 Protection Board**

Against Backfill Use the following acceptable drainage boards:

Manufacturer	Product
Tremco	TremDRAIN S (High Strength)

**2.7 Mechanical Fastening Bar**

3mm x 25mm flat bar, aluminum, stainless or hot-dipped galvanized steel with compatible countersunk fasteners, connected at 250mm spacing. Add fasteners where contact is not firm between fasteners.

**2.8 Backer Rod**

Manufacturer	Product
W.R. Meadows of Canada Ltd.	Cera-Rod
Sternson Construction Products	Hot-Rod- XL

## **PART 3 - EXECUTION**

### **3.1 Workmanship and Control**

- .1 Materials shall be stored in a manner to be kept absolutely dry and free from foreign matter during all phases of the Work.
- .2 Provide for protection of adjacent wall finishes and surfaces where materials are being used.
- .3 Provide suitable platforms, wheeling stages and/or similar protection against damage to the waterproofing from moving material or equipment. No traffic shall be allowed over the completed portions unless permitted by the Consultant.

### **3.2 Surface Preparation**

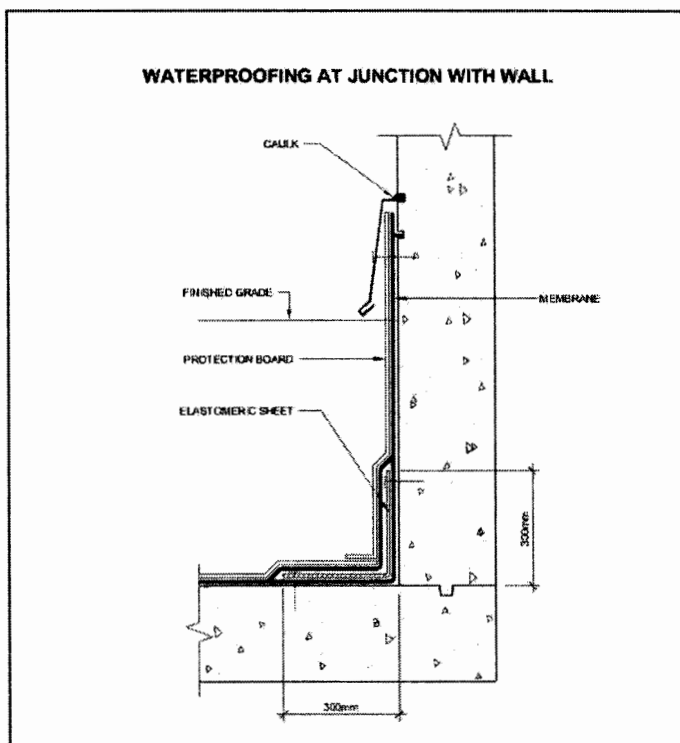
- .1 Remove all existing waterproofing membrane from surfaces to receive new waterproofing membrane, unless approved by manufacturer of new material. Use mechanical means to remove membrane. Chemical solvents will not be permitted. Burning the membrane will not be permitted but the application of heat will be allowed to soften the membrane to assist with its removal provided that no smoke or fumes are produced.
- .2 Remove all material which is powdery, loose or scaling. The surface must be dry, frost free and clean and free of all deleterious material prior to waterproofing.
- .3 Cut required reglets at terminations on vertical surfaces prior to sandblast.
- .4 Sandblast concrete surface to a medium sandblast finish. Identify and seal any paths into occupied space prior to sandblasting.
- .5 Inspect all surfaces to be waterproofed for surface contaminants. Follow manufacturer's recommendations for testing any areas noted.
- .6 Follow manufacturer's recommendations for minimum cure period required for new concrete prior to applying materials. Perform ASTM D4263 test to qualitatively assess the moisture content of concrete to which waterproofing is to be applied.

### **3.3 Installation of Waterproofing Membrane**

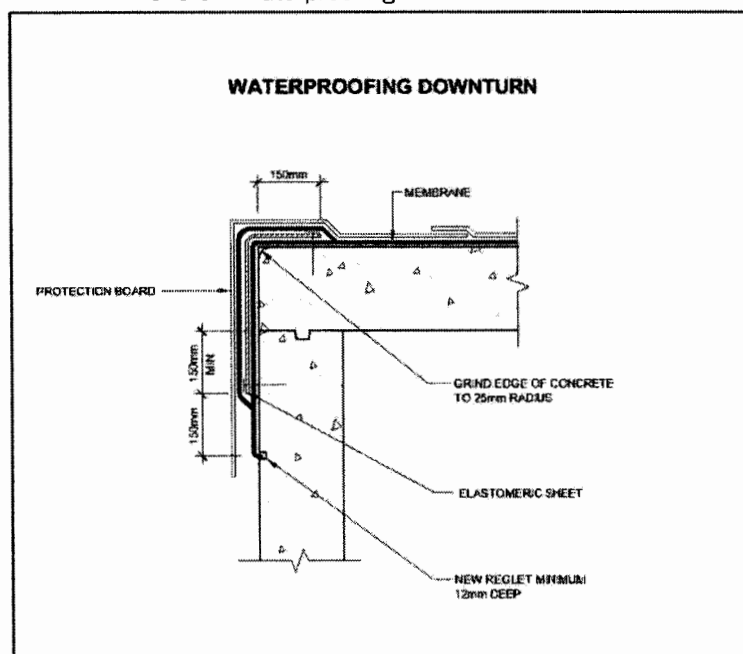
- .1 Melt cakes of material in double jacketed oil bath kettle with agitator and calibrated functional thermometers for oil and membrane. Conform to manufacturer's written specifications regarding heating and application temperatures.
- .2 Determine that the materials specified are compatible with the existing waterproof materials. If such is not the case the Consultant is to be notified and no Work shall continue until directed by the Consultant.
- .3 Examine all areas and be satisfied with all conditions which affect the application. Commencement of Work shall indicate approval of the surfaces and all matters affecting the performance of this Section.



- .4 Apply surface conditioner to surfaces at a rate of 1 litre per 6.0 m<sup>2</sup>. Allow to dry.
- .5 Apply one layer of membrane in accordance with manufacturer's written specifications to minimum thickness of 2mm. Place fabric reinforcing sheet in hot membrane lapped 50mm at edges and apply another layer of membrane to a minimum thickness of 3mm over the reinforcing sheet. Extra layers shall be applied as specified for rough concrete or cracks. Extend up vertical upturns to grade.
- .6 When applying elastomeric reinforcement, cut sheet to size. Embed elastomeric sheet immediately following application of the membrane. Lap ends of elastomeric reinforcement a minimum of 300mm and embed in hot-applied membrane to ensure joint is as water-tight as the continuous material.
- .7 Where only sections of the expansion joint are being waterproofed, plug the ends of the expansion joint by injection waterproofing.
- .8 Reinforce all edges and joints in elastomeric sheets with fabric reinforcement 150mm wide.
- .9 Immediately after cooling, embed protection board over all areas, lapped a minimum of 25mm at edges.
- .10 Cover protection board within 48 hours of installation unless otherwise accepted by the waterproofing manufacturer.
- .11 Flood test all waterproofed areas to Consultant's requirements before backfilling.
- .12 Detailing shall conform to the Project Details (PDs) referenced in Section 01 11 00 and as follows:



### EST3-C5: Waterproofing at Junction with Wall

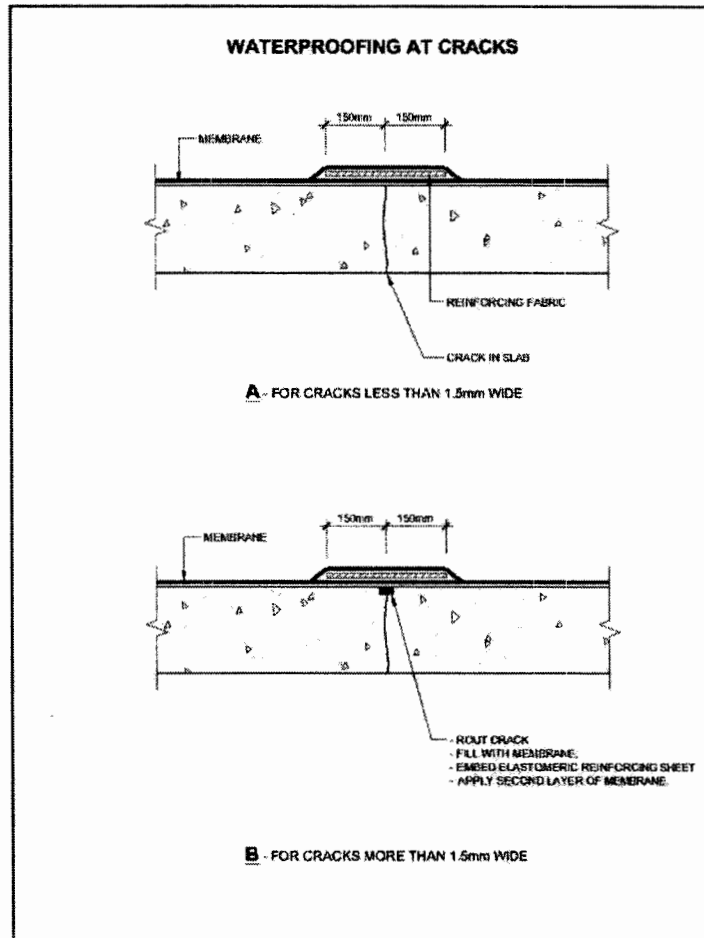


### EST3-C6: Waterproofing Downturn

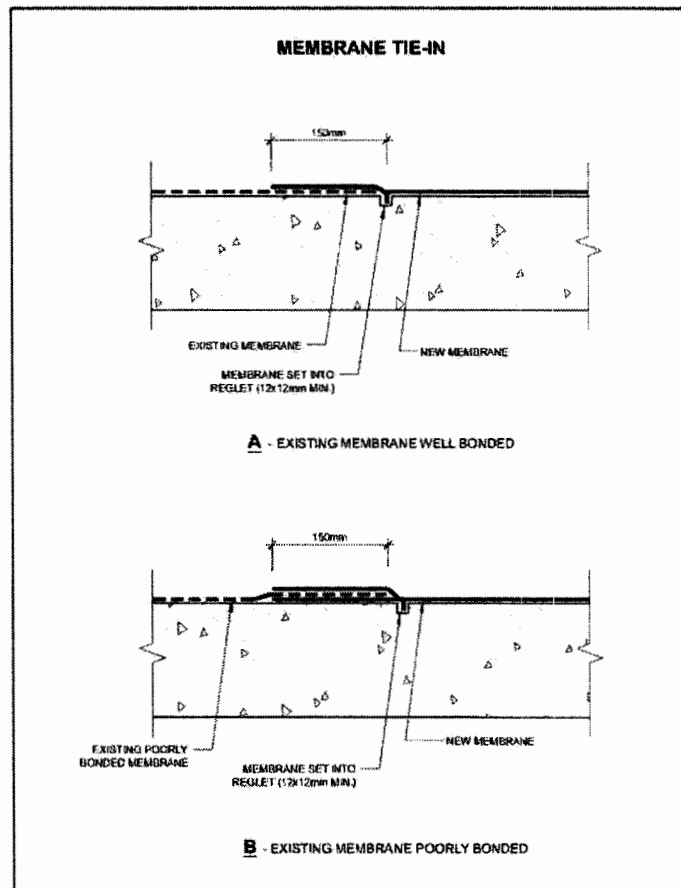
### 3.4 Treatment of Rough Concrete

Apply a heavy coat of membrane and ensure that the high points on the rough surface are covered to a minimum depth of 3mm (1/8"). Embed polyester fabric reinforcement into the hot membrane over the area being treated while the membrane is still hot. A second coat of membrane, 3mm thick, shall be immediately applied over the area and carried 300mm beyond the edge of the polyester fabric reinforcement. Payment shall be made at the rate given in the tender documents.

### 3.5 Membrane Tie-in and Treatment of Cracks

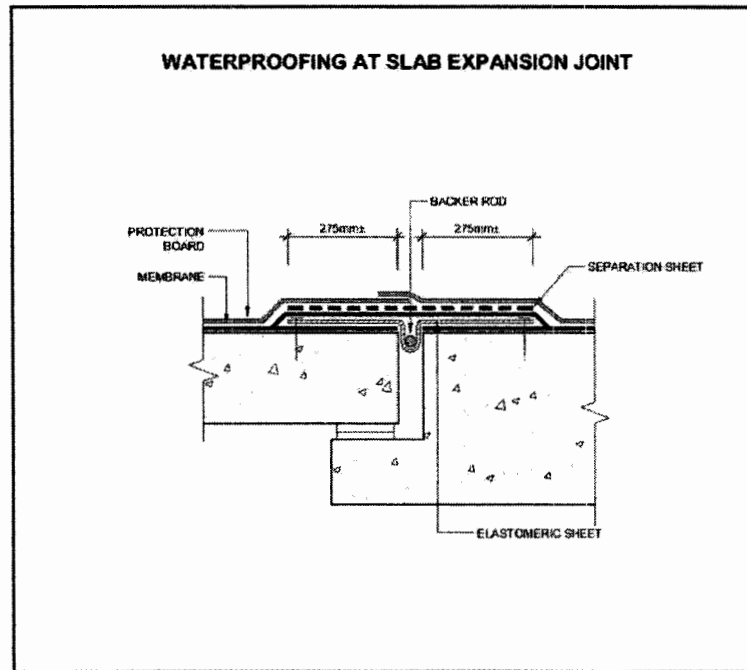


EST3-E10: Waterproofing at Cracks

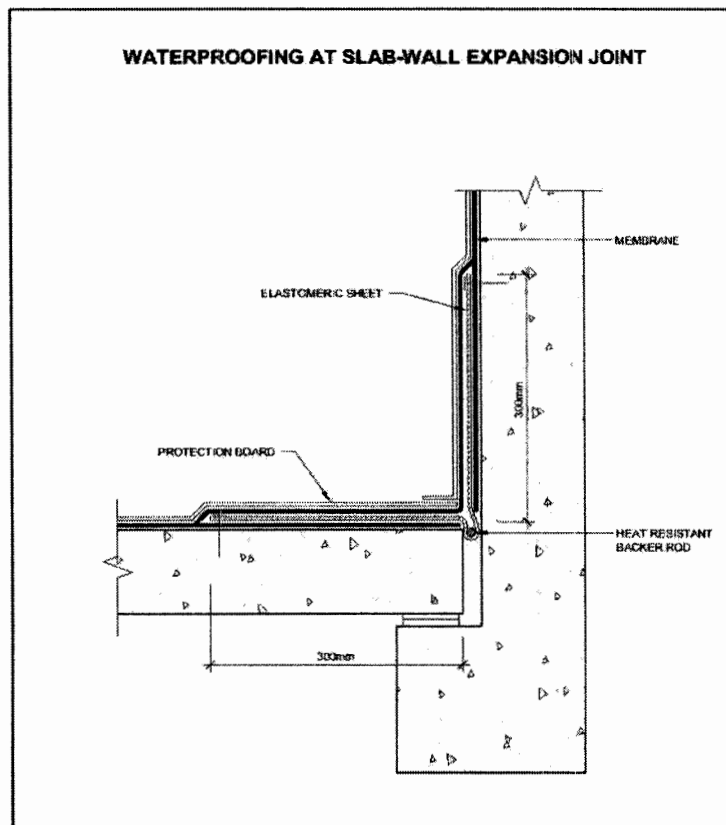


EST3-E11: Membrane Tie-in

### 3.6 Expansion Joints



EST3-B4: Waterproofing at Slab Expansion Joint



EST3-B5: Waterproofing at Slab-Wall Expansion Joint

### **3.7 Cleaning and Painting**

Remove all evidence of leakage from the repair areas. If adjacent surfaces are painted, repaint the areas with exterior grade latex paint approved by the Consultant.

**End of Section 07 14 13**

## **PART 1 - GENERAL**

### **1.1 Description**

This Section specifies the supply and installation of insulation for garage roof slab assemblies.

### **1.2 Inspection and Testing**

Ensure the Consultant is aware of progress of work in this Section. Provide notice to allow inspection of the completed membrane prior to proceeding.

## **PART 2 - MATERIALS AND PRODUCTS**

### **2.1 Insulation**

#### **.1 Extruded Polystyrene Foam Board**

Extruded polystyrene insulation meeting CAN/ULC-S701, Type 4, with ship-lapped edge:

<b>Manufacturer</b>	<b>Product</b>
Dow Chemical Canada Inc.	Styrofoam Highload 100
Owens Corning	Foamular 1000

Thickness shall be to match exiting (two layers of 75mm)

## **PART 3 - EXECUTION**

### **3.1 Examination**

Ensure the waterproofing membrane has been completed and all defects corrected.

### **3.2 Insulation Board**

- .1 Lay insulation tight to adjacent boards. A 5mm gap between boards is the maximum permitted.
- .2 Provide a 5mm to 15mm gap between insulation and vertical faces. Remove the ship lap edges to provide a full insulation thickness at all terminations.
- .3 Stagger all end joints horizontally.
- .4 Ensure drains intersect joints, do not enclose drains within an insulation board.
- .5 In multi-layer insulations, lay thicker layer first and stagger joints vertically.
- .6 Crushed, damaged or mis-cut insulation boards will not be accepted for use.

**End of Section 07 21 13.01**

## **PART 1 - GENERAL**

### **1.1 Description**

This Section specifies the supply and application of sealants concrete pavement joints and cracks.

### **1.2 Environmental Conditions**

Do not apply sealant to damp surfaces or at surface temperatures less than +5°C.

### **1.3 Inspection and Testing**

Notify Consultant for field review of the following:

- .1 identification of leaking cracks and joints.
- .2 verification of new joint profile at leaking cracks or joints.
- .3 surface preparation and installation of sealant.

## **PART 2 - MATERIALS AND PRODUCTS**

### **2.1 Cold Applied Sealant for Concrete**

- .1 Traffic bearing sealant and primers as recommended by the sealant manufacturer.

Polyurethane base, one component, conforming to the requirements of CAN/CGSB 19.13-M89:

Manufacturer	Product
Tremco	Vulkem 45 SSL (Horizontal Surfaces)
Tremco	Vulkem 45 (Vertical Surfaces)

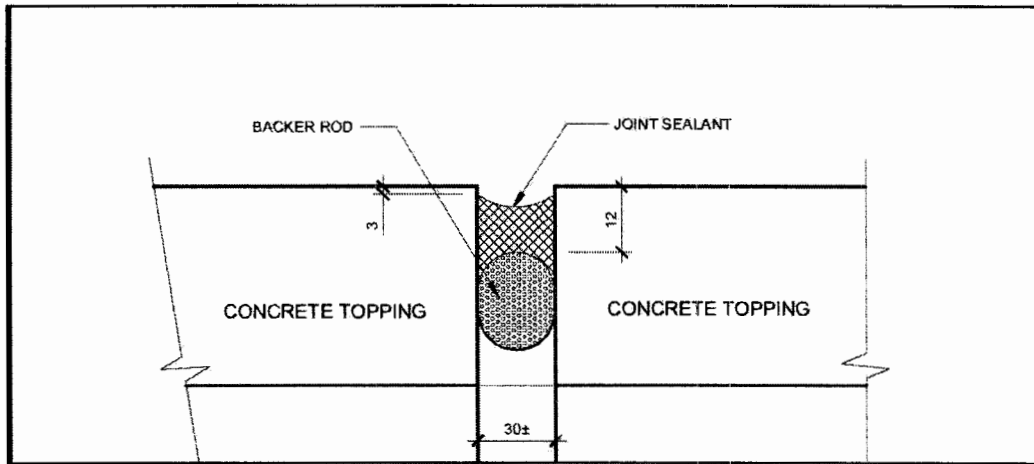
- .2 Submit technical literature for approval of alternatives.
- .3 Colour for exterior application to be approved by Owner.
- .4 SOF-ROD by Tremco foam backer rod or polyethylene bond breaker tape as required.



### **PART 3 - EXECUTION**

#### **3.1 Joint Sealing - Concrete Paving**

- .1 Provide a joint profile as per detail below.



EST3-D7: Caulking at Concrete Topping

- .2 Use one of cold applied joint sealants as specified.

**End of Section 07 92 13.01**

## **PART 1 - GENERAL**

### **1.1 Description**

- .1 Surface preparation and painting of concrete and metal surfaces shall be done in accordance with CGSB 1-GP-31M and the requirements of this Specification.

### **1.2 Environmental Conditions**

- .1 Air temperatures during application and drying of paint shall be not less than +10°C and not greater than +35°C.
- .2 Painting shall not be carried out during a rain or to wet or damp surfaces, nor if the relative humidity is greater than 85%.

### **1.3 Inspection and Testing**

Notify the Consultant for review of the surface preparation and paint application.

## **PART 2 - MATERIALS AND PRODUCTS**

- 2.1 All paint materials used on the project shall be listed on the Qualified Products List which is issued by the Interdepartmental Qualification Board of Paint Materials.

- 2.2 The paint used on this project shall be for exterior application.

- .1 Paint for concrete surfaces to be one of the following:

<b>Manufacturer</b>	<b>Base Coat</b>	<b>Finish Coat</b>
Glidden	9410-0	9410-0
Para	1800	1800
PPG	72-100	72-45
Sherwin Williams	A-100	A-100
Ideal	2000T	2000T

- 2.3 Paint materials to be products of a single manufacturer, and designated by the manufacturer to be compatible with the existing conditions and to each other.
- 2.4 All materials delivered to the site must be in the original containers with unbroken seals and intact labels clearly identifying the products.
- 2.5 Use materials in strict accordance with the manufacturer's specifications and requirements.

## **PART 3 - EXECUTION**

### **3.1 Quality Control**

All work shall meet or exceed the more stringent of the manufacturer's requirements or the requirements of this Specification.

### **3.2 Storage of Materials**

Store materials in a single location designated by the Consultant. Maintain neat and clean. Remove soiled and/or used rags at end of each work day to avoid risk of fire.

### **3.3 Surface Preparation for Concrete Surfaces**

- .1 Remove all surface mounted plates and hardware prior to surface preparation and replace after work in the area completed.
- .2 Remove deleterious materials including:
  - .1 all particles of dirt, rust, dust, chalk, mildew, grease, oil and any other deleterious materials which are detrimental to good bond, by approved methods.
  - .2 all loose, flaking, blistered, deteriorated or otherwise unsound paint, by approved methods.
- .3 All holes in the concrete surfaces greater than 3mm in diameter shall be filled with filler approved by the paint manufacturer.
- .4 Existing surfaces shall be prepared by using high pressure water wash well in advance of paint application or other methods of Consultant's approval.

### **3.4 Paint Application to Concrete**

- .1 Apply paint by brush or roller in strict accordance with the manufacturer's requirements. Do not use any other method of paint application unless prior approval is obtained in writing from the Consultant. (Application of white paint to concrete walls, columns, or slab soffit by airless or conventional spray will be considered acceptable).
- .2 Take particular care to mask and cover adjacent surfaces to ensure neat and true paint lines. Protect all adjacent surfaces, floors, windows, etc. from paint.
- .3 Apply a base coat of paint to all concrete surfaces which have been previously repaired or filled.
- .4 Previously painted concrete surfaces found to be chalking as defined by CGSB 1-GP-72, Section 6, shall be thoroughly washed down with water and wiped free of all chalking and related surface formations prior to application of finish coat.

- .5 Apply a finish coat of paint uniformly over the entire areas of concrete surfaces called for herein. Do not apply a finish coat over the previously applied base coat until it is completely dry.
- .6 The dried finish coat shall be uniform in appearance and colour. The “lap-in” areas shall exhibit uniformity with the rest of the painted areas. The finish shall be free of dirt, coarse particles or other foreign matter.
- .7 Do not attempt to fill cracks on slab soffits. After painting over such cracks, cut the cracks open with a thin blade to permit any water accumulation in the cracks to drain out.

**End of Section 09 91 23.01**

## **PART 1 - GENERAL**

### **1.1 Description**

This section specifies the supply and installation of new drains and associated hardware.

### **1.2 Environmental Conditions**

Take the necessary precautions whenever the air temperature falls below +5 °C or exceeds +26 °C. Make preparations in advance of placing non-shrink grout. Shelter surfaces from direct sun and wind by erecting appropriate sun shades and wind breaks. Do not place non-shrink grout whose temperature falls below +10 °C or exceeds +25 °C.

### **1.3 Inspection and Testing**

Notify the Consultant for field review of the exact drain locations.

## **PART 2 - MATERIALS AND PRODUCTS**

**2.1** All materials on the job site shall be new, CSA approved, best in quality and uniform, as specified.

### **2.2 Floor Drains**

.1 Floor drains shall have a cast-iron body with a shop applied epoxy powder coating, secured grate with conventional fasteners (not vandal proof) and sediment buckets. Unless otherwise specified, all drains shall have a membrane clamping device, where applicable. Connection shall be to match existing piping but no less than 100mm diameter.

.2 Use the following drains as supplied by one of the following suppliers:

.1 Unbonded Concrete Roof Deck

<b>Manufacturer</b>	<b>Product</b>	<b>Measurement</b>
MIFAB Manufacturing	F1340-4-5-6SP-15*-C (2-1/4" min.)	12" DIA
MIFAB Manufacturing	F1440-4-5-15*-C (2-1/4" min.)	12" SQ
WATTS Drainage	FD-340-5-10-15*-40 (2-1/2" min.)	12" DIA
WATTS Drainage	FD-460-AF-5-10-15*-40 (2-7/8" min.)	12" SQ
ZURN Industries	Z-541-E*-S-TS (2" min.)	12" DIA
ZURN Industries	Z-610-H-ADJ-Y-TS-E*-PERF (4-5/8" min.)	12" SQ

\* Note: Add extension as required to meet finish grade.

.3 Exposed portion of drain body above slab level shall be perforated.

**2.3 Drainage Piping and Fittings**

Drainage piping and fittings shall be medium weight, cast-iron mechanical joint pattern and stainless steel clamps. Size to match existing but no less than 100mm diameter unless approved by Consultant.

**2.4 Clean-Outs**

Clean-outs shall have an epoxy coated, cast iron body with neoprene gasket and secured cover.

**2.5 Supports**

.1 All piping shall be supported at all floor drain locations and pipe elbows. Supports on horizontal piping shall be at 2400mm maximum spacing. All hardware shall be cadmium plated or galvanized.

.2 Clamps shall be secured with bolts into lead shields.

.3 Soffit Hangers

Taylor #41 Swivel Ring Hangers

.4 Riser Clamps

.1 Grinnel Figure #126

.2 Hyatt Figure #182

.3 Taylor #82

**2.6 Non-Shrink Grout**

Manufacturer	Product
Master Builders	Masterflow 928
Sika Canada	Sika Grout 212

## **PART 3 - EXECUTION**

### **3.1 Equipment Delivery**

The Contractor shall review the job completion schedule and make sure that the materials that are intended to be used shall be on the job site according to schedule. Use of substituted materials due to delivery problems may not be accepted by the Owner.

### **3.2 Installation**

- .1 Identify the exact drain location by flooding the area in question to determine the slab low point or other areas of ponding.
- .2 Install drain, pipe and other items required in a proper workmanlike manner in accordance with applicable codes and manufacturer's recommendations. Roughen or sandblast sides of core hole prior to installing grout. Use a cement slurry bonding agent. Coordinate the work with the restoration work. Do not cut reinforcing steel without Consultant's approval.
- .3 Ensure that the drain installation is coordinated with the traffic deck coating or waterproofing membrane and that the interfaces are completely sealed.
- .4 Where the drain is installed in an area without waterproofing, tool a 12x12mm joint around the drain perimeter and fill with one of the specified sealants in Section 07 92 13.01 (cold-applied sealant).
- .5 Remove redundant piping and discard if not being reused. Terminate cut-off points in a proper workmanlike manner in accordance with applicable codes.
- .6 Ensure sufficient clean-outs are installed in the correct locations.
- .7 Test all new and existing drains in the work area to ensure they drain freely. Notify the Consultant of any drainage problems found.

**End of Section 22 14 26.01**

## **PART 1 - GENERAL**

### **1.1 Description**

This Section specifies the supply and placement of concrete paving.

### **1.2 Environmental Conditions**

- .1 Take the necessary precautions whenever the air temperature falls below +5 °C or exceeds +27 °C. Make preparations in advance of placing concrete. Shelter surfaces from direct sun and wind by erecting appropriate sun shades and wind breaks. Do not place concrete whose temperature falls below +10 °C or exceeds +30 °C. Do not place concrete in the rain.

### **1.3 Inspection and Testing**

- .1 Notify the Consultant for placement of concrete at least 48 hours prior to commencement. Arrange for the presence of an independent testing agency selected by the Consultant.

- .2 Concrete Testing

Concrete testing by an independent agency, conforming to CSA Standard A23.2-04, is to be provided, will include:

- .1 A standard strength test for each 15 m<sup>3</sup> of concrete placed but not less than one test for each type of concrete placed each day. Each strength test sample will consist of three cylinders with proper identification and field data. One specimen will be tested at 7 days and two at 28 days. Store cylinders in the field for a minimum of 20h prior to transporting to the testing laboratory for curing in accordance with CSA Standard A23.2-3C.
- .2 If concrete is being placed when there is a probability of the air temperature falling below 5 °C during the curing period, each test sample shall include one additional "field-cured" cylinder (reference CSA A23.2-3C) to be stored as near to the placed concrete as possible, and shall receive the same protection from the elements as the concrete that it represents. This cylinder shall be stored in the field for the full 5-day cure period prior to being transported to the testing laboratory for a 7-day compressive strength test. Specimens shall not be removed from the moulds until after the 5-day cure period, if the Contractor wishes to test "field-cured" cylinders earlier for removal of formwork, additional samples should be prepared at the Contractor's expense.
- .3 One standard air entrainment test for each standard strength test in accordance with CSA A23.2-4C or A23.2-7C. If applicable, measure air content before superplasticizers are added to the concrete and repeat test after the addition of superplasticizers.
- .4 Temperature of the fresh concrete shall be measured in accordance with ASTM C1064M-99.



- .5 One or more standard slump tests with each standard strength test in accordance with CSA A23.2-5C. If applicable, measure slump before superplasticizers are added to the concrete and repeat slump test after the addition of superplasticizers. The Consultant may require additional testing for each truck load placed, as deemed necessary.
- .6 Concrete will be considered under strength if:
  - .1 The average of any day's tests of each class of concrete is below specified strength.
  - .2 Any single test result is more than 3.5 MPa below the specified strength.
- .7 In case of dispute, and at the discretion of the consultant, the Contractor may have three 100mm cores extracted from the concrete and tested at his own expense for each result below the required strength, in accordance with CSA Standard A23.2-14C. The results shall be evaluated in accordance with CSA Standard A23.1-00.

.3 Concrete Placement

Concrete may be rejected prior to placement if:

- .1 Concrete fails to conform with the specified mix design.
  - .2 The concrete placement does not begin within 1-1/2 hours from batch time where set retarding admixtures are not employed or the concrete is older than 2 hours from batch time.
  - .3 Where set retarding admixtures are employed, concrete placement extends beyond the maximum placement/working times stipulated by the supplier on the mix design submission.
- .4 The Consultant may require additional testing as deemed necessary.

## **PART 2 - MATERIALS AND PRODUCTS**

### **2.1 Concrete**

- .1 Use ready mixed concrete.
- .2 Conform to CSA Standard A23.1-04, Section 14 for Class C-2 Exposure, subject to de-icing chemicals.
- .3 Provide concrete with the following properties:

Coarse Aggregate	20mm maximum
Minimum Compressive Strength	32 MPa at 28 days
Range in Total Air Content	5% - 8%
Maximum Cement Replacement	20% slag cement by weight of total cementing materials
Polypropylene fibre reinforcement added at a rate to control shrinkage cracking	

- .4 Use water reducing and air entraining agents conforming to ASTM C494-99 and ASTM C260-00 respectively.
- .5 Re-tempering, or the addition of water to restore loss of workability due to the evaporation of mix water while in transit will be permitted only under the direction of the concrete supplier, and provided re-tempering is completed within 1 hour from the time of batching.
- .6 Re-tempering shall only be permitted to restore lost workability to the designed slump. Any increases to workability above the design slump shall be achieved by re-dosing of superplasticizer or water reducers and only under the direction of the concrete supplier.
- .7 If re-tempering is completed, measure and document volume of water added to the concrete, the location where concrete is placed, and sample additional compressive strength cylinders if requested by the Consultant.
- .8 The use of superplasticizers will not be permitted for minimally reinforced paving such as sidewalks and curbs.

### **2.2 Reinforcing Steel**

- .1 New material conforming to CSA Standard G30.18-M92 from Canadian or American mills with factory applied epoxy coating of colour contrasting with steel and rust colours. Conform to the requirements of O.P.S.S. 1442 and 1443 (M.T.O.). All bars 10M and greater shall be deformed and of yield strength 400 MPa unless otherwise noted on the drawings.

### **2.3 Fibres**

Use polypropylene monofilament microfibres.

## **2.4 Curing-Sealing Compounds**

Clear liquid conforming to CGSB Standard 90-GP-1a, Type 1, applied as directed by the manufacturer. It shall not darken nor discolour the concrete surface. Do not use curing compounds on surfaces to which other materials are to be bonded. Acceptable compounds are:

Manufacturer	Product
WR Meadows	CS 309 (clear)
WR Meadows	1220 White (Pigmented)

## **2.5 Concrete Joint Filler**

### **.1 Formed Joints**

Premoulded asphalt impregnated fibre board 12mm thick joint filler, conforming to ASTM D1751-04 and O.P.S.S. 1308 (M.T.O.).

### **.2 Surface Expansion Joints**

Vulkem 45 SSL - Tremco Ltd. or equivalent

## **PART 3 - EXECUTION**

### **3.1 Concrete Paving**

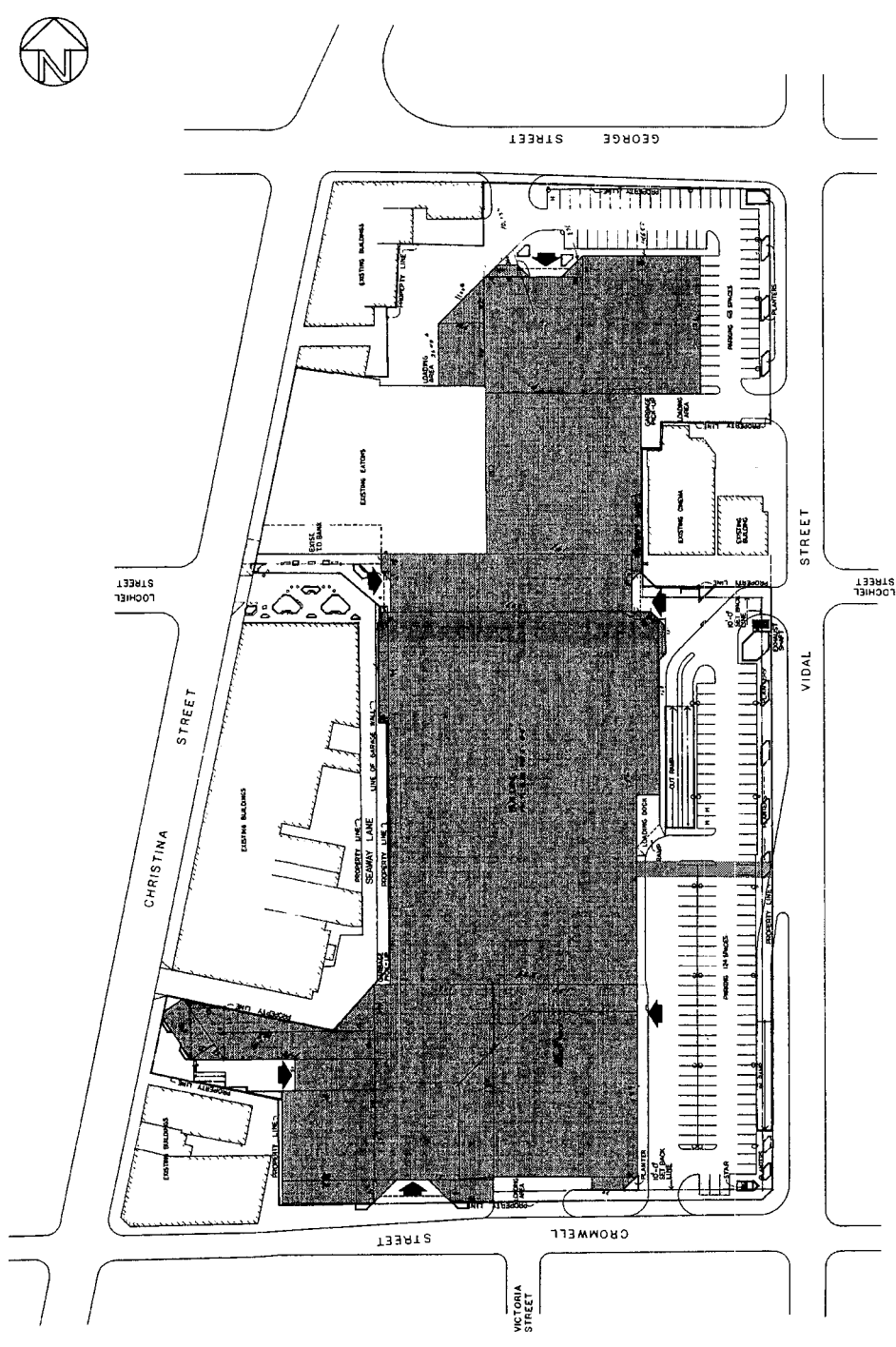
- .1 Install fibre joint filler between slabs and adjacent structures and curbs and between existing and new concrete. Joint filler shall be installed prior to concrete placement and be adequately supported. For short sections (less than 3m) of curb replacement, do not install joint filler (i.e. concrete to concrete bond). Pre-moulded joint filler shall be pre-cut to the shape of the curb and be installed with a 6mm recess on the exposed surfaces.
- .2 Form curbs such that no horizontal joints are visible. Use formwork material suitable for exposed concrete finish. Maintain forms rigidly in place, clean and lightly oiled with an approved non-staining form oil. The exposed face of concrete curbs shall be 100mm minimum, 150mm maximum. Determine height and grades of new curbs by establishing grades of adjacent finishes prior to pouring.
- .3 Maintain moist subgrade a minimum of 4 hours before placement of concrete. Remove all standing water. Concrete shall be laid only on a clean, freshly swept base surface. No concrete shall be laid on a surface which is frozen.
- .4 Provide sawcut transverse joints in curbs at 4.5m (max 6m) spacing. When curbs are constructed adjacent to concrete walkways, provide transverse joint spacing of the curb which coincides with those in the walkway.

- .5 Sidewalks: Provide formed transverse joint filler joints at 4.5m (max. 6m) centres, depressed 5mm below top of walk, and 5mm x 5mm intermediate tooled false joints at 1.5m (min. 1m/max. 2m) centres. Provide rounded edges and joints with 12mm radius.
- .6 Consolidate concrete by suitable means during placing operations. Work thoroughly around reinforcement, embedded items and into corners eliminating all air and stone pockets. Ensure that sufficient workmen are on hand for this operation.
- .7 Honeycombed concrete will not be accepted, and shall be removed and replaced. Cement slurry finish repair for exposed concrete will not be allowed.
- .8 The finish of exposed concrete surfaces which are not formed shall be broom finished.
- .9 The finished surface shall be true to line and grade, and have a crossfall and slope of 2%. Ensure that concrete surface is free from depressions greater than 3mm under a 3m straight edge and that surface drainage is not interrupted.
- .10 Beginning immediately after placement, protect concrete from premature drying, sunshine, excessively hot or cold temperatures, and mechanical injury. Maintain at a relatively constant temperature for as long as is required for hydration of the cement of the concrete. Keep moisture loss to a minimum.
- .11 Cure with approved liquid curing-sealing compound, immediately after placement.
- .12 Do not pile, store or transport materials over slabs until concrete has been in place for at least 7 days.
- .13 Defects caused by poor workmanship or disregard for the protection of the work shall be removed and replaced.

### **3.2 Traffic Markings**

Reinstate traffic markings to match the original layout.

**End of Section 31 11 00**

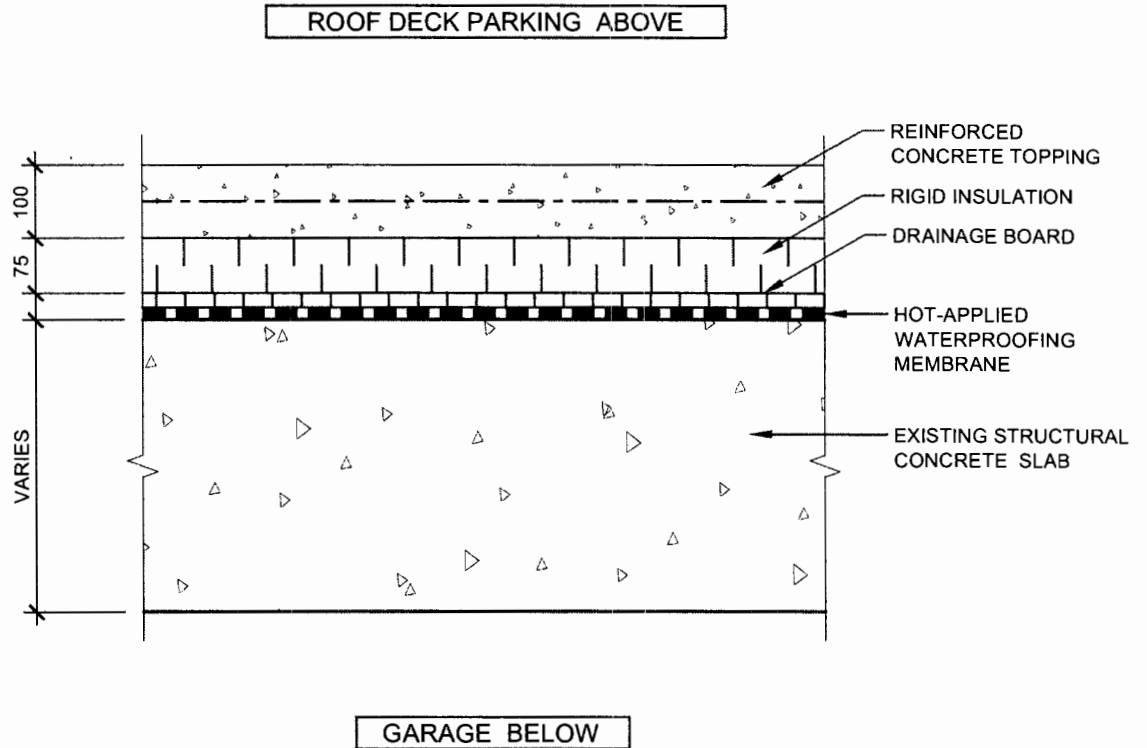


<b>EXPANSION JOINT REPAIRS</b> <b>150 CHRISTINA STREET, SARNIA</b>		Date: 28-Nov-14 Drawn by: OAM Checked by: DCD Scale: NTS	
SITE PLAN		Project No: 13Y125-035C	
2300 YONGE ST., SUITE 2300, TORONTO, ON CANADA M4P 1E4 PHONE: 416.487.5256    halsall.com		Drawing No: SP-1	

APPROXIMATE LOCATION OF EXPANSION JOINT REPAIR

ORIGINAL DRAWING ISSUED BY BREGMAN & HAMANN ARCHITECTS AND ENGINEERS, DATED APRIL 21, 1981, DRAWING No. A.1.1

PLOTTED BY: OMJ • PLOT DATE & TIME: 2014-11-28 10:10:09 AM • PLOT: AT ANSI expand A (8.50 x 11.00 Inches) SHEET SIZE. READ DRAWING ACCORDINGLY.  
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 TENDER\SPEC\DRAWINGS\13Y125-035C.PLAN & DETAILS.DWG



**NOTE:**  
 ADJACENT FINISHES TO MATCH EXISTING.

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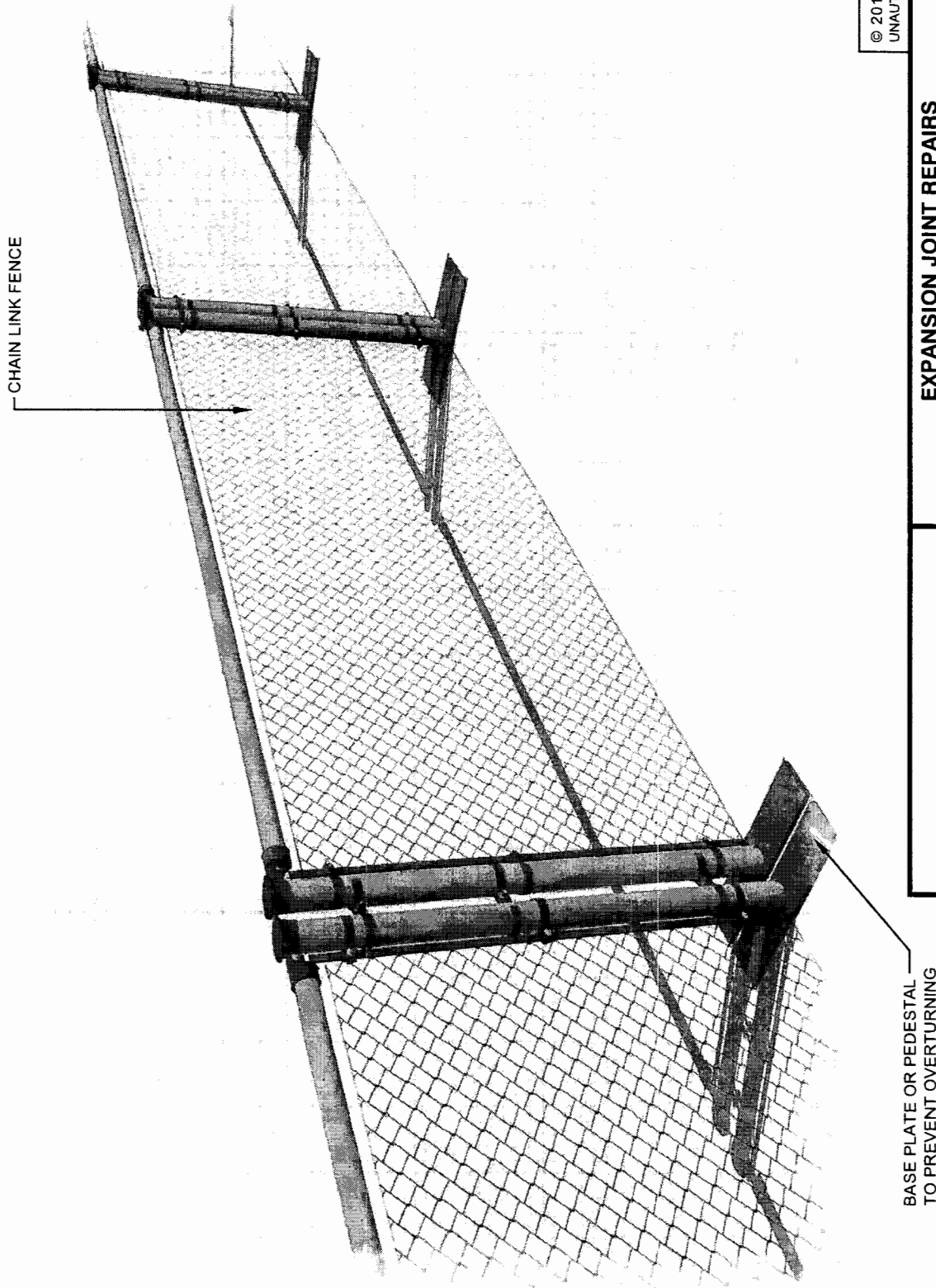
**EXPANSION JOINT REPAIRS  
 150 CHRISTINA STREET, SARNIA**

**NEW ROOF DECK SECTION**

2300 YONGE ST., SUITE 2300, TORONTO, ON CANADA M4P 1E4  
 PHONE: 416.487.5256 halsall.com FAX: 416.487.9766

Date: 28-Nov-14	Scale: NTS
Drawn by: OMJ	Checked by: DCD
Project No. <b>13Y125-035C</b>	
Drawing No. <b>PD-1</b>	

PLOTTED BY: OMJ • PLOT DATE & TIME: 2014-11-28 10:10:10 AM • PLOT: AT ANSI expand A (11.00 x 8.50 Inches) SHEET SIZE. READ DRAWING ACCORDINGLY.  
FILE: P:\Y125\2013\13Y125-035 - 150 CHRISTINA ST., SARNIA - GARAGE COND EVAL\13Y125-035C - GARAGE REPAIRS - SPEC AND TENDER\SPEC\DRAWINGS\13Y125-035C PLAN & DETAILS.DWG



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<b>EXPANSION JOINT REPAIRS</b> <b>150 CHRISTINA STREET, SARNIA</b>		Date: 28-Nov-14	Scale: NTS
		Drawn by: OMJ	Checked by: DCD
<b>PORTABLE FENCE BARRIER</b>		Project No <b>13Y125-035C</b>	
2300 YONGE ST., SUITE 2300, TORONTO, ON CANADA M4P 1E4 PHONE: 416.487.5256      halsall.com      FAX: 416.487.9766		Drawing No. <b>L1-A5</b>	

# Halsall



**Exhibit "H"**

**Sixth Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated January 21, 2015**

**Halsall Contract**





January 14, 2015 (Revised)

A. John Page & Associates Inc.  
As Receiver of Bayside Mall Limited  
100 Richmond St. W., Suite 447  
Toronto, ON M5H 3K6

**Attn: John Page FCPA, FCA, President**

**E-mail: [ajpage@ajohnpage.com](mailto:ajpage@ajohnpage.com)**

Dear Sirs,

**Re: Bayside Mall – 150 Christina St., Sarnia  
Proposal for Services During Construction**

Further to our Tender Results Letter (dated December 22, 2014), we understand that you (acting as Court-appointed Receiver of Bayside Mall Limited, and not in your personal capacity) would like to proceed with garage roof slab expansion joint repairs at Bayside Mall in Sarnia. The Halsall Team welcomes the opportunity to make this project a success, provided, of course, that this letter agreement is conditional (for your benefit) upon your obtaining Court approval of this letter agreement, as well as the contemplated construction contract.

## **1. BACKGROUND**

Bayside Mall (150 Christina St.) was constructed about 1981 (based on the date of the original drawings reviewed as part of our Property Condition Evaluation). 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.

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. We understand that you would like to proceed with repairs to this expansion joint at this time.

## **REQUIREMENTS**

Your requirements, as we understand them, are to:

- ▶ Review samples of work for compliance with the technical requirements of the specifications.
- ▶ Issue written reports to the Contractor highlighting non-compliant aspects and corrective actions.
- ▶ Review Contractor's progress applications and issue Certificates for Payments.
- ▶ Perform "Consultant" function under the applicable construction contract with the applicable Contractor.

## **SCOPE OF SERVICES**

We will perform the work described in the attached scope of work, including as set out above in the above Requirements.

## **FEES AND DISBURSEMENTS**

Your investment for our services would be **\$47,000<sup>1</sup> (excluding HST and reimbursable expenses)**.

Notes:

1. Our fee was previously presented in our Results Letter (dated December 22, 2014).

### **Halsall Associates**

2300 Yonge Street, Suite 2300, Toronto, ON M4P 1E4 [www.halsall.com](http://www.halsall.com) T: 416.487.5256 F: 416.487.9766  
VANCOUVER • CALGARY • SUDBURY • BURLINGTON • TORONTO • OTTAWA • WASHINGTON, DC

*A Parsons Brinckerhoff Halsall Inc. Company*

2. Expenses such as document reproduction, travel, courier and expendable materials will be charged at cost plus 15% in addition to the above fee. Automobile travel will be charged at rates based on Canada Revenue Agency prescribed rates as published from time to time. We estimate that the reimbursable expenses will not exceed \$10,000 (previously presented in our Results Letter.
3. HST will be applied in addition to fees and expenses.


Thank you for considering Halsall. If you have any questions, please feel free to call either of us at the numbers below. If you would like to accept this proposal, please return a signed copy to our office.

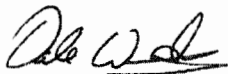
We look forward to working with you.

Yours very truly,

**HALSALL ASSOCIATES**

A Parsons Brinckerhoff Company

  
Dustin Ducharme, P.Eng.  
Project Manager

  
Dale Wannamaker, P.Eng.  
Project Principal

Parsons Brinckerhoff Halsall Inc. is hereby authorized to proceed as per the attached Scope of Work, Fees and Conditions of Assignment included in this proposal.	
<b>AUTHORIZED BY:</b>	<b>A JOHN PAGE ASSOCIATES INC</b>
Company:	<b>SOLELY IN ITS CAPACITY AS COURT</b>
Contact Name:	<b>APPOINTED RECEIVER OF BAYSIDE MALL</b>
Signature:	<b>OR A JOHN PAGE</b>
Date:	<b>JANUARY 21, 2015</b>
<b>CONTRACT AND BILLING DETAILS:</b>	
Company Legal Name:	<b>As above</b>
Billing Address:	<b>SUITE 467 100 RICHMOND ST W.</b>
Billing Contact Name:	<b>TORONTO ON M5H 3K6</b>
Special Billing Instructions: (if applicable)	<b>JOHN PAGE</b>

Attachments:

1. Scope of Services During Construction
2. Conditions of Assignment

P214xR534.Cover Letter.docx



## SCOPE OF WORK SERVICES DURING CONSTRUCTION

### 1. PROJECT MANAGEMENT SERVICES

Halsall's management services involve implementing the control systems required to manage scope, cost, schedule, quality and impact on facility operations for the duration of the project. We create solutions and give direction for minimizing problems. These efforts are communicated to you on an ongoing basis.

- ▶ Chair site meetings with Owner and Contractor at agreed upon intervals.
- ▶ Prepare and coordinate required documentation for building permit application.
- ▶ Manage the project budget and cash flow.
- ▶ Obtain required documentation from the Contractor regarding liability, insurance, workplace safety, Workplace Safety and Insurance Board Certificates, materials data, schedule etc.
- ▶ Provide periodic evaluation of the project impact on facility operations by creating solutions and giving advice for minimizing problems.
- ▶ Obtain closeout documentation (warranties, etc.) for the Owner.

### 2. ENGINEERING SERVICES

#### 2.1 Construction Review

Our construction review services include the following general tasks aimed at evaluating the quality of the work done and providing the necessary technical guidance:

- ▶ Review samples of work in progress for compliance with the technical requirements of the specifications during periodic visits to the site.
- ▶ Provide written reports to the Contractor highlighting non-compliant aspects and recommended corrective actions.
- ▶ Check that deviations from the contract requirements are being addressed by the Contractor.
- ▶ Advise the Contractor on the interpretation of the project drawings and specifications.
- ▶ Issue supplementary instructions (if required).
- ▶ Perform a final review of the work with the Owner and Contractor at completion of the project.

#### 2.2 Contract Administration

- ▶ Prepare the construction contract documents and get them executed.
- ▶ Review Contractor's progress applications and issue Certificates for Payments.
- ▶ Review and advise on the validity of claims for additions or deletions; issue Change Orders.
- ▶ Issue Substantial Performance certification in compliance with lien legislation.

13Y125-035C.let01.Scope of Services Durign Construction.docx



# CONDITIONS OF ASSIGNMENT

The following conditions apply to this agreement:

## 1. CONSULTANT'S SERVICES

- 1.1. The Consultant (including all sub-consultants engaged to perform portions of the work, which are not within the Consultant's range of services) will provide consulting engineering services in accordance with the terms of our proposal and applicable codes, for the scope of services described.
- 1.2. The Client expressly agrees that it has entered into this Agreement with the Consultant, both on its own behalf and as agent on behalf of its employees and principals.

## 2. FEES

- 2.1. Services in this agreement will be performed for the agreed fee. Additional service agreed to by the Client shall be provided for a fee agreed to in accordance with Halsall's hourly fee schedule in effect at that time. Fees indicated do not include the HST. HST taxes will be added.
- 2.2. Invoices will be issued for work completed and are due upon presentation. Overdue accounts are subject to interest charges after 30 days from invoice date in the amount of 1% monthly or 12% annually calculated on the outstanding balance. The Consultant reserves the right, without penalty, to discontinue services in the event of non-payment.
- 2.3. If the project is abandoned or delayed for any reason by the Client, the Client shall pay for services rendered to that date on a percent complete basis.
- 2.4. If the Consultant must make any changes in completed work for any part of the project for reasons which he does not control, or if the Consultant is put to extra work, cost or expense by reason of any act or matter which he does not control, the Client shall pay to the Consultant a fee for such changes or extra work calculated on a time basis; provided that prior to the commencement of such changes or extra work the Consultant shall notify the Client in writing of his intentions to make such changes or to carry out such extra work and that the Consultant shall keep separate cost records in respect to such changes or extra work.

## 3. CLIENT'S RESPONSIBILITY

- 3.1. The Client will make available all relevant information or data pertinent to the project which is required by the Consultant. The Consultant shall be entitled to rely upon the accuracy and completeness of such information and data furnished by or on behalf of the Client.
- 3.2. The Client will give prompt consideration to all requests or documents relating to the project submitted by the Consultant and whenever prompt action is necessary, inform the Consultant of his decisions in such reasonable time so as not to delay the services of the Consultant. The Client shall arrange and make provision for the Consultant's entry and ready access to the project site as necessary to enable the Consultant to perform his services.
- 3.3. The Client will give prompt written notice to the Consultant whenever the Client or his representative becomes aware of any defects or deficiencies in Consultant's work.

## 4. LIABILITY

- 4.1. The Consultant's liability to the Client in contract and tort is limited to \$2,000,000.
- 4.2. No party other than the client shall rely on the Consultant's work without the express written consent of the Consultant.
- 4.3. The Client expressly agrees that the individuals engaged by the Consultant shall have no personal liability to the Client in respect of a claim, whether in contract, tort and/or any other cause of action in law. Accordingly, the Client expressly agrees that it will bring no proceedings and take no action in any court of law against any of the individuals in their personal capacity.
- 4.4. The Client and other users of this service expressly deny any right to any claim, including personal injury claims, which may arise out of mould, mildew or other fungus.

## 5. OWNERSHIP

- 5.1. All data and documents prepared by the Consultant shall be and remain the property of the Consultant. Copies issued to the Client shall be for record purposes only. The Client shall not use or permit use thereof for any other project without the consent of the Consultant.



**6. EMERGENCIES**

- 6.1. In the event of any construction emergency, which in the opinion of the Consultant requires immediate action in the Client's interests, the Consultant shall have authority to issue such orders and to take such steps on behalf, and at the expense, of the Client as he shall deem necessary or expedient.

**7. CONFIDENTIAL DATA**

- 7.1. The Consultant shall not divulge any confidential information communicated to or acquired by him in the course of carrying out the engineering services provided for herein. No such information shall be used by the Consultant on any other project without the approval of the Client.

**8. SUCCESSORS AND ASSIGNMENT**

- 8.1. This Agreement shall ensure to the benefit of, and be binding upon, the parties hereto, and except as hereinafter otherwise provided, the executors, administrators, successors and assigns.
- 8.2. Except as aforesaid neither party shall assign this Agreement without the consent in writing of the other.







**Exhibit "I"**

**Sixth Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated January 21, 2015**

**Realtor Request for Proposals**

## **Bayside Mall**

**Realtor RFP August 26, 2014**

By order of the Honourable Mr. Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) dated December 5, 2012 A. John Page & Associates Inc. was appointed as receiver ("the Receiver") of Bayside Mall Limited ("Bayside"). The principal asset of Bayside is the 245,598 square foot shopping mall known as the "Bayside Mall" ("the Building" or "the Mall") located at 150-202 Christina St. N. in Sarnia, Ontario on land ("the Land") owned by the City of Sarnia ("the City") pursuant to a land lease ("the Land Lease").

In the second half of 2013 we attempted to market just the Building with a list price of \$6.5 million but interest was "underwhelming". We think that one key contributory factor was the uncertainty surrounding the Land Lease. We are pleased to announce that we have now reached an agreement with the City through which we are empowered to market the Land and the Building jointly. Our agreement with the City includes a formula for the sharing of the proceeds of such a sale between the two interests.

We are looking for a realtor to conduct this marketing campaign on our behalf.

The Mall currently has 20 tenants occupying approximately 42% of the leasable space. For the first half of this year, gross income has been just under \$160,000 per month (excluding HST).

We are also finalizing negotiations with the County of Lambton ("the County"), the major tenant in the Mall, regarding an extension of their lease from 2016 to 2021 with an option to extend further at a gross rent in excess of the rent currently being paid ("the Lambton Lease Extension"). We hope to have reached a formal agreement prior to the launch of any marketing of the Land and the Building. A Lambton Lease Extension will be a very positive vote of confidence in the Mall and should improve its marketability and value. The Lambton Lease Extension will also provide a funding mechanism that will enable us to address certain parking garage repairs and an Order to Remedy issued by the City.

We should note that both the City and the County are very interested in seeing that the buyer is a party that will rejuvenate the Mall and thereby improve the downtown Sarnia area. They have reserved the right to approve the purchaser based upon their vision for the Mall and their capabilities.



Receivership sales are on an "as is, where is" basis. Receivers are unable to give any form of representation or warranty regarding assets they sell. All offers should be for cash.

While we are prepared to discuss the marketing approach with our chosen broker, we are currently envisaging a two stage marketing approach. In the first stage, after signing a confidentiality agreement, potential purchasers would have access to a data room of information on the Mall hosted/set up by the broker and would be asked to submit a non binding Letter of Intent ("LOI") setting down the amount of their offer and any key conditions. Parties whose LOIs are deemed attractive would move to the second stage where they would be asked to firm up their interest in a binding offer using the Receiver's form of Agreement of Purchase and Sale. Any offer accepted by the Receiver would be subject to court approval.

If possible, we are looking for a realtor with experience in court sales of properties of this size and complexity.

Regular, clear, accurate reporting, probably every two weeks, in form suitable for inclusion in court reporting is important.

The integrity of the sales process is very important in court receivership sales. Accordingly our realtor must not represent any potential buyer in a dual capacity (without the express consent of the Receiver) and must be and remain independent of all potential purchasers and must act only for the Receiver.

We would appreciate receiving proposals from realtors interested in acting for the Receiver.

Time is of the essence. We would like to receive proposals by no later than the end of the day on Tuesday September 9, 2014. If you cannot meet this deadline but wish to be considered for this assignment, please indicate when you estimate you would be able to get a proposal to us.

We ask that any proposal include:

Outline marketing plan/approach

Timeline from the signing of a listing agreement to being ready to launch

Proposed length of first phase of marketing

Commission structure including details of the costs covered by the broker and costs to be covered by the Receiver

Proposed period of listing agreement and any hold over period

Likely marketing team

Examples of the marketing team's experience in court receivership sales

Examples of expertise in the sale of shopping malls

Redacted examples of the type of bi-weekly reporting the broker is proposing

Any other key terms of a listing agreement

We ask that proposals do not include what we might describe as unnecessary "filler" such as copies of documents previously supplied by us, documents otherwise publicly available or glossy demographics on the Sarnia area. We would like the proposal to be succinct and to focus on the issues raised above. Redacted copies of marketing material prepared in the past and access to an example of a data room can however be helpful in giving us an idea of a broker's marketing style.

We are interested in knowing your proposed listing price and the likely range of sale prices. However, we accept that this may not be realistic until the information needed to populate the data room has been compiled.

If you have any questions about this request please give me a call at 416-364-4894 ext. 11.

Regards



Exhibit "J"

**Sixth Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated January 21, 2015**

**CBRE Listing Agreement**

**THIS SALES LISTING AGREEMENT**, dated September 11, 2014 between

**A. JOHN PAGE & ASSOCIATES INC.**, as Receiver of Bayside Mall  
Limited and not in its personal capacity

(the "**Receiver**")

and

**CBRE LIMITED**, a corporation

(the "**Broker**")

1. The Broker and the Receiver acknowledge that this Agreement is made in the context of the following facts:
  - (i) By Order of the Honourable Mr. Justice Wilton-Siegel of the Ontario Superior Court of Justice (the "**Court**") dated December 5, 2012 ("**the Initial Order**"), issued in the matter of ICICI Bank Canada v. Bayside Mall Limited Court File # CV-12-9911-00-CL (the "**Proceeding**"), A. John Page & Associates Inc. was appointed Receiver of the assets of Bayside Mall Limited ("**Bayside**"). The major asset of Bayside covered by the appointment is the mall located on land ("**the Land**") leased from the City of Sarnia ("**the City**") at 150 Christina St. N. Sarnia known as Bayside Mall ("**the Building**").
  - (ii) Pursuant to the Initial Order the Receiver was and is empowered and authorized to, among other things, market any and all of the Building.
  - (iii) Pursuant to the Initial Order the Receiver was and is empowered and authorized to sell the Building with the approval of the Court.
  - (iv) The Receiver is an independent Court officer;
  - (v) The Receiver reached an agreement with the City dated July 21, 2014 ("**The Sharing Formula Agreement**") by which the City appointed the Receiver as its agent in respect of the marketing and sale of the Land, jointly with the Building (collectively "**the Property**");
  - (vi) By Order of the Honourable Mr. Justice Hainey of the Court dated August 20, 2014 the Sharing Formula Agreement was approved and the Receiver was authorized to enter into the Sharing Formula Agreement;
  - (vii) The Receiver signed the Sharing Formula Agreement on or about August 21, 2014

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- (viii) The Broker acknowledges being given a copy of the Sharing Formula Agreement; The Broker further acknowledges that the Sharing Formula Agreement has a **"Sunset Date"** as defined in the Sharing Formula Agreement of May 15, 2015;
  - (ix) On or about August 26, 2014 the Receiver asked the Broker (among others) for its proposal to act for the Receiver and conduct the marketing campaign of the Property (**"the RFP"**) and
  - (x) The Broker responded to the RFP through a proposal and clarifying emails on or about September 9, 2014 and September 10, 2014 (**"the Broker Response"**).
2. The Receiver hereby engages the Broker to market and sell the Property in accordance with the terms and conditions set out in this Agreement.
3. The term of this Agreement shall be for a period commencing on September 11, 2014 and ending at midnight on the day that is 182 days after that date (the **"Term"**). The Receiver may terminate this Agreement for any reason on providing the Broker with 10 days written notice of termination.
4. In the event of a termination of the Agreement by the Receiver, the Broker shall be entitled to recover its out-of-pocket costs incurred in carrying out its mandate under this Agreement, up to a maximum of \$20,000 plus HST, unless it is otherwise entitled to a commission in accordance with the terms of this Agreement. The Broker and the Receiver agree that this calculation represents a genuine and accurate pre-estimation of the damages arising from any such termination and the Broker agrees that its claim is strictly limited to this amount and that it is only entitled to recover any such amount from any net proceeds of sale actually received by the Receiver.
5. To the extent that they do not conflict with this Agreement,
- (i) any terms and conditions set out in the RFP; and
  - (ii) the representations and warranties set out in the Broker's Response
- are hereby incorporated by reference into this Agreement.
6. The Broker agrees and acknowledges that the Receiver is in control and management of the marketing and sales process and may receive expressions of interest and offers and conduct negotiations directly with prospective purchasers without the involvement of the Broker. Regardless of the involvement of the Broker, the Broker is entitled to commissions as per the terms of this contract.
7. The Broker shall act as advisor to the Receiver in respect of this engagement and shall perform such financial and real estate advisory services as are required and requested by the Receiver, including the following:



- (i) Perform underwriting, financial analysis, pre-marketing due diligence and valuation work on the Property;
- (ii) Prepare along with the Receiver a marketing plan
- (iii) Assemble and package due diligence materials prior to marketing launch;
- (iv) Prepare marketing materials for use in promoting the Property;
- (v) Advise the Receiver of the various steps in achieving the sale of the Property;
- (vi) Compile a list of potential investors that may be interested in acquiring the Property;
- (vii) Execute the marketing plan for the Property;
- (viii) Day-to-day management of the disposition program, including marketing, co-ordination of due diligence, assisting the Receiver and third parties, facilitating tours and information requests, and other duties as required and requested;
- (ix) Providing the Receiver with regular and as required reporting on activities and the progress of the execution of the marketing plan
- (x) Receiving expressions of interest for the Property, if required;
- (xi) Advising the Receiver with respect to such interest and offers;
- (xii) Assisting the Receiver in negotiations, structuring and documentation of the transaction with the purchaser until closing; and
- (xiii) Provide such other advice or services as may be required in order to carry out responsibilities.

The Broker shall have no authority to bind the Receiver and the Receiver is not obliged to accept any offer.

8. Following the earlier of the termination of this Agreement or expiry of the Term, there shall be a holdover period of 90 days (the "**Holdover Period**"). Within five days of the commencement of the Holdover Period the Broker will deliver to the Receiver a list (the "**List**") of persons or entities to whom the Property has been submitted prior to the termination or expiration of this Agreement, which List shall be approved by the Receiver acting reasonably.

If during the Term or prior to the termination of this Agreement, if earlier, the Receiver enters into a binding contract of purchase and sale for part or all of the Property (the "**Sale Agreement**") and that the Sale Agreement has closed or closes within 365 days following the end of the Holdover Period, the Broker shall be entitled to a commission on the Sale Agreement in accordance with this Agreement to be paid from the proceeds of sale on closing.

During the Holdover Period, if the Receiver signs a binding Sale Agreement with any party on the List, and that Sale Agreement closes within 365 days following the end of the Holdover

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Period the Broker shall be entitled to a commission on the Sale Agreement in accordance with this Agreement to be paid from the proceeds of sale on closing.

The Broker shall be entitled to be paid its commission on closing from and only from the proceeds of any sale of the Property, or any part thereof, by the Receiver calculated at the rate of 2.5% of the gross sale price (not including HST and Land Transfer Tax) plus applicable taxes.

9. The Broker may not offer a cooperating broker a fee without the express agreement of the Receiver. In the event that the Receiver decides, in consultation with the Broker, to offer a cooperating broker fee or accept an offer that provides for a fee to a broker participating in the sale, then such fee will, unless agreed otherwise, be payable by the Receiver on closing out of the proceeds of the sale on the same basis as the commission due to the Broker pursuant to this Agreement
10. The Broker acknowledges that any sale of the Property by the Receiver will be on an "as-is, where-is" basis with no representations or warranties whatsoever. The Broker further acknowledges that any such sale will require the approval of the Court and will be effected through a vesting order.
11. For greater certainty, the Broker shall be solely responsible for, among other things, payment of the following expenses in connection with this Agreement and the transactions contemplated in this Agreement:
  - (i) preparation, hosting, and monitoring of any electronic due diligence room;
  - (ii) preparation, design, photography, printing, and other costs associated with marketing and advertising materials;
  - (iii) any lawyers retained by the Broker for advice to the Broker in connection with this Agreement and the transactions referred to in this Agreement; and
  - (iv) advertising costs
12. For greater certainty, the following costs shall not be the responsibility of the Broker:
  - (i) building condition reports;
  - (ii) environmental reports;
  - (iii) energy audits;
  - (iv) appraisals;
  - (v) any commission for cooperating brokers

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13. Any information

- (a) about the Property which is designated by the Receiver as confidential; or
- (b) about the marketing and sale process, including details of interested parties and any offers received

supplied to the Broker by the Receiver or otherwise (except information that was publicly available) shall be kept confidential by the Broker. The Broker shall not discuss the sales and marketing process with any of the parties to the Proceeding, nor release any information to them, without express direction and authorisation from the Receiver.

14. The Broker shall not be entitled to any payment from the Receiver on account of commission, costs, or damages other than from the proceeds of sale on closing of the Property or any part thereof, except damages caused to the Broker arising from any gross negligence or wilful misconduct of the Receiver.

15. Broker agrees to hold the Receiver harmless from all claims, disputes, litigation, judgments and to pay all costs and reasonable solicitors' fees (as invoiced by major Canadian law firms) incurred by the Receiver in connection therewith arising from any activities of the Broker in marketing the Property or otherwise performing its services which are in breach of this Agreement or are engaged in negligently by the Broker.

~~16. The Broker acknowledges and agrees that it will not represent a buyer in a dual agency relationship or otherwise without the consent of the Receiver.~~

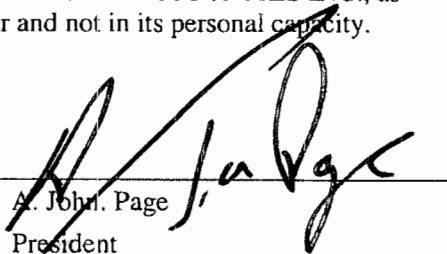
16. The Broker and Listing Team, specifically Sean Comiskey and Brad Walford, acknowledge and agree that the Listing Team will not represent a buyer in a dual agency relationship or otherwise without the consent of the Receiver. The Receiver consents that CBRE agents other than the Listing Team may represent a buyer, wherein CBRE hereby confirms that CBRE will not disclose either parties confidential information to the other party.



17. This Agreement shall be governed by and shall be subject to the laws of the Province of Ontario.
18. In the event no sale of the Property is achieved but the City enters into an agreement for the sale of the Land then no commission shall be payable by the Receiver.

A. JOHN PAGE & ASSOCIATES INC., as  
Receiver and not in its personal capacity.

Per:

  
A. John Page  
President

CBRE Limited

Per:

  
Name: Paul F. Sh  
Title: Senior Vice President

I have authority to bind the Corporation



**Exhibit "K"**

**Sixth Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated January 21, 2015**

**Statement of Receipts and Disbursements**

**Statement of Receipts and Disbursements**  
05/12/2012 through 20/01/2015 (in Canadian Dollars) (Cash Basis)

Category Description	05/12/2012- 20/01/2015
<b>INCOME</b>	
HST on Sales	18,668.77
Interest	4,933.30
Receivables	19,447.91
Receiver's Certificate Borrowing	1,000,000.00
Rent and Other Income	3,412,234.59
<b>TOTAL INCOME</b>	<b>4,455,284.57</b>
<b>EXPENSES</b>	
Consulting Fees	61,704.93
HST Control	14,435.70
HST Input	30,223.77
Insurance	339,839.91
Larlyn Expenses	
Cleaning	260,639.22
Engineering Inspections	27,509.11
Management Fees	163,125.87
Misc HST Exempt	203.00
Other	141,520.06
Repairs & Maintenance	291,693.25
Snow Removal	72,648.35
Temporary Shoring	115,024.88
Utilities	783,461.05
Wages	662,806.21
Water	28,586.78
<b>TOTAL Larlyn Expenses</b>	<b>2,547,217.78</b>
Legal Fees	374,506.08
Misc.	9,285.53
OSB Filing Fee	70.00
Receiver's Fees	762,620.07
<b>TOTAL EXPENSES</b>	<b>4,139,903.77</b>
<b>OVERALL TOTAL</b>	<b>315,380.80</b>