

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

NINTH REPORT OF THE COURT APPOINTED RECEIVER
OF 1368883 ONTARIO INC. (formerly BAYSIDE MALL LIMITED)

Dated March 21, 2016

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 was 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, 2013 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 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 Statement of Receipts and Disbursements (“**R&D**”) 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 R&D

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 McEwen dated June 16, 2014 (**“the June 16, 2014 Order”**) the activities of the Receiver set down in the Fourth Report were approved. The R&D 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 activities of the Receiver set down in the Fifth Report were approved. The R&D 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 and subsequent sharing of proceeds from a sale 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.

On January 21, 2015 the Receiver made its Sixth Report to the Court (**“the Sixth Report”**). A copy of the body of the Sixth Report is attached as ***Exhibit “D”***.

By order of the Honourable Mr. Justice Newbould dated January 29, 2015 (**“the January 29, 2015 Order”**) the activities of the Receiver set down in the Sixth Report were approved including the entering into of a new lease with the County effective June 1, 2014 (**“the New County Lease”**). The R&D contained in the Sixth Report together with the fees and expenses of Gardiner Roberts to December 31, 2014 were also approved. The Receiver’s contracts for certain repairs to the parking garage were also approved.

On February 5, 2015 the Receiver made its Supplement to the Sixth Report.

By order of the Honourable Mr. Justice Newbould dated March 3, 2015 the fees of the Receiver to December 31, 2014 were approved.

By order of the Honourable Madam Justice Conway dated April 14, 2015 the fees and expenses of Heath Whiteley to December 31, 2014 were approved.

On May 19, 2015 the Receiver made its Seventh Report to the Court (“**the Seventh Report**”). A copy of the body of the Seventh Report is attached as ***Exhibit “E”***.

By order of the Honourable Madam Justice Conway dated June 16, 2015 the activities of the Receiver set down in the Seventh Report were approved. The R&D contained in the Seventh Report together with the fees and expenses of the Receiver and its counsel to April 30, 2015 were also approved.

On August 5, 2015 the Receiver made its Eighth Report to the Court (“**the Eighth Report**”). A copy of the body of the Eighth Report is attached as ***Exhibit “F”***.

By order of the Honourable Mr. Justice Hailey dated August 26, 2015 (“**the August 26, 2015 Order**”) the agreement to sell Bayside Mall to Wilsondale Venture Capital Inc. (“**Wilsondale**”), in trust for a company to be incorporated, (“**the Wilsondale APS**”) was approved. By a second order of the Honourable Mr. Justice Hailey dated August 26, 2015 the activities of the Receiver set down in the Eighth Report were also approved as was the R&D contained in the Eighth Report together with the fees and expenses of the Receiver and its counsel to July 31, 2015.

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, the Fifth Report, the Sixth Report, the Seventh Report and the Eighth Report.

Background

The copies of the bodies of the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report and the Eighth Report, attached as *Exhibits "B", "C", "D, "E" and "F"*, provide 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, the Sixth Report, the Seventh Report and the Eighth Report.

Purpose of this Report

- To provide the court with information on the activities of the Receiver since its Eighth Report
- To seek approval of the activities of the Receiver and its R&D as described in this Report
- To seek approval for the fees and disbursements of the Receiver, the Receiver's independent legal counsel, Gardiner Roberts, and Heath Whiteley for the period from August 1, 2015 – February 29, 2016 as set down in fee affidavits
- To seek an order directing the City to pay directly to the Receiver certain property tax refund claims

The Closing of the Sale of Bayside Mall

The August 26, 2015 Order approved the Wilsondale APS which provided for the sale of Bayside Mall for \$1,750,000 to Wilsondale in trust for a company to be incorporated. Wilsondale incorporated a company called Bayside Mall (2015) Limited ("**Bayside Mall (2015)**") and assigned to it the Wilsondale APS. The sale of Bayside Mall to Bayside Mall (2015) closed on October 8, 2015. Attached as *Exhibit "G"* is a copy of the closing Statement of Adjustments. Tax arrears totalling \$1,308,304.94 were paid out of the closing proceeds and the Receiver received the net sum of \$369,711.44.

The Wilsondale APS provides for post closing adjustments for certain matters that could not be determined at Closing. All such post closing adjustments are to be made by no later than April 4, 2016.

We have one unpaid post closing adjustment claim, for \$16,429.91.

Changing the Name of Bayside Mall Limited

At the request of Wilsondale we changed the name of Bayside Mall Limited to 1368883 Ontario Inc.

The City of Sarnia

The City had previously drafted a Notice of Motion dated July 15, 2015 that looked for an order that, among other things, would have seen possession of Bayside Mall revert to the City. We understand that it had been drafted in response to the suggestion that the Receiver, having failed to sell the leasehold interest, might move to abandon the Mall. The City did not pursue the motion and in fact had its counsel review and approve the proposed wording of the August 27, 2015 Order.

The City of Sarnia seems pleased with the sale to Bayside Mall (2015) and with the plans that Bayside Mall (2015) have put forward for redeveloping the Mall and the surrounding area.

Larlyn Property Management Ltd. (“Larlyn”) and Operations Generally

Larlyn continued to act as our property manager up October 8, 2015, the date of the closing of the sale to Bayside Mall (2015). In accordance with the Wilsondale APS, Bayside Mall (2015) continued to use Larlyn for a period of time after that. We understand that they have since terminated Larlyn’s property management contract.

Larlyn have finalized their accounting covering the period ending October 7, 2015. They are currently assisting us in finalizing and collecting (or refunding) the net balances due from or to tenants (see below). When their part of that exercise has been completed they will close their separate operations account at Royal Bank (“**the Larlyn Royal Account**”) and will forward the funds in the account to us.

2015 Tenant Statements and Related Matters

A number of the tenants, including the County, contribute to Mall common area costs and property taxes. Contributions are based on an estimate and are “trued up” at the end of the period based on actual costs incurred. The lease documentation we have is not always clear as to how the true up calculations are to be prepared. Not only have we identified a number of different formulae for determining what costs are to be shared and for then calculating the share to be paid by each tenant but each

formula has cost allocation language that is not always totally clear, particularly in the context of a half empty Mall that is in receivership.

As Receiver we had previously prepared true up statements for 2013 and 2014 on what we felt was a generally fair and equitable basis. Where we were unsure about the appropriate cost allocation we have generally been conservative given the short term and unusual nature of a receivership and the dollars involved. For example we have not allocated any of our own fees to the Common Area Maintenance Statements. We have been attempting to avoid costly disputes.

Once we had received Larlyn's final accounting for operations we, in accordance with the Wilsondale APS, prepared true up statements covering the period from January 1 to October 7, 2015. We are in the process of having Larlyn issue invoices or credit notes reflecting the net balance due from four tenants totalling approximately \$6,600 and the balance refundable to two tenants totalling approximately \$20,000.

CBRE Limited, representing two provincial ministries who rent space at the Mall, had previously asked extensive questions about earlier true up statements and have challenged some of our calculations. This is despite the fact that the earlier true up statements saw their clients getting a significant refund. It would seem that each of the two ministries have a difference allocation formula although what that formula should be is unclear, particularly since no full lease was ever signed by Bayside with one of the ministries. Given the dollars involved we are attempting to resolve this dispute on an overall basis rather than have to incur the cost of a challenging attempt to determine what the actual lease arrangement with each ministry was meant to be and then having to perform a detailed analysis of the costs.

There is one other outstanding disputed tenant receivable, totalling approximately \$7,900. The dispute relates to whether the leasing agreement between that tenant and Bayside Mall provided for a rent increase. Certain terms of the leasing agreement are unclear or ambiguous. While we think our interpretation of the rent payable is the better one we have been unable to effect a recovery to date and have decided to write off the balance owing rather than incur further costs trying to collect it.

Media Enquiries

The receivership of the Mall, its sale and its future prospects continue to be news in the Sarnia area.

Property Taxes

As noted earlier, property tax arrears totalling \$1,308,304.94 were paid to the City on closing.

Property Assessment Appeal

As noted in earlier reports we have filed an appeal of the Bayside Mall Municipal Property Assessment Corporation (“MPAC”) property assessment for the period from 2013-2016 (“**the Appeal**”) with the Assessment Review Board (“**the ARB**”).

The property was assessed at \$7,100,000 as at January 1, 2012 and the property taxes levied for the period from January 1, 2013 are based on that assessment. After extensive marketing, the leasehold interest in the Mall sold for \$1,750,000 in 2015 so it seems to us that a very significant reduction in the assessed value should be in order. A reduction in the assessed value of the Mall will result in a refund of some of the property taxes paid for the period from January 1, 2013 onwards. We estimate that the likely property tax refund will be substantial, perhaps of the order of \$500,000 or more, making this the major potential asset in this receivership.

Our property tax consultants, Altus Group (“**Altus**”), are overseeing the Appeal.

We have had a number of conference calls with MPAC and with MTE Paralegal Professional Corporation (“**MTE**”), the consultants representing the City in the Appeal, in an attempt to better understand each side’s position and to narrow the issues. We have exchanged information. In that regard attached as ***Exhibit “H”*** is a copy of a memorandum dated December 2, 2015 (without exhibits) that we prepared for the parties involved in the Appeal to provide background information on the receivership, the sales processes undertaken by the Receiver, the results of those sales processes and the overall basis for the Appeal.

In order to, hopefully, expedite the resolution of the Appeal we have agreed to attend a two day mediation in late April 2016 along with Altus, MPAC and MTE. The mediation is to be chaired by a representative of the ARB.

Property Tax Vacancy Rebate Claim

Altus have filed two vacancy rebate applications for 2015, one covering the period the Mall was in receivership ie from January 1 to October 7, 2015 and the other covering

the post receivership period ie from October 8 to December 31, 2015. The vacancy rebate application resulted in a tax rebate of about \$52,000 for 2014 based on an assessed value of \$7,110,000. We are anticipating a similar rebate for 2015 although the rebate will undoubtedly be retroactively readjusted once the Appeal has been resolved.

County Application for a Separate Assessment

The New County Lease stipulated that the County will apply for a separate assessment for the space occupied by them for property tax purposes. In that regard the County has designated the space occupied by them as a “Municipal Capital Facility” under the Municipal Act with the effect that, from January 1, 2015, that portion of the Mall should be exempt from property taxes.

The impact of this designation on the assessment and therefore on the property taxes due for the balance of the Mall has yet to be determined. Having regard to the tax exempt status of the primary tenant, it should however result in a refund of some of the property taxes already paid re 2015.

Pending clarification and formalization of various aspects of this designation the County paid rent of \$7,644.31 plus HST each month on account of property taxes. The total amount paid in this regard (covering the period from January 1 to October 7, 2015) that is included in the R&D attached to this report as **Exhibit “K”**(see later) is \$79,693.16 including HST.

Direction re Payment of All Property Tax Refunds

As noted earlier, there are a number of potential property tax refunds and collectively they are sizable. There is the 2015 vacancy rebate claim. There is the impact of the designation as exempt from property tax of the 25% of the Mall occupied by the County effective January 1, 2015. And the most significant of all is the impact of the Appeal and the prospect of a sizeable reduction in the assessed value of the Mall and the resulting refund of already paid property taxes covering the period to December 31, 2015. These three potential sources of property tax refunds (collectively “**the Property Tax Refunds**”) each impact each other but collectively could well total in excess of \$500,000.

In accordance with the Wilsondale APS, at the time of closing Bayside Mall (2015) signed a document (“**the Tax Agreement**”) reaffirming that the Property Tax

Refunds should be paid to the Receiver. They also signed a direction (“**the Direction**”) to the City directing and authorizing them to pay the Property Tax Refunds directly to A. John Page & Associates Inc. The City have however indicated that they cannot or will not carry out the Direction but will instead pay any refunds to the then registered owner of the Land.

This is of concern to the Receiver. Bayside Mall (2015) have clearly agreed that the Property Tax Refunds are to be paid to the Receiver to be dealt with in accordance with the Tax Agreement. There are circumstances in which payment to another party might be problematic.

Attached as ***Exhibit “I”*** is a memorandum summarizing matters pertaining to the attempts of the Receiver to have all Property Tax Refunds directed to the Receiver. Attached to the memorandum are copies of key documents including the Tax Agreement and the Direction.

The Receiver is asking the court to order the City to pay the Property Tax Refunds directly to the Receiver.

Communications with the Secured Creditor

The prime secured creditor of Bayside and the party with the economic interest in the outcome of the receivership is ICICI Bank Canada (“**the Bank**”). We have been keeping the Bank apprised of our activities, primarily through our primary legal counsel, Mr. Whiteley, who is also counsel to the Bank. At their request, we provided the Bank with a status report dated November 26, 2015. We attach a copy of that report as ***Exhibit “J”***.

HST and Corporate Tax Returns

CRA have previously submitted a deemed trust claim for unremitted pre receivership HST for \$23,604.83. We have been filing, on a quarterly basis, HST returns covering our own operations. At the present time we have an unpaid net refund claim totalling \$58,739.80. The last corporate tax return filed by Bayside covered the period to December 31, 2011. It is our understanding that CRA will not release HST refunds when there are outstanding unfiled corporate tax returns or unpaid taxes. We are therefore planning to bring Bayside’s corporate tax returns up to date. We will then indicate to CRA that they should offset the unpaid deemed trust claim against our larger refund claim and forward the net balance to us.

Fees and Expenses of the Receiver and its Legal Counsel

The fees and expenses of the Receiver, its primary legal counsel, Heath Whiteley, and its independent counsel, Gardiner Roberts, relating to their activities from August 2015 to February 2016 were as follows:

A. John Page & Associates Inc.

Month	Hours	Fees	HST	Total
August 2015	69.17	\$25,440.45	\$3,307.26	\$28,747.71
Sept. 2015	54.91	19,854.85	2,581.13	22,435.98
October 2015	35.27	11,694.77	1,520.32	13,215.09
Nov. 2015	75.92	26,290.20	3,417.73	29,707.93
Dec. 2015	40.52	14,536.20	1,889.71	16,425.91
January 2016	48.09	17,629.15	2,291.79	19,920.94
Feb. 2016	42.75	16,143.29	2,098.63	18,241.92
Total	366.63	\$131,588.91	\$17,106.57	\$148,695.48

Heath Whiteley

Period	Fees	HST	Total
August 2015	6,720.00	873.60	7,593.60
Sept - Oct 2015	3,600.00	468.00	4,068.00
Nov. 2015 - Feb.	1,520.00	197.60	1,717.60
	\$11,840.00	\$1,539.20	\$13,379.20

Gardiner Roberts

Period	Fees	Disbursements	HST	Total
August 2015	\$21,506.00	\$868.99	\$2,908.75	\$25,283.74
Sept. 2015	40,887.00	422.50	5,370.24	46,679.74
October 2015	16,778.50	386.55	2,231.46	19,396.51
November 2015	1,024.00	502.75	198.48	1,725.23
Dec. 2015 - Jan. 2016	823.50	69.00	116.03	1,008.53
February 2016	0.00	0.00	0.00	0.00
	\$81,019.00	\$2,249.79	\$10,824.96	\$94,093.75

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.

Receiver's Certificate Borrowings

We had previously borrowed \$1 million from the Bank to fund the Receivership pursuant to two Receiver's Certificates. We paid \$300,000 to the Bank on account of principal and interest related to the Receiver's Certificate Borrowings in October 2015 and a further \$100,000 in November 2015.

Banking and the Receiver's Statement of Receipts and Disbursements

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 the Larlyn Royal Account for use in their management of the Bayside Mall. Attached as *Exhibit "K"* is a copy of the Receiver's R&D from December 5, 2012 to March 21, 2016 combining the three accounts ("**the March 2016 R&D**"). The March 2016 R&D does not include any transactions flowing through the Larlyn Royal Account after February 29, 2016 as these have yet to be reported to us.

The fees and disbursements of the Receiver, Mr. Whiteley and Gardiner Roberts through to February 2016 are included as disbursements in the R&D. We are asking the court to approve the March 2016 R&D.

Although the March 2016 R&D suggests that the Receiver has approximately \$266,000 on hand, there are, as detailed in this Report, a number of claims on those funds. For example, \$20,000 represents amounts due to tenants from the Receiver's 2015 True Up CAM calculations. \$80,000 represents amounts paid by the County on account of property taxes for 2015 that will likely be refunded once the designation of their space as property tax exempt is finalized. There is also an outstanding deemed trust claim re unpaid HST of about \$24,000.

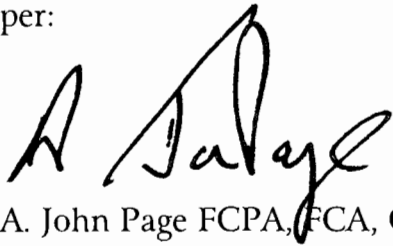
** ** *

Page 13
Ninth Report to the Court
March 21, 2016

All of which is respectfully submitted this 21st day of March, 2016

A. JOHN PAGE & ASSOCIATES INC.
LICENSED INSOLVENCY TRUSTEE
COURT APPOINTED RECEIVER OF 1368883 ONTARIO INC. (FORMERLY BAYSIDE MALL
LIMITED)

per:

A handwritten signature in black ink, appearing to read 'A. Page', written over a light gray background.

A. John Page FCPA, FCA, CIRP, LIT
President

**Exhibits to the Ninth Report of A. John Page & Associates Inc.
as Court Appointed Receiver of 1368883 Ontario Inc. (formerly Bayside Mall
Limited)
dated March 21, 2016**

Initial Order	A
Fourth Report (without exhibits)	B
Fifth Report (without exhibits)	C
Sixth Report (without exhibits)	D
Seventh Report (without exhibits)	E
Eighth Report (without exhibits)	F
Statement of Adjustments	G
Property Assessment Appeal Memorandum dated December 2, 2015	H
Memorandum re Direction re Property Tax Refunds dated March 8, 2016	I
Report to the Bank dated November 26, 2015	J
Statement of Receipts and Disbursements	K



Exhibit "A"

**Ninth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated March 21, 2016**

Initial Order

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

ICICI BANK CANADA

Applicant

- and -

BAYSIDE MALL LIMITED

Respondent

ORDER
(appointing Receiver)

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

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

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER OR PROPERTY MANAGER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

SERVICE AND NOTICE

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

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

GENERAL

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

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

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

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

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

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

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

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
FAIT À TORONTO LE

5th DAY OF Dec 20 12

REGISTRAR

GREFFIER



W. / Hon - L.J.

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

DEC 05 2012

MB

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

DATED the ____ day of _____, 20__.

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

Per: _____
Name:
Title:

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

310 Stouffville Road
Richmond Hill, Ontario
L4E 3P4

Lawyer for the Applicant



Exhibit "B"

**Ninth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated March 21, 2016**

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 1st 2014.” Repair Strategy One involves localised concrete and expansion joint repairs to address leaks through the expansion joints, localised roof slab membrane and drain leakage and corresponding concrete deterioration. The most recent estimate of the cost of Repair Strategy One is in the \$400,000 - \$600,000 range. Based on the advice of our engineers, Halsall Associates (“**Halsall**”), (see later) we have not to date committed to undertake Repair Strategy One in the parking garage. We should note that, at the present time, we have insufficient funds on hand to be able to commence Repair Strategy One.

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

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

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

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

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

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

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

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

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

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

Repairs and Maintenance

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

The Marketing of the Mall

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

Delay in Commencing Launch

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

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

Preparations for Launch

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

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

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

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

All this information was included in the data room.

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

The Determination of a Listing Price

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

Initial Marketing

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

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

Non Binding Letters of Intent

Colliers forwarded to us 9 LOIs from 5 different parties.

Assessment of the LOIs

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

Communications with ICICI Bank Canada

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

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

Overall Assessment

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

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

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

Discussions with the County of Lambton and the City of Sarnia

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

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

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

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

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

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

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

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

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

Status of the Negotiations with the City

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

Status of the Negotiations with the County

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

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

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

Other Tenants and Leasing Generally

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

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

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

Larlyn and Operations Generally

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

Media Enquiries

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

Property Taxes

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

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

Operating Budget

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

Additional Rent

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

Secured Creditors

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

SAMAK and the December Rents

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

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

Insurance

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

Harmonized Sales Tax ("HST")

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

Legal Counsel

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

Fees and Expenses of the Receiver and its Legal Counsel

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

A. John Page & Associates Inc.

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

Heath Whiteley

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

Gardiner Roberts

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

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

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

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

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

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

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

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

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

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

Recent Discussions with the Bank

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

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

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

Alternatives available to the Receiver

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

Alternative 1

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

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

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

Advantages of Alternative 1

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

Disadvantages of Alternative 1

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

Alternative 2

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

Advantages of Alternative 2

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

Disadvantages of Alternative 2

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

Alternative 3

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

Advantages of Alternative 3

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

Disadvantages of Alternative 3

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

Alternative 4

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

Advantages of Alternative 4

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

Disadvantages of Alternative 4

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

Alternative 5

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

Advantages of Alternative 5

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

Disadvantages of Alternative 5

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

The Receiver's Assessment of the Alternatives

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

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

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

The Impact of our Recommendations on the City and the County

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

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

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

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

per:


A. John Page FCPA, FCA, CIRP
President

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

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

S:\DATA\WP\CLIENTS\SARNIA\REPORT #4 V 1Q.DOCX



Exhibit "C"

**Ninth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated March 21, 2016**

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
Total	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
Total	\$23,280.00	\$3,026.40	\$26,306.40

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
Total	\$23,036.50	\$1,034.63	\$3,129.25	\$27,200.38

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 11th 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, prominent "A" and "P".

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

S:\DATA\WP\CLIENTS\SARNIA\BAYSIDE REPORT 5V1L.DOCX



Exhibit "D"

**Ninth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated March 21, 2016**

Sixth Report (without exhibits)

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.

Month	Hours	Fees	HST	Total
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
		465.98	\$170,493.96	\$22,164.22
				\$192,658.18

Heath Whiteley

Period Covered	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
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
		\$52,480.00	\$6,822.40
			\$59,302.40

Gardiner Roberts

Month	Fees	Disbursements	HST	Total
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
		\$38,844.50	\$1,135.87	\$5,197.46
				\$45,177.83

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

S:\DATA\WP\CLIENTS\SARNIA\BAYSIDE REPORT 6V11.DOCX



Exhibit "E"

**Ninth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated March 21, 2016**

Seventh Report (without exhibits)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

SEVENTH REPORT OF THE COURT APPOINTED RECEIVER
OF BAYSIDE MALL LIMITED

Dated May 19, 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 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 McEwen 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 Hailey dated August 20, 2014 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 and subsequent sharing of proceeds from a sale (“**the Sharing Formula Agreement**”) was approved. A copy of the Sharing Formula Agreement is attached as ***Exhibit “D”***. The Receiver was also authorised to enter into a lease agreement with the County substantially in accordance with a confidential term sheet (“**the Term Sheet**”) attached to the Fifth Report.

On January 21, 2015 the Receiver made its Sixth Report to the Court (“**the Sixth Report**”). A copy of the body of the Sixth Report is attached as ***Exhibit “E”***.

By order of the Honourable Mr. Justice Newbould dated January 29, 2015 (“**the January 29, 2015 Order**”) the activities of the Receiver set down in the Sixth Report were approved including the entering into of a new lease with the County effective June 1, 2014 (“**the New County Lease**”). The Statement of Receipts and Disbursements contained in the Sixth Report together with the fees and expenses of Gardiner Roberts to December 31, 2014 were also approved. The Receiver’s contracts

with Halsall Associates (“**Halsall**”) and SMID Construction Limited (“**SMID**”) for certain repairs to the parking garage were also approved.

On February 5, 2015 the Receiver made its Supplement to the Sixth Report.

By order of the Honourable Mr. Justice Newbould dated March 3, 2015 the fees of the Receiver to December 31, 2014 were approved.

By order of the Honourable Madam Justice Conway dated April 14, 2015 the fees and expenses of Heath Whiteley to December 31, 2014 were 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.

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

Background

The copies of the bodies of the Fourth Report, the Fifth Report and the Sixth Report, attached as ***Exhibits “B”, “C” and “E”***, 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 and the Sixth Report.

Purpose of this Report

- To provide the court with information on the activities of the Receiver since its Sixth Report
- 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, the Receiver's independent legal counsel, Gardiner Roberts, and Heath Whiteley for the period from January 1 – April 30, 2015 as set down in fee affidavits
- To seek the advice and direction of the court regarding the options available to the Receiver given the inability of the Receiver to effect a sale of the Land and Building

The Receiver's Go Forward Strategy

As detailed in the Sixth Report, as at January 2015 our go forward strategy was to endeavour to proceed, with court approval where appropriate, generally as follows:

- To undertake the Parking Garage Repairs
- To conclude our joint marketing of the Land and Building in accordance with the Sharing Formula Agreement, to receive and assess Letters of Intent and then proceed to try and conclude a sale of the Land and Building

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.

The May 27, 2014 Order to Remedy lists as "Required Remedial Steps" that, among other things, engineering drawings to obtain a permit for certain parking garage repairs ("**the Parking Garage Repairs**") be submitted by March 1, 2015 and that the Parking Garage Repairs be commenced by May 1, 2015.

The January 29, 2015 Order approved contracts with Halsall and SMID to perform the Parking Garage Repairs. We executed these contracts and both Halsall and SMID have moved diligently to undertake the Parking Garage Repairs. The engineering drawings were submitted before March 1, 2015 and the Parking Garage Repairs have now been completed. We have yet to receive all the invoices relating to the Parking Garage Repairs but understand that they will total approximately \$100,000 less than the budgeted amount of \$485,000 plus HST. We are in the process of having the City cancel the outstanding Order to Remedy.

The funding for the Parking Garage Repairs is, as noted later, being provided by the County in accordance with the terms of the New County Lease.

Marketing the Property

As detailed in the Sixth Report, we signed a listing agreement with CBRE Limited (“CBRE”) dated September 17, 2014 for the marketing of the Land jointly with the Building. The listing agreement expired on March 12, 2015 and was extended by us to May 15, 2015.

The marketing was launched on November 20, 2014.

We attach as *Exhibit “F”* a confidential memorandum (“**the Marketing Memorandum**”) providing details of the marketing of the Land and Building together with copies of CBRE’s periodic reporting letters and copies of the letters of intent (“LOIs”) received from potential purchasers.

As detailed further in the Marketing Memorandum, we established an earliest LOI date of February 12, 2015 and encouraged interested parties to submit a non binding LOI to us by that date setting down the price and any other key conditions of their interest. By mid February 2015 we had received four LOIs of which we felt two were worthy of moving to Stage 2 of the Receiver’s Sales Process where potential purchasers would be allowed to convert their non binding LOIs into a formal binding offer to purchase in the form of the Receiver’s standard agreement of purchase and sale.

The City and County Vetos

Pursuant to the Sharing Formula Agreement (*Exhibit “D”*) and the New County Lease both the City and the County had the right to veto any potential purchaser. The Sharing Formula Agreement detailed the precise terms of the veto right and the “Credentials and Vision Information Package” that the City and County wished to receive from potential purchasers who had been found by the Receiver worthy of moving to Stage 2 of the Receiver’s Sales Process. The Sharing Formula Agreement also provided that the Receiver must indicate to the City whether the LOI submitted by a potential purchaser would likely result in a recovery to the City in excess of a threshold to be set by them.

As detailed in the Marketing Memorandum, on February 26, 2015 we presented two bidders’ LOIs and Credentials and Vision Information Packages to the City and the County for approval. We indicated that neither LOI would likely result in a recovery to the City of in excess of their threshold.

Both bidders' proposals were rejected by the City council.

We attach as *Exhibit "G"* a redacted copy of a letter we sent to the City of Sarnia councillors dated March 17, 2015 asking them to reconsider their veto. They did not.

The County has recently followed the City's lead and has also vetoed the two bidders.

To date we have not received any other LOIs that we feel are worthy of moving to Stage 2 of the Receiver's Sales Process.

The Sharing Formula Agreement had a "**Sunset Date**" of May 15, 2015 such that if there was no binding Agreement of Purchase and Sale ("**APS**") for the sale of the Land and Building by the Sunset Date then the City's willingness to consider a joint sale of the Land with the Building pursuant to the Sharing Formula Agreement would end.

The City did indicated that they would still be prepared to review LOIs up until the Sunset Date and, if satisfactory, would be open to an extension of the Sunset Date to enable a binding APS to be negotiated and signed. However the uncertainty created in the market place by the rejection of two otherwise seemly credible bidders appears to have had the effect of extinguishing whatever interest might have remained in the Mall.

In the circumstances we did not receive any new attractive LOIs prior to the Sunset Date and the Sharing Formula Agreement expired.

The County of Lambton

The County is the largest tenant in the Mall occupying approximately a quarter of the space. As detailed in the Sixth Report we were able to negotiate a new lease with the County ("**the New County Lease**"), substantially in accordance with the Term Sheet, The New County Lease was fully executed on November 11, 2014.

The Initial Term of the New County Lease was for seven years, expiring on May 31, 2021.

However, the New County Lease provided that, if there is no binding APS for the sale of the Land and Building by the Sunset Date then the term of the New County Lease would automatically truncate to May 14, 2017. Given our earlier comments, that has now happened.

Pursuant to the New County Lease, the County have been providing the funding required for the Parking Garage Repairs. This funding is to be repaid by a monthly deduction from rent such that all the funding together with interest will have been repaid prior to May 14, 2017.

Ongoing Cash Flow

The Receiver's ongoing monthly cash flow is comprised of two major components, cash flow related to operations and the professional fees of the Receiver and its legal counsel.

The monthly operational cash flow is seasonal and volatile. The Receiver is monitoring performance to a budget prepared by Larlyn but it is only in the second half of the subsequent month that the actual results for the previous month are known. The major swings in monthly cash flow relate to utility costs (gas and hydro) which are much higher in the winter months. Snow removal is another significant seasonal expense. There are also unanticipated repair costs. Rent received from certain tenants is subject to adjustment the following year when certain costs eg property taxes and common area maintenance costs are known. All of these factors make it hard for the Receiver to "know" what the operational cash flow is on a timely basis. Since the signing of the New County Lease payments to the Receiver from Larlyn on account of operations have improved somewhat. However the Receiver anticipates that this trend will reverse through the summer as the County will start to withhold between \$15,000 and \$20,000 per month (plus HST) from rent to recover their funding of the Parking Garage Repairs, tenants with a monthly rent of over \$8,000 (plus HST) are vacating and (as detailed later) since the space the County is occupying is being designated exempt from property tax with effect from January 1, 2015, the County's payment towards property taxes of almost \$8,000 (plus HST) per month will likely cease shortly and amounts already paid re 2015 will likely be reimbursed through a deduction from rent or a refund.

The receivership professional fees have varied monthly depending on the activities undertaken. Even if the Receiver were to attempt to minimize these costs by stopping all activity except for overall monitoring of Larlyn and operations, the Receiver is of the view that, absent additional funding (which it does not expect to receive), it would be imprudent to continue operations after the fall when utility costs etc. will be expected to rise significantly.

The Options Now Available to the Receiver

We are of the view that, absent a change of outlook at City council, a joint sale of the Land and the Building is not achievable at this time. We had previously concluded that, given the size of the back taxes, a sale of the Building alone ie the leasehold interest of Bayside Mall Limited in Bayside Mall was not achievable at that time.

The New County Lease is now due to terminate on May 14, 2017. The County have previously informed us that it would take them about two years to relocate the various services they provide from Bayside Mall and we therefore suspect that they will have to start making plans for that move very shortly.

The lease of the second largest tenant, Sun Media Corporation ("**Sun Media**"), is due to expire on January 31, 2016. Sun Media have already vacated their space and have no interest in a lease renewal. Another larger tenant, Canadian Blood Services, is vacating this summer.

The options available therefore seem to be as follows:

1. The Expedited Departure Option - Move to relinquish possession of the Mall and obtain our discharge as Receiver at the earliest practical opportunity

The Receiver can develop and implement a disengagement plan on notice to tenants and other stakeholders for handing back of the management of the Mall to Bayside Mall Limited or some other party or, failing that, the abandonment of the Mall, the finalization of all related accounting and administrative matters and the preparation of an application for its discharge as Receiver of Bayside Mall Limited.

2. The Thirty Day Option - Contact the City and see if, in light of the information conveyed in this report, there is any interest in quickly concluding a different agreement for the joint sale of the Land and the Building ie one without any reference to a threshold and without any veto.

To date, dealings with the City have been time consuming and therefore costly in terms of fees. They have also not produced a successful sale of the Land and Building. To the extent that the City speaks "as one" we do not seem to be able to deliver what the City seems to want from the sale of Bayside Mall. In light of this history, we are reluctant to enter into any further negotiations

with the City for some form of extension to the Sharing Formula Agreement unless it is very clear from the outset that we can reach that agreement quickly and that, once reached, we can move to conclude a sale of the Land and Building without further input from the City or the County. The process to date, where the City has vetoed the two potentially satisfactory LOIs and has, in addition, “spooked” the market, makes any other approach less than desirable. Since time is of the essence we have already commenced pursuing this option. We supplied a draft of this report to A. Habas, counsel to the City and the County, and, as well as asking for her and her clients’ comments, indicated that if this option were to be viable we would need an agreement within 30 days of the date we supplied the draft ie by June 15, 2015. Initial feedback suggests that this option is not achievable. We note that we would also need to be able to resurrect the long term New County Lease within the same time period and at the same time remove the County’s veto right. If it is clear that we cannot achieve these objectives in that 30 day period we propose moving to pursue Option 3.

3. The Alternative Thirty Day Option

Promptly list leasehold interest ie just the Building at a price having regard to the LOIs for the Land and Building submitted recently and the outstanding property taxes. Have CBRE contact previously interested parties and attempt to solicit within 30 days an unconditional LOI at or close to the listing price. If successful, attempt to quickly draft and sign a binding APS and then seek court approval prior to closing the sale. If not successful, pursue Option 1.

If we find we have to pursue the Expedited Departure Option we plan to liaise with both the City and the County in an attempt to work with them to minimize the practical implications of our departure.

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.

Attempting to locate tenants is also at odds with the Receiver’s expectation that it

will be taking steps to disengage from the Mall.

We were however approached by Dr. Warren, an optometrist, who wanted to sign a lease on a month to month basis with a 90 day termination notice clause for an existing 793 square foot suite. We have signed this lease on behalf of Bayside Mall Limited because no initial leasehold improvements were required and it provides a small amount of additional income to the Mall.

Since the Sixth Report the following tenants have vacated or have indicated that they are about to vacate the Mall:

- Canadian Blood Services
- Sun Media
- Subway
- Meridian Hearing

Larlyn and Operations Generally

Larlyn Property Management Ltd. ("**Larlyn**"), our property manager, is 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 been interviewed by the press on its status.

Property Taxes

Property taxes due and unpaid as at May 29, 2015 will be \$1,159,550.94 rising to \$1,170,961.91 the following day. We have made no payments to the City on account of property taxes to date. Of the amount due and unpaid, approximately \$697,000 represents taxes charged since the date the Receiver was appointed, ignoring penalties and interest and vacancy rebate credits. The Receiver does not currently have sufficient funds to pay the outstanding taxes.

The amount of property taxes owed is likely significantly lower than the current outstanding amount for two reasons, which are explained in further detail below: (1) taxes are currently being levied on the basis of an assessed property value of \$7,110,000 (significantly higher than what our marketing efforts have shown to be

the market value) and this assessment is under appeal; and (2) the County has filed for a separate assessment asking that the space occupied by them be tax exempt.

Property Tax Appeal

Our property tax consultants, Altus Group (“Altus”), are 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. Altus has also filed a vacancy rebate application for 2014. The vacancy rebate for 2013 resulted in a tax rebate of \$54,969 which was credited to the property tax account.

Given the issues and options detailed earlier in this report, it is not clear whether or not the Receiver should incur the cost of trying to get the property assessment and property tax bill reduced. However, as noted later, the magnitude of the potential reduction is very high. Therefore, until such time as the direction of this file is much clearer, we propose continuing the appeal and any material property tax rebate application.

The property assessment under appeal is \$7,110,000. Given the upper limits to the value of Bayside Mall established through our sales process, we will be instructing Altus to assert that a **very** significant reduction in the property value is in order. Such a reduction would significantly reduce the amount of the property tax arrears. It ought to also enhance the value of the Mall to prospective purchasers.

County Application for Separate Assessment

The New County Lease stipulated that the County will apply for a separate assessment for the space occupied by them for property tax purposes. In that regard the County has designated the space occupied by them as a “Municipal Capital Facility” under the Municipal Act with the effect that, from January 1, 2015, that portion of the Mall should be exempt from property taxes.

The impact of this designation on the assessment and therefore the property taxes due for the balance of the Mall has yet to be determined. Having regard to the tax exempt status of the primary tenant, it should however further reduce the taxes payable, perhaps significantly.

Pending clarification and formalization of various aspects of this designation the

County has been paying rent of \$7,644.31 plus HST each month on account of property taxes. The total amount paid in this regard (covering the period from January 1 to March 31, 2015) that is included in the Statement of Receipts and Disbursements attached to this report (see later) is \$22,932.93 plus HST.

Current Status

Since its appointment the Receiver has collected “Additional Rent” amounts from tenants on account of common area costs and property taxes. There are a number of methods of calculating the amount of Additional Rent due by a tenant. Some are fixed amounts independent of “actual”. Some are ambiguous, particularly in a situation where actual costs/ taxes levied are affected by the large empty portion of the Mall. In the case of the major tenant, the County, the amount paid was a negotiated amount not directly related to “actual” property taxes. All rent, whether basic rent or Additional Rent, has been deposited into the Larlyn Royal Account and used for operations. As noted later, Larlyn have forwarded surplus funds to the Receiver each month. As described in previous reports to the court, the Receiver did not make payments towards the outstanding taxes and used all rent proceeds to pay operating costs, insurance premiums and professional fees. The aim was to have the property tax arrears paid out of the joint proceeds from the sale of the Land and Building and the Sharing Formula Agreement provided a mechanism for this to happen.

However, as detailed earlier in this Report, given that the City has vetoed two bids from seemingly credible purchasers, it now seems likely that there will be no sale of the Mall through the receivership and therefore that the property tax arrears will not and cannot be paid by the Receiver.

The ultimate amount of the property tax arrears is not currently known as the current arrears will likely be reduced significantly once the appeal of the tax assessment has been heard and determined.

Fees and Expenses of the Receiver and its Legal Counsel

The fees and expenses of the Receiver, its primary legal counsel, Heath Whiteley, and its independent counsel, Gardiner Roberts, relating to their activities from January to April 2015 were as follows:

A. John Page & Associates Inc.

Month	Hours	Fees	HST	Total
January 2015	110.75	\$39,463.83	\$5,130.30	\$44,594.13
February 2015	73.61	27,483.05	3,572.80	31,055.85
March 2015	72.18	25,584.30	3,325.96	28,910.26
April 2015	63.89	22,580.71	2,935.49	25,516.20
Total	320.43	\$115,111.89	\$14,964.55	\$130,076.44

Heath Whiteley

Period	Fees	Disbursements	HST	Total
January – March, 2015	\$21,360.00	\$0.00	\$2,776.80	\$24,136.80
April 2015	6,480.00	0.00	842.40	7,322.40
Total	\$27,840.00	\$0.00	\$3,619.20	\$31,459.20

Gardiner Roberts

Period	Fees	Disbursements	HST	Total
January 2015	\$26,908.00	\$457.00	\$3,557.45	\$30,922.45
February 2015	8,459.00	196.75	1,125.25	9,781.00
March 2015	7,552.50	48.25	988.10	8,588.85
April 2015	2,177.50	189.89	307.76	2,675.15
Total	\$45,097.00	\$891.89	\$5,978.56	\$51,967.45

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 Disbursements

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 May 19, 2015 combining the three accounts (“the R&D”). The R&D does not include any transactions flowing through

the Larlyn Royal Account after March 31, 2015 as these have yet to be reported to us.

The fees and disbursements of the Receiver, Mr. Whiteley and Gardiner Roberts through to April 2015 are included as disbursements in the R&D. We are asking the court to approve the R&D.

Although the R&D suggests that the Receiver has approximately \$366,000 on hand, there are a number of claims on those funds. For example, \$119,000 represents funds in the Larlyn Royal Account to cover outstanding cheques and payables as at March 31, 2015. \$23,000 represents amounts paid by the County on account of property taxes for 2015 that will likely be either refunded or deducted from future rent once the designation of their space as property tax exempt is finalized. There is also an outstanding deemed trust claim re unpaid HST of about \$24,000.

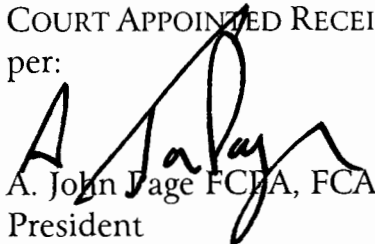
The Receiver is therefore concerned that it might run out of funds before being able to effect an orderly handover of the Mall to another party and will therefore continue to closely monitoring its cash flow going forwards as it likely moves to disengage.

The Receiver currently anticipates being only able to repay a very small portion of the \$1 million it has borrowed from the Bank secured on Receiver's Certificates.

** ** *

All of which is respectfully submitted this 19th day of May, 2015

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


A. John Page FCPA, FCA, CIRP
President

**Exhibits to the Seventh Report of A. John Page & Associates Inc.
as Court Appointed Receiver of Bayside Mall Limited
dated May 19, 2015**

Initial Order	A
Fourth Report (without exhibits)	B
Fifth Report (without exhibits)	C
Sharing Formula Agreement	D
Sixth Report (without exhibits)	E
Marketing Memorandum	F
Redacted letter to the City of Sarnia Councillors dated March 17, 2015	G
Statement of Receipts and Disbursements	H



Exhibit "F"

**Ninth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated March 21, 2016**

Eighth Report (without exhibits)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

EIGHTH REPORT OF THE COURT APPOINTED RECEIVER
OF BAYSIDE MALL LIMITED

Dated August 5, 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 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 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 McEwen 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 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 and subsequent sharing of proceeds from a sale 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.

On January 21, 2015 the Receiver made its Sixth Report to the Court (“**the Sixth Report**”). A copy of the body of the Sixth Report is attached as ***Exhibit “D”***.

By order of the Honourable Mr. Justice Newbould dated January 29, 2015 (“**the January 29, 2015 Order**”) the activities of the Receiver set down in the Sixth Report were approved including the entering into of a new lease with the County effective June 1, 2014 (“**the New County Lease**”). The Statement of Receipts and Disbursements contained in the Sixth Report together with the fees and expenses of Gardiner Roberts to December 31, 2014 were also approved. The Receiver’s contracts for certain repairs to the parking garage were also approved.

On February 5, 2015 the Receiver made its Supplement to the Sixth Report.

By order of the Honourable Mr. Justice Newbould dated March 3, 2015 the fees of the Receiver to December 31, 2014 were approved.

By order of the Honourable Madam Justice Conway dated April 14, 2015 the fees and expenses of Heath Whiteley to December 31, 2014 were approved.

On May 19, 2015 the Receiver made its Seventh Report to the Court (“**the Seventh Report**”). A copy of the body of the Seventh Report is attached as ***Exhibit “E”***.

By order of the Honourable Madam Justice Conway dated June 16, 2015 the activities of the Receiver set down in the Seventh Report were approved. The Statement of Receipts and Disbursements contained in the Seventh Report together with the fees and expenses of the Receiver and its counsel to April 30, 2015 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.

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

Background

The copies of the bodies of the Fourth Report, the Fifth Report, the Sixth Report and the Seventh Report, attached as ***Exhibits “B”, “C”, “D” and “E”***, provide 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, the Sixth Report and the Seventh Report.

Purpose of this Report

- To provide the court with information on the activities of the Receiver since its Seventh Report
- 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, the Receiver's independent legal counsel, Gardiner Roberts, and Heath Whiteley for the period from May 1 – July 31, 2015 as set down in fee affidavits
- To seek approval for the Wilsondale APS (as hereinafter defined) with respect to the leasehold interest of Bayside in the Bayside Mall and for a vesting order to enable the leasehold interest in Bayside to transfer to Wilsondale on closing free of all encumbrances except for permitted encumbrances.

The Receiver's Go Forward Strategy

At the date of the Seventh Report we were considering three go forward options:

1. The expedited departure option
2. The option of seeing if a new agreement could be reached with the City for the joint sale of the Land and leasehold interest in the Mall within 30 days
3. A final attempt to obtain unconditional letters of intent ("LOIs") for the leasehold interest in the Mall within 30 days

We determined shortly after that that the City was not interested in a new agreement in line with the second option so we promptly moved to the third option, to make one last attempt to market the leasehold interest in Bayside Mall.

We signed an extension to the listing agreement with CBRE Limited ("CBRE") and on June 2, 2015 they relaunched their marketing with a list price of \$1.5 million and set July 9, 2015 as the date by which we wanted to receive non binding LOIs.

We attach as *Exhibit "F"* a memorandum ("**the August 3, 2015 Marketing Memorandum**") providing details of the marketing of the leasehold interest in the Mall together with copies of CBRE's periodic reporting letters and copies of the LOIs received from prospective purchasers. We received in total LOIs from five different parties. We admitted three prospective purchasers into the Second Stage of the

Receiver's Sales Process where potential purchasers were allowed to convert their non binding LOIs into a formal binding offer to purchase in the form of the Receiver's standard agreement of purchase and sale ("**APS**").

We also provide in the August 3, 2015 Marketing Memorandum more information on our dealings with and assessment of the three prospective purchasers.

One of the three prospective purchasers admitted to the second stage of the sales process was Wilsondale Venture Capital Inc. in trust for a company to be incorporated ("**Wilsondale**"). They presented us with an executed APS dated July 28, 2015 in a form acceptable to us for more than the list price of \$1.5 million ("**the Wilsondale APS**"). For reasons detailed in the August 3, 2015 Marketing Memorandum we concluded that we should accept the Wilsondale APS as being the most attractive of the alternatives available to us. The Bank, as the party with the key economic interest in the sale, indicated that they were supportive of us accepting the Wilsondale APS. We are asking the court to approve the Wilsondale APS. A copy of the Wilsondale APS is attached as ***Exhibit "G"***. For commercial reasons we are asking the court to keep the August 3, 2015 Marketing Memorandum and the Wilsondale APS confidential until after the successful closing of the sale of the leasehold interest in the Mall.

The Vesting Off of Certain Encumbrances

If not previously discharged or released, we are asking the court to vest off certain encumbrances from title. The instruments to be vested off are listed on ***Exhibit "H"*** to this Report. With respect to PIN # 43268-0043 LT, Instrument #s 1 through to 31 all refer to leases which have since expired and the tenant is no longer in possession. Instrument # 32 is referenced to a document which was previously discharged from title. Instrument #s 33 to 37 are all references to the Bank's security. Instrument #s 38 and 39 refer to a construction lien and related Certificate of Action which were filed after the appointment of the Receiver. Instrument # 40 is the Initial Order. In respect of PIN # 43268-0106 LT, Instrument # 1 is again a lease where the lease has expired and the tenant has vacated. Instrument #s 2, 3, 5, 6, 7, again relate to the Bank's security. Instrument # 8 is the Initial Order. Instrument # 4 also refers to the Bank's security in that it is a Land Registrar's Order bringing forward from the Registry system a piece of the Bank security that had been omitted from the parcel.

The Parking Garage

As noted in the Fourth Report, the Bayside Mall parking garage was subject to the May 27, 2014 Order to Remedy issued by the City Building Department.

The May 27, 2014 Order to Remedy listed as “Required Remedial Steps” that, among other things, engineering drawings to obtain a permit for certain parking garage repairs (“**the Parking Garage Repairs**”) be submitted by March 1, 2015 and that the Parking Garage Repairs be commenced by May 1, 2015.

The January 29, 2015 Order approved contracts to perform the Parking Garage Repairs and the Parking Garage Repairs have now been completed at a cost of \$402,670.10, well below the budgeted amount of \$485,000 plus HST. The City has cancelled the outstanding May 27, 2014 Order to Remedy.

The funding for the Parking Garage Repairs was, as noted later, provided by the County in accordance with the terms of the New County Lease.

The Assignment of the Land Lease

As noted earlier Bayside Mall is situated on the Land which is owned by the City. The relationship is governed by a complex 97 page land lease made as of April 15, 1981 and since amended (“**the Land Lease**”). A copy of the Land Lease is attached as ***Exhibit “I”***.

The Receiver is asking the court to approve an order assigning Bayside’s interest in the Land Lease to Wilsondale and declaring that, upon payment of the outstanding property tax arrears on closing, the Land Lease is in good standing.

It is the Receiver’s understanding that the Land Lease was last assigned in August 31, 1999 when Bayside purchased the interest of Baybridge Capital Developments Ltd. in Bayside Mall. Attached as ***Exhibit “J”*** is a copy of an Acknowledgement and Release dated August 16, 1999 signed by the City in that regard. Attached as ***Exhibit “K”*** is a copy of an Estoppel Certificate also dated August 16, 1999 signed by the City.

Section 15.03 of the Land Lease, which addresses the right of the tenant under the Land Lease (“**the Tenant**”) to assign the Land Lease, states:

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

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

Cadillac Fairview was the Tenant at that time. Bayside is currently the Tenant.

It has been suggested that Bayside is in default under the Land Lease because there are arrears of property taxes. All arrears of property taxes will be paid on the closing of a sale to Wilsondale.

The Receiver is not aware of any amounts due pursuant to the Land Lease on account of Participation Rent, as that term is defined in the Land Lease.

If there is any Minimum Rent due, the amount that is unpaid is \$15 being fifteen years at \$1 per year.

The Receiver is not aware of any other potential outstanding monetary defaults under the Land Lease.

The Tenant appears to be under an obligation to keep the Property in good order and condition. As noted earlier the Receiver has recently had the Parking Garage Repairs performed and the related May 27, 2014 Order to Remedy lifted. The City has recently advised our legal counsel that there are now no outstanding work orders relating to the Mall.

Section 15.03 of the Land Lease looks for a Tenant, after an assignment, to hire a manager having a demonstrated competence for managing shopping centres in Canada. The Wilsondale APS requires Wilsondale to take an assignment of the Receiver’s management contract with Larlyn Property Management Ltd. (“Larlyn”). Larlyn have been competently managing Bayside Mall for the Receiver since

December 2012.

Section 15.04 of the Land Lease provides that if the transferee provides the City with evidence satisfactory to the City (acting reasonably) as to its financial capability to perform the earlier tenant's obligation under the Land Lease then the City will release the earlier tenant from its obligations under the Land Lease. Given the insolvent state of Bayside no such release is required or is being requested.

The City of Sarnia Motion for Possession

The City had drafted a Notice of Motion dated July 15, 2015 that looks for an order that, among other things, would see possession of Bayside Mall revert to the City. We are not sure if this Notice of Motion has ever been filed with the Court. We understand that it was drafted in response to the suggestion that the Receiver, having failed to sell the leasehold interest, might move to abandon the Mall. In light of the move to market the leasehold interest for 30 days, the resulting LOIs and the signing of the Wilsondale APS the City seem to have backed off pursuing their motion. We hope that, if the Wilsondale APS is approved and we move to close that agreement, the City will not pursue this motion.

The County of Lambton

The County is the largest tenant in the Mall occupying approximately a quarter of the space. As detailed in the Sixth Report we had been able to negotiate a new lease with the County. The New County Lease was fully executed on November 11, 2014.

The initial term of the New County Lease was for seven years, expiring on May 31, 2021. However, since we were unable to have a binding APS in place for the Land and leasehold interest by May 15, 2015 the term automatically truncated and the initial term of the New County Lease now expires on May 14, 2017.

Pursuant to the New County Lease, the County provided the funding required for the Parking Garage Repairs. This funding is being repaid by a monthly deduction from rent of approximately \$21,222 commencing on July 1, 2015 such that all the funding together with interest will have been repaid on April 1, 2017.

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.

Attempting to locate tenants was and is also at odds with the uncertain future for the Mall if a successful sale is not concluded.

Larlyn and Operations Generally

Larlyn is 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 been interviewed by the press on its status on a number of occasions.

Property Taxes

Property taxes due and unpaid as at July 31, 2015 were \$1,130,293.42 rising to \$1,141,704.46 the following day. We have made no payments to the City on account of property taxes to date. The Receiver does not currently have sufficient funds to pay the outstanding taxes. A successful closing of the Wilsondale APS will provide sufficient funds to see the property tax arrears paid in full.

Property Tax Appeal

Our property tax consultants, Altus Group ("Altus"), are 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 January 2016 to discuss the appeal. Altus also filed a vacancy rebate application for 2014. We understand this application resulted in a tax rebate of about \$52,000 which has been credited to the property tax account. We anticipate having them file a similar vacancy rebate application for 2015 early in 2016.

The property assessment under appeal is \$7,110,000. Given the value of Bayside Mall established through our sales process and assuming we are able to successfully close the sale to Wilsondale, we are instructing Altus to assert that a **very** significant reduction in the property value is in order. Such a reduction would significantly reduce the amount of the property tax arrears and, since those arrears will have been paid at that time, should result in a very significant refund to the receivership.

County Application for Separate Assessment

The New County Lease stipulated that the County will apply for a separate assessment for the space occupied by them for property tax purposes. In that regard the County has designated the space occupied by them as a “Municipal Capital Facility” under the Municipal Act with the effect that, from January 1, 2015, that portion of the Mall should be exempt from property taxes.

The impact of this designation on the assessment and therefore the property taxes due for the balance of the Mall has yet to be determined. Having regard to the tax exempt status of the primary tenant, it should however further reduce the taxes payable, perhaps significantly.

Pending clarification and formalization of various aspects of this designation the County has been paying rent of \$7,644.31 plus HST each month on account of property taxes. The total amount paid in this regard (covering the period from January 1 to June 30, 2015) that is included in the Statement of Receipts and Disbursements attached to this report (see later) is \$45,865.86 plus HST.

Fees and Expenses of the Receiver and its Legal Counsel

The fees and expenses of the Receiver, its primary legal counsel, Heath Whiteley, and its independent counsel, Gardiner Roberts, relating to their activities from May to July 2015 were as follows:

A. John Page & Associates Inc.

Month	Hours	Fees	HST	Total
May 2015	79.33	\$28,818.63	\$3,746.42	\$32,565.05
June 2015	77.57	28,174.29	3,662.66	31,836.95
July 2015	89.00	32,956.46	4,284.34	37,240.80
Total	245.90	\$89,949.38	\$11,693.42	\$101,642.80

Heath Whiteley

Period	Fees	HST	Total
May 2015	\$10,600.00	\$1,378.00	\$11,978.00
June – July 2015	13,000.00	14,690.00	14,690.00

Total	<u>\$23,600.00</u>	<u>\$3,068.00</u>	<u>\$26,668.00</u>
-------	--------------------	-------------------	--------------------

Gardiner Roberts

Period	Fees	Disbursements	HST	Total
May 2015	\$6,753.00	\$451.75	\$936.62	\$8,141.37
June 2015	13,559.50	664.31	1,849.10	16,072.91
July 2015	25,316.50	1,857.27	3,532.59	30,706.36
Total	<u>\$45,629.00</u>	<u>\$2,973.33</u>	<u>\$6,318.31</u>	<u>\$54,920.64</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 and the Receiver's Statement of Receipts and Disbursements

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

The fees and disbursements of the Receiver, Mr. Whiteley and Gardiner Roberts through to July 2015 are included as disbursements in the R&D. We are asking the court to approve the R&D.

Although the R&D suggests that the Receiver has approximately \$393,000 on hand, there are a number of claims on those funds. For example, \$111,629 represents funds in the Larlyn Royal Account to cover outstanding cheques and other liabilities as at June 30, 2015. \$46,000 represents amounts paid by the County on account of property taxes for 2015 that will likely be either refunded or deducted from future rent once the designation of their space as property tax exempt is finalized. There is also an outstanding deemed trust claim re unpaid HST of about \$24,000.

Page 13
Eighth Report to the Court
August 5, 2015

The Receiver will continue to closely monitor its cash flow to ensure that it does not run out of funds. At the present time the Receiver believes it has sufficient funds available to be able to continue to operate the Mall up to the likely time of a closing of the proposed sale to Wilsondale.

** ** *

All of which is respectfully submitted this 5th day of August, 2015

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


A. John Page FCPA, FCA, CIRP
President

**Exhibits to the Eighth Report of A. John Page & Associates Inc.
as Court Appointed Receiver of Bayside Mall Limited
dated August 5, 2015**

Initial Order	A
Fourth Report (without exhibits)	B
Fifth Report (without exhibits)	C
Sixth Report (without exhibits)	D
Seventh Report (without exhibits)	E
August 3, 2015 Marketing Memorandum	F
Wilsondale APS	G
Encumbrances to be Vested Off Title	H
Land Lease	I
1999 City Estoppel Certificate	J
1999 City Acknowledgement and Release	K
Statement of Receipts and Disbursements	L



Exhibit "G"

**Ninth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated March 21, 2016**

Statement of Adjustments

STATEMENT OF ADJUSTMENTS

Vendor: A. John Page & Associates Inc.

Purchaser: Bayside Mall (2015) Limited

Property: Bayside Mall, 150-202 Christina Street North, Sarnia

Adjusted as of: October 8, 2015

		Credit Purchaser	Credit Vendor
<u>SALE PRICE</u>			\$1,750,000.00
<u>DEPOSITS</u>			
First Deposit	75,000.00		
Second Deposit	75,000.00		
Credit Purchaser:		\$150,000.00	
<u>REALTY TAXES</u>			
2015 total taxes:	279,341.36		
Vendor has paid:	279,341.36		
Vendor's share for 280 days:	214,289.26		
Credit Vendor:			65,052.10
<u>TENANCY</u>			
Monthly rent:	158,532.08		
Tenant has paid for rental period commencing October 1, 2015			
Vendor's share for 7 days:	35,797.57		
Credit Purchaser:		122,734.51	
<u>STORAGE ACCOUNTS</u>			
Vendor has received payment for period October 1, 2015 to October 31, 2015:	1,695.00		
Vendor's share for 7 days:	382.74		
Credit Purchaser:		1,312.26	
<u>PARKING ACCOUNTS</u>			
Vendor has received payment for period October 1, 2015 to October 31, 2015:	8,311.15		
Vendor's share for 7 days:	1,876.71		
Credit Purchaser:		6,434.44	
<u>PRE-PAID RENT</u>			
Credit Purchaser:		25,190.51	

Continued...

	Credit Purchaser	Credit Vendor
<u>CONTRACT - CLEANWORKS</u>		
Paid by Vendor for		
period October 1, 2015		
to October 31, 2015:	11,963.10	
Vendor's share for 7 days:	2,701.35	
Credit Vendor:		9,261.75
<u>CONTRACT - THYSSEN KRUPP</u>		
Paid by Vendor for		
period October 1, 2015		
to October 31, 2015:	4,517.40	
Vendor's share for 7 days:	1,020.06	
Credit Vendor:		3,497.34
<u>CONTRACT - MC BUSINESS SOLUTIONS</u>		
Paid by Vendor for		
period October 1, 2015		
to October 31, 2015:	226.00	
Vendor's share for 7 days:	51.03	
Credit Vendor:		174.97
<u>CONTRACT - LARLYN PROPERTY MANAGEMENT</u>		
Paid by Vendor for		
period October 1, 2015		
to October 31, 2015:	7,298.15	
Vendor's share for 7 days:	1,647.97	
Credit Vendor:		5,650.18
<u>BALANCE DUE ON CLOSING</u>		
payable to		
Gardiner Roberts LLP, in trust		
or as further directed	1,527,964.62	
	\$1,833,636.34	\$1,833,636.34



Exhibit "H"

**Ninth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated March 21, 2016**

**Property Assessment Appeal Memorandum dated
December 2, 2015**

Memorandum

To: File
From: A. John Page
Date: December 2, 2015
Subject: The Bayside Mall MPAC Current Property Value Assessment Appeal

Purpose of Memorandum

A. John Page & Associates Inc. as Court Appointed Receiver of 1368883 Ontario Inc. (formerly Bayside Mall Limited) ("Bayside") has recently closed a sale of Bayside's key asset, its leasehold interest ("the Leasehold Interest") in the property known as "Bayside Mall", Sarnia at a gross price of \$1,750,000.

This memorandum is being prepared to provide background information on the receivership of Bayside, the sales processes undertaken by the Receiver with respect to Bayside Mall, the results of those sales processes and the overall basis for the Receiver's appeal of the Property Value Assessment to assist the parties involved in hopefully moving to an expeditious resolution of the appeal.

Executive Summary

- Bayside Mall comprises land (owned by City of Sarnia) and the Leasehold Interest (formerly owned by Bayside)
- Bayside was placed into receivership in December 2012 with a mandate to sell the Leasehold Interest
- The Receiver spent over \$400,000 repairing the Bayside Mall parking garage
- Extensive Court supervised public sales processes resulted in a gross sale price of \$1,750,000 for the Leasehold Interest
- Real estate commission and legal costs solely relating to the sale were \$143,750
- Net loss from January 1, 2012 to December 1, 2015 was \$804,500
- The Bayside Mall MPAC Current Property Value Assessment as at January 1, 2012 is \$7,110,000
- The Receiver is pursuing an appeal of the Current Property Value Assessment

Background

Bayside Mall's street address is 150-202 Christina St. N in Sarnia ("the Property"). Located on

Memorandum re Bayside Mall Property Tax Appeal

December 2, 2015

Page 2

the Property is a 250,000 square foot mixed use commercial building ("the Building") that was formerly regarded as a shopping mall but is currently used primarily for office space. Until the recent sale, Bayside owned the Leasehold Interest in the Property. The land ("the Land") on which the Building is built is owned by the City of Sarnia ("the City") and the terms of the Leasehold Interest are set down in a 92 page land lease dated August 1982 as amended. ("the Land Lease").

Bayside's ownership of the Leasehold Interest effectively put it in full control of the Building, the tenancies at the Building and the income and expenses of the Building until at least 2043 and with the option to renew for 30 years (or 60 years if major renovations are undertaken).

The City, as owner of the Land but subject to the Leasehold Interest, has received no income (defined as Participation Income in the Land Lease) in decades, if ever, and none is anticipated in the near term. The Leasehold Interest would seem to revert to the City in either 2043, 2073 or 2103, ie not in the near future.

Bayside Mall, the asset being valued, is comprised of two components, the Land and the Leasehold Interest.

Bayside is or was owned by Mr. Malik Khalid and/or his family interests. In December 2012 ICICI Bank Canada ("the Bank") was owed approximately \$13 million by Bayside secured by two mortgages for \$6.5 million and \$5 million and a general security agreement.

The Receivership

Bayside's loans from the Bank had been in default for some time and they had been the subject of a number of forbearance agreements. In 2012 in an attempt to recover some of the amount owing to it, the Bank made an application to the Court for the appointment of a Receiver over Bayside. By order of the Honourable Mr. Justice Wilton-Siegel dated December 5, 2012 ("the Initial Order") A. John Page & Associates Inc. was appointed Receiver of Bayside. A copy of the Initial Order is attached as Exhibit "A". Among other things the Initial Order empowered the Receiver to market the property of Bayside. As noted earlier, Bayside's key asset was the Leasehold Interest in Bayside Mall.

The overall objective of the receivership was clearly to sell the Leasehold Interest in order to repay as much as reasonably possible of the Bank's indebtedness.

The Receiver is an officer of the Court and must report back to the Court, on notice to key stakeholders. The Receiver has issued eight reports to the Court to date. The Court has reviewed these reports and has approved the activities of the Receiver together with its fees and expenses. Copies of the Court reports and the various orders of the Court may be found

on the Receiver's website at *www.ajohnpage.com*.

When the Receiver seeks Court approval for the sale of an asset it must show that it has made sufficient effort to get the best price and has not acted improvidently. In deciding whether to give that approval the Court has traditionally looked to a test set down in a case called "*Soundair*". Soundair indicates that:

"It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently."

1. *It should consider the interests of all parties*
2. *It should consider the efficacy and integrity of the process by which offers are obtained (and)*
3. *It should consider whether there has been unfairness in the working out of the process."*

As detailed later, the Court approved the Receiver's actions in marketing the Leasehold Interest, and in particular, the ultimate sale.

Initial Appraisals

Early in the receivership we commissioned appraisals of the Leasehold Interest and the Land and Leasehold Interest from Altus Group Limited to guide us in our marketing. In an appraisal dated June 7, 2013 they estimated the market value of the Leasehold Interest as at March 1, 2013 to be \$6.2 million and in an appraisal dated June 30, 2013 they estimated the market value of the Land and Leasehold Interest as at March 1, 2013 to be \$9 million.

Our marketing efforts detailed later in this memorandum show that these estimates were materially higher than the actual market value as expressed by the amount we were able to get someone to pay after a very extensive and thorough marketing process of both the Leasehold Interest and the Leasehold Interest jointly with the Land. Therefore the assumptions relied upon in the appraisals were clearly not supported by the market.

First Marketing Phase

A listing agreement was signed with Colliers International London Ontario ("Colliers") on May 16, 2013. Attempts to reach an agreement with the City for the joint sale of the Land and the Leasehold Interest were at that time unsuccessful and Colliers launched their marketing of the Leasehold Interest on October 1, 2013. We attach as Exhibit "B" a copy of the memorandum dated March 19, 2014 that was prepared for the Court detailing the marketing, the results of that marketing and the reason why we found the letters of intent ("LOIs") we had received as unsatisfactory at that time.

Second Marketing Phase

In the summer of 2014 we were able to reach an agreement with the City for the joint listing of the Land and the Leasehold Interest. We delayed launching the marketing of the Land and Leasehold Interest until we had negotiated a new lease with the County of Lambton ("the County") as occupant of approximately 25% of Bayside Mall. The County's existing lease was due to expire on May 15, 2016. This new lease was at a higher gross rent and its initial term was for 7 years. We signed a listing agreement with CBRE Limited ("CBRE") for the joint sale of the Land and the Leasehold Interest and they launched their marketing campaign on November 20, 2014. At the same time we undertook \$400,000 of repairs to the parking garage.

We have attached as Exhibit "C" a copy of the memorandum dated April 22, 2015 that was prepared for the Court detailing the marketing, the results of that marketing and the rejection of the two best LOIs jointly for the Land and Leasehold Interest, for \$2 million and \$2,180,000, by the City and the County. Both of these LOIs were from parties who we regarded as sophisticated and capable of "doing the deal". However, neither of the LOIs was unconditional and there was no guarantee that either of them could have been converted into a binding Agreement of Purchase and Sale and then closed at or close to the amount set down in the LOI. We expected pressure from both parties to push the price down. However we were hopeful that we could have concluded a deal with one of them.

If we had been able to close a deal at either \$2,180,000 or \$2,000,000 we estimate, after costs, that the City would have received nothing for the Land.

Because the City and the County vetoed the two best LOIs we had received, our agreement with the City lapsed and the initial term of the new lease agreement we had signed with the County automatically truncated from seven years to three years thereby reducing the market appeal

Third Marketing Phase

At this stage we were not optimistic about the prospect of ever being able to sell the Leasehold Interest for more than the property tax arrears and were very seriously contemplating abandoning Bayside Mall. We however decided to have one last try to sell the Leasehold Interest.

In the summer of 2015 we extended our listing agreement with CBRE and relaunched the marketing of the Leasehold Interest. We attach as Exhibit "D" a copy of the marketing memorandum dated August 3, 2015 that was prepared for the Court detailing the marketing, the results of that marketing and our recommendation to the Court that the offer from

Wilsondale Venture Capital Inc. ("Wilsondale") for \$1,750,000 be approved.

By order of the Honourable Mr. Justice Hainey dated August 26, 2015 the Court approved the proposed sale to Wilsondale. That sale closed on October 8, 2015.

The Land

The terms of the Leasehold Interest are detailed in a 97 page land lease dated April 15, 1981 as amended. We have attached as Exhibit "E" a note that we prepared for prospective purchasers entitled "The Sale of the Building Known as Bayside Mall, August 2013, Background Information on the Land Lease affecting Bayside Mall." In that we note that the Land Lease has an initial term ending in 2043 and has renewal options. We further note that no Participation Rent appears to have been paid to the City in recent times and none would be anticipated in the near term. In part because of its length, the Land Lease has not been attached as an Exhibit to this memorandum. However, a copy of the Land Lease was attached to the Fourth Report of the Receiver to the Court dated June 5, 2014. That report can be downloaded from the Receiver's website.

The Sales Proceeds

The Leasehold Interest sold for a gross price of \$1,750,000 in 2015, real estate commissions were \$43,750 and legal fees related to just the preparation of the Agreement of Purchase and Sale and then closing the transaction were approximately \$100,000 for a net recovery of \$1,606,250.

This "value" however does not take into account the significant other costs involved in effecting the sale, including the fees of the Receiver. It also does not take into account the enhanced value of the new County lease and the \$400,000 parking garage repairs undertaken in 2014/2015.

Operating Loss from January 1, 2012 to December 1, 2015

The net loss from operations from January 1, 2012 to December 1, 2015 (before interest and amortization) based on the financial information currently available was \$804,500.

It should be noted that the Receiver and its property manager have yet to finalize their accounting for operations. In particular the stub period Common Area Maintenance True Up Statements to October 7, 2015 have yet to be prepared. The Receiver does not think that any adjustment coming out of these calculations would be material.

The net loss number above includes financial information relating to the period prior to the

receivership that was obtained from the books and records of Bayside without audit, review or adjustment.

The Proceeds Received by the Bank from the Sale of Bayside Mall

In 2012 the Bank commenced a process to realize upon its interest in Bayside Mall, ie the Leasehold Interest. That process has taken until the fall of 2015 to effect a realization. The Bank lent the Receiver \$1 million in order to fund the costs involved in selling the Leasehold Interest. It has to date received two repayments of \$400,000. It will probably not recover the full amount of the funds it has advanced to the Receiver together with interest. On that basis the Bank will have received nothing from the sale of its interest in Bayside Mall. It will in fact have had to spend money.

Notice to Reader

In preparing this Memorandum and making some of the comments and estimates contained in the Memorandum, the Receiver has used unaudited financial and other information from a variety of sources. Readers should note that the Receiver has not formally audited or reviewed such information.

Exhibits

Initial Order	A
First Marketing Memorandum dated March 19, 2014	B
Second Marketing Memorandum dated April 22, 2015	C
Third Marketing Memorandum dated August 3, 2015	D
Land Lease Background Information August 2013	E

S:\DATA\WP\CLIENTS\SARNIA\MEMPTAIL.WPD



Exhibit "I"

**Ninth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated March 21, 2016**

**Memorandum re Direction re Property Tax Refunds
dated March 8, 2016**

Memorandum

To: File

From: A. John Page

Date: March 8, 2016

Subject: Bayside Mall Limited ("Bayside") and the Direction to the City of Sarnia ("the City") re the payment of property tax refunds relating to Bayside Mall

Purpose of Memorandum

To summarize matters pertaining to the attempts by A. John Page & Associates Inc. as Court Appointed Receiver of Bayside ("the Receiver") to have all Bayside Mall's property tax refunds relating to the period to December 31, 2015 ("the Property Tax Refunds") paid directly to the Receiver.

The Sale of Bayside Mall

The Receiver signed a agreement of purchase and sale dated July 28, 2015 ("the APS") with Wilsondale Venture Capital Inc. ("Wilsondale") in trust for a company to be incorporated for Bayside's leasehold interest in Bayside Mall, Sarnia. Wilsondale then incorporated Bayside Mall (2015) Limited ("Bayside Mall (2015)") and assigned its interest in the APS to Bayside Mall (2015). On October 8, 2015 the sale of the leasehold interest in Bayside Mall to Bayside Mall (2015) closed. The purchase price was \$1,750,000 and on closing property tax arrears totalling \$1,308,305 were paid out of the proceeds from the sale.

Property Tax Related Appeals and Claims

The property assessment for the land and buildings comprising Bayside Mall was \$7,110,000 effective January 1, 2013 and the taxes paid on closing were based on this assessment. At the time of the closing there were a number of outstanding appeals and potential refund claims relating to realty taxes or the related property assessments ("the Property Tax Appeals"). The Receiver estimates that the resulting Property Tax Refunds will likely exceed \$500,000. Section 3.4 (b) of the APS clearly provided that the Receiver will continue to have carriage of the appeals and claims and shall be entitled to receive payment resulting therefrom for all calendar years up to and including 2015. Attached as Exhibit I to this memorandum is a copy of Section 3.4 (b) of the APS. Attached as Exhibit II is a document entitled "Tax Agreement" that formed part of the documents that were signed at closing providing further information

Memorandum

Page 2

on the Property Tax Appeals and the Property Tax Refunds. The Tax Agreement refines the intent of the parties relating to the Property Tax Appeals and the Property Tax Refunds, In particular the Tax Agreement reaffirms that all Property Tax Refunds shall be paid to the Receiver and that Bayside Mall (2015) will execute all necessary documents and directions to enable the Property Tax Refunds to be paid to the Receiver. Attached as Exhibit III is a copy of the Direction to the City signed by Bayside Mall (2015) and the Receiver directing that the Property Tax Refunds be paid to the Receiver at our downtown Toronto address ("the Direction").

The Position Taken by the City

Attached as Exhibit IV is an email chain commencing with an email from J. Rosekat of Gardiner Roberts LLP, counsel to the Receiver, dated September 29, 2015 to Andrea Habas of Bresver Grossman Chapman & Habas, counsel to the City, enclosing a draft of the Direction. It is followed by her response indicating that "Section 341(2)[*of the Municipal Act*] states that the City shall refund any overpayment to the owner of the land. It cannot therefore sign this agreement, nor agree to pay any refund to anyone other than the then current owner". The third email in the chain is Mr. Rosekat's response which attaches a copy of a court of appeal decision *80 Mornelle Properties Inc. V. Malla Properties Ltd. 2010 ONCA 850*. and asks Ms Habas to have her client reconsider their position.

Attached as Exhibit V is a copy of Section 341 of the Municipal Act.

Interestingly, the City is the owner of the land on which Bayside Mall is built. Bayside's interest was a leasehold interest.

Attached as Exhibit VI is Ms Habas' response dated October 5, 2015 repeating her position that the City would not agree to pay the Property Tax Refund directly to the Receiver.

The Receiver's counsel informed both the City and Bayside Mall (2015) that, given that the closing was set for October 8, 2015, it would likely need to seek a court order after closing to direct that the Property Tax Refunds be paid by the City directly to the Receiver.

Attached as Exhibit VII is an email chain together with attachment detailing communications between Gardiner Roberts and the City of London in September 2015 relating to their acceptance of directions relating to the repayment of property tax refunds to former owners of properties. The correspondence includes the standard form directions accepted by London.

Attached as Exhibit VIII is an extract from the Ontario Property Tax Assessment Handbook by Walker and Grad reciting part of the decision in the above noted case *80 Mornelle Properties Inc. V. Malla Properties Ltd. 2010 ONCA 850* where the court found that "Section 341 (2) ... were simply administrative provisions designed to enable the City to pay the refund without

having to determine who is properly entitled to it".

The Concerns of the Receiver

The Receiver feels that it would be imprudent to allow any of the Property Tax Refunds to be paid by the City to any party other than the Court Appointed Receiver. The Receiver estimates that the Property Tax Refunds will likely result in refunds of the property taxes previously paid on the closing of in excess of \$500,000. The amounts involved represent the major asset of the Receivership. The first potential refund (the property tax vacancy rebate claim) may be paid out as early as May 2016.

Exhibits

Section 3.4 (b) of the APS	I
Tax Agreement - October 8, 2015	II
Direction to the City - October 8, 2015	III
Email chain between J. Rosekat and A. Habas September 29-30, 2015	IV
Section 341 of the Municipal Act	V
Letter from A. Habas October 5, 2015	VI
Email chain relating to London's acceptance of Directions	VII

S:\DATA\WP\CLIENTS\SARNIA\DIRMEM1D.WPD

π

Exhibit "I"

Receivables. The Purchaser agrees to cooperate with Bayside in its attempts to recover the Outstanding Receivables, provided that it shall not be obligated to spend any monies, distraint, terminate the Leases or bring an action for payment of indebtedness. Any amount of rent received by the Purchaser after Closing from the Tenant who owes Outstanding Receivables to Bayside, shall be credited, firstly, to arrears of rent and then to current month's rent and the parties shall immediately pay any rent received accordingly.

3-4

- (b) The Purchaser acknowledges that the Vendor has appealed realty taxes or assessments for the calendar years 2013 – 2016; has made or will make a vacancy rebate claim for calendar years 2014 and 2015, and has made or will make a refund claim arising from space being designated exempt from tax, all of which claims and appeals shall be collectively known as the “**Realty Tax Appeals**”. The Vendor shall continue the Realty Tax Appeals and shall be entitled to receive any payment resulting therefrom in relation to all calendar years up to and including 2015. Any payments received for such period shall be paid to the Vendor. The Purchaser shall execute all necessary directions to enable such payments to be made to the Vendor. The Vendor will reconcile such payments with the Purchaser, such that any refund payment received by the Vendor will be apportioned on a per diem basis determined by reference to the periods of the Vendor's and Purchaser's respective ownership of the Property during such calendar year after deduction of costs relating to such appeals on the same per diem basis. The Vendor shall maintain carriage of all Realty Tax Appeals, and the Vendor shall have full authority and discretion to settle or compromise all Realty Tax Appeals. The Purchaser and the Vendor agree to co-operate with each other with respect to all Realty Tax Appeals. To the extent the Purchaser receives any of the aforementioned payments from the taxing authority on or after the Closing Date relating to periods prior to Closing, it shall forthwith pay the same to the Vendor.

ARTICLE IV CONDITIONS

4.1 Conditions for Vendor

The obligation of the Vendor to complete the Transaction shall be subject to the satisfaction or written waiver of the following conditions on or before the Closing Date or such earlier date or time as may be herein specified:

- (a) on Closing, payment by the Purchaser of the balance of the Purchase Price in its entirety and in the manner required herein and all of the representations and warranties of the Purchaser set out in Section 6.2 shall be true and accurate in all material respects and there shall have been no material changes as of Closing to any of such representations and warranties; and
- (b) prior to Closing, the Purchaser provides the Vendor satisfactory evidence that the Purchaser has obtained any approvals required pursuant to *The Investment Canada Act*.

The conditions set forth in this Section 4.1 are solely for the benefit of the Vendor and may only be satisfied or waived in whole or in part by the Vendor, in the Vendor's sole and absolute discretion, by notice to the Purchaser on or before the Closing Date. If the foregoing conditions have not been satisfied and/or waived in their entirety on or before the Closing Date by the

π

Exhibit "II"

TAX AGREEMENT

MEMORANDUM OF AGREEMENT made as of the ____ day of _____, 2015.

BETWEEN:

A. JOHN PAGE & ASSOCIATES INC., acting solely in its capacity as court-appointed receiver of the assets, undertakings and properties of Bayside Mall Limited and not in its personal capacity (hereinafter referred to as the "**Vendor**")

OF THE FIRST PART,

- and -

BAYSIDE MALL (2015) LIMITED, a corporation incorporated under the laws of the province of Ontario, (hereinafter referred to as the "**Purchaser**"),

OF THE SECOND PART.

WHEREAS the Vendor and Wilsondale Venture Capital Inc. ("**Wilsondale**") have entered into an agreement of purchase and sale made as of July 28, 2015 (such agreement, as amended, supplemented and/or restated to the date hereof, the "**Purchase Agreement**") pursuant to which Wilsondale has agreed to purchase from the Vendor, and the Vendor has agreed to sell to Wilsondale, the Purchased Assets;

AND WHEREAS Wilsondale assigned all of its rights and obligations under the Purchase Agreement to the Purchaser;

AND WHEREAS pursuant to the Purchase Agreement, the Vendor and the Purchaser have agreed to execute and deliver this tax agreement;

AND WHEREAS all terms that are capitalized but not defined herein shall have the meanings given to them in the Purchase Agreement;

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. The Purchaser acknowledges that the Vendor has appealed realty taxes or assessments for the calendar years 2013 – 2016, has made or will make a vacancy rebate claim for calendar years 2014 and 2015, and has made or will make a refund claim arising from space being designated exempt from tax, all of which claims and appeals and any similar claims or appeals shall be collectively known as the "**Realty Tax Appeals**". All payments or credits made by the taxing authority relating directly to rebates or refunds arising from Realty Tax Appeals, including without limitation refunds of interest and penalties, shall be collectively known as "**Refunds**".
2. The Vendor shall continue the Realty Tax Appeals and shall be entitled to receive any Refunds in relation to all calendar years up to and including 2015. Any Refunds for such period shall be paid

to the Vendor. The Purchaser shall execute all necessary documents and directions to enable the Refunds to be paid to the Vendor

3. The Vendor will reconcile all Refunds obtained related to Realty Tax Appeals for the calendar year of 2015 with the Purchaser, such that any 2015 Refunds received by the Vendor will be apportioned on a per diem basis determined by reference to the periods of the Vendor's and Purchaser's respective ownership of the Purchased Assets during 2015, after deduction of any and all costs relating to the Realty Tax Appeals, which costs shall be apportioned on a per diem basis determined by reference to the parties' period of ownership for the period under appeal.
4. Upon receipt of any Refund the Vendor shall calculate and payout any amount which may be owing to any Tenant under its Lease as a result of such Refund. The Vendor will provide the Purchaser with a copy of its calculations and communications to Tenants. This Section also applies to the \$68,798.79 plus HST which The Corporation of the County of Lambton has stated is an overpayment of realty taxes under Section 11 of the Status Certificate dated September 18, 2015 and when the Vendor receives the Refund related to The Corporation of the County of Lambton's space being designated as exempt from realty taxes then the Vendor will reconcile and payout any amount owing to The Corporation of the County of Lambton and provide the Purchase with a copy of its calculations and communications.
5. The Vendor shall maintain carriage of all Realty Tax Appeals, and the Vendor shall have full authority and discretion to settle or compromise all Realty Tax Appeals.
6. The Purchaser and the Vendor agree to co-operate with each other with respect to all Realty Tax Appeals and the Purchaser will provide the Vendor with access to any necessary documents or materials required to continue the Realty Tax Appeals.
7. To the extent the Purchaser receives any Refunds from the taxing authority on or after the Closing Date relating to 2015 or any prior period, it shall forthwith pay the same to the Vendor without deduction or set-off whatsoever and the Vendor shall then perform the reconciliations described in Section 3 and 4 above.
8. In the event that any Refund results in the Purchaser receiving a credit to its property tax account (and whether against future taxes owing or as against tax arrears) relating to 2015 or earlier then the Purchaser shall, within 3 days of receipt of notice of the credit, pay the full amount of the credit received to the Vendor and the Vendor shall then perform the reconciliations described in Section 3 and 4 above.
9. If the Purchaser plans to sell or transfer the Purchased Assets after Closing and there are outstanding Realty Tax Appeals then the Purchaser shall notify the Vendor in advance of entering into any agreement to sell or transfer the Purchased Assets and the Purchaser shall ensure that (i) any potential purchaser agrees in writing, in the purchase agreement, to be bound by the terms and provisions of this Tax Agreement, and (ii) such purchaser provides an acknowledgement on the closing, addressed to the Vendor, stating that it is bound by this Tax Agreement.
10. This Tax Agreement shall be construed in accordance with and governed by the laws in effect within the Province of Ontario. This Tax Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

DATED _____, 2015.

A. JOHN PAGE & ASSOCIATES INC.,
acting solely in its capacity as court-appointed
receiver of the assets, undertakings and
properties of Bayside Mall Limited and not in
its personal capacity

Per: _____

Name: A. John Page

Title: A.S.O.

BAYSIDE MALL (2015) LIMITED

Per: _____

Name: Italo Ferrari

Title: President

I have authority to bind the Corporation

DATED _____, 2015.

A. JOHN PAGE & ASSOCIATES INC.,
acting solely in its capacity as court-appointed
receiver of the assets, undertakings and
properties of Bayside Mall Limited and not in
its personal capacity

Per: _____

Name: A. John Page

Title: A.S.O.

BAYSIDE MALL (2015) LIMITED

Per: _____

Name: Italo Ferrari

Title: President

I have authority to bind the Corporation

π

Exhibit "III"

DIRECTION

TO: The Corporation of The City of Sarnia, Attention: Tax Department
255 Christina Street North, PO Box 3018, Sarnia, ON N7T 7N2

RE: Sale by A. John Page & Associates Inc. (the "**Previous Owner**"), acting solely in its capacity as court-appointed receiver of certain property, assets and undertakings of Bayside Mall Limited and not in its personal capacity, of the property municipally known as 150-202 Christina Street North, Sarnia, Ontario (the "**Property**") to Bayside Mall (2015) Limited (the "**Current Owner**")

AND RE: Municipal Tax Appeal Nos. 2966801, 3028004, 3092477 for the Property, any vacancy rebate claims for the Property (solely for 2014 and 2015), and any refund claims for the Property arising from space being designated as exempt from tax, for any of the years 2013 - 2015 (collectively, the "**Tax Appeal**")
Tax Account 3829 400 01000100.0000

Please be advised that the Property has been sold by the Previous Owner to the Current Owner on October 8, 2015.

The undersigned irrevocably direct and authorize The Corporation Of The City of Sarnia to pay any monies received from the Tax Appeal and credited to the balance on the tax account for the Property to the Previous Owner for the period from 2013 to 2015, inclusive, at the following address:

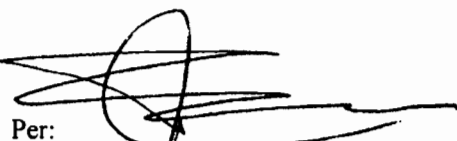
A. John Page & Associates Inc.
100 Richmond Street West, Suite 447
Toronto, ON M5H 3K6

and this shall be your good and sufficient irrevocable authority for so doing.

This Direction may be executed in several counterparts and by facsimile transmission of an originally executed document, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

DATED as of this day of October, 2015.

BAYSIDE MALL (2015) LIMITED


Per: _____

Name: Italo Ferrari
Title: President

I have authority to bind the Corporation

A. JOHN PAGE & ASSOCIATES INC.,
acting solely in its capacity as court-appointed receiver of the assets, undertakings and properties of Bayside Mall Limited and not in its personal capacity

Per: _____

Name: A. John Page
Title: A.S.O.

I have authority to bind the Corporation

DIRECTION

TO: The Corporation Of The City of Samia, Attention: Tax Department
255 Christina Street North, PO Box 3018, Samia, ON N7T 7N2

RE: Sale by A. John Page & Associates Inc. (the "**Previous Owner**"), acting solely in its capacity as court-appointed receiver of certain property, assets and undertakings of Bayside Mall Limited and not in its personal capacity, of the property municipally known as 150-202 Christina Street North, Samia, Ontario (the "**Property**") to Bayside Mall (2015) Limited (the "**Current Owner**")

AND RE: Municipal Tax Appeal Nos. 2966801, 3028004, 3092477 for the Property, any vacancy rebate claims for the Property (solely for 2014 and 2015), and any refund claims for the Property arising from space being designated as exempt from tax, for any of the years 2013 - 2015 (collectively, the "**Tax Appeal**")
Tax Account 3829 400 01000100.0000

Please be advised that the Property has been sold by the Previous Owner to the Current Owner on October 8, 2015.

The undersigned irrevocably direct and authorize The Corporation Of The City of Samia to pay any monies received from the Tax Appeal and credited to the balance on the tax account for the Property to the Previous Owner for the period from 2013 to 2015, inclusive, at the following address:

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

and this shall be your good and sufficient irrevocable authority for so doing.

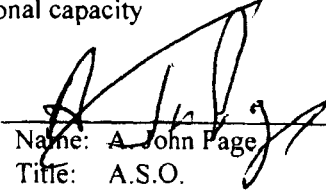
This Direction may be executed in several counterparts and by facsimile transmission of an originally executed document, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

DATED as of this 8th day of October, 2015.

BAYSIDE MALL (2015) LIMITED

Per: _____
Name: Italo Ferrari
Title: President
I have authority to bind the Corporation

A. JOHN PAGE & ASSOCIATES INC.,
acting solely in its capacity as court-appointed receiver of the assets, undertakings and properties of Bayside Mall Limited and not in its personal capacity

Per:  _____
Name: A. John Page
Title: A.S.O.
I have authority to bind the Corporation

π

Exhibit "IV"

Municipal Act, 2001

S.O. 2001, CHAPTER 25

Consolidation Period: From January 1, 2016 to the e-Laws currency date.

Last amendment: 2015, c. 38, Sched. 15.

Extract

Adjustments to roll

341. (1) The treasurer shall adjust the tax roll for a year to reflect changes to the assessment roll for that year made under the *Assessment Act* after the tax roll is prepared. 2001, c. 25, s. 341 (1).

Consequences of adjustments

(2) Taxes for the year shall be collected in accordance with the adjusted tax roll as if the adjustments had formed part of the original tax roll and the local municipality,

(a) shall refund any overpayment to the owner of the land as shown on the tax roll on the date the adjustment is made; or

(b) shall send another tax bill to raise the amount of any underpayment. 2001, c. 25, s. 341 (2); 2006, c. 32, Sched. A, s. 139.

π

Exhibit "V"

A. John Page

From: "Rosekat, Jeffrey" <jrosekat@grllp.com>
To: "Andrea Habas" <ahabas@bgsclaw.com>
Cc: "Stuart, Victoria" <vstuart@grllp.com>; <ajpage@ajohnpage.com>; "Wigley, Jonathan" <jwigley@grllp.com>
Sent: September 30, 2015 1:08 PM
Attach: 2010onca850.pdf
Subject: RE: A. John Page re: Bayside Mall Limited
Andrea,

The issue of the refund on the tax assessment is quite an important element of the deal for obvious reasons. Both the vendor and the purchaser have agreed that the money should be paid to Mr. Page, and the law is quite clear that the new owner has no entitlement to the refund in any event.

The attached Court of Appeal decision makes it clear that s.341 of the *Municipal Act* does not create any substantive right to the refund. The section is an "administrative" provision which is aimed at ensuring that cities can pay the refund to *someone* without worrying about figuring out who is entitled to it (see paragraphs 43 and 44 in particular).

Many municipalities (London, for example) willingly comply with directions re: funds in these circumstances (London even has a form, I believe). They do this, I think, recognizing the absurdity of a section requiring cities to pay money to a party who is not entitled to the funds, particularly where there is an express direction to pay. Obviously, there has to be a credit balance on the tax account as well, but that is taken into account by the wording of the direction.

In light of this, would you be willing to reconsider your position on this issue?

If your client remains uncomfortable making the payment as directed, I will likely move for a Court Order. I assume, given that all parties agree that the payment should be made to the Receiver, that the City would not oppose such a motion.

I am in the office for most of the week if you would like to discuss this further.

-JR.

Jeffrey Rosekat
Partner
d 416 865 6662
jrosekat@grllp.com
GARDINER ROBERTS LLP
Scotia Plaza, 40 King Street West, Suite 3100
Toronto, ON, Canada M5H 3Y2
t 416 865 6600 | f 416 865 6636
www.grllp.com

From: Andrea Habas [mailto:ahabas@bgsclaw.com]
Sent: September 29, 2015 1:30 PM
To: Rosekat, Jeffrey
Subject: RE: A. John Page re: Bayside Mall Limited

I have reviewed this document with my client. Section 341(2)(e) states that the City shall refund any

03/03/2016

over payment to the owner of the land. It cannot therefore sign this agreement, nor agree to pay any refund to anyone other than the then current owner.

From: Rosekat, Jeffrey [mailto:jrosekat@grllp.com]
Sent: Tuesday, September 29, 2015 11:28 AM
To: Andrea Habas
Subject: A. John Page re: Bayside Mall Limited

Andrea,

I understand that we are now aiming at the 8th for a closing.

Attached is a direction which the purchaser and vendor will sell, and which we are asking if the City will acknowledge, asking for any CREDIT in the tax account to be paid to the vendor. I understand that generally municipalities are willing to sign these, and that your client's tax department may have indicated a willingness to consider it.

As you are counsel of record, we wanted to go through you, although if you prefer us to deal directly with the City we are happy to do so. Let me know.

Thanks for your assistance with this.

-JR.

Jeffrey Rosekat
Partner
d 416 865 6662
jrosekat@grllp.com
GARDINER ROBERTS LLP
Scotia Plaza, 40 King Street West, Suite 3100
Toronto, ON, Canada M5H 3Y2
t 416 865 6600 | f 416 865 6636
www.grllp.com

This communication may be solicitor/client privileged and contains confidential information intended only for the persons to whom it is addressed. Any other distribution, copying or disclosure is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message from your mail box without reading or copying it.

Le contenu de cet envoi peut être privilégié et confidentiel, ne s'adresse qu'au(x) destinataire(s) indiqué(s) ci-dessus. Toute autre distribution, expédition ou divulgation est strictement interdite. Si vous avez reçu ce message par erreur, svp informez-nous immédiatement et supprimez ce message de votre boîte de réception sans lecture ou la copie.

This communication may be solicitor/client privileged and contains confidential information intended only for the persons to whom it is addressed. Any other distribution, copying or disclosure is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message from your mail box without reading or copying it.

Le contenu de cet envoi peut être privilégié et confidentiel, ne s'adresse qu'au(x) destinataire(s) indiqué(s) ci-dessus. Toute autre distribution, expédition ou divulgation est strictement interdite. Si vous avez reçu ce message par erreur, svp informez-nous immédiatement et supprimez ce message de votre boîte de réception sans lecture ou la copie.

03/03/2016

CITATION: 80 Mornelle Properties Inc. v. Malla Properties Ltd., 2010 ONCA 850

DATE: 20101214

DOCKET: C51968

COURT OF APPEAL FOR ONTARIO

Moldaver, Simmons and Gillese JJ.A.

BETWEEN

80 Mornelle Properties Inc.

Applicant (Appellant)

and

Malla Properties Ltd.

Respondent (Respondent)

Martin G. Banach, for the appellant

Robert Shour, for the respondent

Heard: October 21, 2010

On appeal from the orders of Justice James M. Spence of the Superior Court of Justice dated March 18, 2010 and May 25, 2010.

Gillese J.A.:

[1] The owner of an apartment building in Toronto appealed the property's tax assessment. It then sold the property.

[2] The City reassessed the property and issued a property tax refund, largely for the period during which the vendor owned the property. Who is entitled to the refund – the vendor or the purchaser?

[3] This appeal answers that question in favour of the vendor.

OVERVIEW

[4] 80 Mornelle Properties Inc. (the Vendor) owned an apartment building in Toronto (the property). It sold the property to PFB Investments Ltd. The sale was completed on October 19, 2006 (the closing). On closing, PFB directed title to Malla Properties Inc. (the Purchaser).

[5] Before closing, the Vendor had retained lawyers to appeal the property's tax assessment. The Vendor continued to pursue the assessment appeal after closing and was ultimately successful. In November 2008, the property was reassessed with the result that a refund of \$251,166.43 (the refund) was owed for the period 2003 to 2006.

[6] The City paid the refund to the Purchaser. It did so because s. 306(2) of the *City of Toronto Act, 2006*,¹ provides that property tax refunds are to be paid "to the owner of the land as shown on the tax roll on the date the adjustment is made".

¹ S.O. 2006, c. 11, Sched. A., as amended by the *Municipal Statute Law Amendment Act, 2006*, S.O. 2006, c. 32, Sched. B., s. 61.

[7] The Vendor asked the Purchaser for the refund. The Purchaser refused.

[8] The Vendor then brought an application in which it asked the court to direct the Purchaser to deliver the majority of the refund to it. The Vendor did not seek the entire refund because it accepted that the Purchaser could retain the part that related to the period after closing.

[9] By order dated March 18, 2010 (the Order), the application judge dismissed the application. In his view, at the time the property was sold, the most that the Vendor could be said to have in respect of its assessment appeal was a “contingent prospect for receiving a tax refund in an amount yet to be determined”. He stated that the Vendor could not have sued on the basis of such an interest and opined that it could not be a chose in action.

[10] The application judge rejected the Purchaser’s argument that it was entitled to the refund because of provisions in various pieces of legislation governing real property. He noted that such legislation relates to land and interests therein and that it is not clear that the “creation of a request for a tax refund gives rise to a right against land or the title to the land”.

[11] The application judge then considered whether the doctrine of unjust enrichment would require the Purchaser to disgorge the refund. He concluded that the case law favoured the Vendor’s claim. Nonetheless, he held that because s. 306(2) of the *City of*

Toronto Act, 2006 authorized payment of the refund to the Purchaser, the Purchaser had a juristic reason to retain it.

[12] By order dated May 25, 2010 (the Costs Order), costs of the application were awarded to the Purchaser in the sum of \$25,000, plus disbursements and applicable taxes.

[13] The Vendor appeals.

[14] In my view, the appeal must be allowed.

THE ISSUES

[15] In order to decide this appeal, two issues must be addressed:

1. Did the right to the refund pass to the Purchaser on the sale of the property?
2. Is the Purchaser entitled to retain the refund as a result of s. 306(2) of the *City of Toronto Act, 2006*?

1. DID THE RIGHT TO THE REFUND PASS TO THE PURCHASER ON THE SALE OF THE PROPERTY?

[16] I begin with a point of clarification. While I have referred to the right in question as “the right to the refund”, that is not completely accurate. On October 19, 2006, immediately prior to closing, the Vendor had the right to pursue the assessment appeal that it had launched in respect of the property and to receive any benefit that might flow from that appeal (the right). At the time of closing, because the reassessment had not yet

been performed, there was no right to a refund. The right was to receive the fruits of the process that the Vendor had undertaken. The value of those fruits might be \$0. Nonetheless, whatever its value, the Vendor was entitled to (*i.e.* owned) the right.

[17] There are two ways in which the right could have passed to the Purchaser on closing: under the terms of the agreement of purchase and sale (the Agreement) or as a result of the operation of real property legislation. As I will explain, neither resulted in the right being conveyed to the Purchaser.

[18] Before embarking on that explanation, it is essential to focus on the legal nature of the right. As previously mentioned, on October 19, 2006 immediately prior to closing, the Vendor had the right to the proceeds of the assessment appeal. What kind of property right is that? Is it a right that attaches to the land or a personal right that belonged to the Vendor?

[19] The Ontario Municipal Board wrestled with this question in *Mitsubishi Electronics Canada Inc. v. Ontario Property Assessment Corp., Region No. 16*, [2000] O.M.B.D. No. 406. It concluded that the right is a chose in action and not one that runs with the land. The Board's reasoning, with which I agree, can be summarized as follows.

[20] The assessment of land and the taxation of land are distinct processes. The assessment of a piece of land is the valuation given to it for the purposes of determining the quantum of property taxes. The assessment of the land does not relate to its use or enjoyment and does not fall within the provisions of s. 15 of the *Conveyancing and Law*

of *Property Act*, R.S.O. 1990, c. C.34. The alteration of an assessment on an appeal does not give rise to an asset or liability. Only the separate mechanism of the application of a tax rate by the taxing authority results in a debt or refund. That mechanism is independent of the assessment process itself. By virtue of legislation,² outstanding taxes on a piece of land are a debt to the municipality for which the municipality has been granted a special enforcement right. The burden of outstanding taxes is assigned to a new owner through the conveyance and transfer of the land, subject to the purchaser's recourse against the vendor. However, an assessment appeal is a chose in action that is not assigned by operation of law. Instead, it must be expressly assigned if it is to pass from a vendor to a purchaser.

[21] In many ways, the right in question is akin to the right of a taxpayer to receive a refund for any overpayment in taxes. If a taxpayer has the right to a refund of overpayment, he or she may enforce that right by an action against the government: see *Profitt v. Ad Productions Ltd. (Trustee of)* (2002), 157 O.A.C. 356 (C.A.) at paras. 18-20. Similarly, if an assessment appeal is successful, the property owner has the right to a refund of the overpayment of property taxes and can enforce that right by way of action against the municipality. In both cases, the right that the owner has is a chose in action.

[22] Choses in action are intangible personal property rights enforceable by legal action. As an intangible personal property right that belonged to the Vendor, it could only have been assigned to the Purchaser by valid legal or equitable assignment. For

² *Municipal Act, 2001*, S.O. 2001, c. 25, s. 349.

legal assignment to occur, the Vendor would have had to expressly assign the right to the Purchaser, in writing.³ No question of an equitable assignment arises on the facts of this case as there was no evidence of an intention to assign the chose in action.

[23] I turn now to explain why the right was not conveyed to the Purchaser, either by the Agreement or by operation of the real property statutes.

The Agreement

[24] Under the Agreement, the Purchaser agreed to purchase and the Vendor agreed to sell the “Property” (art. 2.01). Article 1.01 of the Agreement contains definitions of the significant terms used in the Agreement. “Property” is defined to mean, “collectively the Chattels, the Building, and the Lands”. “Chattels” is defined as “all goods, chattels, fixtures and other tangible personal property owned by the Vendor and used by it in its operation and maintenance of the Property which includes, without limitation, 265 refrigerators, 265 stoves”. “Building” is defined as “[the] existing building at the Lands and all other structures and fixed improvements located on, in or under the Lands belonging to the Vendor”. “Lands” means “the parcel(s) of land as set out in Schedule “A” attached hereto”.

[25] In sum, the Agreement conveyed the property, chattels, building and lands.

³ *Conveyancing and Law of Property Act*, R.S.O. 1990, c. C.34, s. 53(1).

[26] As explained above, the right was intangible personal property that belonged to the Vendor. Clearly, that right does not fall within the meaning of “property, chattels, buildings and lands”, as those terms are defined in the Agreement.

[27] Nor does the right fall within the provisions in the Agreement that govern the adjustment of property taxes on closing. Taken together, arts. 1.01(b), 1.01(f) and 2.01(e) of the Agreement provide that adjustments are to be made to taxes, among other things, on closing. Article 5.02 required the Purchaser to deliver, on closing, an undertaking to re-adjust. In accordance with the Statement of Adjustments, realty taxes were adjusted to compensate the Vendor for the excess taxes it had paid in respect of the property prior to closing.

[28] A valid legal conveyance of a chose in action can be achieved only by express written assignment. The Agreement contains no such assignment. Therefore, the Purchaser cannot rely on it as the basis for retaining the refund.

The Real Property Legislation

[29] The application judge concluded that the provisions in real property statutes such as the *Conveyancing and Law of Property Act*, R.S.O. 1990, c. C.34 and the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, apply to land and interests therein and, therefore, did not apply to the Vendor’s right in respect of the assessment appeal. I agree.

[30] As I have explained, the right was a personal one that belonged to the Vendor. Accordingly, it did not run with the land. Put another way, the right is neither land nor an

Consequences of adjustments

(2) Taxes for the year shall be collected in accordance with the adjusted tax roll as if the adjustments had formed part of the original tax roll and the City,

- a) shall refund any overpayment to the owner of the land as shown on the tax roll on the date the adjustment is made; or
- b) shall send another tax bill to raise the amount of any underpayment. [Emphasis added.]

[35] A brief explanation of the history of s. 306 is in order.

[36] Historically, the City's authority to impose and collect taxes for municipal and school purposes was governed by Parts VIII to XI of the *Municipal Act, 2001*, S.O. 2001, c. 25. That authority was continued under Parts XI to XIV of the *City of Toronto Act, 2006*,⁴ with some modification.

[37] The *City of Toronto Act, 2006*, repealed the *City of Toronto Act, 1997*, S.O. 1997, c. 2. Section 306 appeared for the first time in the 2006 Act. However, when the *City of Toronto Act, 2006*, first came into force, s. 306(2) made no reference to whom the refund was to be paid. It simply read as follows:

306. (2) Taxes for the year shall be collected in accordance with the adjusted tax roll as if the adjustments had formed part of the original tax roll and the City,
a) shall refund any overpayment; or ...

[38] On January 1, 2007, s. 306(2)(a) was amended by the *Municipal Statute Law Amendment Act, 2006*, S.O. 2006, c. 32, Sched. B, s. 61, (the *Amendment Act*) to include

⁴ S.O. 2006, c. 11, Sched. A, prior to *Municipal Statute Law Amendment Act, 2006*, S.O. 2006, c. 32, Sched. B, s. 61.

language specifying to whom the municipality is to pay the refund. This amendment appears in the current version of s. 306(2)(a), which it will be recalled, reads as follows:

306. (2) Taxes for the year shall be collected in accordance with the adjusted tax roll as if the adjustments had formed part of the original tax roll and the City,

- a) shall refund any overpayment to the owner of the land as shown on the tax roll on the date the adjustment is made;... [Emphasis added.]

[39] The *Amendment Act* simultaneously added the same language to s. 341(2)(a) of the *Municipal Act, 2001*, S.O. 2001, c. 25. Section 341 of the *Municipal Act, 2001*, is almost identical to s. 306 of the *City of Toronto Act, 2006*. It applies to municipalities other than the City of Toronto.

[40] The primary purpose of the *Amendment Act* was to amend the *Municipal Act, 2001*, so as to give municipalities many of the powers and duties that had been conferred on the City of Toronto. However, as has been mentioned, it also made changes to the *City of Toronto Act, 2006*, most notably for the purposes of this appeal, by amending s. 306(2)(a).

[41] Neither the Legislative Debates nor the Standing Committee transcripts for the *Amendment Act* disclose any reason for the change to ss. 306 and 341. The change was approved for both Acts without debate or discussion by the Standing Committee.

[42] There is nothing in s. 306(2) or otherwise in the legislation to indicate that the legislature intended to interfere with the rights of property owners. Express wording is necessary before the courts are to interpret legislation as having adversely affected a

[45] The Vendor effectively overpaid taxes on the property during a period in which it owned the property. It was the Vendor who took the necessary steps to have the property taxes reassessed. The right to receive the proceeds of the assessment appeal was a chose in action, a personal right belonging to the Vendor. That right did not run with the property. As the Vendor never assigned the right to the Purchaser, it is the Vendor who is entitled to the refund. Section 306(2)(a) of the *City of Toronto Act, 2006*, does not amount to a juristic reason entitling the Purchaser to retain the refund. Accordingly, the Purchaser must disgorge the refund less \$22,397.11, the amount that the Vendor agrees it can keep.

DISPOSITION

[46] Accordingly, I would allow the appeal, set aside the Order and grant the application. I would award costs of the appeal to the Vendor, fixed on consent at \$12,500, plus disbursements and applicable taxes.

[47] In light of the Vendor's success on appeal, it is entitled to costs below. I would set aside the Costs Order and order costs of the application to the Vendor fixed at \$25,000, plus disbursements and applicable taxes.

RELEASED: DEC 14 2010 ("M.J.M.")

"E. E. Gillese J.A."

"I agree. M. J. Moldaver J.A."

"I agree. J. M. Simmons J.A."

π

Exhibit "VI"

2900 - 390 Bay Street
Toronto Canada M5H 2Y2
Telephone (416) 869-0366
Fax No. (416) 869-0321

BRESVER GROSSMAN CHAPMAN & HABAS LLP

Barristers & Solicitors

Andrea M. Habas
Direct Line: (416) 867-2310
ahabas@bgsclaw.com

File Number: 12-516

October 5, 2015

BY EMAIL - jrosekat@grllp.com

Jeffrey B. Rosekat
GARDINER ROBERTS
Barristers & Solicitors
40 King Street West
Suite 3100, Scotia Plaza
Toronto, Ontario
M5H 3Y2

Dear Mr. Rosekat:

Re: City of Sarnia, County of Lambton - Bayside Mall Limited

Further to our exchange of emails concerning the form of direction the Receiver would like the City's Tax Department to accept, my client has undertaken inquiries of other municipalities to determine their practise in similar circumstances. Perhaps not surprisingly, each of the municipalities that my client contacted, including London, are adamant that they pay out any credit in the tax account only to the then registered owner.

As the case you forwarded to me quite rightly points out, the reason that the relevant provision was added to the *Municipal Act* was to simplify the process and protect the municipalities. It often takes years for assessment appeals to be resolved. There is no certainty that, in this case, the leasehold interest will not be sold by the purchaser prior to the resolution of the assessment appeals. Moreover, with the assessment appeals, vacancy rebates previously issued are recalculated and invoices are sent to the then current owner. That can often cause problems.

As much as we would like to convenience your client, regrettably, the City of Sarnia cannot. The Receiver and the Purchaser will simply have to work out some other form of arrangement to ensure that the Receiver's interests are protected.

Yours very truly

**BRESVER GROSSMAN CHAPMAN
& HABAS LLP**

Andrea Habas

Andrea M. Habas

alw

copy: David Bresver
client

π

Exhibit "VII"

A. John Page

From: "Stuart, Victoria" <vstuart@grllp.com>
To: <ajpage@ajohnpage.com>
Sent: March 8, 2016 4:24 PM
Attach: NEW OWNERSHIP DIRECTION 357 or 358.pdf; DIRECTION TO PAY REBATE to PAST OWNER.pdf
Subject: FW: Direction Form

In the case of vacancy rebates London will honour a direction.

From: Freiman Nayot, Nathalie
Sent: September 17, 2015 3:06 PM
To: Stuart, Victoria; Epstein, David
Subject: FW: Direction Form

Please see attached the forms used by the City of London, as well as an email from Gail Boyce explaining the forms.

Nathalie Freiman Nayot
 d 416 865 6695
nnayot@grllp.com

From: Josh Beattie [<mailto:josh.beattie12@gmail.com>]
Sent: September 17, 2015 3:02 PM
To: Freiman Nayot, Nathalie
Cc: Beattie, Joshua
Subject: Fwd: Direction Form

Hi Nathalie,

Below is an email from Gail Boyce, explaining the forms.

Thanks,
 Josh

----- Forwarded message -----

From: **Boyce, Gail** <gboyce@london.ca>
Date: Thu, Sep 17, 2015 at 2:18 PM
Subject: Direction Form
To: "josh.beattie12@gmail.com" <josh.beattie12@gmail.com>

Good afternoon Josh:

Attached are two direction forms that are used in my role with the City. The first is for applications made under Sections 357 or 358 of the Ontario Municipal Act, and the second is for applications under Section 364 (the vacancy rebate program). If a property changes ownership before an application under Sections 357, 358, or 364 is processed by the City, the appropriate direction form needs to be completed and signed by the current owner authorizing the municipality to send the refund to the previous owner, otherwise all debits and credits stay with the property account.

Regards,

Gail Boyce
 Tax Adjustment Clerk

Finance and Corporate Services
City of London
519-661-4699
gboyce@london.ca

This communication may be solicitor/client privileged and contains confidential information intended only for the persons to whom it is addressed. Any other distribution, copying or disclosure is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message from your mail box without reading or copying it.

Le contenu de cet envoi, peut être privilégié et confidentiel, ne s'adresse qu'au(x) destinataire(s) indiqué(s) ci-dessus. Toute autre distribution, expédition ou divulgation est strictement interdite. Si vous avez reçu ce message par erreur, svp informez-nous immédiatement et supprimez ce message de votre boîte de réception sans lecture ou la copier.

09/03/2016

DIRECTION TO PAY VACANCY REBATE TO PAST OWNER

(This form has been supplied to assist the involved parties)

This will confirm that I am aware of and request that the City of London pay any credit on this account to the prior owner with respect to any Application for Rebate of Property Taxes for Vacancies in Commercial and Industrial Buildings made to the City of London for the property, as described herein, for the period, _____
to _____, inclusive.

Roll Number: 3936._____._____._____._____._____._____._____._____._____._____.0000

Property Address: _____, London, ON

PRIOR OWNER (VENDOR) INFORMATION:

Owner / Corporation Name: _____

Mailing Address: _____

CURRENT OWNER (PURCHASER) INFORMATION:

Owner / Corporation Name: _____

Owner Signature: _____
If owner is a corporation, I have authority to bind the Corporation

Please Print Name of Signatory: _____

Signed this Date: _____

***Please return this completed form to
Realty Tax Section, Room 407, 300 Dufferin Ave., P.O. Box 5256 London,
ON N6A 5M6
or by facsimile to
519.661.6518 City of London
Corporate Services facsimile machine.***

Attention: _____

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original to us by postal service at the address noted. Thank you.

DIRECTION

**TO: THE CORPORATION OF THE CITY OF LONDON
ASSESSMENT SECTION, ROOM 407
P.O. BOX 5035
LONDON ON N6A 4L9**

**RE: PROPERTY TAX ACCOUNT # _____ .0000
MUNICIPAL TAX APPEAL
PROPERTY ADDRESS _____
FOR THE PERIOD _____**

Any credit balance should be distributed as noted below:

to current owner for the period _____

to previous owner for the period _____

CURRENT OWNER	PREVIOUS OWNER
<div style="border-bottom: 1px solid black; margin-bottom: 10px;">Print Name</div> <div style="display: flex; justify-content: space-between; border-bottom: 1px solid black; margin-bottom: 10px;">(Signature)(Date)</div> <div>I have authority to bind the Corporation</div>	<div style="border-bottom: 1px solid black; margin-bottom: 10px;">Print Name</div> <div style="display: flex; justify-content: space-between; border-bottom: 1px solid black; margin-bottom: 10px;">(Signature)(Date)</div> <div>I have authority to bind the Corporation</div>
Mailing Address:	Mailing Address:

π

Exhibit "VIII"

●

**Ontario
Property Tax
Assessment
Handbook**

●

●

Second Edition

●

JACK WALKER, Q.C.
JERRY GRAD, P. Eng.

●

●

CANADA LAW BOOK[®]

●

10:50 REFUND OF TAXES

One of the questions that concerned both the municipality and the taxpayer is the question "to whom shall the refund be made." In *CIBC Mortgage Ltd. v. London (City)*,⁵ Justice J.N. Morissette stated:

I agree with the CIBC's interpretation of section 37(6) of the *Assessment Act*. The *Act*, in my opinion, is clear, and municipalities are to "refund" the overpayment to the person or entity that had paid it, without having to review or interpret contracts between vendors or purchasers, that municipalities are not party to or privy to.

In 2006, s. 341(2) of the *Municipal Act, 2001* was amended to provide that the refund is made "to the owner of the land as shown on the tax roll on the date that the adjustment is made". The adjustment made is in reference to the adjustment after the Board has forwarded the decision to the municipality, the clerk has amended the assessment roll pursuant to s. 40(12) of the *Assessment Act* and the treasurer has amended the tax roll under s. 341(1) of the *Municipal Act, 2001*.

The taxpayer is not entitled to the refund until such time as the appeals or other proceedings have been finalized and the tax roll adjusted.⁶

Under s. 341(2) of the *Municipal Act*, after the tax roll has been adjusted, the local municipality shall refund any overpayment.

Under s. 345(6), the municipality shall pay interest on the overpayments in the same manner as interest is paid under s. 257.11(4) of the *Education Act*⁷ (lowest prime rate reported to the Bank of Canada by any of the banks listed in Schedule 1 to the *Bank Act* at the date of payment). The overpayments referred to in s. 345(6)(b) include a change under the *Assessment Act* in an assessment of the property or classification of the property or a part thereof.

Interest commences 120 days after notification to the municipality by the Assessment Review Board of the change in Assessment.⁸

Consider the factual situation where a parcel of land which has been appealed is sold while the historic appeal continues to exist. After the sale, the historic appeal of the assessment relating to the time period preceding the sale is settled. Nothing in the agreement of purchase and sale deals with entitlement to the proceeds. Under s. 341(2), the municipality pays the rebate to the purchaser but who is entitled to the refund – the vendor or purchaser? The Ontario Court of Appeal determined that the proceeds insofar as they represented time that preceded the sale belonged to the Vendor.⁹

⁵ (2005), 250 D.L.R. (4th) 137 (Ont. S.C.J.), at para. 30.

⁶ *Municipal Act, 2001*, S.O. 2001, c. 25, s. 341.

⁷ R.S.O. 1990, c. E.2.

⁸ *Supra* footnote 6, s. 345(9).

⁹ 80 *Mornelle Properties Inc. v. Malla Properties Ltd.* (2010), 327 D.L.R. (4th) 361 (Ont. C.A.).

The Court analyzed the legal nature of an assessment appeal and determined that it was a chose in action, which is an intangible personal property right enforceable by legal action. As an intangible personal property right it belonged to the vendor and could only be assigned to the Purchaser by valid legal or equitable assignment in writing.¹⁰ Since this had not been done the refund belonged to the Vendor. The Court also found that s. 341(2) and the analogous s. 306(2)(a) in the *City of Toronto Act, 2006*¹¹ "were simply administrative provisions designed to enable the City to pay the refund without having to determine who is properly entitled to it."¹²

10:60 INCREASE OR DECREASE OF TAXES DUE TO "GROSS OR MANIFEST ERROR"

The phrase "gross or manifest error" in reference to the increase or decrease of taxes appears in three sections of the *Municipal Act*, s. 357(1)(f), s. 358(1) and s. 359(1). The analogous sections of the *City of Toronto Act, 2006* are s. 323, s. 325 and s. 326. The former two provide relief dollars to the taxpayer, the latter to the municipality. The phrase, "gross or manifest error" had an interesting evolution.

Initially it appeared in the *Act to amend and consolidate the Assessment Laws of Upper Canada*,¹³ which read "... by reason of any gross and manifest error in the Roll as finally passed by the Court, shall have been overcharged more than twenty-five percent". Through the years the word "and" has been replaced by "or", the 25% dropped, and the word "Roll" was initially deleted and then replaced in s. 357 by the phrase, "error ... in assessing the land". Section 358 refers to an "error in the preparation of the assessment roll", and s. 359 returns to the wording of s. 357 namely "an error ... in assessing the land".

Two cases dealing with overcharges involving a "gross or manifest" error are *Friedberg & Co. v. Toronto (City)*¹⁴ and *Emco Ltd. v. Ontario (Regional Assessment Commissioner, Region No. 23)*.¹⁵

The former case concerned the proper interpretation of s. 44(3) of the *Act*. The appellant, Friedberg, was assessed originally for business tax at a 75% rate for the 1993 to 1997 calendar years. Friedberg operated as an investment dealer and portfolio manager.

In 1997, the Ontario Court of Appeal had decided, in *Templeton Management Ltd. v. Ontario (Regional Assessment Commissioner, Region No. 9)*¹⁶ that a financial institution operating as an agent was

¹⁰ *Ibid.* paras. 21 and 22.

¹¹ S.O. 2006, c. 11, Sch. A.

¹² *Supra*, footnote 9, at para. 44.

¹³ S.C. 1852-1853, c. 182, s. 29.

¹⁴ (2004), 71 O.R. (3d) 639, 2 M.P.L.R. (4th) 1 (C.A.).

¹⁵ (1997), 100 O.A.C. 293, 39 M.P.L.R. (2d) 129 (C.A.).



Exhibit "J"

**Ninth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated March 21, 2016**

Report to the Bank dated November 26, 2015

November 26, 2015

Mr. Lionel Meunier
Assistant Vice President, Corporate Banking
ICICI Bank Canada
150 Ferrand Drive, Suite 1200
Toronto, ON M3C 3E5

Dear Mr. Meunier

1368883 Ontario Inc. (formerly Bayside Mall Limited) ("Bayside")

As you are well aware, we signed an agreement of purchase and sale dated July 28, 2015 ("the APS") with Wilsondale Venture Capital Inc. ("Wilsondale") in trust for a company to be incorporated for Bayside's leasehold interest in Bayside Mall for \$1,750,000. On October 8, 2015 we closed the sale to the company Wilsondale incorporated namely Bayside Mall (2015) Limited ("Bayside Mall (2015)").

You have asked us to provide you with an update on the financial position of the receivership now that Bayside Mall has been sold and on the tasks that remain to be performed, including a status report on the potential areas of recovery, the cost and estimated timeline.

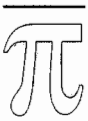
Issues still to be dealt with

Property Tax Appeals and Related Refund Claims

The major potential area of recovery is from the refund of overpaid property taxes. For property tax purposes Bayside Mall was assessed to have a value of \$7,110,000 for the years 2013 onwards resulting in a tax payable each year of approximately \$280,000 (before a vacancy rebate of about \$50,000 per year). The leasehold interest in Bayside Mall sold for \$1,750,000 suggesting that the assessed value is significantly inflated.

We have had our property tax consultants, Altus Group Limited ("Altus"), appeal the assessed value for the years 2013 - 2016. All property tax arrears, including penalties and interest, were paid at the time of the closing of the sale to Bayside Mall (2015). Therefore any reduction in the assessed value of Bayside Mall should result in a repayment of some of the property taxes we paid together with interest.

The process of appealing a property tax assessment seems slow and complicated. For example, the next event scheduled by the Assessment Review Board (the party to whom our appeal is directed) is a "Pre Hearing Conference Call" in mid January 2016 and this was scheduled in May 2015. In an attempt to accelerate this process we recently organized a conference call



Page 2

Mr. Lionel Meunier
November 26, 2015

with ourselves, Altus and the Regional Director of the Municipal Property Assessment Corporation ("MPAC") (MPAC are the party who value properties in Ontario for property tax purposes and it is their value assessment that we are appealing). We also had MTE Paralegal Professional Corporation, representing the City of Sarnia ("the City"), on the call. We indicated that we wanted to expedite the resolution of the appeal. We made two proposals, firstly that we prepare a detailed report setting down our role as Receiver, the sales process and its results and our position regarding the current value of Bayside Mall. We also suggested that, if not resolved by agreement, this appeal might be suitable for mediation through alternative dispute resolution ("ADR"). All sides seemed amenable to both suggestions. We aim to issue the report by the end of next week and have scheduled a follow up conference call for December 4, 2015. We hope our report will facilitate a timely resolution, even if only by helping ensure all parties have the same set of key facts and thereby making ADR more efficient and focused.

It is our current view that the likely refund flowing from a successful reduction in the assessed value of Bayside Mall is an asset with, in the context of this file, a significant potential order of magnitude value, perhaps in the range of \$500,000 and possibly more. We caution you that this is a very approximate number and no recovery is certain. However the potential recovery is significant.

As well as the overall appeal of the assessed value of Bayside Mall there are the following unresolved property tax issues:

1. Property tax vacancy rebate claim for 2015.

In prior years, vacancy rebate claims were made that reduced the tax otherwise payable by about \$50,000 each year. Pursuant to the APS we have the right to claim the vacancy rebate for the period from January 1 to October 7, 2015. We anticipate making the 2015 claim in early 2016. These claims are usually settled in May or June. Altus will make this claim on our behalf, hopefully with the assistance of our former property manager, Larlyn Property Management Ltd. ("Larlyn"). While we anticipate that quantum of our claim will be comparable to the prior year, we should note that, on the assumption that we are able to achieve a very large reduction in the overall tax payable, then the amount of the property tax vacancy rebate claim will be similarly reduced.

2. Refund claim due to the designation of County of Lambton ("the County") space as exempt

Approximately 25% of Bayside Mall is occupied by the County. They have taken steps to have their space designated as exempt from property taxes with effect from January 1, 2015. This designation has yet to be reflected in the tax payable for 2015. When it is, a refund



Mr. Lionel Meunier
November 26, 2015

("the Exempt Space Refund") should be forthcoming. The Exempt Space Refund relating to the period from January 1 to October 7, 2015 should flow to us. The County has paid us \$79,693 on account of 2015 property taxes and once their space has been formally designated exempt and we have received our share of the Exempt Space Refund then we will have to pay back to the County their overpayment. Although the amount of the Exempt Space Refund due to us has yet to be determined we anticipate it will be somewhat less than the \$79,693 we will need to pay to the County.

3. Court Order Directing the City to Pay Property Tax Refunds to the Receiver.

The City have refused to accept our direction that certain property tax refunds, as set down in the APS, should be paid directly to us, claiming that they are obliged to pay them to the then current owner of Bayside Mall. As a matter of prudence we intend to try and obtain a court order directing the City to pay all such refunds to us in order to avoid any potential difficulty in recovering the refund from the then owner of Bayside Mall at some future time.

The APS provides that the benefit of the above mentioned property tax appeals and claims relating to the period prior to October 8, 2015 should flow to us. In addition it provides that we will continue to have carriage of the above mentioned appeals and claims and shall have full authority to settle or compromise such claims. Some of the claims relate to the period after closing. The APS provides that certain costs relating to the appeals and claims are to be divided between the two periods.

The timeline for the resolution of all matters related to the property tax refunds is not clear. We are endeavouring to expedite matters where possible. However it will likely be many months and perhaps more than a year before all issues have been settled. We are encouraged by the fact that the appeal and related refund claims are the or one of the largest outstanding property tax matters at the City. Regardless of their outcome this makes it hard for the City to budget and to set ongoing tax rates. This should provide motivation to bring certainty to this matter on a timely basis.

Final Accounting From Larlyn and Settlement of All Utility and Other Bills

The APS provided that revenue and expenses to the day before closing ie October 7, 2015 were for the account of the Receiver and revenue and expenses for the period from October 8, 2015 were for the account of Bayside Mall (2015). Larlyn has recently provided us with their Management Report and Financial Statement for the month ended October 31, 2015 detailing, among other things, the payments and collections made by them in October 2015. Their Statement details unpaid invoices and estimates totalling \$43,977. We are therefore still awaiting their final accounting.



Page 4

Mr. Lionel Meunier
November 26, 2015

Preparation of Tenant "True Up" Statements re CAM and Property Taxes Payable

As you are aware a number of the tenants contribute towards common area maintenance ("CAM") costs and property taxes. The contribution formula is unfortunately not the same for each tenant. Generally, and depending on the formula, tenants contribute each month based on an estimate of their share of the CAM costs and property taxes. We will shortly be taking the final accounting from Larlyn and using it to prepare stub period CAM and tax statements for the period from January 1 to October 7, 2015. Some tenants will owe an additional balance and some will be due a refund. Until we have completed those calculations we cannot estimate the magnitude of those amounts.

Once the property tax appeals have been finally resolved and refunds received we will need to revisit the property tax payments made by tenants re the period from January 1, 2013 to October 7, 2015 as some tenants may be entitled to a refund of amounts paid on account of the previously high tax assessment.

Collect Tenant Receivables

According to Larlyn, as at October 31, 2015 there were "normal" receivables totalling \$15,810 and a disputed receivable totalling \$15,810. In addition, the above mentioned True Up statements may reveal other amounts due by tenants to Bayside. We need to collect these accounts if possible.

Repay any overpayments of CAM and Property Taxes

As noted earlier, we will need to repay the \$79,693 overpayment of 2015 property taxes paid by the County. We will also need to repay overpayments of CAM and property taxes re 2014 of \$11,124 and any overpayments of CAM and property taxes re 2015.

Certain tenants may have the right to review or challenge our calculation of their CAM and property tax contribution for 2013-2015. Once all other matters have been resolved we will need to assess the impact of this right pending our distribution of all the funds in our possession.

Agreement to Readjust

The APS provides for the post closing readjustment of items, such as tenant rent payments in October and certain October expenses, that were estimated at closing on the Statement of Adjustments. These post closing adjustments are to be made within 180 days of October 8, 2015. We are already aware of one readjustment claim we have against Bayside Mall (2015) for over \$16,000. There will likely be others and they could flow either way.



Page 5

Mr. Lionel Meunier
November 26, 2015

HST Arrears and Refund Claim

Canada Revenue Agency have an outstanding pre receivership claim for unpaid HST of \$23,604.83 plus penalty and interest. The claim for \$23,604.83 is a deemed trust claim that, absent a bankruptcy, has priority over the Bank's secured position. This claim needs to be settled. In addition we have an outstanding HST refund claim related to our period as Receiver, currently for approximately \$50,000, but likely significantly higher once we have completed our accounting etc. The two claims can likely be offset but in order for us to receive the net balance we are claiming we may need to file certain unfiled corporate tax returns. We will assess the cost benefit of filing these returns once the likely magnitude of our net claim is clearer.

Financial Position

Funds on Hand and the Claims on Those Funds

We attach a Statement of Receipts and Disbursements ("the R&D") covering the period from December 5, 2013 to November 24, 2015 and combining our receivership accounts with the account opened by Larlyn. The R&D does not include any transactions flowing through the Larlyn account after October 31, 2015 as these have yet to be reported to us. The R&D shows \$499,012 on hand. However, as noted earlier, there are a number of significant claims and obligations to be paid out of those funds, including:

1. Repayment of property taxes paid by the County in 2015 - \$79,678
2. Payment by Larlyn of the remaining operational liabilities estimated at \$43,977
3. Repayment of overpayment of CAM in 2014 \$11,124
4. Unpaid professional fees to date estimated at \$33,900 (including HST)

leaving net funds on hand of \$330,333 before other potential claims and ongoing costs.

As noted above there are a number of areas where we anticipate receiving further funds. However their quantum and timing is uncertain.

We have paid to you \$300,000 relating to the Receiver's Certificate borrowings. We propose paying a further \$100,000 in the next few days and holding the balance of the funds in our possession pending future developments.

Ongoing Professional Costs

We estimate that there are unbilled professional costs relating to the work being done by



Page 6

Mr. Lionel Meunier
November 26, 2015

Altus, Heath Whiteley, Gardiner Roberts and ourselves of approximately \$30,000 (plus HST).

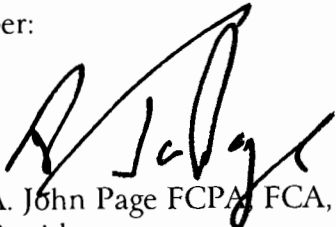
It is not possible to accurately estimate the likely quantum of the ongoing costs of the Receivership. These costs will include our fees, legal fees of Heath Whiteley and Gardiner Roberts and Altus's fees and any costs related to the tax appeal. They might be of the order of \$50,000 but the actual amount could easily be significantly different. We are asking all professionals to provide us with monthly bills to enable us to monitor these costs. Some of the costs relating to the property tax appeals etc. may be apportioned to Bayside Mall (2015).

* * * * *

Please let us know if you have any questions or require any further information at this time.

Yours very truly

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


A. John Page FCPA, FCA, CIRP
President

S:\DATA\WP\CLIENTS\SARNIA\MEUREPID\WPD

cc Heath Whiteley

Exhibit

Statement of Receipts and Disbursements

Statement of Receipts and Disbursements - ETD
05/12/2012 through 26/11/2015 (in Canadian Dollars) (Cash Basis)

26/11/2015

Page 1

Category Description	05/12/2012- 26/11/2015
INCOME	
HST on Sales	-1,406.58
Interest	7,609.53
Lambton Funding	455,017.20
Receivables	19,447.91
Receiver's Certificate Borrowing	1,000,000.00
Rent and Other Income	5,264,546.21
Sale of Mall	1,750,000.00
TOTAL INCOME	8,495,214.27
EXPENSES	
Consulting Fees	75,017.43
HST Control	50,681.05
HST Input	-2,087.39
Insurance	462,375.63
Interest on Lambton Funding	3,822.06
Larlyn Expenses	
Cleaning	378,946.90
Engineering Inspections	30,245.73
Management Fees	237,413.17
Misc HST Exempt	338.76
Other	206,003.99
Repairs & Maintenance	403,376.03
Snow Removal	114,272.45
Temporary Shoring	138,792.02
Utilities	1,160,811.70
Wages	924,460.61
Water	60,833.72
TOTAL Larlyn Expenses	3,655,495.08
Legal Fees	611,706.84
Misc.	10,614.91
Operating Expense	7,045.68
OSB Filing Fee	70.00
Parking Garage Repairs	402,670.10
Prepaid Rent	25,190.51
Property Taxes	1,243,252.84
Realtor Commission	43,750.00
Receiver's Certificate Repayments	300,000.00
Receiver's Fees	1,025,531.93
Repayment of Lambton Funding	81,065.82
TOTAL EXPENSES	7,996,202.49
OVERALL TOTAL	499,011.78



Exhibit "K"

**Ninth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated March 21, 2016**

Statement of Receipts and Disbursements

Statement of Receipts and Disbursements - ETD:2
05/12/2012 through 21/03/2016 (in Canadian Dollars) (Cash Basis)

21/03/2016

Page 1

Category Description	05/12/2012- 21/03/2016
INCOME	
HST on Sales	-641.59
Interest	7,962.68
Lambton Funding	455,017.20
Receivables	19,447.91
Receiver's Certificate Borrowing	1,000,000.00
Rent and Other Income	5,278,406.21
Sale of Mall	1,750,000.00
TOTAL INCOME	8,510,192.41
EXPENSES	
Consulting Fees	87,417.43
HST Control	58,739.80
HST Input	5,941.30
Insurance	462,375.63
Interest on Lambton Funding	3,822.06
Larlyn Expenses	
Cleaning	389,937.88
Engineering Inspections	30,245.73
Management Fees	237,413.17
Misc HST Exempt	374.42
Other	208,181.49
Repairs & Maintenance	406,292.03
Snow Removal	114,272.45
Temporary Shoring	138,792.02
Utilities	1,184,659.08
Wages	924,460.61
Water	60,833.72
TOTAL Larlyn Expenses	3,695,462.60
Legal Fees	615,646.09
Misc.	12,345.23
Operating Expense	7,045.68
OSB Filing Fee	70.00
Parking Garage Repairs	402,670.10
Prepaid Rent	25,190.51
Property Taxes	1,243,252.84
Realtor Commission	43,750.00
Receiver's Certificate Repayments	400,000.00
Receiver's Fees	1,099,270.25
Repayment of Lambton Funding	81,065.82
TOTAL EXPENSES	8,244,065.34
OVERALL TOTAL	266,127.07