

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>
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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.

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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 "A"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

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

REGISTRAR

GREFFIER



W. / Hon - L.J.

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

DEC 05 2012

MB

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

DATED the ____ day of _____, 20__.

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

Per: _____
Name:
Title:

B E T W E E N:

ICICI BANK CANADA
Applicant

- AND -

BAYSIDE MALL LIMITED
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

(PROCEEDING COMMENCED AT TORONTO)

ORDER
(appointing Receiver)

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

Tel: (905) 773-7700
Fax: (905) 773-7666
Email: heath@whiteleylitigation.com

310 Stouffville Road
Richmond Hill, Ontario
L4E 3P4

Lawyer for the Applicant



Exhibit "B"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

Fourth Report (without exhibits)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

FOURTH REPORT OF THE COURT APPOINTED RECEIVER
OF BAYSIDE MALL LIMITED

Dated June 5, 2014

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice to Reader

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

The Bayside Mall - Overview

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

Purpose of this Report

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

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

Summary of Key Economic Interests in the Bayside Mall

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

The Land Lease

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

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

The Physical Condition of the Bayside Mall

The Parking Garage and the City Order to Remedy –

As detailed in the Third Report, at the date of our last report there was an outstanding “Order to Remedy Unsafe Building” dated September 17, 2013 (“**the September 17, 2013 Order to Remedy**”) issued by Mr. Alan Shaw, the City Chief Building Official . We attach a copy of the September 17, 2013 Order as *Exhibit “C”*. The September 17, 2013 Order has five “Required Remedial Steps”. We/Larlyn have complied with and, where applicable, are continuing to comply with the first four steps. Step 5 states that a certain repair strategy (“**Repair Strategy One**”) is to be commenced no later than June 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

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Exhibit "C"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

Fifth Report (without exhibits)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

FIFTH REPORT OF THE COURT APPOINTED RECEIVER
OF BAYSIDE MALL LIMITED

Dated August 11, 2014

Introduction

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

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

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

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

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

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

By order of the Honourable Mr. Justice Wilton-Siegel dated February 21, 2014 the activities of the Receiver set down in the First Report and the Supplement to the First Report were approved. The fees and expenses of the Receiver and its then primary counsel, Heath Whiteley, to January 31, 2013 were also approved. The fees and expenses of the Receiver’s independent counsel, Gardiner Roberts LLP, to December 31, 2012 were also approved.

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

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

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

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

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

By order of the Honourable Madam Justice Thorburn dated November 7, 2013 the activities of the Receiver set down in the Third Report were approved. The receipts and disbursements set down in the Statement of Receipts and Disbursements contained in the Third Report, together with the fees and expenses of the Receiver and its counsel to September 30, 2013 were also approved.

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

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

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

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

Notice to Reader

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

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

Background

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

Purpose of this Report

- To provide the court with information on the activities of the Receiver since its Fourth Report and in particular with respect of the Thirty Day Strategy
- To seek an increase in the Receiver's borrowing limit by \$250,000 to \$1 million
- To authorize the Receiver to enter into an agreement with the City regarding the joint sale of the Land and the Building
- To authorize the Receiver to enter into a lease extension agreement with the County on behalf of Bayside
- To seek approval of the activities of the Receiver and its Statement of Receipts and Disbursements as described in this Report
- To seek approval for the fees and disbursements of the Receiver, Heath Whiteley, and the Receiver's independent legal counsel, Gardiner Roberts, for the period from June 1 – July 31, 2014 as set down in fee affidavits.

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

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

Alternative 1 was to:

- Agree to the Bank's request that we allow the Conditional LOI Purchaser 30 days to "firm up" their interest, presumably by having urgent discussions with the City and the County.
- In parallel indicate to the Bank and the City that the Receiver would strongly

encourage them to take one further attempt during that 30 day period to bridge the gap between their two positions on a Sharing Formula but without any minimum price thresholds, merely a City veto.

- Scale down the Receiver and its counsel's activities to the bare minimum to conserve resources.
- If, at the end of the 30 days, the Conditional LOI Purchaser has indicated a willingness to proceed on an unconditional basis, then move to try and formalize that interest.
- If, in the alternative, at the end of the 30 days the Bank and the City have reached an agreement on a Sharing Formula, then assess whether the Receiver feels, at that time, it is comfortable proceeding with a process that sees the Land and the Building sold given the then cash position.
- Failing which the Receiver will proceed to seek court approval to effect an orderly hand over/back of the Mall as soon as possible, presumably at first instance to Bayside Mall Limited but perhaps in reality to either the Bank or the City and then obtain its discharge.

Alternative 5 was to:

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

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

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

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

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

in this report.

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

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

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

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

The Sharing Formula Agreement

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

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

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

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

The County of Lambton

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

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

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

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

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

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

Other Tenants and Leasing Generally

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

We continue to not be actively attempting to locate tenants for vacant space because such a process takes time and is expensive, in terms of commissions, Receiver’s and legal fees and of any required lease hold improvements. In addition new tenancies bind the Mall and its image. However we have had a few larger expressions of

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

The Parking Garage

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

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

Fees and Expenses of the Receiver and its Legal Counsel

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

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

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

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

A. John Page & Associates Inc.

Month	Hours	Fees	HST	Total
June 2014	92.49	\$30,288.19	\$3,937.46	\$34,225.65
July 2014	93.48	33,831.14	4,398.05	38,229.19
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.

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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 initial "A" and a long, sweeping underline.

A. John Page FCPA, FCA, CIRP
President

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

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

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Exhibit "D"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

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

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Exhibit "E"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

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.

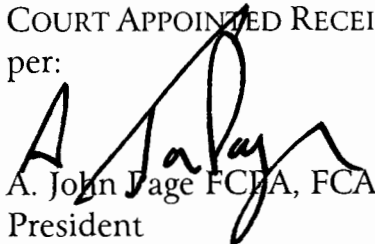
The Receiver is therefore concerned that it might run out of funds before being able to effect an orderly handover of the Mall to another party and will therefore continue to closely monitoring its cash flow going forwards as it likely moves to disengage.

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"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

August 3, 2015 Marketing Memorandum

Confidential Exhibit

Filed Separately



Exhibit "G"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

Wilsondale APS

Confidential Exhibit

Filed Separately



Exhibit "H"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

Encumbrances to be Vested Off Title

ENCUMBRANCES TO BE DISCHARGED, RELEASED OR VESTED OFF

PIN NO. 43268-0043 LT

1. Instrument No. L282253 registered May 28, 1970, Lease with Louis Maltin trading under firm name and style "Sarnia Bargain Homes"
2. Instrument No. L372883 registered August 21, 1975, Notice of Lease with The Toronto-Dominion Bank;
3. Instrument No. L380359 registered December 15, 1975, Notice of Lease with Walkers Stores Limited;
4. Instrument No. L479012 registered August 27, 1980, Assignment of Lease to The Corporation of the City of Sarnia;
5. Instrument No. L510927 registered September 2, 1982, Notice of Lease with Reitmans Inc.
6. Instrument No. L511286 registered September 14, 1982, Notice of Lease with The Great Atlantic & Pacific Co. of Canada Ltd.
7. Instrument No. L513711 registered November 12, 1982, Agreement with The Great Atlantic & Pacific Company of Canada.
8. Instrument No. L514139 registered November 19, 1982, Assignment of Atlantic & Pacific Company of Canada Lease to S.E.C. Leaseholds Limited.
9. Instrument No. L514140 registered November 19, 1982, Assignment of The Toronto-Dominion Bank Lease to S.E.C. Leaseholds Limited.
10. Instrument No. L519807 registered March 24, 1983, Assignment of Lease to The Cadillac Fairview Corp. Limited.
11. Instrument No. L524381 registered June 15, 1983, Notice of Lease with Kinney Shoes of Canada Ltd.
12. Instrument No. L524382 registered June 15, 1983, Notice of Lease with Bata Industries Ltd.
13. Instrument No. L524383 registered June 15, 1983, Notice of Lease with The Young Manufacturer Inc.
14. Instrument No. L524384 registered June 15, 1982. Notice of Lease with Agnew Surpass Inc.
15. Instrument No. L524385 registered June 15, 1983, Notice of Lease with Garfield News Company of Canada, Pantha Enterprises Limited, Swisslake Enterprises Limited cob Garfield.
16. Instrument No. L524386 registered June 15, 1983, Notice of Lease with Doulton Canada Inc.

17. Instrument No. L524388 registered June 15, 1983, Notice of Lease with Imasco R. I. Inc.
18. Instrument No. L524899 registered June 23, 1983, Notice of Lease with Reitmans Inc.
19. Instrument No. L529707 registered September 22, 1983, Notice of Lease with Multi Restaurants Inc.
20. Instrument No. L529708 registered September 22, 1983, Notice of Lease with Tandy Electronics Ltd.
21. Instrument No. L529709 registered September 22, 1983, Notice of Lease with 536587 Ontario Ltd.
22. Instrument No. L539459 registered April 18, 1984, Notice of Lease with Peoples Jewellers Limited.
23. Instrument No. L547633 registered October 1, 1984, Notice of Lease with The Cadillac Fairview Corporation Limited.
24. Instrument No. L548511 registered October 22, 1984, Notice of Lease with 536587 Ontario Limited.
25. Instrument No. L548976 registered October 31, 1984, Notice of Lease with Dylex Ltd.
26. Instrument No. L548977 registered October 31, 1984, Notice of Lease with Dylex Ltd.
27. Instrument No. L548979 registered October 31, 1984, Notice of Lease with Chateau Stores of Canada Ltd.
28. Instrument No. L549222 registered November 6, 1984, Notice of Lease with K.J.'s Restaurant Ltd.
29. Instrument No. L549223 registered November 6, 1984, Notice of Lease with Suzy Shier (Canada) Ltd.
30. Instrument No. L549224 registered November 6, 1984, Notice of Lease with Suzy Shier (Canada) Ltd.
31. Instrument No. L551254 registered December 18, 1984, Notice of Lease with Canada Permanent Mortgage Corporation.
32. Instrument No. L568513 registered November 21, 1985, Assignment of Lease to Wescan Shopping Centres Inc.
33. Instrument No. L928636 registered December 1, 2004 is a Charge to ICICI Bank Canada in the principal amount of \$6,500,000.00.
34. Instrument No. L928637 registered December 1, 2004 is A General Assignment of Rents.
35. Instrument No. LA10087 registered April 20, 2007 is a Notice between Bayside Mall Limited and ICICI Bank Canada.

36. Instrument No. LA10788 registered May 4, 2007 is a Notice of Charge of Lease between Bayside Mall Limited and ICICI Bank Limited in the principal amount of \$4,000,000.00.
37. Instrument No. LA103762 registered April 10, 2012 is a Notice of Charge of Lease between Bayside Mall Limited and ICICI Bank Canada in the principal amount of \$5,000,000.00.
38. Instrument No. LA116712 registered January 18, 2013 is a Construction Lien registered by Steeplejack Services (Eastern) Ltd. in the amount of \$22,140.00.
39. Instrument No. LA118004 registered February 26, 2013 is a Certificate registered by Steeplejack Services (Eastern) Ltd.
40. Instrument No. LA155219 registered July 28, 2015, Application to Register Court Order.

PIN NO. 43268-0106 LT

1. Instrument No. L511286 registered September 14, 1982, Notice of Lease with The Great Atlantic & Pacific Co. of Canada Ltd.
2. Instrument No. L928636 registered December 1, 2004 is a Charge to ICICI Bank Canada in the principal amount of \$6,500,000.00.
3. Instrument No. L928637 registered December 1, 2004 is a General Assignment of Rents.
4. Instrument No. LA9094 registered March 28, 2007 is a Land Registrar's Order.
5. Instrument No. LA10087 registered April 20, 2007 is a Notice between Bayside Mall Limited and ICICI Bank Canada.
6. Instrument No. LA10788 registered May 4, 2007 is a Notice of Charge of Lease between Bayside Mall Limited and ICICI Bank Limited in the principal amount of \$4,000,000.00.
7. Instrument No. LA103762 registered April 10, 2012 is a Notice of Charge of Lease between Bayside Mall Limited and ICICI Bank Canada in the principal amount of \$5,000,000.00.
8. Instrument No. LA155219 registered July 28, 2015, Application to Register Court Order.



Exhibit "I"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

Land Lease

<p style="text-align: center;">1988 JUN 22 PM 2:45</p> <p style="text-align: center;">NUMBER 629020</p> <p style="text-align: center;">CERTIFICATE OF REGISTRATION</p> <p style="text-align: center;">JUN 22 1988</p> <p style="text-align: center;">LAMBTON No. 25 SARNIA</p> <p style="text-align: right; margin-right: 50px;"><i>K. D. Dan</i> LAND REGISTRAR</p> <p>New Property Identifiers</p> <p>Executions</p>	<p>(1) Registry <input checked="" type="checkbox"/> Land Titles <input type="checkbox"/> (2) Page 1 of 9 pages</p>										
	<p>(3) Property Identifier(s) Block Property Additional: See Schedule <input type="checkbox"/></p>										
	<p>(4) Nature of Document Agreement</p>										
	<p>(5) Consideration Mutual covenants and conditions Dollars \$ -----</p>										
	<p>(6) Description In the City of Sarnia, in the County of Lambton parts of Lots 1, 5 and 10, according to Registrar's Composite Plan Number 664 for the City of Sarnia, in the County of Lambton.</p>										
<p>Additional: See Schedule <input type="checkbox"/></p>	<p>(7) This Document Contains: (a) Redescription New Easement Plan/Sketch <input type="checkbox"/> (b) Schedule for: Pg. 5-9 Description <input checked="" type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input checked="" type="checkbox"/></p>										
<p>(8) This Document provides as follows: Amends a Lease dated April 15th, 1981 registered as Instrument Number 495101 for the County of Lambton.</p> <p style="text-align: right;">Continued on Schedule <input type="checkbox"/></p>											
<p>(9) This Document relates to instrument number(s) 495101</p>											
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:50%;">(10) Party(ies) (Set out Status or Interest)</th> <th style="width:30%;">Signature(s)</th> <th style="width:20%;">Date of Signature</th> </tr> <tr> <td>Name(s)</td> <td></td> <td>Y M D</td> </tr> <tr> <td>THE CORPORATION OF THE CITY OF SARNIA</td> <td rowspan="2" style="text-align: center; vertical-align: middle;"><i>Gerald F. Gillespie</i></td> <td rowspan="2" style="text-align: center; vertical-align: middle;">88 06 22</td> </tr> <tr> <td>by its Solicitor, Gerald F. Gillespie</td> </tr> </table>		(10) Party(ies) (Set out Status or Interest)	Signature(s)	Date of Signature	Name(s)		Y M D	THE CORPORATION OF THE CITY OF SARNIA	<i>Gerald F. Gillespie</i>	88 06 22	by its Solicitor, Gerald F. Gillespie
(10) Party(ies) (Set out Status or Interest)	Signature(s)	Date of Signature									
Name(s)		Y M D									
THE CORPORATION OF THE CITY OF SARNIA	<i>Gerald F. Gillespie</i>	88 06 22									
by its Solicitor, Gerald F. Gillespie											
<p>(11) Address for Service 255 N. Christina Street, Sarnia, Ontario N7T 5V4</p>											
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:50%;">(12) Party(ies) (Set out Status or Interest)</th> <th style="width:30%;">Signature(s)</th> <th style="width:20%;">Date of Signature</th> </tr> <tr> <td>Name(s)</td> <td></td> <td>Y M D</td> </tr> <tr> <td>WESCAN SHOPPING CENTRES INC.</td> <td></td> <td></td> </tr> </table>		(12) Party(ies) (Set out Status or Interest)	Signature(s)	Date of Signature	Name(s)		Y M D	WESCAN SHOPPING CENTRES INC.			
(12) Party(ies) (Set out Status or Interest)	Signature(s)	Date of Signature									
Name(s)		Y M D									
WESCAN SHOPPING CENTRES INC.											
<p>(13) Address for Service c/o Mr. S. Paul Mantini, Barrister & Solicitor, Suite 3400, The Exchange Tower, P. O. Box 420, 2 First Canadian Place, Toronto, Ontario M5X 1J3</p>											
<p>(14) Municipal Address of Property</p> <p style="text-align: center;">N/A</p>	<p>(15) Document Prepared by: Gerald F. Gillespie City Solicitor's Office 255 N. Christina Street Sarnia, Ontario N7T 5V4</p>										
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="2">Fees and Tax</th> </tr> <tr> <td style="width:60%;">Registration Fee</td> <td style="width:40%; text-align: center;">70</td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td>Total</td> <td> </td> </tr> </table>		Fees and Tax		Registration Fee	70					Total	
Fees and Tax											
Registration Fee	70										
Total											

AGREEMENT made this 29th day of February, 1988.

B E T W E E N:

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

OF THE FIRST PART

- and -

WESCAN SHOPPING CENTRES INC.

(hereinafter called the "Tenant")

OF THE SECOND PART

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

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

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

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

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

AUTH. B. L.

No. 9574

PASSED 29TH DAY
FEBRUARY 1988

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

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

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

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

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

1. The lands affected by this Agreement are described in Schedule "A" hereto.

2. Article 1.01(bb)(N)(1) is deleted and the following substituted therefor:

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

by".

3. This Agreement shall be deemed to be effective from

3.

the 15th day of April, 1981.

IN WITNESS WHEREOF the parties have executed this Agreement.

THE CORPORATION OF THE CITY
OF SARNIA

Per: *Ernest Wood* Acting Mayor

Per: *[Signature]* Clerk

WESCAN SHOPPING CENTRES INC.

Per: *[Signature]*

Per: *[Signature]*
JOSEPH L. ROTMAN, SECRETARY

5.

SCHEDULE "A"

PART 1

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

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

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

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

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

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

SCHEDULE "A"PART 2

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

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

7.

SCHEDULE "A"

PART 3

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

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

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

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

SCHEDULE "A"

PART 4A

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

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

SCHEDULE "A"

PART 4B

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

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

511285
THIS INDENTURE made as of the 1st day of June, 1981.

B E T W E E N:

THE CORPORATION OF THE CITY OF SARNIA

(hereinafter called the "Landlord")

OF THE FIRST PART,

- and -

THE CADILLAC FAIRVIEW CORPORATION LIMITED
and EATON PROPERTIES LIMITED

(hereinafter collectively called the "Tenant")

OF THE SECOND PART.

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

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

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

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

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

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

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

(B) the net proceeds of such financing;

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

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

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

EATON PROPERTIES LIMITED

DIRECTOR

ASSISTANT SECRETARY

THE CORPORATION OF THE CITY OF SARNIA

Mayor

Clerk

THE CABILLAC FAIRVIEW CORPORATION LIMITED

VICE-PRESIDENT

EATON PROPERTIES LIMITED

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30.01 Successors and Assigns

Approved *[Signature]*

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

B E T W E E N :

THE CORPORATION OF THE CITY OF SARNIA

(hereinafter called the "Landlord"),

OF THE FIRST PART,

- and -

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

OF THE SECOND PART,

ARTICLE I

DEFINITIONS

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

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

"Additional Renewal Term" means any one of such portions of the Term;

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

attached or situate within such buildings, structures or improvements, and "Building" means any such building, structure or improvement;

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

without limitation:

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

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

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

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

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

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

Less the total of:

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

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

Plus the total of:

- (I) a development fee for Cadillac Fairview of 2% of the total of (A) to (F) less (H) above, and;
- (J) a development fee paid to Shefco Investments Limited of 1 1/2 per cent of the result of the calculation referred to in (A) to (H) above to a maximum of \$255,000;
- (r) "Initial Tenant Return" means the sum of 0.02 plus the quotient obtained by dividing:

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

(B) the net proceeds of such financing;

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

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

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

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for
amendment*

Housing for Ontario;

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

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

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

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

m 62902
for over

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

THE DEMISE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

BUILDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

RENTAL

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

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

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

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

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

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

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

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

ARTICLE V

PAYMENT OF TAXES, ASSESSMENTS, ETC.

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

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

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

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

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

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

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

ARTICLE VI
INSURANCE

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VII
REPAIRS AND MAINTENANCE

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

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

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

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

ARTICLE VIII
CHANGES AND ALTERATIONS

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

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

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

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

ARTICLE IX
DAMAGE OR DESTRUCTION

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

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

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

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

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

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

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

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

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

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

ARTICLE X

COMPLIANCE WITH LAWS, ORDINANCES, AGREEMENTS, ETC.

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

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

ARTICLE XI

LIENS

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

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

ARTICLE XII
USE OF PROPERTY

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

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

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

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

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

ARTICLE XIII
INDEMNIFICATION OF LANDLORD

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

ARTICLE XIV
CONVEYANCE BY LANDLORD

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

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

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

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

ARTICLE XV
ASSIGNING AND SUBLETTING

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

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

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

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

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

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

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

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

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

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

ARTICLE XVI

BANKRUPTCY

16.01 If:

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

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

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

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

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

ARTICLE XVII

DEFAULT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XVIII

MORTGAGE

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

(a) That such Mortgage

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

(b) That any such Mortgagee enters into an agreement in form satisfactory to the Landlord to the effect that:

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

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

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

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

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

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

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

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

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

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

ARTICLE XIX

END OF TERM

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

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

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

ARTICLE XX

OVERHOLDING

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

ARTICLE XXI

DISTRESS

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

ARTICLE XXII

ARBITRATION

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

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

ARTICLE XXIII

MISCELLANEOUS

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

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

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

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

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

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

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

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

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

ARTICLE XXIV
CONDITION OF AND TITLE TO PROPERTY

24.01 The Landlord warrants that:

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

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

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

ARTICLE XXV

/ QUIET ENJOYMENT

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

ARTICLE XXVI

REMEDIES

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

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

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

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

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

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

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

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

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

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

ARTICLE XXVII
LOCHIEL STREET SEWER

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

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

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

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

determined by a submission to arbitration pursuant to Article XXII.

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

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

(a) In accordance with working drawings as amended from time to time and approved by the Landlord;
and

(b) Without any negligence on the part of the Tenant, its servants, officers, employees, agents or independent contractors,

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

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

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

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

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

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

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

ARTICLE XXVIII
PARKING STRUCTURE

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

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

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

ARTICLE XXIX

INTEREST IN AND LIABILITY OF THE TENANT

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

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

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

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

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

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

ARTICLE XXX
SUCCESSORS AND ASSIGNS

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

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

THE CORPORATION OF THE CITY OF
SARNIA

Marcus Saddy
Mayor
John H. Brown
Clerk

THE CADILLAC FAIRVIEW CORPORATION
LIMITED

George H. Hawley
President
John H. Brown
Secretary

EATON PROPERTIES LIMITED

John H. Brown
Director
John H. Brown
Secretary

SCHEDULE "A"

PART 1

STAGE 1 LAND

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

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

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

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

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

SCHEDULE "A"

PART 2

STAGE 2 LAND

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

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

SCHEDULE "A"

PART 3

STAGE 3 LAND

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

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

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

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

SCHEDULE "A"

PART 4A

STAGE 4A LAND

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

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

SCHEDULE "A"

PART 4B

STAGE 4B LAND

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

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

SCHEDULE "B"

Page 2

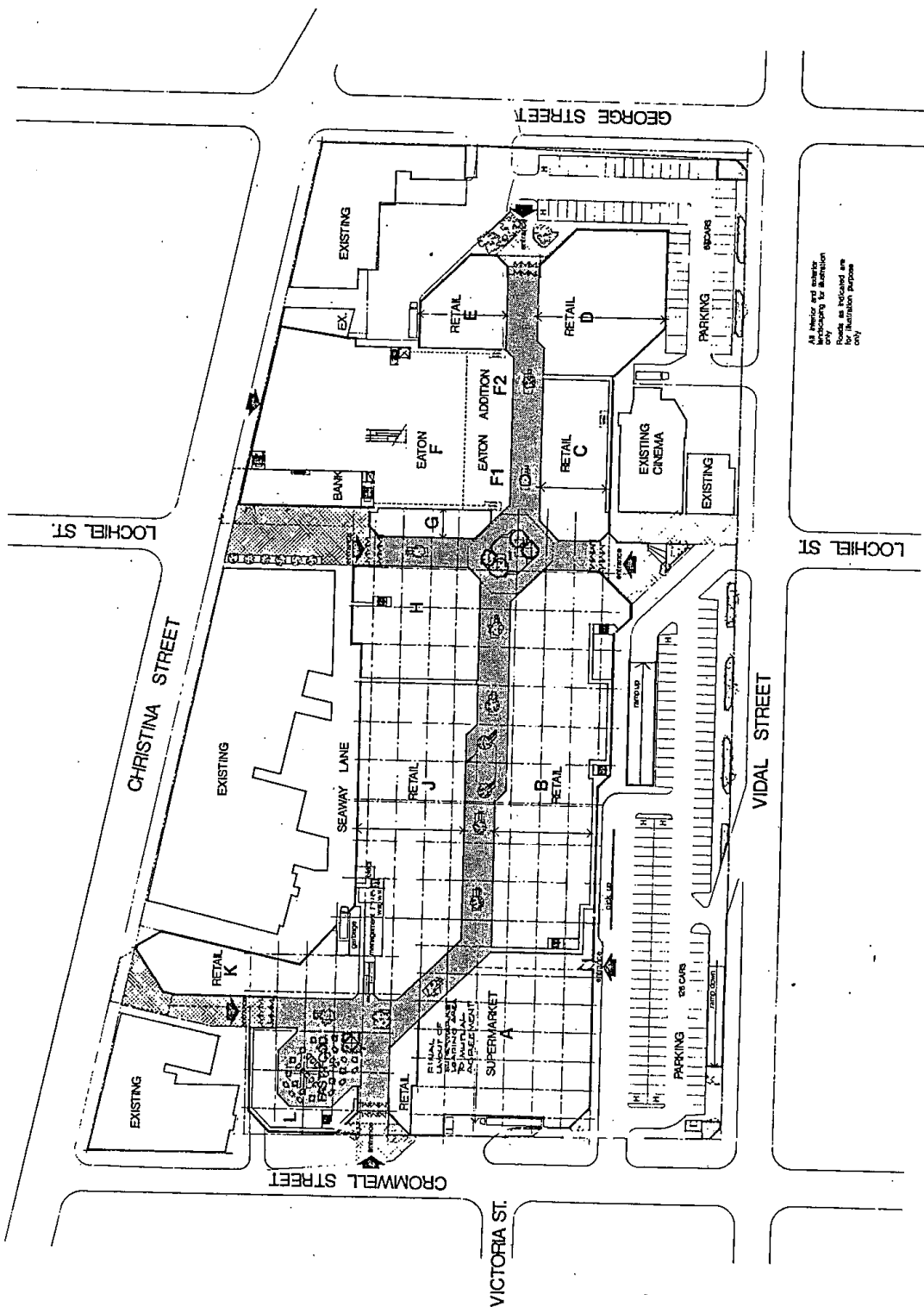


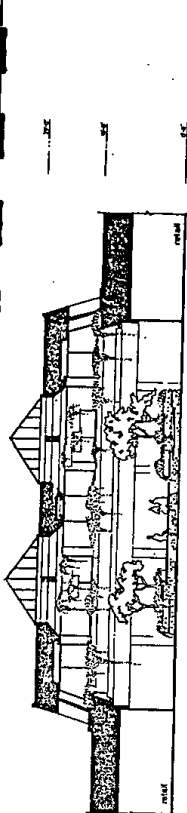
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BY: [Signature]
PROJECT: SARNIA EATON CENTRE

SARNIA
EATON
CENTRE

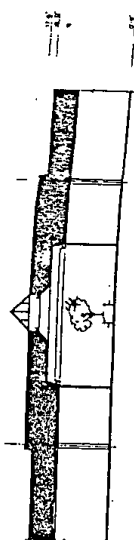
GROUND
FLOOR PLAN
MAJOR
ENTRANCES

Scale: 1/8" = 1'-0"

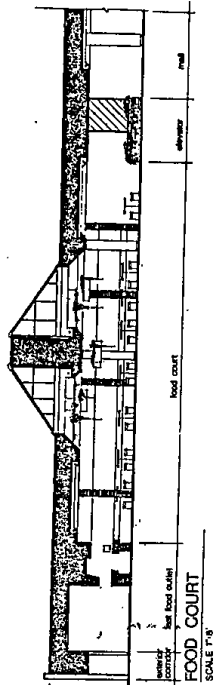




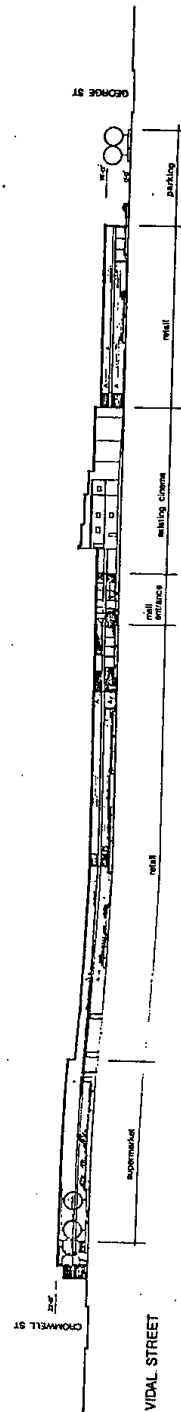
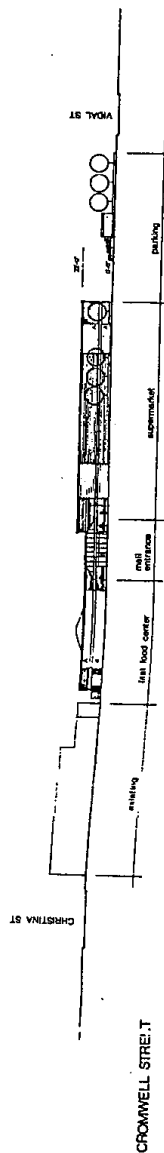
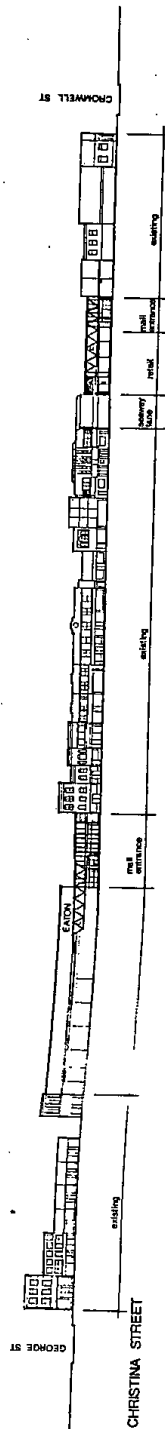
NORTH COURT
SCALE 1"=8'



TYPICAL MALL SECTION
SCALE 1"=8'



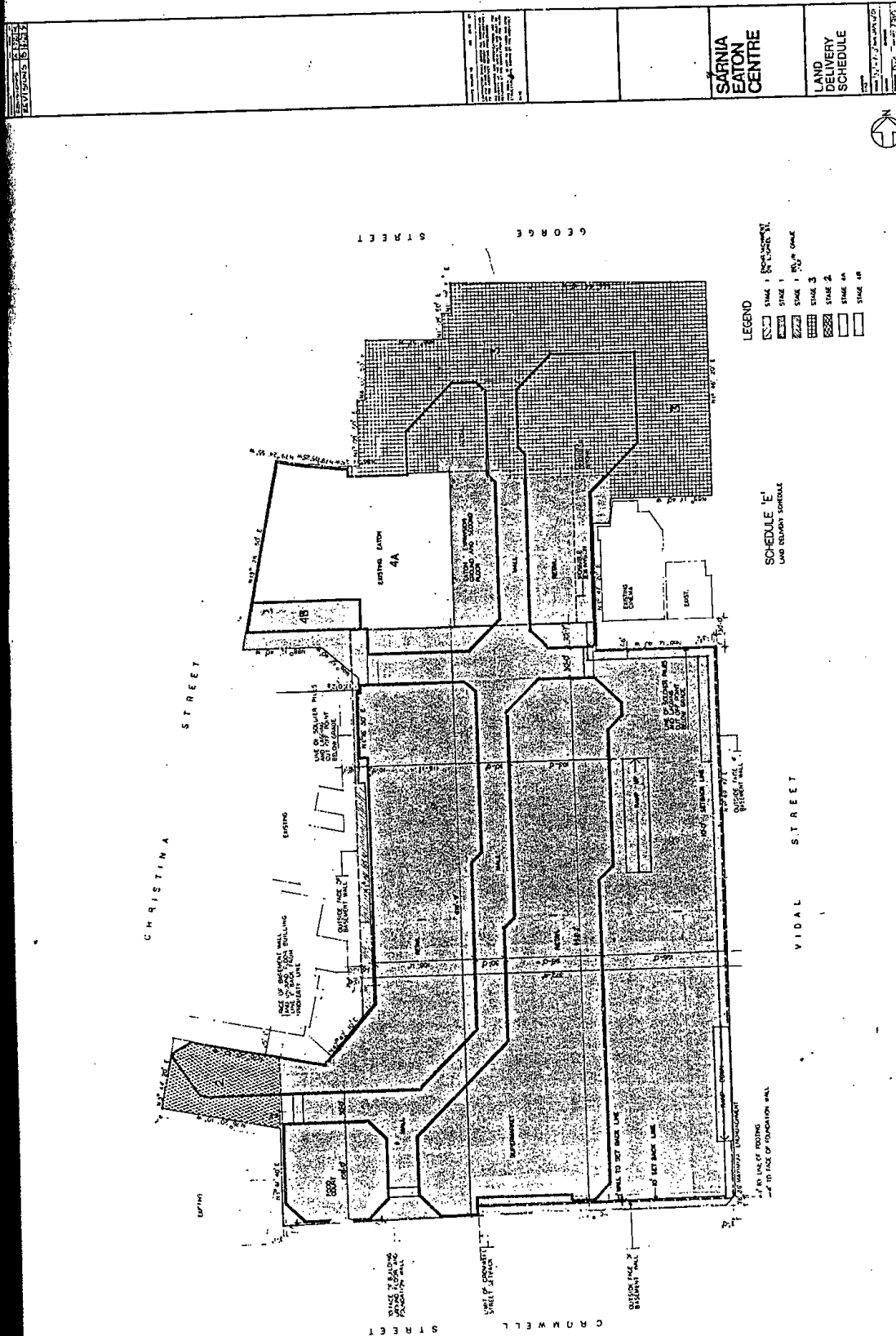
FOOD COURT
SCALE 1"=8'



Symbol	Material
A	face brick
B	tinred glass and aluminum frame
C	canopy structure

Note: all exterior surfaces to wall to be repaired with a material of like kind and quality as original material to match appearance.

all sections and elevations shall be prepared in accordance with the above general design conditions.

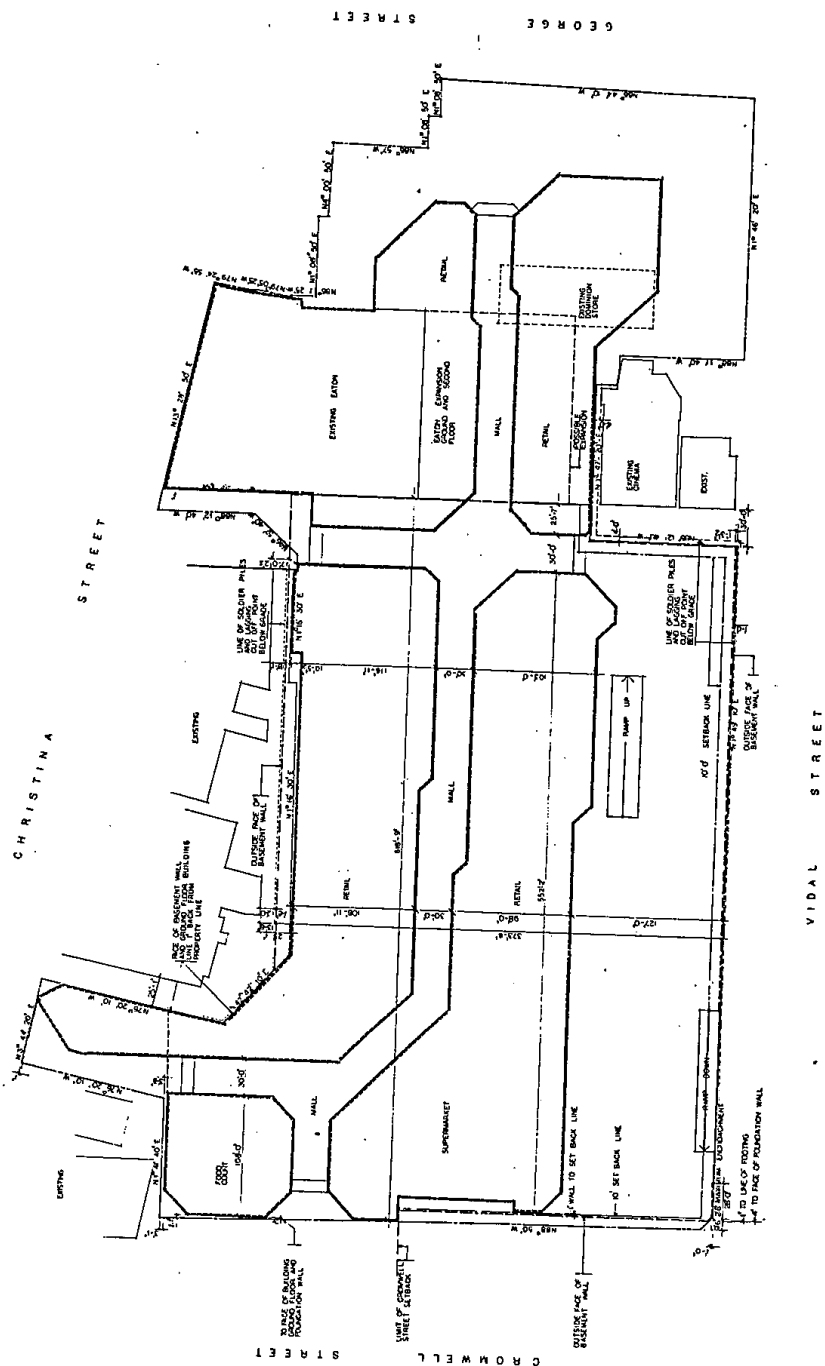


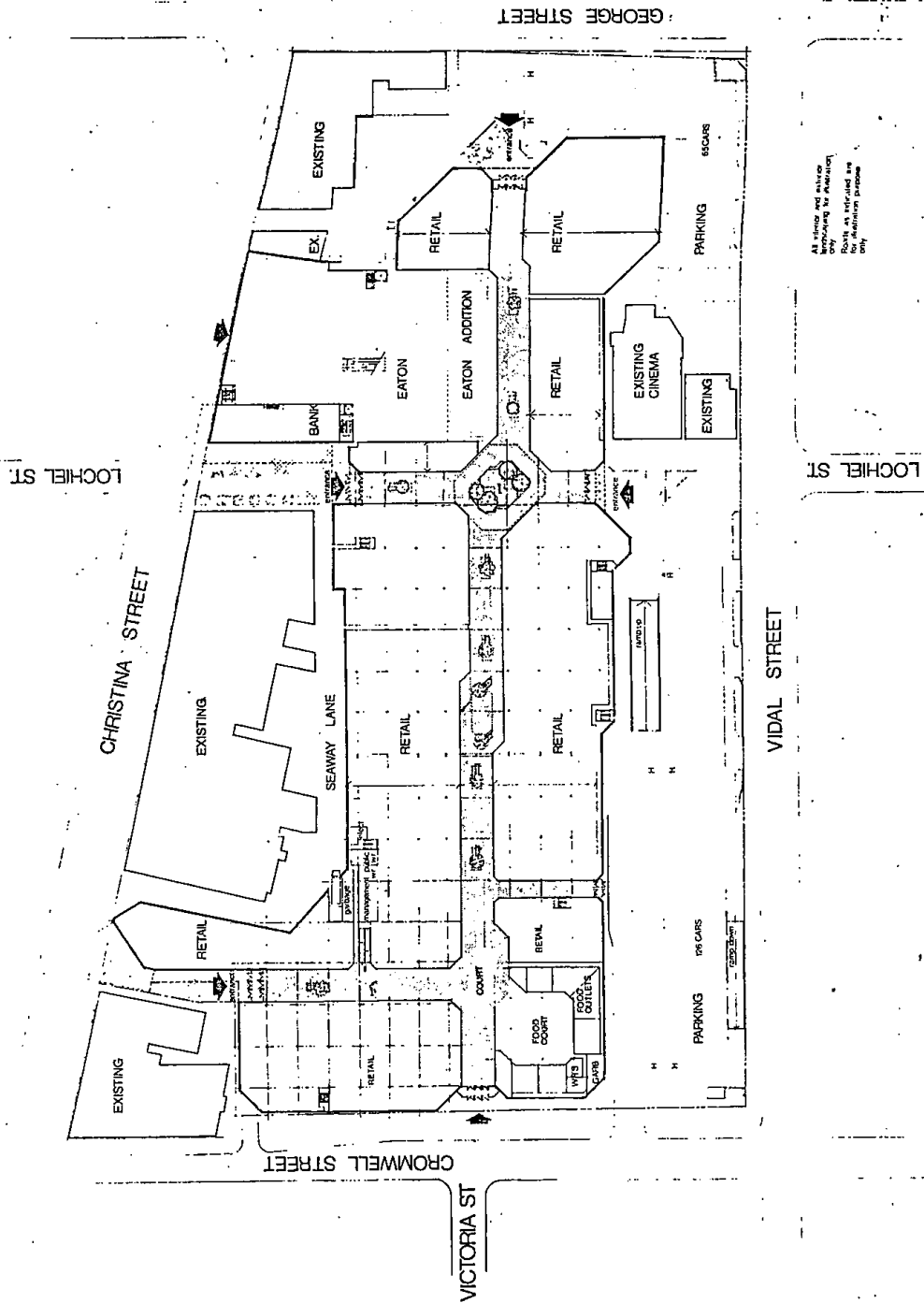
Page 5

Page 5

**SARNIA
EATON
CENTRE**

SET BACK AND
BUILDING
DIMENSION
PLAN

[illegible]



SCHEDULE "C" TO GROUND LEASE

EATON LEASE ASSIGNMENT PROVISIONS

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

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

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

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

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

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

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

- 3 -

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

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

- (a) carries on a department store business with substantially similar merchandising, service and operating practices to that carried on by Eaton Company in the Eaton's Store in accordance with the operating covenant set forth in paragraph 17 of the Heads of Agreement; and
- (b) is then in a position to borrow money on a long term basis at an interest rate no less favourable than that which would then be available to Eaton Company.

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

The Land Transfer Tax Act, 1974

AFFIDAVIT OF RESIDENCE AND OF VALUE OF THE CONSIDERATION

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

names of all transferors in full) THE CORPORATION OF THE CITY OF SARINIA

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

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

OATH AND SAY THAT:

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

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

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

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

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

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

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

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

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

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

TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:

Monies paid or to be paid in cash	\$ 591,800.00
Mortgages (i) Assumed (show principal and interest to be credited against purchase price)	\$ Nil
(ii) Given back to vendor	\$ Nil
Property transferred in exchange (detail below)	\$ Nil
Securities transferred to the value of (detail below)	\$ Nil
Liens, legacies, annuities and maintenance charges to which transfer is subject	\$ Nil
Other valuable consideration subject to land transfer tax (detail below)	\$ Nil

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

VALUE OF LAND, BUILDING, FIXTURES AND GOODWILL SUBJECT TO LAND TRANSFER TAX (TOTAL OF (a) to (f)) \$ 591,800.00 \$ 591,800.00

VALUE OF ALL CHATTELS - items of tangible personal property \$ 4554.40
Retail Sales Tax is payable on the value of all chattels unless exempt under the provisions of The Retail Sales Tax Act, R.S.O. 1970, c.415, as amended \$ Nil
Other consideration for transaction not included in (g) or (h) above \$ Nil

TOTAL CONSIDERATION \$ 591,800.00

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

N/A

Remarks and explanations, if necessary N/A

WORN before me at the City of North York
Municipality of Metropolitan Toronto
day of June 19 81

Commissioner for taking Affidavits, etc.

GEORGE LAWTEY

(signature(s))

PROPERTY INFORMATION RECORD

Describe nature of instrument: Ground Lease

Address of property being conveyed (if available) not available

Assessment Roll No. (if available) n/a

Ring address(es) for future Notices of Assessment under The Assessment Act for property being conveyed (see instruction 6).

The Cadillac Fairview Corporation Limited, 1200 Sheppard Avenue East Willowdale, Ontario M2K 2R8

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

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

name(s) and address(es) of each transferee's solicitor. SMITH, LYONS, TORRANCE, STEVENSON, & MAYER

P.O. Box 38, Toronto-Dominion Centre, Toronto, Ontario M 1C7

For Land Registry Office use only

REGISTRATION NO.

Land Registry Office No.

Registration Date

SCHEDULE "A"

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

Part 1:

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

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

Part 2:

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

Part 3:

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

Part 4A:

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

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

Part 4B:

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

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

The Land Transfer Tax Act, 1974
AFFIDAVIT OF RESIDENCE AND OF VALUE OF THE CONSIDERATION

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

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

MAKE OATH AND SAY THAT:

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

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

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

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

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

6. Other remarks and explanations, if necessary N/A

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

Michael Spohn

PROPERTY INFORMATION RECORD

Describe nature of instrument: Ground Lease

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

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

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

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

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

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

For Land Registry Office use only

REGISTRATION NO.

Land Registry Office No.

Registration Date

SCHEDULE "A"

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

Part 1:

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

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

Part 2:

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

Part 3:

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

Part 4A:

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

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

Part 4B:

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

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

DATED as of April 15th, 1981.

495101

THE CORPORATION OF THE CITY OF
SARNIA

- and -

THE CADILLAC FAIRVIEW
CORPORATION LIMITED and EATON
PROPERTIES LIMITED

L E A S E

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

1981 AUG -5 PM 2:25

LAND REGISTRY OFFICE

495101

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

2:25 P.M. in the

Land Registry Office AUG -5 1981

at Sarnia,
Ontario.

Ken Doan LAND REGISTRAR

City

19. 40
4554.

11.



Exhibit "J"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

1999 City Estoppel Certificate

ESTOPPEL CERTIFICATE

- TO: BAYSIDE MALL LIMITED**
(hereinafter referred to as "the Purchaser")
- AND TO: BAYBRIDGE CAPITAL DEVELOPMENTS LTD.**
(hereinafter referred to as "Baybridge")
- AND TO: The Purchaser and Baybridge (hereinafter collectively referred to as the "Addressees")**
- RE: Bayside Mall (Sarnia Eaton Centre), Sarnia, Ontario (the "Property"); and**
- RE: A. Indenture of Lease dated April 15, 1981 and registered in the Land Registry Office for the Registry Division of Lambton (No. 25) as Instrument Number 495101 made between The Corporation of the City of Sarnia, as Landlord, and The Cadillac Fairview Corporation Limited ("Cadillac") and Eaton Properties Limited, as Tenant, as amended pursuant to Instrument Numbers 511285 and 629020 and assigned and transferred to Baybridge by Instrument Number 790824 registered December 5, 1996 (hereinafter collectively referred as the "Ground Lease"); and**
- RE: B. Unregistered Development Agreement made as of the 2nd day of June, 1980 between The Corporation of the City of Sarnia and The Cadillac Fairview Corporation Limited and Eaton Properties Limited (hereinafter referred to as the "Development Agreement"); and**
- RE: C. Agreement for Right-of-Way dated August 23, 1982 and made between The Corporation of the City of Sarnia and Union Gas (and consented to by The Cadillac Fairview Corporation Limited and Eaton Properties Limited) and registered September 28, 1982 in the Land Registry Office for the Registry Division of Lambton (No. 25) as Instrument Number 511746 (hereinafter referred to as the "Right-of-Way Agreement"); and**
- RE: D. Building Easement Agreement dated August 23, 1982 made among The Corporation of the City of Sarnia, Union Gas Limited, The Cadillac Fairview Corporation Limited and Eaton Properties Limited and registered September 28, 1982 in the Land Registry Office for the Registry Division of Lambton (No. 25) as Instrument Number 511747 (hereinafter referred to as the**

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"Building Easement Agreement"); and

RE: E. Agreement dated as of January 16, 1981 and made between The Corporation of the City of Sarnia and The Cadillac Fairview Corporation Limited and Eaton Properties Limited and registered September 14, 1982 in the Land Registry Office for the Registry Division of Lambton (No. 25) as Instrument Number 511284 (hereinafter referred to as the "Parking Structure Agreement"); and

RE: F. Agreement dated as of July 23, 1982 and made between The Corporation of the City of Sarnia and The Cadillac Fairview Corporation Limited and Eaton Properties Limited and registered September 7, 1982 in the Land Registry Office for the Registry Division of Lambton (No. 25) as Instrument Number 511042 (hereinafter referred to as the "Decorations Agreement"); and

RE: G. Agreement dated as of July 23, 1982 and made between The Cadillac Fairview Corporation Limited and Eaton Properties Limited and The Corporation of the City of Sarnia and registered August 16, 1982 in the Land Registry Office for the Registry Division of Lambton (No. 25) as Instrument Number 510147 (hereinafter referred to as the "Parking Garage Entrance Sign Agreement").

(Items B, C, D, E, F and G collectively referred to as the "Property Agreements")

I. The Corporation of the City of Sarnia (hereinafter referred as the "Undersigned"), as Landlord under the Ground Lease respecting the Property originally demised to The Cadillac Fairview Corporation Limited and Eaton Properties Limited (hereinafter for purposes of Article I hereof collectively referred to as the "Tenant") pursuant to the Ground Lease (the "Demised Premises"), hereby certifies to the Addressees and acknowledges that the Addressees are relying upon the following in connection with the Demised Premises:

- 1. The term of the Ground Lease terminates on August 19, 2042. In addition to the term the Ground Lease contains provision for renewal in accordance Article 2 of the Ground Lease.**
- 2. The Tenant is in possession of the Demised Premises in accordance with the terms of the Ground Lease. The Demised Premises are comprised of approximately**

345,544 square feet.

3. The Tenant possesses title to and absolute ownership of all buildings, structures, and other improvements of any nature and kind whatsoever situate in, on, and under the lands described in Schedule "A" to the Ground Lease.
4. The Ground Lease has not been altered or amended since its execution and is in full force and effect.
5. The minimum rent is presently \$1.00 per annum and participation rent pursuant to the provisions of the Ground Lease is calculated as follows:-
 - a) 50% of annual net participation income defined as gross revenue less operating expenses, after initial Tenant's return calculated by annuitizing initial developments costs of \$22,396,000 at the mortgage rate (18%) plus 2% for 30 years which equals \$4.6 million. Guaranteed return of 12.5% return before participation is owed; and
 - b) participation reduces to 15% of annual participation income once cumulative payments under (a) total \$9,300,000.

Minimum rent and participation rent, as applicable, has been paid to date in accordance with the terms of the Ground Lease.

6. There is no prepaid rent, security deposit, letter of credit, guarantee, bond, surety or other instrument whatsoever now or hereafter required to be paid or posted by the Tenant to or with, as the case may be, the Undersigned pursuant to the provisions of the Ground Lease.
7. There is no existing default or breach of the Ground Lease on the part of the Tenant as of the date hereof and the Undersigned has no outstanding or contemplated claim of any nature and kind whatsoever against the Tenant directly or indirectly with respect to the performance by the Tenant of its obligations under the Ground Lease.
8. There is no agreement with the Undersigned other than that contained in the Ground Lease, pertaining to the obligations of the Tenant under the Ground Lease and the rights of the Tenant relating to the use and occupation of the Demised Premises or the Property by the Tenant.
9. All assignments, reassignments, transfers, conveyances and other dealings in relation to any interest in the Ground Lease, as the case may be, by and on behalf of all parties including the Tenant have been duly and properly completed to the satisfaction of and with the consent of the Undersigned.
10. The Undersigned acknowledges that the Ground Lease and the rents payable thereunder may be assigned by the Tenant to the Purchaser and if so, the

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Purchaser, as tenant, is to continue to make rental payments to the Undersigned under the Ground Lease in accordance with the Ground Lease until the Purchaser, as tenant, is notified to the contrary by the Landlord under the Ground Lease.

11. The Undersigned possesses a good and marketable title in fee simple to all of the lands described in Schedule "A" to the Ground Lease having duly authorized by By-Law the acquisition of all of said Lands described in Schedule "A" to the Ground Lease. The Undersigned acknowledges that with regard to the acquisition of portions of said lands described in Schedule "A" to the Ground Lease, no By-Laws are registered on title, though such By-Laws may, in fact, exist. Accordingly, the undersigned agrees to formally prepare and pass a correcting By-Law authorizing acquisition of all of the said lands described in Schedule "A" to the Ground Lease in connection with the redevelopment of the Property pursuant to the applicable provisions of the Planning Act, Ontario.

II. The Undersigned further acknowledges, agrees, represents, warrants and certifies to the Addressees all of the following and acknowledges that the Addressees are relying upon the following in connection with the Property:-

1. Neither Cadillac nor Eaton Properties Limited, nor Baybridge, nor their respective transferees, assignees, affiliates, predecessors, successors and assigns, (hereinafter for purposes of Article II hereof collectively referred as the "Developer") have been or are in breach of any of their respective obligations and agreements under the Development Agreement, the Right-of-Way Agreement, the Building Easement Agreement, the Parking Structure Agreement, the Decorations Agreement or the Parking Garage Entrance Sign Agreement as of the date hereof;
2. There is no security deposit, letter of credit, guarantee, bond, surety or other payment or instrument whatsoever now or hereafter required to be paid to or deposited with the Undersigned by the Developer under the Development Agreement, the Right-of-Way Agreement, the Building Easement Agreement, the Parking Structure Agreement, the Decorations Agreement or the Parking Garage Entrance Sign Agreement as of the date hereof; and
3. The Undersigned has no claim or potential claim against the Developer in connection with the performance, or lack of performance, by the Developer of any obligations to be performed under the Development Agreement, the Right-of-Way Agreement, the Building Easement Agreement, the Parking Structure Agreement, the Decorations Agreement or the Parking Garage Entrance Sign Agreement as of the date hereof.
4. There is not now nor will there be in the future any obligation or responsibility to any extent whatsoever on the part of the Developer or the Addressees to make any payment, repayment, or deposit of security in any form whatsoever in favour of the

Government of the Province of Ontario or any other governmental entity whatsoever in connection with the planning, development and maintenance of the Property.

5. There is no agreement with the Developer other than those referenced herein, pertaining to the obligations and future obligations of the Developer and the Addressees under the Ground Lease, the Development Agreement, the Right-of-Way Agreement, the Building Easement Agreement, the Parking Structure Agreement, the Decorations Agreement or the Parking Garage Entrance Sign Agreement.

The Undersigned hereby consents to the assignment by Baybridge of its interest in the Ground Lease and of its interest in the Property to the Purchaser as required pursuant to the provisions of the Ground Lease, as applicable, acknowledging that all conditions to the granting of such consent have been satisfied and releases Baybridge from its covenants and obligations under the Ground Lease and Property Agreements.

DATED at Sarnia, Ontario, this 16th day of August, 1999.

THE CORPORATION OF THE CITY OF SARNIA

PER: 

PER: 

We have authority to bind the Corporation



Exhibit "K"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

1999 City Acknowledgement and Release

ACKNOWLEDGEMENT AND RELEASE

TO: BAYBRIDGE CAPITAL DEVELOPMENTS LTD. ("Baybridge")

AND TO: BAYSIDE MALL LIMITED (the "Purchaser")

RE: Lease dated April 15, 1981, between The Corporation of the City of Sarnia (the "Landlord"), as landlord and The Cadillac Fairview Corporation Limited and Eaton Properties Limited, as tenant, as amended and assigned to the date hereof (collectively the "Lease") with respect to the lands described in Schedule "A" attached hereto (the "Property")

WHEREAS Baybridge is the tenant under the Lease as of the date hereof;

AND WHEREAS the Purchaser has agreed to purchase from Baybridge the Bayside Mall, Sarnia, Ontario including without limitation, Baybridge's right, title and interest in the Lease;

AND WHEREAS in order to complete the sale of the Property, the Purchaser and Baybridge require certain assurances from the Landlord, as contemplated by the Lease;

NOW THEREFORE in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Landlord hereby acknowledges to and agrees with Baybridge and the Purchaser as follows:-

1. The Landlord acknowledges and agrees that:
 - a) the Purchaser has provided the Landlord with an undertaking stating that upon completion of the subject transaction the Purchaser shall retain Baybridge, or such other property manager agreeable to the Landlord, to manage the Bayside Mall on behalf of the Purchaser; and
 - b) Baybridge is not in default under the Lease.

Accordingly, Baybridge may assign the Lease to the Purchaser in accordance with Section 15.03 of the Lease.

2. The Landlord acknowledges receipt from the Purchaser of evidence satisfactory to the Landlord as to the financial capability of the Purchaser to perform Baybridge's obligations under the Lease.
3. Upon the execution and delivery by the parties of the Assignment and Assumption

150/99

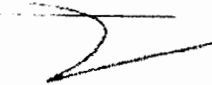
180
Agreement in favour of the Landlord in the form attached hereto as Schedule "B" on the closing of the purchase of the Property, the Landlord shall release Baybridge from all covenants and obligations under the Lease in accordance with the provisions of Section 15.04 of the Lease.

DATED this 16th day of August, 1999.

THE CORPORATION OF THE CITY OF SARNIA

PER: 

Name: MIKE BRADLEY

Title: MAYOR 

PER: 

Name: ANN TUPLIN

Title: CLERK

SCHEDULE "A"

LEGAL DESCRIPTION OF THE BAYSIDE MALL LANDS

ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the City of Sarnia, County of Lambton and Province of Ontario, and being more particularly described as follows:

FIRSTLY

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

SUBJECT TO an easement for an existing storm sewer located in part of Lochiel Street and part of former Lochiel Street (now closed by By-law No. 8188 of the City of Sarnia, registered as Instrument Number 488095 for the County of Lambton), according to Registered Plan Number 14 for the City of Sarnia, now known as part of Lots 1, 5 and 10 according to Registrar's Composite Plan Number 664 of the City of Sarnia, designated as Parts 2 and 5 on Reference Plan 25R-3477;

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

AND SUBJECT TO an easement through the ramps and driveways of the Parking Structure for the passage of men and equipment for the purpose of the maintenance, repair or replacement of the said storm sewer; and the Corporation of the City of Sarnia for the purpose of the said easements, may store equipment and pile material relative to such maintenance, repair or replacement adjacent thereto in a manner consistent both with the efficient carrying out of the work, and minimizing disturbance and inconvenience to the tenant under the lease registered as Instrument Number 495101, both parties acting reasonably;

AND SUBJECT TO a right-of-way over that part of Lot 1 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 1 and 4 on Reference Plan 25R-3690 in favour of Union Gas Limited, its successors and assigns and its and their servants, workmen, employees and agents, pursuant to Instrument No. 511746.

SECONDLY

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

THIRDLY

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

FOURTHLY

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

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

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

AND SUBJECT TO a right-of-way over that part of Lot 1 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 1 and 4 on Reference Plan 25R-3690 in favour of Union Gas Limited, its successors and assigns and its and their servants, workmen, employees and agents, pursuant to Instrument No. 511746.

FIFTHLY

Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 4 on Reference Plan 25R-3518.

SIXTHLY

Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 5 on Reference Plan 25R-3518.

SEVENTHLY

Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 6 on Reference Plan 25R-3518.

SCHEDULE "B"

NOT TO BE REGISTERED

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT made as of the day of August, 1999.

B E T W E E N:

THE CORPORATION OF THE CITY OF SARNIA

(hereinafter called the "Landlord")

OF THE FIRST PART;

- and -

BAYBRIDGE CAPITAL DEVELOPMENTS LTD.

(hereinafter called the "Assignor")

OF THE SECOND PART;

- and -

BAYSIDE MALL LIMITED

(hereinafter called the "Assignee")

OF THE THIRD PART.

WHEREAS by an indenture of lease (the "Original Lease") made as of the 15th day of April, 1981 and registered in the Registry Office for the Registry Division of Lambton (the "Registry Office") on the 5th day of August, 1981 as Instrument No. 495101, between the Landlord, as landlord, and The Cadillac Fairview Corporation Limited and Eaton Properties Limited (collectively the "Tenant"), as tenant, the lands described in Schedule "A" attached hereto (hereinafter called the "Lands") were leased to the Tenant;

AND WHEREAS the Original Lease was amended and supplemented by an indenture made as of the 1st day of June, 1991, between the Landlord and the Tenant which indenture was registered in the Registry Office on the 14th day of September, 1982, as Instrument No. 511285;

AND WHEREAS the Original Lease was further amended by an indenture made as of the 29th day of February, 1988 between the Landlord and Wescan Shopping Centre Inc., as tenant, which indenture was registered in the Registry Office on the 22nd day of June, 1988 as Instrument No. 629020;

AND WHEREAS the Original Lease, as so amended and supplemented, is hereinafter referred to as the "Lease";

AND WHEREAS the Assignor is now the tenant under the Lease;

AND WHEREAS the Assignor has agreed to assign all of its right, title and interest in and to the Lease to the Assignee and the Assignee has agreed to assume all of the Assignor's covenants and obligations under the Lease from and after the date hereof (the "Effective Date");

NOW THEREFORE in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) and the mutual covenants and agreement hereinafter contained, the parties hereto hereby agree as follows:

4. The Assignor assigns, transfers and sets over unto the Assignee without any representations or warranties to the Assignee other than those made by the Assignor to the Assignee in other written agreements between them:

- (a) all of the Assignor's right, title and interest as tenant in and to the Lease from and after the Effective Date; and
- (b) the benefit arising from and after the Effective Date of all covenants by the Landlord under the Lease.

5. As of the Effective Date, the Assignee hereby assumes those obligations of the Assignor, as tenant, under the Lease which are to be observed or performed by the tenant thereunder (which obligations are herein called the "Assumed Obligations") and covenants and agrees with the Assignor and the Landlord that from and including the Effective Date, the Assignee will observe and perform all Assumed Obligations, including making all payments or otherwise performing all obligations of the Assignor, as tenant under the Lease, in accordance with the provisions of the Lease.

6. In accordance with the provisions of Article XV of the Lease, the Landlord hereby releases the Assignor from all of its covenants and obligations under the Lease effective as of the Effective Date.

4. Each of the parties shall at all times hereafter execute and deliver all such further documents and instruments, and shall do such further acts and things as may be reasonably required to give effect to this Agreement.

5. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

6. This Agreement shall come to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

7. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Delivery of this Agreement may be made by facsimile transmission and when so transmitted shall be as effective as if delivered and received personally. Notwithstanding any execution in counterpart or delivery by facsimile transmission, the parties agree to execute six copies of the same document, not in counterpart, within five Business Days of delivery of such counterparts or facsimile transmission.

8. This Agreement shall not be registered against title to the Lands without the prior written consent of all of the parties hereto, which consent may be unreasonably or arbitrarily withheld.

IN WITNESS WHEREOF the parties have executed this Agreement.

THE CORPORATION OF THE CITY OF SARNIA

PER: _____

Name:
Title:

PER: _____

Name:
Title:

BAYBRIDGE CAPITAL DEVELOPMENTS LTD.

PER: _____

Name:
Title:

BAYSIDE MALL LIMITED

PER: _____

Name:
Title:

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SCHEDULE "A"

LEGAL DESCRIPTION OF THE BAYSIDE MALL LANDS

ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the City of Sarnia, County of Lambton and Province of Ontario, and being more particularly described as follows:

FIRSTLY

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

SUBJECT TO an easement for an existing storm sewer located in part of Lochiel Street and part of former Lochiel Street (now closed by By-law No. 8188 of the City of Sarnia, registered as Instrument Number 498095 for the County of Lambton), according to Registered Plan Number 14 for the City of Sarnia, now known as part of Lots 1, 5 and 10 according to Registrar's Composite Plan Number 664 of the City of Sarnia, designated as Parts 2 and 5 on Reference Plan 25R-3477;

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

AND SUBJECT TO an easement through the ramps and driveways of the Parking Structure for the passage of men and equipment for the purpose of the maintenance, repair or replacement of the said storm sewer; and the Corporation of the City of Sarnia for the purpose of the said easements, may store equipment and pile material relative to such maintenance, repair or replacement adjacent thereto in a manner consistent both with the efficient carrying out of the work, and minimizing disturbance and inconvenience to the tenant under the lease registered as Instrument Number 495101, both parties acting reasonably;

AND SUBJECT TO a right-of-way over that part of Lot 1 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 1 and 4 on Reference Plan 25R-3690 in favour of Union Gas Limited, its successors and assigns and its and their servants, workmen, employees and agents, pursuant to Instrument No. 511746.

SECONDLY

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

THIRDLY

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

FOURTHLY

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

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

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

AND SUBJECT TO a right-of-way over that part of Lot 1 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 1 and 4 on Reference Plan 25R-3690 in favour of Union Gas Limited, its successors and assigns and its and their servants, workmen, employees and agents, pursuant to Instrument No. 511746.

FIFTHLY

Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 4 on Reference Plan 25R-3518.

SIXTHLY

Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 5 on Reference Plan 25R-3518.

SEVENTHLY

Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 6 on Reference Plan 25R-3518.



Exhibit "L"

**Eighth Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated August 5, 2015**

Statement of Receipts and Disbursements

Statement of Receipts and Disbursements - ETD
05/12/2012 through 05/08/2015 (in Canadian Dollars) (Cash Basis)

05/08/2015

Page 1

Category Description	05/12/2012- 05/08/2015
INCOME	
HST on Sales	40,546.03
Interest	6,722.05
Lambton Funding	455,017.20
Receivables	19,447.91
Receiver's Certificate Borrowing	1,000,000.00
Rent and Other Income	4,712,697.48
TOTAL INCOME	6,234,430.67
EXPENSES	
Consulting Fees	71,467.43
HST Control	22,829.71
HST Input	71,164.90
Insurance	447,623.91
Larlyn Expenses	
Cleaning	331,511.46
Engineering Inspections	30,245.73
Management Fees	215,635.38
Misc HST Exempt	274.22
Other	181,276.83
Repairs & Maintenance	370,110.16
Snow Removal	114,272.45
Temporary Shoring	138,792.02
Utilities	1,044,931.28
Wages	838,392.96
Water	60,833.72
TOTAL Larlyn Expenses	3,326,276.21
Legal Fees	520,537.30
Misc.	9,871.11
OSB Filing Fee	70.00
Parking Garage Repairs	402,670.10
Receiver's Fees	968,541.86
TOTAL EXPENSES	5,841,052.53
OVERALL TOTAL	393,378.14