

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

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

Dated November 1, 2016

### Introduction

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

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

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

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

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Eleventh Report to the Court  
November 1, 2016

Supplement to the First Report”).

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

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

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

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

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

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

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

By order of the Honourable Madam Justice Thorburn dated November 7, 2013 the activities of the Receiver set down in the Third Report were approved. The R&D

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

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

By order of the Honourable Mr. Justice McEwen dated June 16, 2014 ("the June 16, 2014 Order") the activities of the Receiver set down in the Fourth Report were approved. The R&D contained in the Fourth Report together with the fees and expenses of the Receiver and its counsel to May 31, 2014 were also approved.

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

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

By order of the Honourable Mr. Justice Hainey dated August 20, 2014 the activities of the Receiver set down in the Fifth Report were approved. The R&D contained in the Fifth Report together with the fees and expenses of the Receiver and Gardiner Roberts to July 31, 2014 were also approved. The Receiver's borrowing limit was increased by \$250,000 to \$1 million. An agreement between the Receiver and the City with respect to the joint marketing of the Land and Building and subsequent sharing of proceeds from a sale was approved. The Receiver was also authorised to enter into a lease agreement with the County substantially in accordance with a confidential term sheet attached to the Fifth Report.

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

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

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

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

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

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

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

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

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

On March 21, 2016 the Receiver made its Ninth Report to the Court ("the Ninth Report"). A copy of the body of the Ninth Report is attached as *Exhibit "G"*.

By order of the Honourable Mr. Justice Mr. Justice Wilton-Siegel dated May 3, 2016 ("the May 3, 2016 Order") the activities of the Receiver set down in the Ninth Report were approved. The R&D contained in the Ninth Report together with the fees and expenses of the Receiver and its counsel to February 29, 2016 were also approved. In addition, the City was ordered and directed to pay directly to the Receiver any and all property tax refunds relating to Bayside Mall for the period from January 1, 2013 to December 31, 2015 ("the Property Tax Refunds").

On June 2, 2016 the Receiver made its Tenth Report to the Court ("the Tenth Report"). A copy of the body of the Tenth Report is attached as *Exhibit "H"*.

By order of the Honourable Mr. Justice Hainey dated June 16, 2016 (“the June 16, 2016 Order”) the activities of the Receiver set down in the Tenth Report were approved. The R&D contained in the Tenth Report together with the fees and expenses of the Receiver and its counsel to May 31, 2016 were also approved. In addition the Settlement in connection with the appeal of the property assessment by MPAC for the period from 2013-2016 was 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, the Seventh Report, the Eighth Report, the Ninth Report and the Tenth Report.

#### Background

The copies of the bodies of the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report, the Eighth Report, the Ninth Report and the Tenth Report, attached as *Exhibits “B”, “C”, “D”, “E”, “F”, “G” and “H”*, provide background information on the Mall and the receivership. They also provide details of the challenges that faced the Receiver in the spring of 2014 that lead the Receiver to seek the advice and directions of the court and subsequent developments leading up to the issuance of the Fifth Report, the Sixth Report, the Seventh Report, the Eighth Report, the Ninth Report and the Tenth Report.

#### Purpose of this Report

- To provide the court with information on the activities of the Receiver since its Tenth Report
- To seek approval of the activities of the Receiver and its R&D as described in this Report

- To seek approval for the fees and disbursements of the Receiver and the Receiver's legal counsel, Heath Whiteley, for the period from June 1 – October 31, 2016 and the Receiver's independent counsel for the period from February 1 to May 31, 2016 as set down in fee affidavits
- To seek a full and final release from any and all claims by tenants and former tenants at Bayside Mall

### The Closing of the Sale of Bayside Mall

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

The Wilsondale APS provides for post closing adjustments for certain matters that could not be determined at Closing. All such post closing adjustments were to have been made by no later than April 4, 2016. At that time there was one outstanding post closing adjustment claim in the amount of \$16,429.91 payable to us. We have yet to receive payment of that claim despite requesting same.

We understand that payment has been delayed in part because of a dispute over who owns Bayside Mall (2015). We further understand that that dispute has recently been resolved.

### Larlyn Property Management Ltd. ("Larlyn") and Operations Generally

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

Larlyn have now closed their separate operations account at Royal Bank ("the Larlyn Royal Account") and have forward the funds in the account to us. As noted later we have now taken on direct responsibility for finalizing our dealings with tenants relating to the period of the Receivership.

### Property Assessment Appeal

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

The property was assessed at \$7,100,000 as at January 1, 2012 and the property taxes levied for the period from January 1, 2013 are based on that assessment. After extensive marketing, the leasehold interest in the Mall sold for \$1,750,000 in 2015 so it seemed to us that a very significant reduction in the assessed value should be in order. Our property tax consultants, Altus Group ("Altus"), oversaw the Appeal.

In order to expedite the resolution of the Appeal we attended a mediation in Sarnia in late April 2016 ("the Mediation"). At the Mediation we reached a settlement with the City ("the Settlement"). The Settlement saw the assessed value of the property reduced to \$2,500,000 for the years 2013-2015 and \$3,345,000 for the year 2016. The June 16, 2016 Order approved the Settlement and immediately after its issuance we and the City executed Minutes of Settlement.

On August 3, 2016 we received from the City a payment of \$518,777.46 ("the Property Tax Refund"). We attach as *Exhibit "I"* a schedule showing a breakdown of the Property Tax Refund.

### Property Tax Vacancy Rebate Claim

Altus filed, on our behalf, two vacancy rebate applications for 2015, one covering the period the Mall was in receivership (i.e. from January 1 to October 7, 2015) and the other covering the post receivership period (i.e. from October 8 to December 31, 2015). We received a refund ("the Vacancy Rebates") relating to both applications of \$18,336.30 in early July 2016.

### Bayside Mall (2015) and the Property Tax Refund

Bayside Mall (2015) was entitled to be paid by the Receiver its share of the Property Tax Refund and the Vacancy Rebates relating to their period of ownership net of costs in accordance with the Wilsondale APS.

We attach as *Exhibit "J"* our calculation in that respect. It shows that Bayside Mall (2015)'s share of the costs is greater than its share of the amounts received by the

Receiver and accordingly no amount is payable by the Receiver to Bayside Mall (2015) on account of the Property Tax Refund and the Vacancy Rebates.

It should be noted that the Settlement covered the period from 2013-2016 and therefore the property taxes due to be paid by Bayside Mall (2015) relating to 2016 will, as a result, be significantly reduced. There is no provision in the Wilsondale APS for any costs being allocated against the tax reduction flowing to Bayside Mall (2015) re 2016.

#### The Impact of the Property Tax Refund on Tenants

We conducted a detailed review to determine whether any of the Property Tax Refund should be paid over to tenants. We attach a copy of a memorandum documenting that review as *Exhibit "K"*. We formed the view that no portion of the Property Tax Refund should be paid over to any of the tenants.

#### 2015 Tenant Statements and Related Matters

Larlyn has been unable to collect the 2015 Mall common area costs and property taxes "true up" balance of approximately \$5,800 plus HST from two former Mall tenants, Sun Media and Canadian Blood Services. We are therefore taking back prime responsibility for this collection activity and plan to contact both parties shortly in regard to their outstanding obligations.

The Ministry of College and Universities ("MC&U")  
The Ministry of Children and Youth Services ("MC&YS")

We attach as *Exhibit "L"* a memorandum summarizing the financial dealings between the Receiver and two tenants at Bayside Mall, MC&U and MC&YS (collectively "the Ministries").

The documentation detailing the terms under which the Ministries have occupied space at Bayside Mall is complex and unclear. CBRE Limited, on behalf of the Ministries, questioned the Receiver's allocation of costs but then did not respond to attempts by the Receiver to settle the amounts owing. The Receiver is looking to bring closure to its dealings with the Ministries by seeking a release from any and all claims the Ministries may have against the Receiver, on notice to the Ministries.



### Release from Tenant Claims

The Receiver operated Bayside Mall for almost three years. In order to complete our administration we need to be sure no tenant has any valid claim against the Receiver in anyway connected with our actions as Receiver. We are therefore asking the court for an order, on notice to the major tenants, the County, the Ministries, Sun Media and Canadian Blood Services, releasing the Receiver from any and all claims tenants and former tenants of Bayside Mall may have against the Receiver related in anyway to their occupancy of space at Bayside Mall.

The major tenant at the Mall has been the County. As part of the lead up to the closing of the sale of the Mall they provided an estoppel certificate entitled a "Status Certificate" dated September 18, 2015. A copy of the Status Certificate is attached as *Exhibit "M"*. As noted in the Tenth Report they have subsequently confirmed that we should regard the designation of their space at Bayside Mall in 2015 as exempt from tax as null and void and therefore there was no property tax overpayment. They paid the 2014 CAM True-up balance without further protest and in late spring of 2016 received and deposited a \$22,094 CAM True-up payment from the Receiver re the Receiver's stub period in 2015. As far as we know there are no outstanding issues between the Receiver and the County related to Bayside Mall.

The Receiver does not propose serving the motion record, containing this report and the related Notice of Motion, on the smaller tenants and former tenants for the following four reasons. First, it is now over a year since the Receiver ceased running the Mall and any potential amounts that may be at issue would be too small to warrant the cost of such notice.

Secondly, the Receiver has posted its reports and court orders on its website at [www.ajohnpage.com](http://www.ajohnpage.com). The Receiver will post this report along with the related Notice of Motion on its website promptly after issuance, making it generally available to interested parties.

Thirdly, the Receiver's attempts to effect a significant property tax refund recovery have been reported in the Sarnia media on a number of occasions over a lengthy period of time.

Finally, with the exception of the queries from CBRE on behalf of the Ministries noted earlier the Receiver is not aware of any potential claim having been made by

any tenant or former tenant relating to the receivership period.

Attached as *Exhibit "N"* is a schedule listing the smaller tenants and former tenants that the Receiver is proposing not be served with the motion record containing the Notice of Motion.

#### Communications with the Secured Creditor

The prime secured creditor of Bayside and the party with the economic interest in the outcome of the receivership is ICICI Bank Canada ("the Bank"). We have been keeping the Bank apprised of our activities, primarily through our primary legal counsel, Mr. Whiteley, who is also counsel to the Bank.

#### HST and Corporate Tax Returns

CRA had previously submitted a deemed trust claim for unremitted pre receivership HST for \$23,604.83. We have been filing, on a quarterly basis, HST returns covering our own operations. At the present time we have an unpaid net refund claim totalling over \$82,000 relating to returns filed covering our reportable activities to the end of July 2016. The last corporate tax return filed by Bayside covered the period to December 31, 2011. It is our understanding that CRA will not release HST refunds when there are outstanding unfiled corporate tax returns or unpaid taxes. We therefore assembled sufficient financial information to enable Bayside's corporate tax returns to be brought up to date and show that no tax is payable. With the assistance of tax accountants Koster, Spinks & Koster LLP we filed the outstanding returns covering the years 2012-2015 in early August 2016. These returns have now been assessed and we have received a \$1,500 refund relating to a small loss carryback claim we made re taxes paid in 2009 and 2011.

We have written to CRA indicating that they should offset the unpaid deemed trust claim against our larger refund claim and forward the net balance to us. CRA have indicated to us that they are reviewing our request at this time.

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

The fees and expenses of the Receiver and its primary legal counsel, Heath Whiteley, relating to their activities from June to October 2016 were as follows:

A. John Page & Associates Inc.

Month	Hours	Fees	HST	Total
June 2016	30.43	\$11,115.17	\$1,444.97	\$12,560.14
July 2016	25.67	9,266.99	1,204.71	10,471.70
August 2016	31.76	12,031.14	1,564.05	13,595.19
September 2016	27.83	10,558.55	1,372.61	11,931.16
October 2016	36.25	13,853.29	1,800.93	15,654.22
Total	151.94	\$56,825.14	\$7,387.27	\$64,212.41

Heath Whiteley

Period	Fees	Disbursements	HST	Total
June 2016	\$4,600.00	\$209.16	\$606.99	\$5,416.15
July – September 2016	2,280.00	0.00	296.40	2,576.40
October 2016	5,040.00	0.00	655.20	5,695.20
Total	\$11,920.00	\$209.16	\$1,558.59	\$13,687.75

The fees and expenses of the Receiver's independent counsel, Gardiner Roberts, relating to their activities from February to May 2016 were as follows:

Period	Fees	Disbursements	HST	Total
February – April 2016	\$792.00	\$26.56	\$106.41	\$924.97

May 2016	148.50	159.30	40.01	347.81
Total	\$940.50	\$185.86	\$146.42	\$1,272.78

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 the Larlyn Royal Account for use in their management of the Bayside Mall. As noted earlier, the Larlyn Royal Account has since been closed. Attached as *Exhibit "O"* is a copy of the Receiver's R&D from December 5, 2012 to November 1, 2016 combining the three accounts ("the November 2016 R&D").

The fees and disbursements of the Receiver, Mr. Whiteley and Gardiner Roberts through to October 31, 2016 are included as disbursements in the R&D. We are asking the court to approve the November 2016 R&D.

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All of which is respectfully submitted this 1st day of November, 2016

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

per:



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

Exhibits to the Eleventh Report of A. John Page & Associates Inc.  
as Court Appointed Receiver of 1368883 Ontario Inc. (formerly Bayside Mall  
Limited)  
dated November 1, 2016

Initial Order	A
Fourth Report (without exhibits)	B
Fifth Report (without exhibits)	C
Sixth Report (without exhibits)	D
Seventh Report (without exhibits)	E
Eighth Report (without exhibits)	F
Ninth Report (without exhibits)	G
Tenth Report (without exhibits)	H
Breakdown of the Property Tax Refund	I
Calculation of Bayside Mall (2015) entitlement to a portion of the Property Tax Refund	J
Memorandum re Property Tax Refund	K
Memorandum re the Ministries	L
County Status Certificate	M
Smaller Tenants	N
Statement of Receipts and Disbursements	O



**Exhibit "A"**

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Initial Order**

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

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

**ICICI BANK CANADA**

Applicant

- and -

**BAYSIDE MALL LIMITED**

Respondent

**ORDER**  
**(appointing Receiver)**

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

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

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

### **SERVICE**

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

### **APPOINTMENT**

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

### **RECEIVER'S POWERS**

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

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



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

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

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

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

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

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

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

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

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

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

### **NO PROCEEDINGS AGAINST THE RECEIVER OR PROPERTY MANAGER**

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

### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

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

### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

### **NO INTERFERENCE WITH THE RECEIVER**

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

## **CONTINUATION OF SERVICES**

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

## **RECEIVER TO HOLD FUNDS**

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

## **EMPLOYEES**

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

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

#### **PIPEDA**

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

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

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

#### **RECEIVER'S ACCOUNTS**

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

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



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

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

#### **FUNDING OF THE RECEIVERSHIP**

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

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

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

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

### **SERVICE AND NOTICE**

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

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

### **GENERAL**

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

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

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

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

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

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

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



*W. Van-Holtz*

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

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

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

REGISTRAR

*[Signature]*  
GREFFIER

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:

**BETWEEN:**

**ICICI BANK CANADA**  
Applicant

**- AND -**

**BAYSIDE MALL LIMITED**  
Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

(PROCEEDING COMMENCED AT TORONTO)

**ORDER**

(appointing Receiver)

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

Tel: (905) 773-7700

Fax: (905) 773-7666

Email: [heath@whiteleylligation.com](mailto:heath@whiteleylligation.com)

310 Stouffville Road  
Richmond Hill, Ontario  
L4E 3P4

Lawyer for the Applicant



**Exhibit "B"**

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Fourth Report (without exhibits)**



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

FOURTH REPORT OF THE COURT APPOINTED RECEIVER  
OF BAYSIDE MALL LIMITED

Dated June 5, 2014

**Introduction**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Notice to Reader**

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

### **The Bayside Mall - Overview**

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

### **Purpose of this Report**

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

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

### **Summary of Key Economic Interests in the Bayside Mall**

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

### **The Land Lease**

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

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

## The Physical Condition of the Bayside Mall

### The Parking Garage and the City Order to Remedy –

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

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

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

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

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

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

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

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

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

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

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

### Repairs and Maintenance

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

### The Marketing of the Mall

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

### Delay in Commencing Launch

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

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

### Preparations for Launch

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

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

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

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



All this information was included in the data room.

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

### The Determination of a Listing Price

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

### Initial Marketing

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

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

### Non Binding Letters of Intent

Colliers forwarded to us 9 LOIs from 5 different parties.

### Assessment of the LOIs

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

### Communications with ICICI Bank Canada

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

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

### Overall Assessment

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

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

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

### Discussions with the County of Lambton and the City of Sarnia

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

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

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

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

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

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

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

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

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

### **Status of the Negotiations with the City**

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

### **Status of the Negotiations with the County**

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

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

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

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

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

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

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

### **Larlyn and Operations Generally**

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

### **Media Enquiries**

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

### **Property Taxes**

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

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

### **Operating Budget**

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

### **Additional Rent**

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

### **Secured Creditors**

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

### **SAMAK and the December Rents**

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

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

### **Insurance**

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

### **Harmonized Sales Tax (“HST”)**

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

### **Legal Counsel**

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

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

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

#### A. John Page & Associates Inc.

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

#### Heath Whiteley

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

#### Gardiner Roberts

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



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

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

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

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

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

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

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

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

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

### **Recent Discussions with the Bank**

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

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

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

### **Alternatives available to the Receiver**

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

#### **Alternative 1**

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

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

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

### **Advantages of Alternative 1**

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

### **Disadvantages of Alternative 1**

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

### **Alternative 2**

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

### **Advantages of Alternative 2**

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

### **Disadvantages of Alternative 2**

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

### **Alternative 3**

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

### **Advantages of Alternative 3**

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

### **Disadvantages of Alternative 3**

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

#### **Alternative 4**

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

#### **Advantages of Alternative 4**

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

#### **Disadvantages of Alternative 4**

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

#### **Alternative 5**

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

#### **Advantages of Alternative 5**

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

#### **Disadvantages of Alternative 5**

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

#### **The Receiver's Assessment of the Alternatives**

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

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

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

### **The Impact of our Recommendations on the City and the County**

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

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

All of which is respectfully submitted this 5<sup>th</sup> day of June, 2014

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

per:

  
A. John Page FCPA, FCA, CIRP  
President

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

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

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**Exhibit "C"**

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Fifth Report (without exhibits)**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

FIFTH REPORT OF THE COURT APPOINTED RECEIVER  
OF BAYSIDE MALL LIMITED

Dated August 11, 2014

**Introduction**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Notice to Reader**

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

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

### **Background**

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

### **Purpose of this Report**

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

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

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

Alternative 1 was to:

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

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

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

Alternative 5 was to:

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

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

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

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

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



in this report.

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

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

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

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

## **The Sharing Formula Agreement**

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

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

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

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

### **The County of Lambton**

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

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

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

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

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

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

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

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

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

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

### **The Parking Garage**

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

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

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

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

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

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

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

A. John Page & Associates Inc.

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

Heath Whiteley

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

Gardiner Roberts

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

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

### **Banking, the Receiver's Statement of Receipts and Disbursements and its Potential Shortage of Cash**

At the commencement of this assignment, we opened up receivership bank accounts at Royal Bank of Canada and at ICICI Bank Canada. Shortly after their appointment as property manager Larlyn opened up a separate account at Royal Bank of Canada (“the Larlyn Royal Account”) for use in the management of the Bayside Mall. Attached as *Exhibit "F"* is a copy of the Receiver's Interim Statement of Receipts and

Disbursement from December 5, 2012 to August 11, 2014 combining the three accounts (“the R&D”). The R&D does not include any transactions flowing through the Larlyn Royal Account after June 30, 2014 as these have yet to be reported to us. The funds shown as being on hand are deceptively large because they include \$89,509 of prepaid rent and a reserve held by Larlyn of approximately \$66,000 to cover uncashed cheques and unpaid liabilities incurred by them to June 30, 2014. At the date of the Report the Receiver has therefore perhaps “only” \$100,000 of free cash and it has certain cost obligations including giving notice to its property manager, if it were to disengage as Receiver. It also has an outstanding HST deemed trust claim of about \$24,000 and has to finalize and settle the HST accounting for its period of operations.

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

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



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Fifth Report to the Court  
August 11, 2014

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

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

per:

A handwritten signature in black ink, appearing to read "A. John Page". The signature is written in a cursive style with a large, sweeping initial "A" and a long, horizontal stroke extending to the right.

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"**

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Sixth Report (without exhibits)**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

SIXTH REPORT OF THE COURT APPOINTED RECEIVER  
OF BAYSIDE MALL LIMITED

Dated January 21, 2015

**Introduction**

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

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

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

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

**Supplement to the First Report”).**

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

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

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

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

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

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

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

By order of the Honourable Madam Justice Thorburn dated November 7, 2013 the activities of the Receiver set down in the Third Report were approved. The Statement

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

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

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

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

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

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

### **Notice to Reader**

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

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

## **Background**

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

## **Purpose of this Report**

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

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

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

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

#### Building

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

### **The Sharing Formula Agreement**

The August 20, 2014 Order authorized the Receiver to enter into the Sharing Formula Agreement with the City. The Sharing Formula Agreement provides for the joint sale of the Land and Building with a pre agreed division of the proceeds of such a sale. The Sharing Formula Agreement also provides that the City will be supplied information on the credentials, experience, vision and financial strength of a potential 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 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 a 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
	<b>465.98</b>	<b>\$170,493.96</b>	<b>\$22,164.22</b>	<b>\$192,658.18</b>

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
	<b>\$52,480.00</b>	<b>\$6,822.40</b>	<b>\$59,302.40</b>

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
	<b>\$38,844.50</b>	<b>\$1,135.87</b>	<b>\$5,197.46</b>	<b>\$45,177.83</b>

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

approve these fees and disbursements.

### **Banking and the Receiver's Statement of Receipts and**

At the commencement of this assignment, we opened up receivership bank accounts at Royal Bank of Canada and at ICICI Bank Canada. Shortly after their appointment as property manager Larlyn opened up a separate account at Royal Bank of Canada (“**the Larlyn Royal Account**”) for use in the management of the Bayside Mall. Attached as *Exhibit “K”* is a copy of the Receiver's Interim Statement of Receipts and Disbursement from December 5, 2012 to January 20, 2015 combining the three accounts (“**the R&D**”). The R&D does not include any transactions flowing through the Larlyn Royal Account after November 30, 2014 as these have yet to be reported to us.

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

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

\*\* \*\* \*

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

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



A. John Page FCPA, FCA, CIRP  
President

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

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



**Exhibit "E"**

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Seventh Report (without exhibits)**



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

SEVENTH REPORT OF THE COURT APPOINTED RECEIVER  
OF BAYSIDE MALL LIMITED

Dated May 19, 2015

**Introduction**

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

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

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

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

**Supplement to the First Report”).**

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

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

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

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

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

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

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

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

and expenses of the Receiver and its counsel to September 30, 2013 were also approved.

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

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

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

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

By order of the Honourable Mr. Justice Haaney 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 indicate 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 seemingly 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
<b>Total</b>	<b>320.43</b>	<b>\$115,111.89</b>	<b>\$14,964.55</b>	<b>\$130,076.44</b>

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
<b>Total</b>	<b>\$27,840.00</b>	<b>\$0.00</b>	<b>\$3,619.20</b>	<b>\$31,459.20</b>

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
<b>Total</b>	<b>\$45,097.00</b>	<b>\$891.89</b>	<b>\$5,978.56</b>	<b>\$51,967.45</b>

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

**Banking and the Receiver's Statement of Receipts and 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"

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Eighth Report (without exhibits)**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

EIGHTH REPORT OF THE COURT APPOINTED RECEIVER  
OF BAYSIDE MALL LIMITED

Dated August 5, 2015

**Introduction**

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

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

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

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

**Supplement to the First Report”).**

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

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

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

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

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

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

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

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

and expenses of the Receiver and its counsel to September 30, 2013 were also approved.

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

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

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

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

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

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

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

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

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

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

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

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

### **Notice to Reader**

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

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

### **Background**

The copies of the bodies of the Fourth Report, the Fifth Report, the Sixth Report and the Seventh Report, attached as *Exhibits “B”, “C”, “D” and “E”*, provide background information on the Mall and the receivership. They also provide details of the challenges that faced the Receiver in the spring of 2014 that lead the Receiver to seek the advice and directions of the court and subsequent developments leading up to the issuance of the Fifth Report, the Sixth Report and the Seventh Report.

### **Purpose of this Report**

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

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

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

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

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

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

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

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

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

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

### **The Vesting Off of Certain Encumbrances**

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

## **The Parking Garage**

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

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

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

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

## **The Assignment of the Land Lease**

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

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

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

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



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

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

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

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

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

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

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

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

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

December 2012.

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

### **The City of Sarnia Motion for Possession**

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

### **The County of Lambton**

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

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

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

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

We continue to not be actively attempting to locate tenants for vacant space because

such a process takes time and is expensive, in terms of commissions, Receiver's and legal fees and of any required lease hold improvements. In addition new tenancies bind the Mall and its image.

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

### **Larlyn and Operations Generally**

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

### **Media Enquiries**

The receivership of the Mall continues to be news in the Sarnia area and we have been interviewed by the press on its status on a number of occasions.

### **Property Taxes**

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

### **Property Tax Appeal**

Our property tax consultants, Altus Group ("**Altus**"), are overseeing the appeal that we had them file of the MPAC property assessment for 2013 – 2016. We understand that a pre-hearing conference call has been scheduled for January 2016 to discuss the appeal. Altus also filed a vacancy rebate application for 2014. We understand this application resulted in a tax rebate of about \$52,000 which has been credited to the property tax account. We anticipate having them file a similar vacancy rebate application for 2015 early in 2016.

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

### County Application for Separate Assessment

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

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

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

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

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

#### A. John Page & Associates Inc.

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

#### 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

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

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

#### **Banking and the Receiver's Statement of Receipts and Disbursements**

At the commencement of this assignment, we opened up receivership bank accounts at Royal Bank of Canada and at ICICI Bank Canada. Shortly after their appointment as property manager, Larlyn opened up a separate account at Royal Bank of Canada (“**the Larlyn Royal Account**”) for use in the management of the Bayside Mall. Attached as *Exhibit “L”* is a copy of the Receiver's Interim Statement of Receipts and Disbursement from December 5, 2012 to August 5, 2015 combining the three accounts (“**the R&D**”). The R&D does not include any transactions flowing through the Larlyn Royal Account after June 30, 2015 as these have yet to be reported to us.

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

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

Page 13  
Eighth Report to the Court  
August 5, 2015

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

\*\* \*\* \*

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

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

  
A. John Page FCPA, FCA, CIRP  
President

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

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



Exhibit "G"

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Ninth Report (without exhibits)**



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

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

Dated March 21, 2016

**Introduction**

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

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

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

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

**Supplement to the First Report”).**

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

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

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

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

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

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

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

By order of the Honourable Madam Justice Thorburn dated November 7, 2013 the activities of the Receiver set down in the Third Report were approved. The R&D

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

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

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

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

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

By order of the Honourable Mr. Justice Hainey dated August 20, 2014 the activities of the Receiver set down in the Fifth Report were approved. The R&D contained in the Fifth Report together with the fees and expenses of the Receiver and Gardiner Roberts to July 31, 2014 were also approved. The Receiver’s borrowing limit was increased by \$250,000 to \$1 million. An agreement between the Receiver and the City with respect to the joint marketing of the Land and Building and subsequent sharing of proceeds from a sale was approved. The Receiver was also authorised to enter into a lease agreement with the County substantially in accordance with a confidential term sheet attached to the Fifth Report.

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

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

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

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

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

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

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

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

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

### **Notice to Reader**

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

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

## **Background**

The copies of the bodies of the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report and the Eighth Report, attached as *Exhibits “B”, “C”, “D”, “E” and “F”*, provide background information on the Mall and the receivership. They also provide details of the challenges that faced the Receiver in the spring of 2014 that lead the Receiver to seek the advice and directions of the court and subsequent developments leading up to the issuance of the Fifth Report, the Sixth Report, the Seventh Report and the Eighth Report.

## **Purpose of this Report**

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

## **The Closing of the Sale of Bayside Mall**

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

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

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

## **Changing the Name of Bayside Mall Limited**

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

## **The City of Sarnia**

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

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

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

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

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

## **2015 Tenant Statements and Related Matters**

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

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

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

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

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

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

### **Media Enquiries**

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

## **Property Taxes**

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

## **Property Assessment Appeal**

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

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

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

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

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

## **Property Tax Vacancy Rebate Claim**

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



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

### **County Application for a Separate Assessment**

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

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

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

### **Direction re Payment of All Property Tax Refunds**

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

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

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

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

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

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

### **Communications with the Secured Creditor**

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

### **HST and Corporate Tax Returns**

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

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

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

#### A. John Page & Associates Inc.

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

#### Heath Whiteley

Period	Fees	HST	Total
August 2015	6,720.00	873.60	7,593.60
Sept - Oct 2015	3,600.00	468.00	4,068.00
Nov. 2015 - Feb.	1,520.00	197.60	1,717.60
	<b>\$10,320.00</b>	<b>\$1,341.60</b>	<b>\$11,661.60</b>

#### Gardiner Roberts

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

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

### **Receiver's Certificate Borrowings**

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

### **Banking and the Receiver's Statement of Receipts and Disbursements**

At the commencement of this assignment, we opened up receivership bank accounts at Royal Bank of Canada and at ICICI Bank Canada. Shortly after their appointment as property manager, Larlyn opened up the Larlyn Royal Account for use in their management of the Bayside Mall. Attached as *Exhibit "K"* is a copy of the Receiver's R&D from December 5, 2012 to March 21, 2016 combining the three accounts ("**the March 2016 R&D**"). The March 2016 R&D does not include any transactions flowing through the Larlyn Royal Account after February 29, 2016 as these have yet to be reported to us.

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

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

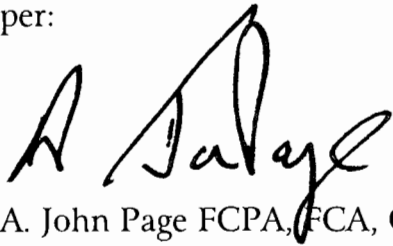
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Ninth Report to the Court  
March 21, 2016

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

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

per:

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

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

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

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



**Exhibit "H"**

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Tenth Report (without exhibits)**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

**ICICI BANK CANADA**

Applicant

-and-

**BAYSIDE MALL LIMITED**

Respondent

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

**Dated June 2, 2016**

**Introduction**

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

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

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

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

On February 15, 2013 the Receiver issued a Notice of Motion asking, among other things, for an order directing the former property manager of Bayside Mall, SAMAK Management & Construction Inc. ("**SAMAK**"), to remit \$155,580.93 to the Receiver,



being the amount of rent collected from tenants of the Bayside Mall by SAMAK for the month of December 2012 (**“the December Rents”**).

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

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

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

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

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

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

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

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

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

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

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

By order of the Honourable Mr. Justice Hainey dated August 20, 2014 the activities of the Receiver set down in the Fifth Report were approved. The R&D contained in the Fifth Report together with the fees and expenses of the Receiver and Gardiner Roberts to July 31, 2014 were also approved. The Receiver’s borrowing limit was increased by \$250,000 to \$1 million. An agreement between the Receiver and the City with respect to the joint marketing of the Land and Building and subsequent sharing of proceeds from a sale was approved. The Receiver was also authorised to enter into a lease agreement with the County substantially in accordance with a confidential term sheet attached to the Fifth Report.

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

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

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

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

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

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

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

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

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

On March 21, 2016 the Receiver made its Ninth Report to the Court (**“the Ninth Report”**). A copy of the body of the Ninth Report is attached as *Exhibit “G”*.

By order of the Honourable Mr. Justice Mr. Justice Wilton-Siegel dated May 3, 2016 (**“the May 3, 2016 Order”**) the activities of the Receiver set down in the Ninth Report were approved. The R&D contained in the Ninth Report together with the fees and expenses of the Receiver and its counsel to February 29, 2016 were also approved. In addition, the City was ordered and directed to pay directly to the Receiver any and all property tax refunds relating to Bayside Mall for the period from January 1, 2013 to December 31, 2015 (**“the Property Tax Refunds”**).

### **Notice to Reader**

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

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

### **Background**

The copies of the bodies of the Fourth Report, the Fifth Report, the Sixth Report, the Seventh Report, the Eighth Report and the Ninth Report, attached as *Exhibits “B”, “C”, “D”, “E”, “F” and “G”*, provide background information on the Mall and the receivership. They also provide details of the challenges that faced the Receiver in the spring of 2014 that lead the Receiver to seek the advice and directions of the court and subsequent developments leading up to the issuance of the Fifth Report, the Sixth

Report, the Seventh Report, the Eighth Report and the Ninth Report.

### **Purpose of this Report**

- To provide the court with information on the activities of the Receiver since its Ninth Report
- To seek approval of the activities of the Receiver and its R&D as described in this Report
- To seek approval for the fees and disbursements of the Receiver and the Receiver's legal counsel, Heath Whiteley for the period from March 1 – May 31, 2016 as set down in fee affidavits
- To seek an order approving the Settlement (as defined later) of the outstanding property assessment appeal

### **The Closing of the Sale of Bayside Mall**

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

The Wilsondale APS provides for post closing adjustments for certain matters that could not be determined at Closing. All such post closing adjustments were to have been made by no later than April 4, 2016. At that time there was one outstanding post closing adjustment claim, by us for \$16,429.91. We have yet to receive payment of that claim.

### **Larlyn Property Management Ltd. ("Larlyn") and Operations Generally**

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

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

## **2015 Tenant Statements and Related Matters**

A number of the tenants, including the County, contribute to Mall common area costs and property taxes in accordance with the terms of their lease arrangement. In most cases, contributions are based on an estimate and are “trued up” at the end of the period based on actual costs incurred. The lease documentation we have is not always clear as to how the true up calculations are to be prepared. Not only have we identified a number of different formulae for determining what costs are to be shared and for then calculating the share to be paid by each tenant but each formula has cost allocation language that is not always totally clear, particularly in the context of a half empty Mall that is in receivership.

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

Once we had received Larlyn’s final accounting for operations we, in accordance with the Wilsondale APS, prepared true up statements covering the period from January 1 to October 7, 2015. We have issued credit notes and refund cheques to two tenants, who, according to the true up statements had overpaid additional rent. One of the two tenants, the County, was repaid almost \$20,000 plus HST. Larlyn have issued invoices reflecting the net balance due from four tenants totalling approximately \$6,600 and are currently attempting to collect the outstanding amounts due.

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

Once the property assessment appeal (see below) has been finally resolved and all Property Tax Refunds received we plan to revisit the contribution by tenants towards common area costs and property taxes during the period 2013 to 2015 with a view to equitably bringing closure to this matter so that we can move to finalize the receivership without the potential of a readjustment claim from a tenant.

## **Property Assessment Appeal**

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

The property was assessed at \$7,100,000 as at January 1, 2012 and the property taxes levied for the period from January 1, 2013 are based on that assessment. After extensive marketing, the leasehold interest in the Mall sold for \$1,750,000 in 2015 so it seemed to us that a very significant reduction in the assessed value should be in order. Our property tax consultants, Altus Group (“**Altus**”), have been overseeing the Appeal.

We had a number of conference calls with MPAC and with MTE Paralegal Professional Corporation (“**MTE**”), the consultants representing the City in the Appeal, in an attempt to better understand each side’s position and to narrow the issues. We exchanged information. In order to expedite the resolution of the Appeal we attended a mediation in Sarnia in late April 2016 (“**the Mediation**”) along with Altus, MPAC, MTE, the City and the County. The Mediation was chaired by a representative of the ARB.

At the Mediation we reached a settlement with the City (“**the Settlement**”). The Settlement sees the assessed value of the property reduced to \$2,500,000 for the years 2013-2015 and \$3,345,000 for the year 2016. We anticipate that the Settlement will result in a refund of approximately \$506,000 relating to taxes and interest paid relating to the years 2013-2015. Bayside Mall (2015) is entitled to be paid by the Receiver the share of the Property Tax Refunds relating to their period of ownership, net of costs, in accordance with the Wilsondale APS. They will also benefit through a significant reduction in the taxes payable for 2016.

The Settlement avoids the potentially substantial cost of a contested full hearing before the ARB. It also brings prompt closure to this aspect of the file. It had been suggested that a full hearing might take 8 days or more and would be unlikely to be before the fall of 2016 and potentially later. While we felt there were solid arguments supporting a further reduction in assessed value from that set down in the Settlement there was no guarantee that the ARB would fully support these arguments. Moreover, any such further reduction would have to be substantial to offset the additional costs in respect of which there is negligible prospect of material recovery given the rules governing the Appeal. On balance we are of the view that the Settlement is fair and reasonable and we are asking the Court to approve it.

Mr. Whiteley discussed with the Bank the range of acceptable outcomes prior to attending the Mediation. The Settlement is within that range and is therefore supported by the Bank.

A copy of the Memorandum of Agreement with the City documenting the Settlement is attached as *Exhibit "H"*. The Settlement is conditional upon approval by the City Council and by the Court. Council approval to the Settlement was given on May 30, 2016. If approved by the Court, we and the City will execute the Minutes of Settlement attached to the Memorandum of Agreement and the parties will take the steps necessary to give effect to the Settlement.

### **Property Tax Vacancy Rebate Claim**

Altus have filed, on our behalf, two vacancy rebate applications for 2015, one covering the period the Mall was in receivership (i.e. from January 1 to October 7, 2015) and the other covering the post receivership period (i.e. from October 8 to December 31, 2015). The vacancy rebate application resulted in a tax rebate of about \$52,000 for 2014 based on an assessed value of \$7,110,000. In light of the Settlement and the reduced assessed value for 2015 we are anticipating a rebate of the order of \$20,000 for 2015. Bayside Mall (2015) is entitled to be paid by the Receiver the vacancy rebate relating to the period from October 8 to December 31, 2015, net of costs.

### **County Application for a Separate Assessment**

The New County Lease stipulated that the County will apply for a separate assessment for the space occupied by them for property tax purposes. In that regard the County appeared to have, on March 4, 2015, 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.

We were however informed by the County at the Mediation in April 2016 that we should regard the designation in 2015 as null and void. We are not aware of the reasons for this statement. We had been holding approximately \$80,000 of moneys paid by the County on account of property taxes in 2015 and had anticipated having to refund most if not all of this balance once the Municipal Capital Facility designation had been made effective, depending on whether the effective date was deemed to be January 1 or March 4, 2015. The New County Lease provided that, until such time as a separate assessment is obtained the County shall pay realty taxes calculated at the rate of \$1.65 per sq. ft. per annum. While the likely impact of the exemption on the assessed value (and therefore taxes payable) of the balance of the Mall was not clear, we concluded, given the state of negotiations in the Mediation at that time it was advantageous to not have the designation in effect in 2015. We therefore made this a condition of the Settlement and it was an important factor in our decision to enter into the Settlement, subject to court approval.

We subsequently had the County confirm in writing that the \$80,000 was no longer subject to refund. As noted earlier, we have recently paid over to the County almost

\$20,000 plus HST representing their overpayment of additional rent in 2015. As far as we know there are now no outstanding issues between the Receiver and the County relating to Bayside Mall.

### **Direction re Payment of All Property Tax Refunds**

The May 3, 2016 Order orders and directs the City to pay the Property Tax Refunds directly to the Receiver.

### **Communications with the Secured Creditor**

The prime secured creditor of Bayside and the party with the economic interest in the outcome of the receivership is ICICI Bank Canada (“**the Bank**”). We have been keeping the Bank apprised of our activities, primarily through our primary legal counsel, Mr. Whiteley, who is also counsel to the Bank.

### **HST and Corporate Tax Returns**

CRA had previously submitted a deemed trust claim for unremitted pre receivership HST for \$23,604.83. We have been filing, on a quarterly basis, HST returns covering our own operations. At the present time we have an unpaid net refund claim totalling \$68,200 relating to returns filed covering our reportable activities to the end of April 2016. The last corporate tax return filed by Bayside covered the period to December 31, 2011. It is our understanding that CRA will not release HST refunds when there are outstanding unfiled corporate tax returns or unpaid taxes. We have therefore commenced the preparation of sufficient financial information to enable Bayside’s corporate tax returns to be brought up to date and show that no tax is payable. We will then indicate to CRA that they should offset the unpaid deemed trust claim against our larger refund claim and forward the net balance to us.

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

The fees and expenses of the Receiver and its primary legal counsel, Heath Whiteley, relating to their activities from March to May 2016 were as follows:

#### **A. John Page & Associates Inc.**

Month	Hours	Fees	HST	Total
March 2016	50.51	\$18,789.39	\$2,442.62	\$21,232.01
April 2016	89.25	34,104.75	4,433.62	38,538.37



May 2016	45.17	17,062.95	2,218.18	19,281.13
Total	184.93	\$69,957.09	\$9,094.42	\$79,051.51

Heath Whiteley

Period	Fees	Disbursements	HST	Total
March 2016	\$7,560.00	0.00	\$982.80	\$8,542.80
April 2016	24,720.00	340.40	3,239.61	28,299.71
May 2016	8,200.00	0.00	1,066.00	9,266.00
Total	\$40,480.00	\$340.10	\$5,288.41	\$46,108.51

The Receiver and Mr. Whiteley 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 the Larlyn Royal Account for use in their management of the Bayside Mall. Attached as *Exhibit "I"* is a copy of the Receiver's R&D from December 5, 2012 to June 2, 2016 combining the three accounts ("**the June 2016 R&D**"). The June 2016 R&D does not include any transactions flowing through the Larlyn Royal Account after April 30, 2016 as these have yet to be reported to us.

The fees and disbursements of the Receiver and Mr. Whiteley through to May 31, 2016 are included as disbursements in the R&D. We are asking the court to approve the June 2016 R&D.

\*\* \* \* \*

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Tenth Report to the Court  
June 2, 2016

All of which is respectfully submitted this 2nd day of June, 2016

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

A handwritten signature in black ink that reads "A. John Page". The signature is written in a cursive style with a large, stylized initial "A" and a long, sweeping underline.

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

**Exhibits to the Tenth Report of A. John Page & Associates Inc.  
as Court Appointed Receiver of 1368883 Ontario Inc. (formerly Bayside  
Mall Limited)  
dated June 2, 2016**

Initial Order	A
Fourth Report (without exhibits)	B
Fifth Report (without exhibits)	C
Sixth Report (without exhibits)	D
Seventh Report (without exhibits)	E
Eighth Report (without exhibits)	F
Ninth Report (without exhibits)	G
Memorandum of Agreement re Bayside Mall Property Taxes	H
Statement of Receipts and Disbursements	I



**Exhibit "I"**

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Breakdown of the Property Tax Refund**

**3829 400 010 00100 - BAYSIDE CENTRE**

**ORIGINAL**

	<b>CVA TAX</b>	<b>CAP ADJ</b>	<b>TOTAL TAXES</b>	<b>VACANCY REBATE</b>	<b>PENALTY</b>	<b>TOTAL</b>
<b>2013</b>	276,733.15	2,732.67	279,465.82	-54,969.29	34,400.56	258,897.09
<b>2014</b>	275,788.19	2,361.19	278,149.38	-52,084.48	103,886.49	329,951.39
<b>2015</b>	277,498.33	1,843.03	279,341.36	-18,336.30	102,728.46	363,733.52
					241,015.51	Total 952,582.00

**REVISED**

<b>2013</b>	86,491.62	47,500.67	133,992.29	-26,737.90	25,308.48	132,562.87
<b>2014</b>	86,886.23	21,012.19	107,898.42	-20,319.00	72,303.32	159,882.74
<b>2015</b>	88,014.77	8,029.03	96,043.80	-18,336.30	63,651.43	141,358.93
					161,263.23	TOTAL 433,804.54

**ADJUSTMENT**

<b>2013</b>	-190,241.53	44,768.00	-145,473.53	28,231.39	-9,092.08	-126,334.22
<b>2014</b>	-188,901.96	18,651.00	-170,250.96	31,765.48	-31,583.17	-170,068.65
<b>2015</b>	-189,483.56	6,186.00	-183,297.56	0.00	-39,077.03	-222,374.59
					79,752.28	TOTAL -518,777.46



**Exhibit "J"**

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Calculation of Bayside Mall (2015) entitlement to a  
portion of the Property Tax Refund**

**Bayside Property Taxes**  
**Refund from Settlement - April 25, 2016**

Based on information supplied by the City of Sarnia

Total Amount Paid re 2013-2015	2013	2014	2015	Bayside Mall (2015) Limited Share of 2015 Taxes
Original Taxes Payable	\$279,465.82	\$278,149.38	\$279,341.36	\$65,052.10
Original Vacancy Rebate	(54,969.29)	(52,084.48)		0.00
	<u>\$224,496.53</u>	<u>\$226,064.90</u>	<u>\$279,341.36</u>	<u>\$65,052.10</u>

**Assessment per the Settlement**

DT	1,538,534	\$1,538,534	\$1,538,534
CT	648,021	648,021	648,021
ST	313,445	313,445	313,445
Total	<u>\$2,500,000</u>	<u>\$2,500,000</u>	<u>\$2,500,000</u>

Revised Tax Payable	\$133,992.29	\$107,898.42	\$96,043.80	\$22,366.36
Revised Vacancy Rebate	(26,737.90)	(20,319.00)	(18,336.30)	(4,270.10)
	<u>\$107,254.39</u>	<u>\$87,579.42</u>	<u>\$77,707.50</u>	<u>\$18,096.27</u>

Refund \$201,633.86 \$46,955.83

Less Bayside Mall (2015) Limited share of costs of pursuing Realty Tax Refunds \$57,649.98

offset capped at	Net	\$41,553.83	
	HST	5,402.00	
	Gross	<u>46,955.83</u>	(46,955.83)

Net amount due to Bayside Mall (2015) Limited

Nil

**Bayside Mall, Sarnia**

**Allocation of costs re Property Tax Appeals relating to the years 2013-2016**

Property Tax Costs		Net	HST	Gross	Note
Altus	Consultant	\$37,212.50	\$4,837.63	\$42,050.13	To June 16, 2016
AJP&AI	Receiver	92,390.63	12,010.78	104,401.41	To July 31, 2016
Whiteley	Legal Counsel	35,667.00	4,636.71	40,303.71	To June 30, 2016
		<u>\$165,270.13</u>	<u>\$21,485.12</u>	<u>\$186,755.25</u>	

Apportionment		Bayside Mall Limited (AJP&AI)	Bayside Mall (2015) Limited
Days of Ownership		1461	451

Costs		Bayside Mall Limited (AJP&AI)	Bayside Mall (2015) Limited
		\$165,270.13	\$51,017.68
HST		21,485.12	6,632.30
		<u>\$186,755.25</u>	<u>\$57,649.98</u>





**Exhibit "K"**

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Memorandum re Property Tax Refund**

# Memorandum

To: File  
From: A. John Page  
Date: September 27, 2016  
Subject: Bayside Mall Property Tax Refunds

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## Purpose of Memorandum

To document the Receiver's analysis of the issue of whether any portion of the recently received property tax refund should be paid to any of the tenants of Bayside Mall.

## The Property Tax Refund

At the commencement of the receivership in December 2012 Bayside Mall's property taxes (\$286,000 in 2012) were based on an assessed value of \$7,342,000 falling to \$7,119,000 in 2013. Prior to that the assessed value had been higher. Bayside Mall was sold on October 8, 2015 for \$1,750,000. We appealed the assessed value for 2013-2016 and reached a mediated settlement in the spring of 2016 such that the assessed value for 2013-2015 was reduced to \$2,500,000. In August 2016 a refund of approximately \$519,000 was received representing overpaid taxes together with penalties and interest (of which approximately \$43,000 related to the post receivership period from October 8 -December 31, 2015). The refund relating to the period of the receivership was therefore \$476,092. The total refund relating to the period of the receivership excluding penalties and interest and net of costs was \$332,620 ("the Property Tax Refund").

Attached as Exhibit "A" is a schedule summarizing the original taxes paid, the refund by year and the costs of the appeal.

## Vacancy Rebates and Interest and Penalties

Each year Bayside has received a property tax vacancy rebate of the order of \$20,000 - \$30,000. Since these payment relate solely to vacant space they have not been included in this review. Penalties and interest totalling approximately \$80,000 were included with the Property Tax Refund. Since tenants were never charged these penalties and interest they have also not been

included in this review.

### Tenant Vacancies and Their Impact on Value

At the commencement of the receivership only just over 40% of the Mall was occupied. That figure has dropped slowly since that time.

In the assessment appeal mediation MPAC, the Municipal Property Assessment Corporation, made it clear that a key component of their assessment of the value of the Mall was its income stream. Those parts of the Mall that were and are vacant have no income stream and therefore do not immediately contribute to the assessed value.

The amount realized for the Mall of \$1,750,000 and the new assessed value of \$2,500,000 were clearly impacted by the high vacancy rate.

### Tenant Contributions to Property Taxes and Common Area Maintenance Costs ("CAM")

We have located a number of leases and offers to lease but do not have lease documentation for every tenant at the Mall. We do not know if the documentation we do have is a complete reflection of the agreement Bayside Mall Limited had with that tenant regarding its occupancy of space at Bayside Mall. A number of the tenants have been contributing to Bayside Mall CAM and property taxes. In a number of cases, contributions seem based on an estimate and we suspect were supposed to be "trued up" at the end of the period based on actual costs incurred. As far as we can ascertain during the period from 2008 to 2012 contributions were being made at the rate of \$8.39 per square foot per annum for CAM and between \$1.64 and \$1.67 psf pa for property taxes ie a total of between \$10.03 and \$10.06 psf pa. Property taxes levied between 2005 and 2011 were approximately \$400,000 pa (prior to a retroactive reassessment made in 2011. The above contribution toward property taxes is simplistically consistent with taxes at \$400,000 and a 245,000 sq ft mall. It also seems that no true up calculation had been performed for some time. We are unaware of any tenants who were dissatisfied with the amount they were contributing to CAM and property taxes during this period.

The lease documentation we have is not always clear as to how the true up calculations are to be prepared. We have not located any working papers showing how the true up calculation was prepared in the past. (As noted earlier we believe no true up calculations have been prepared for some time.) Another unclear issue is the extent to which the fact that the Mall was half empty should impact the contribution by tenants to common costs including property taxes.

As Receiver we had previously prepared true up statements for 2013, 2014 and 2015 (up to the date of closing) on what we felt was a generally fair and equitable basis. Where we were unsure

about the appropriate cost allocation we have generally been conservative given the short term and unusual nature of a receivership and the dollars involved. For example we have not allocated any of our own fees to the CAM Statements. As noted later, for many net tenants we deliberately reduced the true up rate so that we were able to maintain the total CAM and property tax charges at approximately the rate that tenants had been paying from 2008 to 2012. We did so as, having regard to the short term nature of receiverships, the relatively low dollars at stake and the potential gaps in our lease documentation, we wanted to avoid costly disputes and analysis and be able to bring the receivership to a close on a timely basis. This conservative approach has also provided us with a "cushion" against claims for adjustment, whether related to the Property Tax Refund or otherwise.

For most tenancies we "trued up" at the following rates per square foot per annum:

	CAM	Property Taxes	Total
2013	\$8.67	\$1.11	\$9.78
2014	\$8.93	\$1.10	\$10.03
2015 annualized	\$8.81	\$1.28	\$10.09

The issue we are considering is whether any of the Property Tax Refund should be paid to any of the tenants. In performing this review we looked at the lease documentation we had located by tenant for each of the three periods in question.

We have identified the following classes of lease agreements by year for the period from January 1, 2013 to October 7, 2015:

1. The Major Tenant
2. The Second Largest Tenant
3. The Two Ministries
4. Smaller Net Leases
5. Gross Leases

We attach as Exhibit "B" schedules allocating tenants to the different classes of lease arrangements.

1. The Major Tenant - The County of Lambton ("the County")

The County occupies approximately 55,595 square feet being approximately 23% of the space at the Mall. We negotiated a new lease with the County ("the New County Lease") that took effect on June 1, 2014. Under the terms of the New County Lease, the County and Bayside

Mall Limited acknowledged and confirmed that no amounts were due to or from the other with respect to the earlier lease.

The New County Lease provides for the contribution by the County towards CAM. The County has been sent an accounting with respect to CAM for the period from June 1 to December 31, 2014 and from January 1 to October 7, 2015. The Receiver made a payment to the County in the amount of \$22,094 in May 2016 representing the calculated overpayment on account of CAM made by the County for the period from January 1 to October 7, 2015. The County deposited the payment in June 2016 and has not challenged the payment or the related true up calculation.

The New County Lease requires the County to apply for a separate tax assessment for its space in the Mall. Until that separate assessment is issued, the New County Lease provides that the County will pay a fixed amount of \$1.65 per square foot per annum. As at October 8, 2015 no separate assessment had been issued.

Until such time as a separate tax assessment is issued for the space occupied by the County, the County's obligation to contribute towards property taxes is independent of the total size of those property taxes. As a result the County has no entitlement to any portion of the Property Tax Refund, which it acknowledged during the mediation.

## 2. The Second Largest Tenant - Sun Media

Sun Media occupied approximately 9,200 square feet of space at the Mall pursuant to a signed offer to lease dated October 27, 2010. We have not located a signed lease. The term of the offer to lease was from February 1, 2011 to January 31, 2016. We understand that Sun Media are no longer a tenant at Bayside Mall. The offer to lease provides that:

"Additional Rent - The Tenant covenants and agrees that it shall pay, for and during the entire term hereof, to the Landlord its proportionate share of CAM and Realty Taxes....For 2011 the Additional Rent is \$9.50."

No definition of "proportionate share" is given.

Sun Media have paid additional rent each month at the rate of \$9.50 psf pa throughout the period.

We have prepared our true up calculation for Sun Media using the same approach as for the smaller net lease tenants noted below. In the 2013 true up calculation we charged them at the rate of \$9.78 psf pa. They paid the difference without protest. In 2014 we charged them at the rate of \$10.03 psf pa. They paid the difference without protest. In the stub period of 2015 we

have charged them at an annualized rate of \$10.09 psf pa. They have yet to pay the difference, an amount of \$4,013.41. Our property manager has informed us that this is because they have vacated the Mall and, as a result, he is having problems finding the person responsible for authorizing the payment.

Using the same standard form CAM and Tax allocation formula used for the smaller net lease tenants Sun Media has no entitlement to any of the Property Tax Refund. We are of the view that this is fair and reasonable.

3. The Ministry of Children and Youth Services ("MC&YS")  
The Ministry of College and Universities ("MC&U")  
(jointly "the Ministries")

MC&YS occupies approximately 2,809 sf at the Mall. We located a 62 page signed lease dated December 30, 2008 between MC&YS and Bayside Mall Limited ("the MC&YS Lease"). The MC&YS Lease appears to be an Ontario Government standard form.

MC&U occupies approximately 4,743 sf at the Mall. We located an offer to lease between MC&U and Bayside Mall Limited dated June 4, 2009 that references an Ontario Government standard form 73 page lease document. We did not locate the document itself but have been subsequently been provided with a document that purports to be that standard form lease ("the MC&U Standard Form Lease"). The MC&U Standard Form Lease is slightly different to the MC&YS Lease.

The above leasing documentation is complex and, in part, hard to understand. The Receiver was not part of the process that lead to the signing of the MC&YS Lease and the MC&U offer to lease and therefore does not know with any certainty whether any other documentation exists and what was in the minds of the parties signing the documents.

The Ministries have been contributing to property taxes at the rate of \$1.66 psf pa. This rate is consistent generally with the taxes being levied in 2008 and 2009 when they entered into leasing arrangements with Bayside Mall Limited. The recent Property Tax Refund is attributable to the significant drop in the value (and the assessed value) of the Mall caused by the large number of vacant units.

The MC&U Standard Form Lease has a statement that "Notwithstanding anything herein to the contrary, Realty Taxes will be allocated to the Tenant in an equitable manner, having regard to assessment principles, any vacancies in the Building and in accordance with generally accepted accounting principles applied consistently by prudent owners or landlords of similar buildings of comparable size, effective age, quality, use and geographic area."

Both the MC&YS Lease and the MC&U Standard Form Lease have a clause - "Reasonableness - Notwithstanding anything contained in this Lease to the contrary, (a) any allocation of any cost, charge or expense shall be done on a reasonable and equitable basis; ..."

It seems unreasonable and inequitable, particularly in light of this explicit language, that any portion of the Property Tax Refund be allocated to either of the Ministries. Accordingly, we are of the view that the reasonable and equitable allocation of property taxes to the space occupied by the Ministries is the \$1.66 psf pa that they have been paying since 2008/2009.

#### 4. Smaller Net Leases

Based on the (incomplete) lease documentation together with information on past invoicing and payments we have identified a number of smaller tenants (10 in 2013 (12,603 sq ft) down to 7 in 2015 (9,249)) where it seems likely that the tenancy is a net tenancy and therefore there should some adjustment so that these tenants pay their fair share of actual common costs.

The amounts involved are relatively low. For four of the tenancies we were able to locate signed Bayside Standard Form leases attached to which was a definition of, among other things, operating costs and proportionate share. We used this definition and the resulting allocation formula to "true up" these net leases. Our initial calculations however suggested that, even though we had not allocated any of the Receiver's fees to operating costs, the resulting true up payment would represent an increase of about \$2 psf pa ie a 20% increase. We took the view that, given the low dollars involved, the short term nature of the receivership, the lack of any recent true up calculation and the poor state of the records we should adjust the true up calculation so as to make most increases nominal. We did this by including in the allocation denominator a 28,036 square foot vacant unit that, according to the standard form lease should have been excluded.

By so doing we avoided having to spend time on tenant enquiries and complaints at a time when our focus was on the sale of the Mall. We also created a cushion against claims for adjustment, whether related to the Property Tax Refund or otherwise.

We have now recalculated the per square foot CAM and property tax allocation for 2013-2015. For the purposes of this calculation, we have given the tenants full credit for the Property Tax Refund but have also reversed the adjustment noted above by excluding the 28,036 square foot vacant unit from the allocation denominator. On an overall basis we have calculated that the net operating lease tenants have been undercharged approximately \$1.45 per square foot in total over the approximately three year period. Therefore, even if it is argued that these tenants were entitled to a share of the Property Tax Refund, the amount of that share would be less than the amount we undercharged those tenants. We do not propose attempting to invoice and collect the net undercharged amount.

5. Gross Leases

Based on the information available to us we concluded that a number of tenants were on a "gross lease basis" where they paid a fixed amount each month as rent and that that payment was not adjustable. Through the receivership period there were approximately 8 such tenants occupying in total about 20,000 sq feet of space. Tenants with gross leases would not have a claim to any portion of the Property Tax Refund.

The Position of the Prime Secured Creditor

The receivership of Bayside Mall Limited was initiated at the request of its prime secured creditor, ICICI Bank Canada ("the Bank"). The Bank was owed over \$12 million, secured in part by its mortgage on Bayside Mall. In order to fund the receivership the Bank lent the Receiver \$1 million. To date only \$800,000 of the Receiver's borrowings has been repaid and we have on hand approximately \$192,000. It is not certain that the full \$1 million will ever be repaid but, if it is, then any payment in excess of that to the Bank will likely be nominal. The Bank will therefore be suffering a very significant shortfall on its loan. The Property Tax Refund was the direct result of the significant vacancies at Bayside Mall and the resulting low price obtained from the sale of Bayside Mall (after it should be noted, a very extensive sales process). Any payment of any portion of the Property Tax Refund to a tenant would be at the expense of the Bank.

Analysis and Conclusion

For the reasons set out earlier we are of the view that no portion of the Property Tax Refund should be paid to any of the tenants at Bayside Mall.

Exhibits

Summary of taxes paid and refunded	A
Rent paid in 2013-2015	B



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Exhibit "A"

**BAYSIDE MALL - SARNIA**  
**SUMMARY OF PROPERTY TAX REFUND - AUGUST 2016**

	2013	2014	2015	2015 Receiver's Stub Period	Total
Original Property Taxes	\$279,465.82	\$278,149.38	\$279,341.36	\$214,289.26	
Revised Property Taxes	133,992.29	107,898.42	96,043.80	73,677.44	
Refund	145,473.53	170,250.96	183,297.56	140,611.82	
Costs of Assessment Appeal	(44,709.36)	(44,709.36)		(34,297.58)	
Revised Taxes Including Costs	178,701.65	152,607.78		107,975.02	439,284.45
Refund Net of Costs	\$100,764.17	\$125,541.60		\$106,314.24	\$332,620.01

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Exhibit "B"

**BAYSIDE MALL - SARNIA**  
**2013 CAM and Tax Review Work Sheet**

Unaudited

BUILDING/ UNIT	SQ.FT. PER UNIT	TENANT	CAM Rate pa	Taxes Rate pa	CAM Amount	Taxes Amount
<b>THE COUNTY OF LAMBTON</b>						
191	55,595	County of Lambton			\$108,966.24	\$91,452.36
BS191	895	County of Lambton				
	56,490				<u>108,966.24</u>	<u>91,452.36</u>
<b>THE MINISTRIES</b>						
105	4,743	Ministry of College & University			29,060.36	8,266.80
	4,743				<u>29,060.36</u>	<u>8,266.80</u>
115	2,809	Ministry of Children & Youth Services			16,815.54	3,676.65
	2,809				<u>16,815.54</u>	<u>3,676.65</u>
<b>GROSS LEASES</b>						
121	3,532	Aram's Rugs (Dermentjian)				
100	3,507	Limbo Lounge				6,137.28
100B	2,572	Limbo Lounge				
125	834	Mandarin Arts				789.60
175	1,952	Marsh TV			17,079.96	3,416.04
185	4,485	Meridian Hearing				
80/81	1,571	Preferred Hairstylists				
184	2,450	PT Health Solutions				
182A	200	Sarnia Transit				
	21,103				<u>17,079.96</u>	<u>10,342.92</u>
<b>SMALLER NET LEASES</b>						
166	2,755	Anjema Eye Institute	8.67	1.11	23,885.85	3,058.05
FC131	487	Beanzz	8.67	1.11	4,222.29	540.57
101	3,472	Canadian Blood Services	8.67	1.11	30,102.24	3,853.92
104	2,000	Hogan Pharmacy	8.67	1.11	17,340.00	2,220.00
FC144	513	Hong Kong Express	8.67	1.11	4,447.71	569.43
145	636	Mary Kathy Anic Vinnis	8.67	1.11	5,514.12	705.96
116	400	Mini Accessories	8.67	1.11	3,468.00	444.00
129	1,074	Ontario March of Dimes	8.67	1.11	9,311.58	1,192.14
174	721	Sarnia Vision Care	8.67	1.11	6,251.07	800.31
FC146	545	Subway	8.67	1.11	4,725.15	604.95
	12,603				<u>109,268.01</u>	<u>13,989.33</u>
<b>SUN MEDIA</b>						
52A	9,200	Sun Media	8.67	1.11	79,764.00	10,212.00
	9,200				<u>79,764.00</u>	<u>10,212.00</u>
Occupied	106,948					
<b>Total Sq Ft</b>	<u>245,598</u>				<u>\$360,954.11</u>	<u>\$137,940.06</u>

**BAYSIDE MALL - SARNIA**  
**2014 CAM and Tax Review Work Sheet**

Unaudited

BUILDING/ UNIT	SQ.FT. PER UNIT	Months	TENANT	CAM Rate p/a	Taxes Rate p/a	CAM Amount	Taxes Amount
<b>COUNTY OF LAMBTON</b>							
BS191	895		County of Lambton			\$0.00	\$0.00
191	55,595	5	County of Lambton - Jan - May			45,402.60	38,105.15
	55,595	7	County of Lambton - June - Dec			239,011.61	53,510.19
	56,490					<u>284,414.21</u>	<u>91,615.34</u>
<b>THE MINISTRIES</b>							
115	2,809		Ministry of Children & Youth Services			19,365.48	3,659.33
	2,809					<u>19,365.48</u>	<u>3,659.33</u>
105	4,743		Ministry of College & University			33,467.13	8,266.92
	4,743					<u>33,467.13</u>	<u>8,266.92</u>
<b>GROSS LEASES</b>							
121	3,532		Aram's Rugs (Dermentjian)			0.00	0.00
100	3,507		Limbo Lounge			13,501.95	6,137.28
100B	2,572		Limbo Lounge			0.00	0.00
125	834		Mandarin Arts			0.00	789.60
175	1,952		Marsh TV			17,079.96	3,416.04
184	2,450		PT Healthcare Solutions Inc.			20,555.52	4,017.96
185	4,485		Meridian Hearing only using small portion			0.00	0.00
182A	200		Sarnia Transit			0.00	0.00
80/81	1,571		Vacant-Old Preferred Hairstylists			0.00	0.00
	21,103					<u>51,137.43</u>	<u>14,360.88</u>
<b>SMALLER NET LEASES</b>							
186	2,755		Anjema Eye Institute	10.02	1.10	27,605.10	3,030.50
	356		Anjema Eye Institute - additional				
FC131	487		Beanzz	8.93	1.10	4,348.91	535.70
101	3,472		Canadian Blood Services	8.93	1.10	31,004.96	3,819.20
FC144	513		Hong Kong Express	8.93	1.10	4,581.09	564.30
116	400		Mini Accessories	8.93	1.10	3,572.00	440.00
174	721		Sarnia Vision Care	8.93	1.10	6,438.53	793.10
FC146	545		Subway	8.93	1.10	4,866.85	599.50
104	2,000	7	Vacant-Old Hogans	8.93	1.10	10,418.33	1,283.33
129	1,074	9	Vacant-Old March of Dimes	8.93	1.10	7,193.12	886.05
145	636	6	Vacant-Old Vinnis	8.93	1.10	2,839.74	349.80
	12,959					<u>102,868.63</u>	<u>12,301.48</u>
<b>SUN MEDIA</b>							
52A	9,200		Sun Media	8.93	1.10	82,156.00	10,120.00
	9,200					<u>82,156.00</u>	<u>10,120.00</u>
Occupied	107,304						
<b>Total Sq Ft</b>	<u><b>245,598</b></u>					<u><b>\$573,408.88</b></u>	<u><b>\$140,323.95</b></u>

**BAYSIDE MALL - SARNIA**

**2015 Stub Period**

Unaudited

**January 1 - October 7, 2015 CAM and Tax Review Work Sheet**

BUILDING/ UNIT	SQ.FT. PER UNIT	Months	TENANT	CAM Rate	Taxes Rate	CAM Amount	Taxes Amount
<b>COUNTY OF LAMBTON</b>							
191	55595		County of Lambton			\$284,346.51	\$70,524.92
BS191	895		County of Lambton				
	56490					<u>284,346.51</u>	<u>70,524.92</u>
<b>THE MINISTRIES</b>							
115	2809		Ministry of Children & Youth Services			13,782.44	3,585.52
	2809					<u>13,782.44</u>	<u>3,585.52</u>
105	4490		Ministry of College & University			24,466.65	6,355.75
105	253		Ministry of College & University				
	4743					<u>24,466.65</u>	<u>6,355.75</u>
<b>GROSS LEASES</b>							
121	3532		Aram's Rugs (Dermentjian)			0.00	0.00
173	793	-2	Dr Warren Optometrist			0.00	0.00
100	3507		Limbo Lounge			0.00	4,718.45
100B	2572		Limbo Lounge			0.00	0.00
125	834		Mandarin Arts			0.00	607.06
175	1952		Marsh TV			10,129.94	2,491.21
184	2450		PT Health Solutions			15,803.44	3,089.08
182A	200		Sarnia Transit			0.00	0.00
185	4,485	4	Vacant - Meridian Hearing only using small portion			0.00	0.00
	20,325					<u>25,933.38</u>	<u>10,905.80</u>
<b>SMALLER NET LEASES</b>							
166	3111		Anjema Eye Institute	6.76	0.98	21,030.36	3,048.78
FC131	487		Beanzz	6.76	0.98	3,292.12	477.26
FC144	513		Hong Kong Express	6.76	0.98	3,467.88	502.74
116	400		Mini Accessories	6.76	0.98	2,704.00	392.00
174	721		Sarnia Vision Care	6.76	0.98	4,873.96	706.58
101	3,472	7	Vacant - Canadian Blood Services	5.12	0.74	17,776.64	2,569.28
FC146	545	5	Vacant - Subway	3.65	0.53	1,989.25	288.85
	9249					<u>55,134.21</u>	<u>7,985.49</u>
<b>SUN MEDIA</b>							
52A	9200		Sun Media	6.76	0.98	62,192.00	9,016.00
	9200					<u>62,192.00</u>	<u>9,016.00</u>
	102,816						
<b>Total Sq Ft</b>	<u>245,598</u>					<u>\$465,855.19</u>	<u>\$108,373.48</u>



**Exhibit "L"**

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Memorandum re the Ministries**

# Memorandum

**To:** File  
**From:** A. John Page  
**Date:** October 31, 2016  
**Subject:** The Ministry of College and Universities ("MC&U")  
The Ministry of Children and Youth Services ("MC&YS") (collectively  
"the Ministries")

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## Purpose of Memorandum

The purpose of this memorandum is to summarize the financial dealings between the Receiver and two Bayside Mall tenants, the Ministries, in particular with respect to the contribution by them towards common area maintenance costs ("CAM") and property taxes at Bayside Mall, with a view to bringing closure to that relationship.

## The Ministries and Bayside Mall

MC&YS occupies approximately 2,809 sf at the Mall. We located a 62 page signed lease dated December 30, 2008 between MC&YS and Bayside Mall Limited ("**the MC&YS Lease**"). The MC&YS Lease appears to be an Ontario Government standard form.

MC&U occupies approximately 4,743 sf at the Mall. We located an offer to lease between MC&U and Bayside Mall Limited dated June 4, 2009 that references an Ontario Government standard form 73 page lease document. We did not locate the document itself but have been subsequently been provided with a document that purports to be that standard form lease ("**the MC&U Standard Form Lease**"). The MC&U Standard Form Lease is slightly different to the MC&YS Lease. (MC&U may in fact occupy as much as 5,200 sf however the MC&U Standard Form Lease caps their liability to pay net rent based on 4,490 sf and their liability to contribute to CAM and taxes based on 4,980 sf. We do not know why these numbers are lower than the actual space apparently leased).

The above leasing documentation is complex and, in part, hard to understand. It seems excessive having regard to the size of the space rented. The Receiver was not part of the process that lead to the signing of the MC&YS Lease and the Offer to Lease and therefore does not know with any certainty whether any other documentation exists and what was in the minds of the parties signing the documents.

The Ministries have been contributing to CAM and property taxes each month as follows:



Memorandum

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MC&U

Actual Square Footage	5200
Capped Square Footage for Rent	4490
Capped Square Footage for CAM and Tax Contributions	4980
Annual Rent Rate (applied to capped square footage)	\$11.90 psf
Annual CAM Rate (applied to capped square footage)	\$7.08 psf
Annual Property Tax Rate (applied to capped square footage)	\$1.66 psf

MC&YS

Square Footage	2809
Annual Rent Rate	\$10.00 psf
Annual CAM Rate	\$8.39 psf
Annual Property Tax Rate	\$1.66 psf

As far as we can tell from the lease documentation it seems that contributions are based on an estimate and are "trued up" at the end of the period based on actual costs incurred. The lease documentation we have, while seemingly very prescriptive, is not clear as to how the true up calculations are to be prepared in the context of a half empty Mall that is in receivership. We are unaware of any true up calculations having been undertaken for the period prior to our appointment as Receiver of Bayside Mall Limited.

Both the MC&YS Lease and the MC&U Standard Form Lease have a clause -

*"Reasonableness - Notwithstanding anything contained in this Lease to the contrary, (a) any allocation of any cost, charge or expense shall be done on a reasonable and equitable basis; ..."*

The MC&U Standard Form Lease has a statement that-

*"Notwithstanding anything herein to the contrary, Realty Taxes will be allocated to the Tenant in an equitable manner, having regard to assessment principles, any vacancies in the Building and in accordance with generally accepted accounting principles applied consistently"*

Memorandum

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*by prudent owners or landlords of similar buildings of comparable size, effective age, quality, use and geographic area."*

As Receiver we had previously prepared true up statements for 2013 and 2014 for all affected tenants on what we felt was a generally fair and equitable basis having regard to the short term nature of receiverships, the state of the records and the materiality of the amounts involved. Where we were unsure about the appropriate cost allocation we have generally been conservative. For example, we have not allocated any of our own fees to the annual CAM statements. We did so as we wanted to avoid costly disputes. Based on these conservative calculations we provided the Ministries with an aggregate CAM and property tax credit of \$16,783.69 plus HST re 2013 (which credit has been taken by the Ministries). We then initially provided the Ministries with a credit for 2014 totalling \$9,844.30 plus HST. We had hoped that this would avoid us having to incur the cost of further detailed consideration of the leasing arrangements and related matters pertaining to cost allocation during the receivership. However, despite the above, CBRE Limited ("CBRE"), on behalf of the Ministries asked extensive questions about earlier true up statements and challenged some of our calculations.

Given the dollars involved we then attempted to resolve this dispute on an overall basis in order to avoid incurring the cost of a challenging and perhaps legalistic attempt to determine what the actual lease arrangement with each ministry was meant to be and then having to perform a detailed analysis of the costs. However, subsequent communications from CBRE led us to believe that this might not be possible.

Since the Mall has been sold we now have a much better sense of materiality than we did earlier. We also know that we do not have to repeat this exercise and, once concluded, can close this aspect of the file. Once communications from CBRE lead us to believe an overall resolution without further investigation was not going to be possible, we performed a more detailed review of the Ministries' lease documentation and the costs incurred and shared. We noted, among other things, that for most or all other tenants, costs were shared pro rata based on usable space in the Mall (ie excluding certain vacant basement space) of about 217,000 square feet and not the 245,000 square feet previously used in allocating costs to the Ministries.

Upon reflection, it seemed more reasonable and equitable that, where possible, common area costs be shared pro rata based on each tenant's space over the prime usable space in the Mall and not the total space. We therefore prepared revised true up statements for the two Ministries incorporating this revised Mall size.

MC&U exercised a purported right set down in the Offer to Lease to extend their lease in August 2014 for 5 years "at the then current Market Rental". No new rental rate was agreed with MC&U at that time. We have since proposed an increase from \$10 psf pa to \$11.80 psf

Memorandum

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pa which is the rate being paid by MC&YS. This increase totals \$10,113.36 plus HST over the applicable period.

We provided CBRE, representing the Ministries, with details of our readjustments based on the above on February 10, 2016. In summary we asked MT&U \$2,673.71 and MC&YS \$3,092.70 for a total of \$5,766.41 including HST after netting off the 2014 credits that they had not previously deducted from rent. We have received no response to that request.

Based on these revised calculations, the CAM rates being levied per year on a per square foot basis are as follows:

Year	MC&U	MC&YS	Smaller Tenants with standard CAM clauses
Estimate	\$8.39	\$7.08	
2013 actual	6.60	6.78	8.67
2014 actual	7.60	7.81	8.93
2015 stub period actual	4.91	5.05	7.74

In each period the Ministries are being asked to pay less than the other smaller tenants. This is because we have attempted to calculate their CAM contribution using the wording from the MC&YS Lease and the MC&U Standard Form Lease, to the benefit of the Ministries, even though it is at times inconsistent with the wording being used for the majority of CAM contributing tenants. We note that the wording in the MC&YS Lease is different to that in the MC&U Standard Form Lease, hence the different rates being charged. All these differences add to the complexity and cost in dealing with these two relatively small tenancies.

For the reasons set out in our separate property tax refund memorandum it is our view that no portion of the recent property tax refund should be paid to either of the Ministries. We further concluded that, having regard to the cause of the refund, namely the large amount of vacant space at the Mall, that the reasonable and equitable contribution towards property taxes should continue to be the \$1.66 psf pa that the Ministries had been paying for some years.

Given the information we have on the leasing arrangements between the Ministries and Bayside Mall Limited and the impact of vacancies and the receivership on costs etc. we think it is difficult to calculate exactly what contribution the Ministries should make on account of Bayside Mall CAM and property taxes. However, we feel that the CAM and tax contributions we have outlined in this memorandum represent a reasonable and equitable allocation of

Memorandum

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those costs to the Ministries. Using these numbers, the Ministries are paying significantly less than they were presumably comfortable paying when the estimated CAM and tax rates were set. They are also paying less per square foot than other small tenants on account of CAM.

Overall we have given or are proposing giving the Ministries credits totalling \$21,794.03 plus HST on account of true up calculations and are looking for payment of \$10,113.36 plus HST representing a market net rent adjustment. Given previously taken credits we are now looking for the Ministries to pay us \$5,766.41.

The matter at hand is not whether we can collect that outstanding balance. It is the need to bring closure to the issue of whether there are any amounts that the Receiver should refund to the Ministries related to their occupancy during the receivership period and, in a broader sense, whether either of the Ministries has any claim against the Receiver. If either of the Ministries disagree with our calculations or our interpretation of the lease arrangements and what is reasonable and equitable we need to have them make that case promptly so it can be dealt with. It is necessary that we get this closure before we distribute funds which would otherwise be available to settle any valid claim.

Our attempts to get such closure with respect to the Ministries have to date been unsuccessful.

To that end the Receiver is proposing to seek an order from the court, on notice to the Ministries, stating that the Receiver is released from any obligation to pay any funds back to either of the Ministries on account of any matter pertaining to their occupancy of space at Bayside Mall.

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**Exhibit "M"**

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**County Status Certificate**

## STATUS CERTIFICATE

TO: **A. John Page and Associates, Receiver for the Bayside Mall Limited**

RE: **The Corporation of the County of Lambton**

The undersigned, being the Tenant under a lease dated June 1, 2014 (the "**Lease**") made between Bayside Mall Limited, as "**Landlord**", and The Corporation of the County of Lambton, as Tenant ("**the County**" or "**the Tenant**"), respecting a portion ("**the Leased Premises**") of the premises known as Bayside Mall, Sarnia, Ontario hereby certifies and acknowledges the following:

1. The current term commenced on June 1, 2014. The term of the Lease expires on May 14, 2017. The Tenant has the right to extend the term of the Lease by 3 years in accordance with Section 2 of Schedule "E" to the Lease.
2. The Leased Premises comprise "**the Office Premises**" (55,595 square feet), "**the Storage Premises**" (895 square feet) and "**the Terrace Premises**".
3. The annual base rent is as follows:  
  
For the Office Premises - \$11.70 per square foot per annum plus HST  
  
For the Storage Premises - \$5.00 per square foot per annum plus HST  
  
For the Terrace Premise – Nil
4. The following amounts are currently being paid on account of Additional Rent as an estimate of the amount ultimately payable:  
  
For the Office Premises –  
  
Common Area Costs \$7.11 per square foot per annum plus HST,  
  
Property Taxes - \$1.65 per square foot per annum plus HST and  
  
the reimbursement of certain utility costs paid by the Landlord  
  
For the Storage Premises and the Terrace Premises – Nil
5. The obligation to contribute to Common Area Costs is subject to a cap as set out in the Lease.
6. The Term of the Lease was truncated to May 14, 2017 in accordance with Section 17 of the Lease and the side letter with the Receiver dated September 25, 2014.
7. The Lease has not been altered or amended except as expressly set out herein and is in full force and effect and is enforceable against the Tenant in accordance with its terms.

8. The Tenant is in possession of the Leased Premises.
9. Except as set out in this certificate, the amount of prepaid rent or security deposit held by the Landlord is Nil.
10. The Tenant has advanced the sum of \$455,017.20 to the Landlord in accordance with Schedule D Section 7 of the Lease to fund certain parking garage repairs. The parking garage repairs have been completed and no further funds are due to be advanced. This funding is being repaid, with interest, as a deduction from the monthly rent otherwise payable for the months of July 2015 to March 2017 at the rate of \$21,221.97 per month and as a final deduction of \$21,222.01 in the month of April 2017. At the date of this certificate the sum of \$63,665.91 has been deducted from the monthly rent otherwise due and the amount of \$403,217.47 (including interest) remains to be deducted.
11. The Tenant has been paying the sum of \$7,644.31 plus HST each month on account of property taxes. The Leased Premises have been designated a Municipal Capital Facility with effect from January 1, 2015 such that the Leased Premises, while leased by the Tenant, will be exempt from realty taxes while so designated. The Bayside Mall property tax assessment has yet to be amended to reflect that designation. Upon the amendment of the property tax assessment the Tenant will be entitled to repayment of the overpayment of property taxes from January 1, 2015. At the date of this certificate the amount of the property tax overpayment is \$68,798.79 plus HST.
12. The Leased Premises have been completed in accordance with all obligations of the Landlord and such work has been satisfactorily completed, and to the best of the Tenant's knowledge, there is no subsisting default on the part of the Landlord of any of its obligations under the Lease except with respect to its obligations to maintain the premises in accordance with Article 7 of the Lease as follows:
  - (a) Failure to keep the four escalators serving the area occupied by the County all operational, thereby creating accessibility issues for third parties accessing the County's services such as the local Housing Tribunal and POA Court.
  - (b) The roof over the space occupied by the County space leaks
  - (c) The general state of repair of the premises, which has been lacking
  - (d) The level of HVAC repairs and maintenance prior to the Lease coming into force, which was the responsibility of the Landlord, was lacking. As a result, current repairs are more than the norm. The County is currently disputing the Landlord's 2014 CAM True-up (and the Landlord's request for an additional payment in excess of what has already been collected)
13. No default on the part of the Tenant has occurred and is continuing. To the best of the Tenant's knowledge, except as set down in this certificate there is no existing or continuing default in respect of the Lease on the part of the Landlord and no event or condition exists that would permit the Tenant to terminate the Lease or withhold payment of rent.

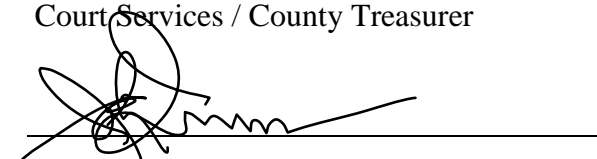
14. Except as set out in this certificate, the Tenant presently has no claim, defense, set-off or counterclaim against the Landlord under the Lease or otherwise.
15. The Lease has not been assigned and the Leased Premises have not been sublet, except as set out below. Permitted subtenants are:
  - (a) Service Ontario
  - (b) Ontario Disability Support Program
  - (c) Workplace Safety and Insurance
  - (d) The Ministry of Labour
  - (e) Employment Resource Centre Community Connections
16. The County is entitled to claim \$90,000 towards the cost of carpet replacement as per Page 43, Schedule "D" Clause 2 entitled "Capital Plan - Tenant". Otherwise, there are no tenant inducements, tenant allowances or other incentives payable or to be performed by the Landlord which have not been paid in full and there are no future rent-free or rent-reduced periods under the Lease, except as set out in this certificate.

The contents of this certificate may be relied upon by the Purchaser of the Property and by any mortgagee or lender in connection with any financing of the Property by the Purchaser.

**DATED** at Wyoming this 18th day of September, 2015.

**The Corporation of the County of  
Lambton**

Per: John Innes, GM, Finance, Facilities &  
Court Services / County Treasurer

A handwritten signature in black ink, appearing to be 'John Innes', written over a horizontal line.

*I have the authority to bind the  
Corporation.*





Exhibit "N"

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Smaller Tenants**

Bayside Mall

Listing of Tenants and Former Tenants relating to the period from January 1, 2013 to October 7, 2015 that the Receiver does not propose giving notice to regarding request for a release from claims

Suite #	SF	Approximate Departure Date	New lease arrangement	Tenant	Comments
<b>GROSS LEASES</b>					
121	3,532			Aram's Rugs (Dermentjian)	Only paying utilities
100	3,507			Limbo Lounge	
100B	2,572			Limbo Lounge	Basement
125	834			Mandarin Arts	
173	793		1-Mar-15	Dr Warren Optomitrist	
175	1,952			Marsh TV	
184	2,450			PT Healthcare Solutions Inc.	
185	4,485	30-Apr-15		Meridian Hearing	Only using small portion
182A	200			Sarnia Transit	
80/81	1,571	2014		Preferred Hairstylists	
<b>SMALLER NET LEASES</b>					
166	2,755			Anjema Eye Institute	
	356		1-Dec-14	Anjema Eye Institute - additional	
FC131	487			Beanzz	
FC144	513			Hong Kong Express	
116	400			Mini Accessories	
174	721			Sarnia Vision Care	
FC146	545	31-May-15		Subway	
104	2,000	31-Jul-14		Hogan Pharmacy	
129	1,074	30-Sep-14		March of Dimes	
145	636	30-Jun-14		Mary Kathy Anic Vinnis	

Note

The Receiver does not have lease documentation for all of the above tenant relationships



Exhibit "O"

**Eleventh Report of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated November 1, 2016**

**Statement of Receipts and Disbursements**

Statement of Receipts and Disbursements - ETD:2  
 05/12/2012 through 01/11/2016 (in Canadian Dollars) (Cash Basis)

01/11/2016

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Category Description	05/12/2012- 01/11/2016
<b>INCOME</b>	
Corporate Tax Refund	1,573.50
Cost Contribution	41,553.83
HST on Sales	2,101.40
Interest	8,024.15
Lambton Funding	455,017.20
Property Tax Refund	490,157.93
Receivables	19,447.91
Receiver's Certificate Borrowing	1,000,000.00
Rent and Other Income	5,259,685.47
Sale of Mall	1,750,000.00
<b>TOTAL INCOME</b>	<b>9,027,561.39</b>
<b>EXPENSES</b>	
Consulting Fees	104,692.43
HST Control	82,863.40
HST Input	7,553.76
Insurance	462,375.63
Interest on Lambton Funding	3,822.06
Larlyn Expenses	
Cleaning	389,937.88
Engineering Inspections	30,245.73
Management Fees	237,413.17
Misc HST Exempt	402.42
Other	208,181.49
Repairs & Maintenance	406,292.03
Snow Removal	114,272.45
Temporary Shoring	138,792.02
Utilities	1,184,659.08
Wages	924,460.61
Water	60,833.72
<b>TOTAL Larlyn Expenses</b>	<b>3,695,490.60</b>
Legal Fees	669,721.71
Misc.	14,240.26
Operating Expense	7,045.68
OSB Filing Fee	70.00
Parking Garage Repairs	402,670.10
Prepaid Rent	25,190.51
Property Taxes	1,243,252.84
Realtor Commission	43,750.00
Receiver's Certificate Repayments	800,000.00
Receiver's Fees	1,226,052.48
Repayment of Lambton Funding	81,065.82
<b>TOTAL EXPENSES</b>	<b>8,869,857.28</b>
<b>OVERALL TOTAL</b>	<b>157,704.11</b>