

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

SEVENTH REPORT OF THE COURT APPOINTED RECEIVER
OF BAYSIDE MALL LIMITED

Dated May 19, 2015

Introduction

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

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

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

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

Supplement to the First Report”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice to Reader

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

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

Background

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

Purpose of this Report

- To provide the court with information on the activities of the Receiver since its Sixth Report
- To seek approval of the activities of the Receiver and its Statement of Receipts and Disbursements as described in this Report

- To seek approval for the fees and disbursements of the Receiver, the Receiver's independent legal counsel, Gardiner Roberts, and Heath Whiteley for the period from January 1 – April 30, 2015 as set down in fee affidavits
- To seek the advice and direction of the court regarding the options available to the Receiver given the inability of the Receiver to effect a sale of the Land and Building

The Receiver's Go Forward Strategy

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

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

The Parking Garage

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

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

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

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

Marketing the Property

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

The marketing was launched on November 20, 2014.

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

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

The City and County Vetos

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

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

Both bidders' proposals were rejected by the City council.

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

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

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

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

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

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

The County of Lambton

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

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

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

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

Ongoing Cash Flow

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

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

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

The Options Now Available to the Receiver

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

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

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

The options available therefore seem to be as follows:

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

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

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

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

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

3. The Alternative Thirty Day Option

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

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

Other Tenants and Leasing Generally

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

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

will be taking steps to disengage from the Mall.

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

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

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

Larlyn and Operations Generally

Larlyn Property Management Ltd. ("**Larlyn**"), our property manager, is continuing to act as property manager of the Mall.

Media Enquiries

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

Property Taxes

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

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

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

Property Tax Appeal

Our property tax consultants, Altus Group (“Altus”), are overseeing the appeal that we had them file of the MPAC property assessment for 2013 – 2016. We understand that a pre-hearing conference call has been scheduled for mid May 2015 to discuss the appeal. Altus has also filed a vacancy rebate application for 2014. The vacancy rebate for 2013 resulted in a tax rebate of \$54,969 which was credited to the property tax account.

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

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

County Application for Separate Assessment

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

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

Pending clarification and formalization of various aspects of this designation the

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

Current Status

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

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

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

Fees and Expenses of the Receiver and its Legal Counsel

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

A. John Page & Associates Inc.

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

Heath Whiteley

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

Gardiner Roberts

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

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

Banking and the Receiver's Statement of Receipts and Disbursements

At the commencement of this assignment, we opened up receivership bank accounts at Royal Bank of Canada and at ICICI Bank Canada. Shortly after their appointment as property manager, Larlyn opened up a separate account at Royal Bank of Canada (“the Larlyn Royal Account”) for use in the management of the Bayside Mall. Attached as *Exhibit “H”* is a copy of the Receiver's Interim Statement of Receipts and Disbursement from December 5, 2012 to May 19, 2015 combining the three accounts (“the R&D”). The R&D does not include any transactions flowing through

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

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

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

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

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

** ** *

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

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


A. John Page FCPA, FCA, CIRP
President

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

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



Exhibit "A"

**Seventh Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated May 19, 2015**

Initial Order

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

ICICI BANK CANADA

Applicant

- and -

BAYSIDE MALL LIMITED

Respondent

ORDER
(appointing Receiver)

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

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

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER OR PROPERTY MANAGER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

SERVICE AND NOTICE

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

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

GENERAL

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

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

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

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

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

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

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

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

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

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

REGISTRAR

GREFFIER



W. / Hon - L.J.

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

DEC 05 2012

MB

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

DATED the ____ day of _____, 20__.

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

Per: _____
Name:
Title:

B E T W E E N:

ICICI BANK CANADA
Applicant

- AND -

BAYSIDE MALL LIMITED
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

(PROCEEDING COMMENCED AT TORONTO)

ORDER
(appointing Receiver)

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

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

310 Stouffville Road
Richmond Hill, Ontario
L4E 3P4

Lawyer for the Applicant



Exhibit "B"

**Seventh Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated May 19, 2015**

Fourth Report (without exhibits)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

FOURTH REPORT OF THE COURT APPOINTED RECEIVER
OF BAYSIDE MALL LIMITED

Dated June 5, 2014

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice to Reader

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

The Bayside Mall - Overview

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

Purpose of this Report

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

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

Summary of Key Economic Interests in the Bayside Mall

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

The Land Lease

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

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

The Physical Condition of the Bayside Mall

The Parking Garage and the City Order to Remedy –

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

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

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

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

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

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

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

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

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

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

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

Repairs and Maintenance

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

The Marketing of the Mall

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

Delay in Commencing Launch

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

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

Preparations for Launch

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

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

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

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

All this information was included in the data room.

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

The Determination of a Listing Price

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

Initial Marketing

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

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

Non Binding Letters of Intent

Colliers forwarded to us 9 LOIs from 5 different parties.

Assessment of the LOIs

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

Communications with ICICI Bank Canada

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

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

Overall Assessment

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

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

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

Discussions with the County of Lambton and the City of Sarnia

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

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

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

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

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

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

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

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

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

Status of the Negotiations with the City

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

Status of the Negotiations with the County

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

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

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

Other Tenants and Leasing Generally

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

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

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

Larlyn and Operations Generally

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

Media Enquiries

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

Property Taxes

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

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

Operating Budget

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

Additional Rent

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

Secured Creditors

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

SAMAK and the December Rents

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

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

Insurance

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

Harmonized Sales Tax ("HST")

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

Legal Counsel

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

Fees and Expenses of the Receiver and its Legal Counsel

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

A. John Page & Associates Inc.

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

Heath Whiteley

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

Gardiner Roberts

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

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

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

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

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

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

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

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

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

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

Recent Discussions with the Bank

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

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

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

Alternatives available to the Receiver

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

Alternative 1

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

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

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

Advantages of Alternative 1

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

Disadvantages of Alternative 1

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

Alternative 2

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

Advantages of Alternative 2

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

Disadvantages of Alternative 2

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

Alternative 3

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

Advantages of Alternative 3

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

Disadvantages of Alternative 3

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

Alternative 4

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

Advantages of Alternative 4

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

Disadvantages of Alternative 4

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

Alternative 5

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

Advantages of Alternative 5

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

Disadvantages of Alternative 5

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

The Receiver's Assessment of the Alternatives

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

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

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

The Impact of our Recommendations on the City and the County

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

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

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

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

per:


A. John Page FCPA, FCA, CIRP
President

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

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

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Exhibit "C"

**Seventh Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated May 19, 2015**

Fifth Report (without exhibits)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

FIFTH REPORT OF THE COURT APPOINTED RECEIVER
OF BAYSIDE MALL LIMITED

Dated August 11, 2014

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice to Reader

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

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

Background

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

Purpose of this Report

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

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

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

Alternative 1 was to:

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

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

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

Alternative 5 was to:

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

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

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

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

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

in this report.

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

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

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

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

The Sharing Formula Agreement

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

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

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

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

The County of Lambton

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

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

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

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

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

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

Other Tenants and Leasing Generally

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

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

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

The Parking Garage

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

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

Fees and Expenses of the Receiver and its Legal Counsel

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

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

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

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

A. John Page & Associates Inc.

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

Heath Whiteley

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

Gardiner Roberts

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

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

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

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

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

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

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

Page 16
Fifth Report to the Court
August 11, 2014

All of which is respectfully submitted this 11th day of August, 2014

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

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

A. John Page FCPA, FCA, CIRP
President

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

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

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Exhibit "D"

**Seventh Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated May 19, 2015**

Sharing Formula Agreement

AGREEMENT

THIS AGREEMENT made and effective as of the 21 day of July, 2014

B E T W E E N:

THE CORPORATION OF THE CITY OF SARNIA
(the "City")

OF THE FIRST PART

- and -

**A. JOHN PAGE & ASSOCIATES INC., in its capacity as receiver
of Bayside Mall Limited, and not in its personal capacity**
(the "Receiver")

OF THE SECOND PART

WHEREAS the City is the owner of approximately 8.72 acres of land located at 150 - 202 Christina Street North, Sarnia, Ontario, more particularly described in Schedule "A" hereto (the "**Property**");

AND WHEREAS pursuant to a lease agreement dated April 15, 1981, the City leased the Property to Bayside Mall Limited (the "**Debtor**");

AND WHEREAS on December 5, 2012, the Honourable Mr. Wilton-Siegel appointed the Receiver as receiver and manager of the assets, undertaking and property of the Debtor which included the Debtor's leasehold interest in the Property;

AND WHEREAS all parties are in agreement that the Property owned by the City shall be marketed and sold together with the Debtor's leasehold interest in the Property and the parties wish to set out herein the terms and conditions of the agreement reached between them in respect of the marketing and sale of the Property.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT:

1. On the terms and conditions set out herein, the City hereby appoints the Receiver as its agent in respect of the marketing and sale of the Property, jointly with the Debtor's leasehold interest and the Receiver hereby accepts that appointment.
2. The Receiver, in its own discretion, shall market the Property and the Debtor's leasehold interest (the "**Joint Asset**"), including the advertising and solicitation of offers in respect of the Joint Asset.
3. The Receiver shall provide the City with written notice of the date that the Joint Asset is listed for sale, and shall provide the City with copies of all marketing materials.
4. The City shall retain a veto with respect to the sale of the Joint Asset in accordance with the Veto Process Outline attached hereto as Schedule "**B**".

5. Once the Veto Process has been complied with and an Agreement of Purchase and Sale has been accepted by the Receiver subject to Court Approval,

(a) The City shall pass a by-law pursuant to which the City will permit the Property to be added to the receivership (upon issuance of a Court Order to that effect) for the sole purposes of conveying the Property to the prospective purchaser, which, by law will further provide for the Property to be released or discharged from the Receivership in the event that the transaction is not completed on its closing date or on a mutually agreed upon extended closing date; and

(b) the Receiver will bring a motion to the Court for an Approval and Vesting Order in respect of the sale of the Joint Asset to that prospective purchaser.

6. Upon completion of the sale of the Joint Asset, the proceeds of sale are to be distributed in accordance with the Sharing Formula attached hereto as Schedule "C".

7. All parties acknowledge, understand and agree that in the event that there is no sale of the Joint Asset, then the City bears no obligation in respect of the Receiver fees, including the fees described in the Sharing Formula attached as Schedule "C".

8. This Agreement is conditional upon the Receiver obtaining a Court Order approving this Agreement and authorising the Receiver to enter into it.

9. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario to which all parties hereby attorn.

10. The parties agree that they will each execute and deliver such additional documents, instruments, agreements and other assurances as may be reasonably required to effectually carry out the intent of this Agreement.

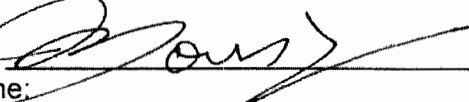
11. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements between the parties in connection with the subject matter herein, except as expressly set forth or referred to herein.

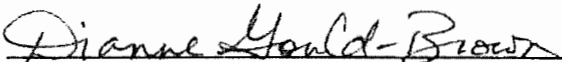
12. No amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and executed by each of the parties hereto.

13. This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written.

**THE CORPORATION OF THE
CITY OF SARNIA**

Per: 
Name: _____
Title: _____

Per: 
Name: _____
Title: _____

WE HAVE AUTHORITY TO BIND THE CITY

**A. JOHN PAGE & ASSOCIATES INC., in its
capacity as Receiver of Bayside Mall
Limited, and not in its personal capacity**

Per: _____
Name: A. John Page
Title: President

I HAVE AUTHORITY TO BIND THE CORPORATION

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written.

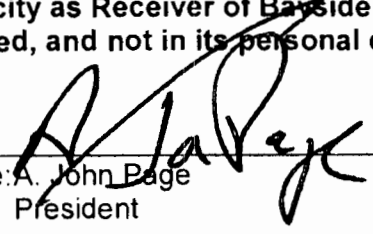
**THE CORPORATION OF THE
CITY OF SARNIA**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

WE HAVE AUTHORITY TO BIND THE CITY

**A. JOHN PAGE & ASSOCIATES INC., in its
capacity as Receiver of Bayside Mall
Limited, and not in its personal capacity**

Per:  _____
Name: A. John Page
Title: President

I HAVE AUTHORITY TO BIND THE CORPORATION

SCHEDULE "A"

LEGAL DESCRIPTION:

PIN: 43268 - 0043 (LT)

Lot 1, Plan 664, except Part 1, Plan 25R-3635, together with L469116,
subject to L511746, Sarnia

TORONTO: 507455W (99252)

SCHEDULE "B"

DRAFT VETO PROCESS OUTLINE

Bayside Mall

Revised July 11, 2014

This outline sets out the process by which the City of Sarnia ("**City**") and County of Lambton ("**County**") may exercise a veto with respect to the sale of the Bayside Mall. It assumes that an amount will be identified by the City and accepted by the Receiver ("**the Threshold Amount**") and provides for notification as to whether it is estimated that the offer will result in proceeds below or in excess of the Threshold Amount going to the City.

This outline should be read in conjunction with the attached timeline. The process is as follows:

- The first stage seeks letters of interest ("**LOI**"). As part of the request for LOI the Receiver will require that interested purchasers provide, concurrent with the LOI, a 2 page synopsis of the potential purchaser's identity/expertise/credentials/general source of funding and vision for the Mall. For those LOIs which the Receiver wishes to move to Stage Two of its Sales Process, the Receiver will provide the City and County with copies of the LOI (excluding the price) and two page synopsis for information purposes. The Receiver will indicate whether the LOI indicates a potential purchase price that, based on information available at that time, will likely result in proceeds going to the City below or above the Threshold Amount.
- The second stage is anticipated to yield agreements of purchase and sale ("**APS**"). If a potential purchaser is selected to move to the second stage then the Receiver will ask the potential purchaser to submit further information in line with the information below (the "**Credentials and Vision Information Package**"). The Receiver will request that such information be provided within two weeks of the request but parties having problems meeting this deadline will have the opportunity to seek an extension.
- The Receiver will present each Credentials and Vision Information Package to the City and the County for approval within 2 months from the date that the Receiver receives the first Credentials and Vision Information Package and every two months thereafter. The City and the County shall have (i) 45 calendar days from the date of receipt of each Credentials and Vision Information Package or (ii) the day following the first regular business meeting of each Council following its Inauguration in December, 2014, whichever is later, to approve that potential purchaser. In the event that any of the APS submitted contain a different purchase price than the original LOI submitted by any potential purchaser resulting in a change of

status (below/above threshold), then the Receiver shall advise the City and if the change of status puts the APS below the threshold, then the approval right will be reactivated having the same timing and process as if there had been a change in the potential purchaser's ownership structure. If the City and County do not respond in that period that purchaser is deemed to be approved. If a potential purchaser were to change the ownership structure through which they wished to acquire the Mall and Land following approval the approval right would be reactivated.

- The Credentials and Vision Information Packages shall contain:
 - Ownership structure of purchaser with disclosure of beneficial owners to current satisfactory Anti-Money Laundering disclosure requirements. Trigger interest is 25%
 - Sufficient background information to assess the credit worthiness of the purchaser. This may be satisfied by financial statements, net worth statements, bank recommendations
 - Names of senior management team detailing experience
 - Likely source of funding for acquisition and for future repairs and development
 - Preliminary five year plan for capital expenditure (repairs and redevelopment)
 - Vision for the Mall (or alternative visions)
 - Management plan for daily operations
 - Other Malls or commercial operations that the purchaser (or key members of the purchaser group) has run or owns
 - Years of experience in the commercial real estate business of the purchaser (or key members of the purchaser group) either as developers, managers, or owners of land or commercial real estate.
 - Any other real estate operations within Sarnia
 - Names of consultants, planners, engineers and other professionals, if identified
 - Name of the management company to be retained to manage the Bayside Mall together with examples of other property currently managed
 - Authorization to perform standard credit and background checks
- Sunset clause – Should there be no binding APS in place by May 15, 2015 (the "Sunset Date") the end of the term of the County's lease shall be deemed to be May 14, 2017. Should an APS become binding but not close, the end of the term of the County's lease shall be deemed to be 24 months following the date the agreement comes to an end. The Sunset Date equally applies to the City's willingness to consider the sale of the Bayside Mall.

SCHEDULE "C"

Bayside Mall, Sarnia

Possible Sharing Formula for the Division of Proceeds of Sale of Bayside Mall between City of Sarnia, the Receiver and ICICI Bank Canada ("the Bank")

Based on proposal discussed at a meeting at Receiver's offices on June 16, 2014 as updated for comments on June 24, 2014

	Scenarios						
Sale Price	\$ 4,500,000	\$ 5,000,000	\$ 5,500,000	\$ 5,750,000	\$ 6,000,000	\$ 6,500,000	\$ 7,000,000
R/E Commission at 4%	(180,000)	(200,000)	(220,000)	(230,000)	(240,000)	(260,000)	(280,000)
Property Taxes - estimated	(900,000)	(900,000)	(900,000)	(900,000)	(900,000)	(900,000)	(900,000)
Receiver's Costs - estimated	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)	(200,000)
Net Funds available for sharing	\$3,220,000	\$3,700,000	\$4,180,000	\$4,420,000	\$4,660,000	\$5,140,000	\$5,620,000
50% to City	1,610,000	1,850,000	2,090,000	2,210,000	2,330,000	2,570,000	2,810,000
50% to Receiver	1,610,000	1,850,000	2,090,000	2,210,000	2,330,000	2,570,000	2,810,000
	\$ 3,220,000	\$ 3,700,000	\$ 4,180,000	\$ 4,420,000	\$ 4,660,000	\$ 5,140,000	\$ 5,620,000
Contribution by City to Additional Receivervship Sale Process Costs	\$ (125,000)	\$ (125,000)	\$ (125,000)	\$ (125,000)	\$ (125,000)	\$ (125,000)	\$ (125,000)
Amount available for the City	\$ 1,485,000	\$ 1,725,000	\$ 1,965,000	\$ 2,085,000	\$ 2,205,000	\$ 2,445,000	\$ 2,685,000
Balance received by Receiver	\$ 1,735,000	\$ 1,875,000	\$ 2,215,000	\$ 2,335,000	\$ 2,455,000	\$ 2,695,000	\$ 2,935,000
Loss HST Arrears Deemed Trust Claim	(24,000)	(24,000)	(24,000)	(24,000)	(24,000)	(24,000)	(24,000)
Deficit on Receiver's Certificate Borrowing	(214,000)	(214,000)	(214,000)	(214,000)	(214,000)	(214,000)	(214,000)
Interest on Receiver's Borrowings	(171,000)	(171,000)	(171,000)	(171,000)	(171,000)	(171,000)	(171,000)
	(409,000)	(409,000)	(409,000)	(409,000)	(409,000)	(409,000)	(409,000)
Net amount available for Bank	\$ 1,326,000	\$ 1,566,000	\$ 1,806,000	\$ 1,926,000	\$ 2,046,000	\$ 2,286,000	\$ 2,526,000

Notes and Assumptions

Purpose of the worksheet is to set down how the proceeds of the joint sale of Bayside Mall land and buildings would be divided generally using the Receiver's understanding of the 50/50 sharing formula discussions on June 16, 2014 involving counsel for the Bank the Receiver and the City as updated for additional comments on June 24, 2014.

The spreadsheet used the assumptions re costs etc. that formed part of settlement negotiations in April 2014 and these have not been updated

The sharing formula assumes that real estate commission and property tax arrears and the fees of the Receiver and the Receiver's independent legal counsel (Gardiner Roberts) from January 27, 2014 onwards will be "paid" from the gross proceeds of a joint sale prior to sharing.

Net proceeds after these "payments" will be shared 50/50 between the City and the Receiver

The sharing formula sees the City contribute an additional \$125,000 towards the Receivervship sale process costs

The Receiver borrowed \$750,000 from ICICI Bank Canada in December 2012 at an interest rate of 10% pa under a court approved Receiver's Certificate having a priority charge over the assets of the Receivervship

The Receiver is currently in a deficit position.

Based on property management information to February 28, 2014 and, after adjusting for professional fees otherwise covered by the above sharing formula, on April 23, 2014 the Receiver estimated the deficit to be approximately \$214,000

Any deficit on Receivervship borrowings together with interest will be paid from the Bank's portion of the net proceeds

This spreadsheet assumes no further borrowing and, for the purposes of calculating interest it is assumed that that repayment will take place on December 31, 2014. Both of these assumptions are no longer realistic but, in the Receiver's opinion, this does not materially impact the overall purpose of the spreadsheet

In addition the Receiver has received an HST deemed trust priority claim from CRA for approximately \$24,000. Any deemed trust HST priority claim will be paid from the Bank's portion of the net proceeds

Actual results will be different to these estimates, perhaps materially so.



Exhibit "E"

**Seventh Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated May 19, 2015**

Sixth Report (without exhibits)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

SIXTH REPORT OF THE COURT APPOINTED RECEIVER
OF BAYSIDE MALL LIMITED

Dated January 21, 2015

Introduction

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

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

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

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

Supplement to the First Report”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice to Reader

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

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

Background

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

Purpose of this Report

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

The Receiver’s Go Forward Strategy

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

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

Building

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

The Sharing Formula Agreement

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

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

The County of Lambton

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

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

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

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

The Parking Garage

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

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

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

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

Order to Remedy.

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

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

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

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

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

prejudicial to the successful marketing and sale of the Mall.

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

Marketing the Property

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

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

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

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

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

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

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

Other Tenants and Leasing Generally

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

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

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

Larlyn and Operations Generally

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

Media Enquiries

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

Property Taxes

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

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

Fees and Expenses of the Receiver and its Legal Counsel

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

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

A. John Page & Associates Inc.

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

Heath Whiteley

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

Gardiner Roberts

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

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

approve these fees and disbursements.

Banking and the Receiver's Statement of Receipts and

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

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

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

** ** *

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

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



A. John Page FCPA, FCA, CIRP
President

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

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

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Exhibit "F"

**Seventh Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated May 19, 2015**

Marketing Memorandum

Confidential Exhibit

Filed Separately



Exhibit "G"

**Seventh Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated May 19, 2015**

**Redacted letter to the City of Sarnia Councillors
dated March 17, 2015**

March 17, 2015

To the City of Sarnia Councillors

Bayside Mall

We should like to refer to the letter from your legal counsel, Bresver Grossman Chapman & Habas LLP, dated March 10, 2015 formerly notifying us that the Letters of Intent ("LOIs") and related information from two potential purchasers of Bayside Mall that had been submitted to you for "approval" had been vetoed.

We have written to both bidders and have asked them to consider revising and resubmitting their LOIs and related Credentials and Vision Package. We gave them a deadline of the end of Tuesday March 17, 2015. They have each provided us with an email response which we enclose. One bidder, [REDACTED], also provided us with additional information supporting the net worth of his enterprise which, on a confidential basis, we also enclose. Neither of the bidders changed their bid price.

We are still asking Council to approve both of these parties as potential bidders for Bayside Mall.

As part of your deliberations we wanted to bring the following to your attention.

This property has been fully marketed by CBRE Limited (with our overall monitoring) since November 2014. Their marketing has included:

- 2 advertisements in the Globe & Mail
- Multiple email blasts to over 3,000 potential investors and developers
- A direct mailing of a glossy flier to about 2,000 potential investors and developers
- On line exposure through various websites
- Conventional telephone and other contact with likely interested parties

Over 50 Confidentiality Agreements were signed giving parties access to the detailed data room assembled by the Receiver and CBRE providing extensive information on the Mall.

Site visits have been arranged.

Our aim has been to provide potential purchasers with extensive information about the Mall and its financial and physical condition so that they can make an offer that is unconditional or has a very short conditional period. We were and are looking to find bidders who are "real" and are capable of concluding a deal rather than speculative bidders who have not, as yet, thought through the opportunity, lined up financing and fleshed out their vision for the Mall. Bidders such as this are generally looking for a free option to purchase. They then use the



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option period to see if they can either put together the components of a real bid or, alternatively, flip the project to someone else (for a profit). Sellers can easily be left later on without a purchaser in situations such as this. We need to deal with real bidders with a strong potential to complete a sale. These bidders also need to be able to show credentials and a vision for the Mall that will likely be adequate for your purposes.

We have to date received five LOIs of which only 2 seemed worthy of presentation to you. We have rejected the other three for the following reasons:

1. The first bidder's offer was for less than the property tax arrears. This bidder declined to increase their bid.
2. The second bidder's offer was also low. This bidder also wanted a 90 business day unrestricted "due diligence" period after the signing of a binding (and of course exclusive) Agreement of Purchase and Sale ("APS"). This would give the bidder a free option to purchase the Mall for over four months. At the end of that period the bidder could decline to proceed further without consequences or might then leverage the situation to look for concessions because, at that time, the sales process we have conducted would be "cold" and if we did not proceed with this bidder the sunset clause in our agreements with both the City and the County would be triggered. This is not an attractive proposition.
3. The third bidder also wanted a 90 business day unrestricted "due diligence" period after the signing of a binding APS. In addition this bidder's preliminary Credentials and Vision Package suggested that they needed to do a lot more work on the project before they would be in a position to produce a Credentials and Vision Package that might satisfy your requirements. If this bidder were to resubmit with a more attractive LOI and Credentials and Vision Package and a significantly reduced due diligence period we can, of course, submit them to the City and the County for "approval". However, given the timing of the various council meetings, the time we expect it will take to negotiate a binding APS with someone and the looming sunset clause date we think we are likely out of time with this bidder. We cannot take the risk and wait and see if this party will pick up the pace of their consideration of this opportunity and resubmit an LOI that we and then you might find acceptable. If they do submit something attractive later we can discuss it with you at that time.

In short, Bayside Mall has been exposed to the market through a court supervised sales process. The LOIs that we have presented to Council are the best expressions of real interest we currently have. Both parties seem experienced and well funded. They both seem capable of concluding an agreement and carrying out their vision.



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Based on our marketing we have to conclude that the threshold set by Council was unfortunately unrealistic. You might wish to receive that amount for the sale of the land but the market is not prepared to pay that for the land.

Simply put. The market has spoken through the sale process and these two bidders are the best we have been able to locate who we think are capable of closing a sale.

We had previously concluded that, given the size of the back taxes, Bayside Mall was unsaleable without the land included in the package. If Council vetoes both of the current bidders again we will likely have to conclude that we are not able to sell Bayside Mall even with the land.

We might also note that even if both bidders are not vetoed we are some distance from having one of them "under contract". Even if we were to receive "approval" for a bidder at your next council meeting on March 23, 2015 we then need to receive the approval of the County of Lambton and their next meeting after that is on April 15, 2015. It will then be a number of weeks before we will likely be in a position to sign a binding APS with that bidder. Both these bidders seem to be sophisticated operators and we anticipate that negotiating that APS may not be easy. If negotiations with one bidder break down we may need to switch to the other bidder. Delays like the recent one however send poor signals and make that task harder. Time is tight. As you well know, our agreements with the County and the City both have sunset clauses. If we do not have a binding APS for the Mall in place by May 15, 2015 our agreement with the City regarding including the land in a sale expires and the County's lease period is automatically truncated so that it will expire on May 14, 2017.

Upon hearing of the veto we instructed our legal counsel to stop work on drafting a form of binding APS and on determining how to resolve the many legal title issues that would need to be dealt with prior to any closing. If this Mall is not going to be sold by us then these costs would be wasted. However if the City "approves" the two bidders next week we will immediately recommence drafting the APS pending awaiting the decision of the County at their April 15, 2015 meeting. Depending on the outcome of that meeting we will then likely decide which of the bidders is our front runner and will attempt to sign a binding APS with them. It may be possible to start those negotiations prior to the County council decision but we may find our chosen bidder reluctant to incur significant legal and other costs until they know they have been "approved" by both councils.

If Council vetoes both bidders again they should realize we likely have no other parties "in the wings" who seem capable of doing a deal in the time frame remaining.

We have yet to discuss this eventuality in detail with the secured creditor who has the economic interest in the sale of the Mall and has been funding the costs of the receivership



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but if the two LOIs are vetoed again we suspect we will immediately cease efforts to actively market the property further. We may continue to merely collect rent for a period of time but will likely ultimately move to responsibly disengage from all contracts relating to the Mall, give our property manager notice, ask the court to discharge us as Receiver and "abandon"/ "walk away" from Bayside Mall. At that time we suspect the Mall will get handed back to the former operator, Mr. Khalid, although we are not sure whether he will have any interest in doing anything with it.

We ask you to consider very seriously the implications for the centre of your city if this were to come to pass and urge you to approve both bidders so that we can try, in the short time available, to sign a binding APS with one of them and close that sale.

Yours very truly

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

A. John Page FCPA, FCA, CIRP
President

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Exhibit "H"

**Seventh Report of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated May 19, 2015**

Statement of Receipts and Disbursements

19/05/2015

Statement of Receipts and Disbursements - ETD
05/12/2012 through 19/05/2015 (in Canadian Dollars) (Cash Basis)

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Category Description	05/12/2012- 19/05/2015
INCOME	
HST on Sales	44,264.82
Interest	5,977.36
Lambton Funding	254,844.44
Receivables	19,447.91
Receiver's Certificate Borrowing	1,000,000.00
Rent and Other Income	4,213,823.24
TOTAL INCOME	5,538,357.77
EXPENSES	
Consulting Fees	61,704.93
HST Control	5,255.81
HST Input	77,355.29
Insurance	405,481.23
Larlyn Expenses	
Cleaning	308,134.03
Engineering Inspections	28,533.25
Management Fees	193,943.29
Misc HST Exempt	245.00
Other	160,531.77
Repairs & Maintenance	344,216.25
Snow Removal	108,528.13
Temporary Shoring	138,272.02
Utilities	948,039.38
Wages	769,508.79
Water	60,833.72
TOTAL Larlyn Expenses	3,060,785.63
Legal Fees	448,334.97
Misc.	9,330.56
OSB Filing Fee	70.00
Parking Garage Repairs	225,526.06
Receiver's Fees	878,592.48
TOTAL EXPENSES	5,172,436.96
OVERALL TOTAL	365,920.81