

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

BETWEEN:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and
Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

**MOTION RECORD
(returnable February 26, 2009)**

February 20, 2009

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Receiver Inc. in its capacity as
Interim Receiver and Receiver and
Manager of 1539304 Ontario Inc.**

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MOTION RECORD INDEX

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Court File No.: CV-08-7714-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

**NOTICE OF MOTION
returnable February 26, 2009**

Ira Smith Trustee & Receiver Inc., in its capacity as Court-appointed Interim Receiver and Receiver and Manager (the "Receiver") of 1539304 Ontario Inc. (the "Debtor") will make a motion to the Court on February 26, 2009 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached hereto as Schedule "A":
 - (a) abridging the time for and validating the service of this Notice of Motion and the materials filed in support of this motion and dispensing with further service thereof;

- (b) approving the First Report of the Receiver dated February 20, 2009 (the “First Report”) and the actions of the Receiver as set out therein;
- (c) approving the fees and disbursements of the Receiver and those of its counsel;
- (d) approving a process (the “Sale Process”) for the marketing and sale of the Debtor’s assets, undertaking and property (the “Assets”), including a condominium project under development in the City of Hamilton known as Trinity Landing (the “Project”);
- (e) increasing to \$450,000 the Receiver’s authority to borrow monies for the purpose of funding the exercise of the powers and duties conferred upon it as interim receiver and receiver and manager of the Debtor and the Receiver’s Borrowing Charge, both as set out in paragraph 20 of the Order Appointing the Receiver dated November 12, 2008 (the “Appointment Order”);
- (f) an Order sealing Volume 2 of the First Report;
- (g) such further and other relief as counsel may request and this Honourable Court may permit

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to the Appointment Order, Ira Smith Trustee & Receiver Inc. was appointed as Interim Receiver and Receiver and Manager of the assets, undertaking and property of the Debtor pursuant to ss. 47(1) of the *Bankruptcy and Insolvency Act, Act*, R.S.C. 1985 C. B-3 (the “BIA”) and s. 101 of the *Courts of Justice Act*, R.S.O. 1190, c. C-43 (the “CJA”).
2. Under the Appointment Order, the Receiver is empowered to market and sell the Assets.
3. The Receiver has determined that it is appropriate to conduct the Sale Process with respect to the Assets of the Debtor at this time in the manner set out in the First Report.

4. The proposed Sale Process is fair and commercially reasonable and should help maximize the value of the Assets.
5. The Receivers requires an increase to its borrowing authority and the Receiver's Borrowing Charge in order to fulfill its mandate under the Appointment Order;
6. S. 47 of the BIA.
7. S. 101 of the CJA.
8. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The First Report;
2. Such further and other materials as counsel may advise and this Honourable Court may permit.

Date: February 20, 2009

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TO: ATTACHED SERVICE LIST

SERVICE LIST

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SCHEDULE "A"

Court File No.: CV-08-7714-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 26TH DAY
JUSTICE) OF FEBRUARY, 2009

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as court – appointed interim receiver and receiver and manager (the “Receiver”) of all the assets, undertaking and property of 1539304 Ontario Inc. (the “Debtor”), for an order, *inter alia*, approving the First Report of the Receiver dated February 20, 2009, (the “First Report”) and the actions and activities of the Receiver as detailed therein, and for an order approving the sales process outlined in the First Report (the “Sales Process”) in relation to the assets, undertaking and property of the Debtor was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver and the exhibits thereto, filed, and upon hearing the submissions of counsel for the Receiver, and no one appearing for the other parties

served with the Receiver's Motion Record, although duly served as appears from the affidavit of service of Deborah Russell sworn February 20, 2009:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion and Receiver's Motion Record herein is abridged, that this motion is properly returnable today, the service, including the manner of service, of the Motion Record is hereby approved and that further service is dispensed with.

FIRST REPORT

2. **THIS COURT ORDERS** that the First Report and the actions of the Receiver as reported therein be and are hereby approved.

3. **THIS COURT ORDERS** that the Receiver's fees and disbursements from November 13, 2008 to February 15, 2009, and the fees and disbursements of its legal counsel, Lang Michener LLP, from November 11, 2008 to December 17, 2008 and from January 5, 2009 to January 30, 2009, all as detailed in the First Report, be and are hereby approved.

4. **THIS COURT ORDERS** the Volume 2 of the First Report shall be treated as confidential and shall be sealed, segregated from and not form a part of the public record pending further order of this Court and shall be filed with this Court in a sealed enveloped attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order request.

SALE PROCESS

5. **THIS COURT ORDERS** that the sale process as described in the First Report and as specifically described in Exhibit "E" to the First Report and procedures and conditions contained therein including the Terms and Condition of Sale at Exhibit "G" to the First Report

(collectively, the "Sale Process") is approved, and the Receiver is authorized and directed to implement and to take all steps necessary or desirable to complete and fulfill all requirements, terms, conditions and steps contemplated therein, and any information received by the Receiver or its respective directors, officers, counsel, agents, professional advisors or employees related to or arising from the Sale Process shall be kept confidential and be utilized only for the purposes of the Sale Process and for no other purpose.

6. **THIS COURT ORDERS** that the confidentiality agreement to be executed by all prospective purchasers seeking to participate in the Sales Process, attached as Exhibit "F" to the First Report, is hereby approved.

FUNDING OF THE RECEIVERSHIP

7. **THIS COURT ORDERS** that the Receiver's authority to borrow monies for the purpose of funding the exercise of the powers and duties conferred upon it as interim receiver and receiver and manager of the Debtor and the Receiver's Borrowing Charge, both as set out in paragraph 20 of the Order Appointing the Receiver dated November 12, 2008, are hereby amended to increase the Receiver's authority to borrow monies and the Receiver's Borrowing Charge to \$450,000.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

FIRST REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.

VOLUME 1

**IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER
AND MANAGER OF 1539304 ONTARIO INC.**

DATED FEBRUARY 20, 2009

1.0 INTRODUCTION

This report (the “**First Report**”) is filed by Ira Smith Trustee & Receiver Inc. (“**ISI**”) in its capacity as court- appointed interim receiver and receiver and manager (the “**Receiver**”), pursuant to section 47.1 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**”), without security, of all of the assets, undertaking and property of 1539304 Ontario Inc. (the “**Company**” or the “**Debtor**”).

The Honourable Madam Justice Pepall made an order dated November 12, 2008 (the “**Receivership Order**”) appointing the Receiver. A copy of the Receivership Order is attached hereto as **Exhibit “A”**.

1.1 Purpose of this Report

The purpose of this First Report is to report to this Honourable Court on:

1. the actions and activities of the Receiver since November 12, 2008;
2. the Receiver's retainer of Pelican Woodcliff Inc. ("**PWI**"), an independent real estate consulting firm assisting the Receiver (subject to the approval of this Honourable Court);
3. PWI's Report to the Receiver dated December 31, 2008 (the "**PWI Report**") on the receivership of the Company's known asset, a condominium project under development in the City of Hamilton known as Trinity Landing (the "**Project**"), and their report of project and property management activities to date (the "**PWI activities**");
4. the need for the Receiver to continue its retainer of PWI to assist the Receiver with the interim property and project management;
5. the cash flow requirements of the Project referred to in the PWI Report contained in the sealed volume 2 of this Report;
6. prior to the beginning of the receivership, units sold by the Company and deposit funds held in trust by the Company's solicitor;
7. the accounting for the receipts and disbursements of the Receiver from November 12, 2008 to February 19, 2009; and
8. the fees and costs to date incurred by the Receiver and its legal counsel, Lang Michener LLP.

1.2 Disclaimer

The Receiver has relied upon the financial records and financial statements of the Debtor, as well as other information supplied by management and employees of the Debtor, its accountants, appraisers, valuers, and other advisors. Our procedures did not constitute an audit or review engagement.

Therefore, the Receiver is unable to and does not express an opinion on any financial statements, or elements of accounts referred to in this First Report, or any of the attached Appendices or Exhibits forming part of this First Report. Our procedures and enquiries did not include verification work or constitute an audit in accordance with generally accepted auditing standards. In the event any of the information we relied upon was inaccurate or incomplete, the results of our analysis could be materially affected. We reserve the right to review all calculations included or referred to in this First Report and, if we consider it necessary, to revise our calculations or conclusions in light of new information as such information becomes available.

1.3 Confidential Volume 2

This First Report contains a Confidential Volume 2, which contains the PWI Report, and certain other reports commissioned by PWI on behalf of and with the approval of the Receiver. The purpose of the PWI Report was to assess the state of the Project upon the appointment of the Receiver. The PWI Report also contains various findings and recommendations concerning improvements to the Project.

Also contained in Volume 1 of this First Report is the Receiver's recommendation for a process to market the Project for sale (the "Sales Process") (as further defined below). The Receiver

believes that it is in the best interests of the stakeholders that if this Honourable Court approves the recommended Sales Process, that full disclosure to all potential purchasers should be made only through the Sales Process and not by way of the Receiver's First Report to Court.

Therefore, the Receiver is seeking an Order sealing Volume 2 of this First Report until further Order of this Honourable Court. The Receiver makes this request to avoid any prejudice that might be caused by publicly disclosing the PWI Report and other reports contained therein other than to potential purchasers through a Court-approved Sales Process. The main findings and recommendations of PWI are disclosed below in this Volume 1 of the First Report, so that all stakeholders will have knowledge of such findings and recommendations, and to assist them in better understanding the context in which the Receiver makes certain of its recommendations herein.

For reasons stated above, the Receiver believes that the PWI Report and other reports in Volume 2 must be sealed at this time, so that no party will obtain any special insight into, or advantage with respect to, the Project as disclosed in such reports.

2.0 BACKGROUND AND OVERVIEW

The Company's principal asset is a building located at 80 King William Street in the City of Hamilton. The Project comprises an existing 3 storey rehabilitated commercial structure which is currently under construction to be converted to a 5 storey, 50 unit loft style residential condominium building which has been marketed under the name Trinity Landing Condominiums. The legal description of the property is Lot 21 and Part of Lot 22, Nathaniel Hughson Survey (Unregistered), south side of King William Street between John Street and Catharine Street, being Part 1 on 62R-16706; Hamilton.

As indicated in the material of the Applicant in these proceedings, ICICI Bank Canada (“**ICICI**” or the “**Applicant**”), no work has occurred on the Project since July 16, 2008¹.

3.0 ACTIVITIES OF THE RECEIVER

3.1 Initial site visit -

Upon its appointment on November 12, 2008, Mr. I. Smith of the Receiver, contacted the Company’s principal, Mr. H. Ganatra and advised him of the receivership appointment. Mr. Ganatra provided the Receiver with a brief description of the Project and advised the Receiver that there was neither heat nor hydro service to the property. Mr. Ganatra also advised that a general contractor used on the Project, Mr. H. Epp, was very knowledgeable and had been providing property management services.

A meeting was scheduled at the building with Mr. Ganatra for November 13, 2008, in order for Mr. Ganatra to provide the Receiver with the keys to and a tour of the Project. The Receiver also made arrangements with representatives of PWI, a real estate property development and project management consulting firm that could provide assistance to the Receiver in its administration, to meet at the Project the next day.

On November 13, 2008, Messrs. I. Smith and B. Smith of the Receiver, Messrs. R. Mandowsky and N. Ary of PWI and Mr. Ganatra met at the Project. Mr. Ganatra provided the keys to the premises to the Receiver and provided a detailed tour of the Project. At the conclusion of the tour, Mr. Ganatra undertook to provide the Receiver with all property, assets and undertaking of

¹ Affidavit of Lionel Meunier sworn September 4, 2008, page 4, Tab 2 of the Application Record dated September 8, 2008.

the Company in his possession or control. To date, very little additional information, documentation or property has been provided by Mr. Ganatra.

From this site visit, the Receiver concluded that certain emergency work would have to be performed in order to obtain approval from the utilities to restore hydro and gas to the premises. The Receiver also concluded that the Project would require some additional emergency work in order to secure the site. The Receiver discussed these issues with Messrs. Mandowsky and Ary on site, and requested PWI to provide the Receiver with both its proposed engagement letter as well a listing of emergency items required to be implemented immediately for the safety and security of the Project.

3.2 *Immediate activities arising from initial site visit –*

During the first week of the receivership, the Receiver's activities included:

- took possession and control of the physical property;
- notified Hamilton Police of our appointment;
- retained a locksmith and changed the locks to the premises;
- arranged through PWI for three (3) nightly security patrols to be conducted;
- restored hydro and gas to those areas of the building where it was safe to do so in order for sufficient heating and lighting to be available to the Project;
- communicated with Mr. R. Weston, City of Hamilton legal counsel, regarding obtaining a copy of a recent appraisal commissioned by the City and opportunities available from the City's perspective for any party interested in completing the project;
- arranged for continuation of the existing insurance coverage adding the Receiver as an additional named insured until the policy expires on February 28, 2009; and
- instructed PWI to proceed with specific repairs to secure the physical premises.

3.3 November 19, 2008 site visit –

Once the most immediate safety and security issues were dealt with, the Receiver and PWI agreed that a site visit to the Project with the benefit of light and heat was appropriate, in order to further assess the condition of the Project. PWI also made arrangements for Mr. Epp to be in attendance. On November 19, 2008, Mr. B. Smith of the Receiver, Messrs. Mandowsky, Ari and M. Winnick of PWI and Mr. Epp toured the premises. During this tour, various items were noted and it was agreed that certain items that could be done immediately at moderate cost to further secure the site would be done immediately by Mr. Epp. As well, it was agreed that PWI would begin its work to prepare a comprehensive report for the Receiver on the Project, with recommendations on how best to proceed.

3.4 Insurance –

The Receiver contacted Sinclair-Cockburn Financial Group (“SCFG”), the insurance broker who placed the insurance coverage for the Company on the Project. As the Receiver was discussing the required coverage, the broker was surprised to learn that the Project was not completed and was not inhabited by individual residential condominium unit owners, as SCFG and the insurer had been led to believe. The broker initially advised the Receiver that the insurer would not extend coverage to the Receiver, but after learning of the steps taken by the Receiver to secure and monitor the Project, the insurer reconsidered and agreed to extend coverage.

The Receiver also consulted with Firstbrook, Cassie & Anderson Ltd., the broker that handles the insolvency insurance program for ISI and many other trustees and receivers. Based on consultation with Firstbrook, Cassie & Anderson Ltd., the Receiver paid the additional amount

of \$7,536.24 (inclusive of provincial tax) in order to be added to the Company's insurance coverage, as amended for the status of the Project.

Attached as **Exhibit "B"** is a copy of the email from SCFG dated December 5, 2008 confirming the coverage and a copy of the insurance endorsement subsequently received for the insurance coverage currently in place for the Project with the Receiver added as a named insured.

The current coverage expires on February 28, 2009 and the Receiver is in communication with SCFG for the renewal of coverage.

3.5 Regular reporting to and meetings with ICICI –

The Receiver prepares a monthly reporting memorandum outlining major activities during the immediate prior month and discussing issues relating to the Project that the Receiver has identified with the assistance of PWI. The Receiver has provided a copy of such memo to ICICI to assist ICICI in understanding the issues relating to the Project and the upcoming borrowing needs of the Receiver. As the Receiver is borrowing from ICICI (discussed further in this First Report) under its borrowing authority under the Appointment Order, the Receiver believed ICICI should be aware of issues through the monthly reporting memoranda and where necessary, at a meeting.

The Receiver has held four (4) meetings to date with representatives of ICICI (one of which was the February meeting with The City of Hamilton referred to below).

3.6 Meetings with The City of Hamilton –

As indicated in the Applicants' motion material, The City of Hamilton (the "City") holds a mortgage on the real property in the original principal amount of \$1.2 million. The City's

mortgage is subordinate to the mortgage security of ICICI. The City of Hamilton also has an interest in seeing the Project proceed as part of an overall plan to rejuvenate the downtown core of Hamilton. Accordingly, the City is an important stakeholder that the Receiver has also kept apprised of the receivership administration on a regular basis, including meeting with City representatives on December 11, 2008 and February 17, 2009.

The main purpose of the December meeting with the City was for the Receiver and PWI to advise the City of the current status of the receivership administration and to allow for the Receiver and PWI to understand the concerns and desires of the City in connection with the Project. The main purpose of the February meeting was for representatives of the Receiver, PWI and ICICI, and its legal counsel, to meet with the City representatives, to advise the City of the Receiver's plans for a Sales Process for the Project (further described below) and to ensure that any concerns the City had could be addressed.

Both meetings involved dialogue between all parties and the Receiver is pleased with its communications and relationship with the City to date.

4.0 RETAINER OF PWI

The Appointment Order and specifically paragraph 3(d) thereof, provides the Receiver with the authority to retain consultants and advisors to assist it in this receivership administration. As indicated above, the Receiver had requested PWI to attend the initial site visit to the Project on November 13, 2008.

PWI was known to both ISI and ICICI prior to the appointment of the Receiver. With the approval of ICICI, the Receiver contacted PWI with a view of retaining it to assist the Receiver.

The Receiver consulted with ICICI, which concurred with the Receiver's choice of PWI. At a meeting held between representatives of the Receiver and ICICI and respective legal counsel on November 13, 2008, representatives of the ICICI advised that since it was funding the costs of this receivership administration and was aware of PWI's abilities, it did not wish the Receiver to incur the time to obtain other quotes for the consulting services required.

The Receiver held discussions with PWI concerning its mandate, and PWI provided its draft engagement letter to the Receiver for approval and signing. Discussions were held and certain amendments were made to the engagement letter. Attached as **Exhibit "C"** is a signed copy of the PWI engagement letter wherein the Receiver is retaining the consulting services of PWI as outlined therein. The Receiver advises the Court that the entering into of the PWI engagement letter is subject to the approval of this Honourable Court.

Attached as **Exhibit "D"** are the curriculum vitae of Messrs. Mandowsky and Ary who are the representatives of PWI responsible for assisting the Receiver in this administration.

The Receiver requested that, in accordance with the PWI engagement letter, PWI would assist the Receiver by providing property management services for the Project, in addition to supervising the emergency repairs required to secure the Project as described above. The Receiver also requested PWI to prepare a report for the Receiver with its recommendations concerning any issues it could identify with respect to the Project, as well as the timing of any offering of the Project for sale.

5.0 THE PWI REPORT

PWI provided its Report dated December 30, 2008 in draft form for the Receiver to review setting out the current status of the Project and making specific recommendations for the Receiver to consider. These recommendations focused mainly on what steps the Receiver should take and also provided a Project budget up to and including May 31, 2009. The Receiver and PWI discussed the Report at length and on February 18, 2009 PWI released the Report in final form. As indicated above, the Receiver is seeking an Order to seal the PWI Report contained in Volume 2 of this First Report for the reasons outlined above. In order to assist the readers of this Volume 1 of the First Report, the Receiver advises that PWI's major findings and recommendations are:

1. The emergency work to make the Project site secure and safe, as identified by the Receiver and PWI early in the receivership administration, was completed.
2. Based on the findings of the Structural Engineer, the building structure is safe.
3. That a Mould Consultant be retained to prepare a report for the Receiver. A Mould Consultant was retained during the preparation of the PWI Report. The Mould Consultant's Interim Report dated December 23, 2008 was delivered and is contained in Volume 2 of this First Report.
4. A Building Science Study should be undertaken in relation to the building envelope. Such study was requisitioned and the report dated January 28, 2009 was delivered and is contained in Volume 2 of this First Report.

5. A construction budget, including the fees and costs of PWI for the period November 13, 2008 to May 31, 2009, which totals \$418,740. This estimate does not include Receiver and legal fees or GST on any expenditure.
6. That PWI meet with the Project's previous real estate listing agent to get a better understanding of the Agreements of Purchase and Sale previously entered into between the Company and individual purchasers of residential condominium units.
7. A disposition strategy be developed and implemented as soon as possible.

The Receiver advises that both ICICI and the City are in agreement that a disposition strategy be implemented immediately.

6.0 PROPOSED SALES PROCESS

The Receiver has not commissioned an appraisal of the real property or the Project at this time. Rather, the Receiver has reviewed a copy of the following appraisals which have been provided to it by ICICI and the City:

1. Pocrnic Realty Advisors Inc. appraisal dated June 27, 2007 prepared for ICICI.
2. Antec Appraisal Group Inc. appraisal dated July 7, 2008 prepared for the City.

The Receiver believes that the Sales Process outlined below, for which the Receiver is seeking the approval of this Honourable Court, will allow the marketplace to determine the value of the Project. Nevertheless, the Receiver advises that it intends to obtain an updated appraisal from one of the above-noted appraisers.

Accordingly, the Receiver will ask each of the above appraisers to advise the Receiver as to the cost of an updated appraisal and retain one of these appraisers to provide such an appraisal to the Receiver.

The Receiver, through discussion with both ICICI and the City, has determined that the stakeholders would be best served by a Court-supervised Sales Process conducted by the Receiver. Such a process will allow the Project to be exposed to the marketplace to generate the best possible return under the current circumstances. The Receiver believes that such a Sales Process must be carefully managed through the proposed time period and has therefore prepared for consideration and approval by this Honourable Court, a proposed Sales Process which the Receiver believes is appropriate.

The Receiver has considered, and rejected, the retainer of a qualified commercial real estate agent specializing in the sale of such properties. Both the Receiver, and its consultant, PWI, have the combined experience of sales in the real estate development industry, both in receivership and non-distressed situations.

The Receiver also believes that the Sales Process should allow potential bidders to conduct the necessary due diligence to submit an offer. The Receiver believes that this due diligence process will assist potential purchasers to gain a better understanding of the current state of the Project, the amount of work that needs to be completed, and will provide potential purchasers access to the information contained in Volume 2 of this First Report subject to the provision of appropriate confidentiality agreements. The Receiver's proposed Sales Process will provide potential purchasers with this information.

The Sales Process being recommended to this Honourable Court is attached hereto as **Exhibit “E”**.

Key elements of the Sales Process include:

1. The Receiver will require all interested parties to execute a confidentiality agreement, substantially in the form of the agreement attached hereto as **Exhibit “F”** (the “**Confidentiality Agreement**”), prior to such interested parties obtaining the Confidential Information Memorandum (the “**CIM**”).
2. Each qualified potential purchaser will then be granted access to a password protected internet based due diligence website to view such further detailed information in the possession or control of the Receiver.
3. All potential purchasers will be requested to comply with the standard Terms and Conditions in the form attached hereto as **Exhibit “G”** (the “**Terms and Conditions**”).

Given all of the factors outlined above, the Receiver recommends that all “Firm Offers” (as defined in the Terms and Conditions) relating to this opportunity be submitted to the Receiver no later than 12:00 noon (Toronto time) on May 11, 2009. The Receiver will then be in a position to: (i) evaluate all such Firm Offers; (ii) provide any final information to the relevant parties that they may need in connection with such Final Offer; (iii) obtain all necessary approvals from this Honourable Court; and (iv) complete the transaction contemplated under the Court-approved Agreement of Purchase and Sale with a target date during July, 2009.

7.0 LIEN CLAIMS

The Applicant's motion record describes two tranches of construction liens registered against the Project, and steps taken by ICICI in posting Letters of Credit and obtaining Orders vacating the registration of those liens². At this point neither the Receiver nor its legal counsel has spent any meaningful time reviewing these lien issues. The Receiver believes that this issue should be addressed at the time the Receiver has received proceeds of sale from the sale of the assets of Debtor and is prepared to make application to this Honourable Court for a distribution of such funds.

8.0 CONDOMINIUM UNITS SOLD BY THE COMPANY AND FUNDS HELD IN TRUST PRIOR TO THE COMMENCEMENT OF THE RECEIVERSHIP

The Receiver was contact by Mr. M. Caplan of Coldwell Banker, the real estate broker who had been marketing the Project prior to the appointment of the Receiver. Mr. Caplan advised that there were individuals who had signed agreements of purchase and sale for certain proposed units (collectively the "Purchasers", individually a "Purchaser"). These Purchasers had paid deposits and had purchased upgrades for their units and that certain of their deposits were still being held in trust by the Project's solicitor. The Receiver advised Mr. Caplan that he should provide the Receiver with the sales agreements, details of deposits and upgrade fees paid and contact details for the solicitor holding these funds.. Mr. Caplan did not provide any such information to the Receiver, notwithstanding his assertions that he is aware of complete details concerning the Project and that he was the broker of record.

² Affidavit of Lionel Meunier sworn September 4, 2008, pp. 3-5.

The Receiver was ultimately contacted by a Purchaser who did provide proof of payment of deposit funds to "Burns Vasani, in trust". The Receiver contacted Mr. S. Vasani of Burns Vasani Argiropoulos LLP and requested an accounting of its trust ledger relating to the Project along with copies of the Purchasers' files corresponding to the funds held in trust. Attached as **Exhibit "H"** is the Trust Ledger Statement for the Project. Mr. Vasani acknowledged that he has been contacted by certain of the Purchasers, and correspondence in the files provided by Mr. Vasani indicates that they are seeking a return of their deposits. Mr. Vasani wished to release the trust funds to the Receiver, however, the Receiver advised Mr. Vasani to continue to hold the funds and await further instructions.

The Receiver will be completing its review of the documentation forwarded by Mr. Vasani, including the Agreements of Purchase and Sale, in respect of the proposed units, and will then bring forward its recommendation to this Honourable Court as to what it will then consider to be the appropriate disposition of the funds held by Mr. Vasani's law firm.

9.0 RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

As the Project does not have any income producing elements to it, there has been no cash flow available for the Receiver to utilize. Accordingly, ICICI has agreed to provide the Receiver with the necessary funding. The Receiver has been borrowing from ICICI under its borrowing authority contained in the Appointment Order, and specifically, paragraph 20 of such Order. The Receiver has issued two (2) Receiver's Certificates to date and has borrowed under the Receivership Borrowings Charge (all as defined in the Appointment Order) the amount of \$100,000.00 to date.

Attached as **Exhibit "I"** is the Receiver's Statement of Receipts and Disbursements for the period November 12, 2008 to February 18, 2009.

10.0 INCREASING THE RECEIVER'S BORROWING AUTHORITY

As previously stated, in section 9.0 above, the Receiver has borrowed half of the amount originally allowed under the Appointment Order and currently has \$15,194.93 of borrowed funds on hand. The Receiver currently estimates that it will require approximately \$16,000 monthly to cover utility, insurance and security costs in addition to the professional fees of the Receiver, Lang Michener, PWI and other necessary consultants and any costs related to remediation and upkeep of the Project.

Attached hereto as **Exhibit "J"** is a copy of the current 2009 Interim Property Tax Bill for the Project as well as a detailed statement of account indicating arrears of \$15,702.63 and a current quarterly instalment of \$4,010.00 due. Based on the three (3) year trend of levied taxes (as indicated on Page 1 of the statement, the second page of Exhibit "J" to this Report) the Receiver estimates taxes for 2009 in total to be \$20,000.00 . The Receiver recommends to this Honourable Court that it pay the property tax arrears and keep property taxes current as unpaid property taxes and the resultant additional charges attach to the lands as a prior lien.

The Receiver therefore requests that this Honourable Court grant the Receiver the ability to borrow an additional \$250,000.00, above the amount granted in the Appointment Order for a total of \$450,000.00.

11.0 FEES AND DISBURSEMENTS OF THE RECEIVER

Attached hereto as **Exhibit "K"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of the Receiver for the period from November 13, 2008 to February 15, 2009. As indicated in the Receiver's Statement of Receipts and Disbursements, to date, the amount of \$8,606.24 has been advanced on account of these fees and disbursements.

12.0 FEES AND DISBURSEMENTS OF LANG MICHENER LLP

Attached hereto as **Exhibit "L"** is the Affidavit of Mr. Leslie A. Wittlin, Partner of Lang Michener LLP, attesting to the fees and disbursements of Lang Michener LLP for the period from November 13, 2008 to January 30, 2009 .

13.0 FEES AND DISBURSEMENTS OF PWI

Attached hereto as **Exhibit "M"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of PWI for services provided at the request of the Receiver for the period from November 13, 2008 to January 31, 2009.

14.0 OTHER MATTERS

In accordance with Subsections 245(1) and 246(1) of the BIA, on December 12, 2008, the Receiver's statutory Report (the "**BIA Report**") was sent by ordinary mail to the Debtor, the Office of the Superintendent of Bankruptcy and all known creditors of the Debtor. Attached as **Exhibit "N"** to this First Report is a copy of the Affidavit of Mailing and the BIA Report.

15.0 CONCLUSION AND RECOMMENDATIONS

For the reasons set out in this First Report, the Receiver respectfully requests that this Honourable Court approve:

1. the Receiver's retention of PWI, to assist in the management and sale of the Project as further described in the PWI engagement letter described above;
 2. the actions and activities of the Receiver as described in this First Report;
 3. the professional fees and disbursements of the Receiver from November 12, 2008 to February 15, 2009 as contained in this First Report;
 4. the professional fees and disbursements of the Receiver's legal counsel, Lang Michener LLP, from November 12, 2008 to January 30, 2009 as contained in this First Report;
 5. the professional fees and disbursements of PWI as contained in this First Report;
 6. the Receiver's request for an Order sealing Volume 2 of this First Report;
 7. the Sales Process as defined and described in this First Report;
 8. the Receiver's request for an Order granting an increase in its Borrowing Charge;
- and

9. such other advice and direction from this Honourable Court that the Receiver or its legal counsel deems appropriate in the circumstances.

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All of which is respectfully submitted at Toronto, Ontario this 20th day of February, 2009.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court-Appointed Interim Receiver
and Receiver and Manager of 1539304 Ontario Inc.
and not in its personal Capacity



Per: _____

President

Court File No. CV-08-7714-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM
JUSTICE PEPALL

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)
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WEDNESDAY, THE 12th DAY
OF NOVEMBER, 2008

B E T W E E N:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s. 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43
and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*

ORDER

THIS APPLICATION made by ICICI Bank Canada (the "**Bank**") for an Order pursuant to section 47.1 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 Ira Smith Trustee & Receiver Inc. ("**Smith**") as interim receiver and receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 1539304 Ontario Inc. (the "**Company**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Lionel Meunier, sworn September 4, 2008 and the Exhibits thereto, and on hearing the submissions of counsel for the Bank, no other parties appearing although duly served as appears from the affidavit of service of Fiorella Sasso sworn September 10, 2008, and on reading the consent of Smith to act as the Receiver, *1539304*
the City of Hamilton + from custans
me.
87P

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 47.1 of the BIA and section 101 of the CJA, Smith is hereby appointed Receiver, without security, of all of the Company's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**").

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 and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, protect and maintain control of 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 Company, 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 Company
- (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 powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Company or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting such monies, including, without limitation, to enforce any security held by the Company;
- (g) to settle, extend or compromise any indebtedness owing to the Company;
- (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 Company, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Company;
- (j) 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 Company, 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;

- (k) 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;
- (l) 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 \$200,000; 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* and subsection 31(1) of the Ontario *Mortgages Act* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

- (m) 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;
- (n) 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;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) 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 Company;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Company, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Company;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Company may have; and

(s) to take any steps reasonably incidental to the exercise of these powers; 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 Company, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that: (i) the Company, (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.

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 Company, 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

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 except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE COMPANY OR THE PROPERTY

8. **THIS COURT ORDERS** that that no Proceeding against or in respect of the Company 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 Company 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 Company, 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 nothing in this paragraph shall (i) empower the Receiver or the Company to carry on any business which the Company is not lawfully entitled to carry on, (ii) exempt the Receiver or the Company 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 for the purpose of perfecting such lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS AND DECLARES** 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 Company, 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 the Company 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 Company 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 Company'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 Company 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 Interi 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 Company shall be considered the employees of the Company until such time as the Receiver, on the Company's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay,

or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

14. **THIS COURT ORDERS** that that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of current employees only 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**") and for the sole purpose of assisting or facilitating the prospective purchaser's or bidder's negotiations or discussions with said employees in respect of future employment with the prospective purchaser or bidder. 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 Company, 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. 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 any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and 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 (the "**Receiver's Charge**").
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 normal 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 ~~\$800,000~~ ^{-\$200,000-} (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. SVP

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.

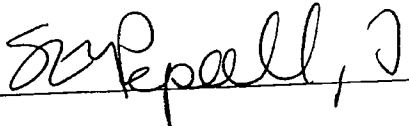
22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
23. **THIS COURT ORDERS** that the monies from time to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

GENERAL

24. **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.
25. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Company.
26. **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.
27. **THIS COURT ORDERS** that 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.

28. **THIS COURT ORDERS** that the applicant shall have its costs of this application, 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 Company's estate with such priority and at such time as this Court may determine.
29. **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, provided that nothing in this section operates to extend any applicable appeal period.



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Schedule "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$ ●

1. THIS IS TO CERTIFY that Ira Smith Trustee & Receiver Inc., the interim receiver and the receiver and manager (the "**Receiver**") of the assets, undertakings and properties of 1539304 Ontario Inc. (the "**Company**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the 12th day of November, 2008 (the "**Order**") made in an action having Court file number CV-08-7714-00CL, 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 (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, 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 defined in the Order) 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 _____, 2008.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Receiver of the
Property (as defined in the Order), and not
in its personal capacity

Per: _____
Name:
Title:

B E T W E E N:

ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

ORDER

GOWLING LAFLEUR HENDERSON LLP

Barristers & Solicitors
1600 – 1 First Canadian Place
100 King Street West
Toronto, Ontario
M5X 1G5

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

Tel: (416) 862-4400
Fax: (416) 862-7661

Solicitors for the Applicant

Ira Smith

From: Michaela Waller [michaela.waller@scfg.ca]
Sent: December 5, 2008 10:30 AM
To: Ira Smith
Cc: dave.barr@scfg.ca
Subject: RE: 1539304 Ontario Inc - Trinity Landing # 501203410
Attachments: AR-M257_20081205_102703.tif

Importance: High

Good Morning Ira,

As per your discussion yesterday with Dave Barr, please find attached an invoice for the additional premium charged for the above noted policy in the amount of \$7536.24 which includes the 8% provincial tax. This payment can be made payable to ING Insurance Canada and can be sent to them directly at the below address:

ING Insurance Canada
 700 University Avenue, Suite 1500
 Toronto, ON , M5G 0A1

ING was very happy to hear that you are taking all measures necessary to ensure the site is safe and secure. We have advised them that the electrician is going in to ensure everything is up to code and that contractors will be boarding up the windows and securing the location, along with security patrolling the site three times a night.

If you need anything further or have any questions please feel free to give either Dave Barr or myself a call. As Dave mentioned on the phone he will be out to the site early next week to meet with the general contractor.

Thanks Ira, a copy of the policy endorsement should arrive next week and I will forward it to your attention right away. Have a great weekend.

Michaela

Michaela Waller
 Account Manager
michaela.waller@scfg.ca
 Tel. 905-683-6129 x247
 Fax 905-683-1117 Sinclair-Cockburn Financial Group
 1029 Brock Road South
 Pickering, ON L1W 3T7
 Canada
www.scfg.ca

-----Original Message-----

From: documents@sinclaircockburn.com [<mailto:documents@sinclaircockburn.com>]

Sent: Friday, December 05, 2008 10:27 AM
To: michaela.waller@phoenixeastern.com
Subject: Scanned image from SCFG Pickering

DEVICE NAME: SCFG Pickering
DEVICE MODEL: SHARP AR-M257
LOCATION: Back of office

FILE FORMAT: TIFF G4
RESOLUTION: 300dpi

Attached file is scanned image in TIFF format.



7100 Woodbine Avenue
Suite 208
Markham, Ontario L3R 5J2
tel: (905) 477-4507
fax: (905) 477-4509

November 17, 2008

e-mail: pwi@pelicanwoodcliff.com

Mr. Ira Smith
Ira Smith Trustee & Receiver Inc.
167 Applewood Crescent
Suite 6
Concord, Ontario L4K 4K7

Via E-mail: ira@irasmithinc.com

Dear Mr. Smith,

Re: 80 King William Street
Property Management and Project Management Services

Further to our meeting at the above Property on November 13, 2008, we are pleased to provide you with our proposal for Property Management and Project Management Services in connection with the Trinity Landing condominium project located at 80 King William Street, Hamilton, ON (the "Property").

The purpose of this letter is to record the terms and provisions of the engagement of Pelican Woodcliff Inc. ("PWI") by Ira Smith Trustee & Receiver Inc. ("ISI" or the "Receiver"), solely in its capacity as Interim Receiver and Receiver and Manager. PWI acknowledges that its retainer by the Receiver is in accordance with the terms of the Order of the Ontario Superior Court of Justice (Commercial List) dated November 12, 2008 (the "Appointment Order") and specifically, paragraph 3(d) of the Appointment Order.

We previously became familiar with the Property while preparing a Peer Review Report for ICICI Bank which dealt with the status of the project at that time and provided an estimate of cost to complete together with recommendation. This report is dated June 25, 2008 and based on our preliminary walk through the building on November 13, there has been no material progress in construction since the time of the report.

Our proposal encompasses the following services:

1. Property Management
2. Project Management
3. Disposition Analysis

SCOPE OF WORK

I. Property Management

Under the role of Property Manager, we will be responsible for the following:

- a) Security of the Property including lock replacement, overseeing patrol company, securing points of entry, installing monitoring devices (if deemed necessary);

- b) Building utilities: ensuring that the building is properly heated and has continuous hydro service;
- c) Insurance coverage: with the receiver, ensuring proper coverage;
- d) Building inspections: Minimum of one visit per week by PWI personnel to ensure that the building remains secure and operational.

II. Project Management

1. Emergency Work

We propose that the following activities take place immediately to reduce the likelihood of further deterioration of the building (emergency work).

- a) Meet with the General Contractor to receive his input on the scope of emergency work;
- b) Meet with Consulting Team (Architect and Engineers, as required);
- c) Assemble all available documentation (from Developer, Consultants, General Contractor);
- d) Prepare a scope of emergency work;
- e) Prepare a cost estimate to complete the emergency items and provide it together with recommendations to the Receiver.
- f) Review bid(s) by contractor(s) and co-ordinate work with chosen contractor.

2. Marketing & Sales Review

We propose to conduct:

- a) A review of all the Agreements of Purchase and Sale and prepare a summary of each agreement. This summary will assist the Receiver in deciding which course of action is most appropriate once the Property is stabilized;
- b) A review of the condominium documents;
- c) Meeting with the Sales Agent (Marvin Caplan, Coldwell Banker)

3. Discussions with the City of Hamilton

The City of Hamilton has vested interest in this Property both through its program to revitalize the downtown area and as a Lender to the project. A

meeting with the appropriate people (Councilor, Area Planner, etc.) will help us understand the City's position in regard to the project.

4. Disposition Analysis and Implementation

Based on the information gathered through the above activities, we will provide the Receiver with an analysis of the disposition options available and will provide our recommendations. Once a decision is made as to the optimal mode of disposition, we will manage the process in conjunction with the Receiver.

5. Other

Depending on the requirements of the Receiver, we are able to provide additional project management services based on our experience in condominium development projects.

FEES

Our fees will be based on the following hourly rates:

Principals	\$250.00 per hour
Associates/Senior Quantity Surveyors/Property Manager	\$170.00 per hour
Quantity Surveyors/Junior Management	\$130.00 per hour
Analyst	\$110.00 per hour

The following are preliminary estimates of the range of potential fees.

I.	Property Management: Ia, Ib and Ic	\$15,000 - \$20,000
	Property Management: Id	\$650/week (based on one visit per week)
II.	Project Management: II. 1a, II 1b, II 1c, II 1d, II 1f	\$25,000 - \$30,000
	Project Management: II 1e	\$3,000 - \$5,000
	Marketing & Sales Review: II 2	\$5,000 - \$7,000
	Discussions with City of Hamilton: II 3	Hourly
	Disposition Analysis: II 4	Hourly
	Other: II 5	Hourly

Note: The above fee ranges are based on a preliminary understanding of the scope of work. We will inform you if the actual fees exceed the upper end of the range by more than 20%.

EXPENSES

The foregoing fee ranges exclude GST and out of pocket expenses which will be billed in addition

Our invoices will be submitted monthly and are payable within 30 days.

OTHER

PWI is being retained by ISI, solely in its capacity as Court-appointed Interim Receiver and Receiver and Manager of 1539304 Ontario Inc. in connection with the Property ("ISI" or the "Receiver"). The purpose of PWI's retainer is to assist ISI as described above.

This agreement and the terms of PWI's retainer, is subject to the Receiver obtaining the approval of the Ontario Superior Court of Justice (Commercial List) (the "Court") to such Agreement, and is subject to any subsequent Orders of the Court made which may alter or terminate this Agreement.

This Agreement is binding with effect from the date the Court approves the appointment of PWI. It shall remain in effect thereafter, subject to any further Order of the Court affecting this Agreement. The Scope may be altered by the agreement of both parties, subject to Court approval.

PWI will perform the services set out herein as an independent contractor. Nothing contained herein shall be deemed to create any association, partnership, joint venture or to provide either party with the right, power or authority, whether expressed or implied, to create any such duty or obligation on behalf of the other party.

PWI shall comply with all applicable federal, provincial and municipal laws, rules and regulations arising out of or connected with the performance of the services under this Agreement.

PWI acknowledges that it is being retained by ISI, solely in its capacity as the Interim Receiver and Receiver and Manager under the Appointment Order. Any protection granted to ISI by the Appointment Order, or any subsequent Order of the Court, shall also be granted to PWI in performing its duties under this Agreement.

PWI agrees that it must bring to the attention of the Receiver any event which transpires that may lead to any party having a claim against the Property, PWI or the Receiver.

PWI will cooperate and assist the Receiver in the defence of any such claim at the cost of the Receiver.

NOTICES

All notices, requests, demands or other communications (collectively, "Notices") by the terms hereof required or permitted to be given by one party to any other party, or to any

other person shall be given in writing by personal delivery or by registered mail, postage prepaid, facsimile transmission or by electronic mail by such other party as follows:

(a) To ISI: #6-167 Applewood Crescent, Concord, ON L4K 4K7
Attention: Ira Smith

Fax: 905.738.9848
Email: ira@irasmithinc.com

(b) To PWI: #208-7100 Woodbine Avenue, Markham, ON L3R 5J2
Attention: Ronald Mandowsky

Fax: 905.477.4509
Email: ronnie@pelicanwoodcliff.com

Or at such other address as may be given by such person to the other parties hereto in writing from time to time.

ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties with respect to all the matters herein and its execution has not been induced by or do any of the parties rely upon or regard as material, any representations or writings whatever not incorporated herein and made a part hereof and may not be amended or modified in any respect except by written instrument signed by the parties hereto. Any schedules referred to herein are incorporated herein by reference and form part of the Agreement.

CONFIDENTIALITY

PWI recognizes the confidential nature of this assignment. PWI undertakes that its retainer, and all information obtained by PWI as a result of this retainer, will not be disclosed to third parties unless PWI has first obtained the prior consent of the Receiver to release specific information.

GOVERNING LAW

This Agreement shall be governed by and construed in accordance to the law of the Province of Ontario and the federal laws of Canada applicable therein and each of the parties hereto agrees irrevocably to conform to the exclusive jurisdiction of the Court.

TRANSMISSION BY FACSIMILE AND EMAIL

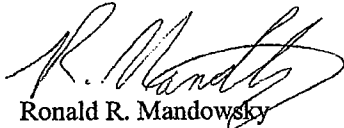
The parties hereto agree that this Agreement, and any other notices to be given under this Agreement, may be transmitted by Facsimile or Email or such similar device and that the reproduction of signatures by facsimile or as contained in Email or such similar device will be treated as binding as if originals and each party hereto undertakes to provide each and every other party hereto with a copy of the Agreement bearing original signatures forthwith upon demand.

We look forward to working with you on this project.

If you are in agreement with this proposal, please sign below and return to this office.

Yours truly,

PELICAN WOODCLIFF INC.

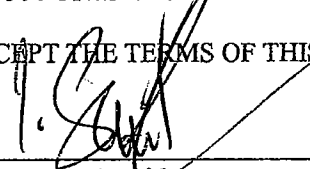

Ronald R. Mandowsky
Principal

RRM/am

**IRA SMITH TRUSTEE & RECEIVER INC.,
SOLELY IN ITS CAPACITY AS COURT APPOINTED
INTERIM RECEIVER AND RECEIVER AND MANAGER
OF 1539304 ONTARIO INC.**

WE ACCEPT THE TERMS OF THIS PROPOSAL

Per: _____


President

Ronald Mandowsky, P. Eng., M.B.A.**Professional Qualifications:**

Member of the Association of Professional Engineers of Ontario (Professional Engineer)
Member of the Real Estate Council of Ontario (Registered Real Estate Broker), Member of the Association of Land Economists (Professional Land Economist)

Project Experience:

Ronald Mandowsky is one of the founding members of Pelican Woodcliff Inc. He has over 23 years of experience in the development and construction industries as consulting engineer, project manager, cost consultant, receiver, property manager and financial advisor.

Project experience from 1998 to the present:

As Principal of Pelican Woodcliff Inc., Mr. Mandowsky oversees projects in the areas of Project Monitoring, Project Management, Default Remedy, Property Management and Physical Due Diligence on real estate properties.

Project experience from 1984 to 1998:

As Principal of Pelican Management, Mr. Mandowsky provided management services both to financial institutions and to developers. He has successfully co-ordinated a number of construction, renovation and development projects and directed Pelican's role as cost consultant. As receiver and manager of numerous projects and properties, Mr. Mandowsky has successfully operated under adverse circumstances in stabilizing properties under default and implementing programs to mitigate damages to financial institutions.

As Vice President of Project Management, Mr. Mandowsky managed and co-ordinated the portfolio of urban development and construction projects of The Goldman Group. In this capacity he directed teams of architects, engineers and consultants throughout all phases of planning, design, marketing, construction and occupancy. Mr. Mandowsky also negotiated and communicated with municipal and provincial personnel and was responsible for project financial reporting. These projects include but are not limited to: The Dunhill Club; St. George Mews; Jockey Club and Leaside Park Condominium Projects, Castle Hill Townhomes, Bathurst Square Residences, Monogram Place Office Building and two Journey's End Hotels.

Project experience from 1980 to 1984:

As a Civil Engineer, Mr. Mandowsky worked in the capacity of Consulting Engineer for EBA Engineering - a large geotechnical and building sciences consulting firm in Calgary, Alberta. His responsibilities included site investigations, testing, design and report writing. Several projects involved detailed analysis of complex alternatives and recommendations to clients.

Natan Ary, M.Eng., MBA

Professional Qualifications:

Master - Business Administration, University of Toronto

Master - Construction Management, University of Toronto

B.Sc. Civil Engineering, Universidad de Costa Rica

Project Experience:

Natan Ary, Associate at Pelican Woodcliff Inc., joined the firm in 2003. He has over 20 years of real estate consulting experience in the areas of default remedy, project management, project monitoring, financial due diligence, strategic investment advice and default remedy.

Natan has provided default remedy services and conducted feasibility analyses, market research studies, financial proformas, and economic and fiscal impact analyses of real estate development projects as well as portfolio valuation analyses, proposal call strategy and management, and financial feasibility studies of infrastructure projects. He has worked for both private and public clients located in Canada, the USA, Argentina, Chile and Central America. His clients included Santa Fe Railway Lands in the USA, Molson Breweries, Humber Community College, Public Works Canada and the Ontario Realty Corporation. Some of the projects he worked on include: Highway 407, the Sheppard Subway Line, CN Lands, Liberty Village Land Assemblies in Toronto and the Montreal Forum.

Project Experience from 2003 to the present:

Recent experience includes default remedy services in the Greater Toronto Area, project management of a high rise residential condominium building in Orillia, Ontario; project monitor for numerous commercial, residential and health care projects in Ontario; financial due diligence for income producing properties across Canada and financing / investors packages for use by real estate developers seeking financing from financial institutions and syndicated investors.

Project Experience from 1997 to 2003:

Sales and Marketing Manager of a wholesale importing company, which distributes consumer goods to supermarkets and department stores.

Project Experience from 1987 – 1997:

As an associate consultant at a large multi-disciplinary consulting firm in Toronto involved in transportation design, architectural design, and real estate, Natan's duties included major financial feasibility studies; market research and economic and fiscal impact analysis of development and infrastructure projects as well as portfolio valuation analysis.

Project Experience from 1985 - 1987

As a Senior Consultant of an international accounting firm, Natan conducted financial feasibility studies and proposal call evaluations for real estate and hospitality projects.

<p>2. Marketing period</p>	<ul style="list-style-type: none"> • Prepare and publish advertisement of opportunity in national and local newspaper(s). • Publish business opportunity, and Court-approved Terms and Conditions of Sale on the Receiver’s website, www.irasmithinc.com • Make initial contact with potential purchasers and distribute Teaser as requested. • Distribute and execute Court-approved Confidentiality Agreement and distribute CIM. • Receive and evaluate non-binding Letter of Intent (“LOI”). • Included in the documents for review in the web based data room shall be a form of Agreement of Purchase and Sale for the use of Potential Purchasers in submitting their Final Offers (as defined in the Terms and Conditions of Sale). 	<ul style="list-style-type: none"> • February 27 to March 27, 2009. • February 27 to April 9, 2009
<p>3. Evaluation of LOI’s</p>	<ul style="list-style-type: none"> • Screen and select a limited number of potential buyers that have passed the screening stage to examine the web based data room and tour facilities 	<ul style="list-style-type: none"> • April 9 to April 13, 2009

