

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE C.CAMPBELL )

TUESDAY, SEPTEMBER 11, 2012

B E T W E E N:

ICICI BANK CANADA

Applicant

and



2058756 ONTARIO LIMITED

Respondent

**ORDER**

**THIS MOTION**, made by the Court Appointed Receiver, A. John Page & Associates Inc., for an order (a) approving the listing of the real property of the respondent company, at 100 Central Avenue, Brockville, Ontario for sale and for lease as outlined in the First Report of the Receiver dated August 29, 2012 (the "First Report"); (b) approving the activities of the Receiver to date including arrangements regarding property management as detailed in the First Report of the Receiver; (c) approving the fees and expenses of the Receiver and its counsel; and, such further and other relief as to this Honourable Court may seem just, was heard this day at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

**ON READING** the Notice of Motion, the First Report of the Receiver, and the affidavits of A. John Page, sworn August 29, 2012, and Jeffrey Rosekat, sworn August 29, 2012 and on hearing the submissions of the lawyer(s) present on the motion and being advised of the listing

agreement attached as Schedule 1 to this order, all parties per the service list on the notice of motion having been served as appears from the affidavit of K. Engelhardt sworn August 30, 2012,

1. THIS COURT ORDERS that the capitalised terms herein which are not otherwise defined shall have the meaning ascribed to them in the First Report.
2. THIS COURT ORDERS that the activities of the Receiver to date as set out in the First Report, including the entering into a property management agreement with Samak Management & Construction Inc. are hereby approved.
3. THIS COURT ORDERS that the receipts and disbursements of the Receiver as set forth in the Statement of Receipts and Disbursements contained in his First Report be and the same are hereby approved.
4. THIS COURT ORDERS that the Receiver is authorized to market the lands and premises known as 100 Central Avenue West (in this paragraph, "the Property") including advertising and soliciting offers in respect of the sale 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 subject to the further approval of any sale by this Court and, in connection therewith, the selection and engagement by the Receiver of CBRE Limited as listing broker for the sale of the Property is hereby approved, and the Receiver is authorised to enter into the listing agreement dated September 8, 2012, attached as Schedule 1, with that broker.

5. THIS COURT ORDERS that the Receiver is authorized to enter into such further agreement for the leasing of the Property with CBRE Limited on terms that the Receiver deems appropriate.
6. THIS COURT ORDERS that the fees of the Receiver to the period from April 16, 2012 and ending July 31, 2012 in the amount of \$94,003.16 plus applicable GST/HST as set forth in the affidavit of A. John Page and the exhibits attached thereto and filed with this Notice of Motion, are hereby approved and allowed.
7. THIS COURT ORDERS that the fees and disbursements of the Receiver's counsel commencing May 29, 2012 and ending on July 31, 2012 in the amount of \$19,659.75, plus applicable GST/HST, as set forth in the fee affidavit of J. Rosekat and the exhibits attached thereto and filed with this Notice of Motion, are hereby approved and allowed.

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

SEP 11 2012

RECEIVED  


  
(Signature of Judge)

## Schedule 1 - Listing Agreement

**THIS SALES LISTING AGREEMENT**, dated September 8, 2012, between

**A. JOHN PAGE & ASSOCIATES INC.**, as Receiver of certain of the assets of 2058756 Ontario Limited and not in its personal capacity

(the "Receiver")

and

**CBRE LIMITED**, a corporation

(the "Broker")

1. The Broker and the Receiver acknowledge that this Agreement is made in the context of the following facts:
  - (i) By Order of Justice Brown of the Ontario Superior Court of Justice (the "Court") dated June 21, 2012 ("the Initial Order"), issued in the matter of ICICI Bank Canada v. 2058756 Ontario Limited Court File # CV-12-9740-00-CL (the "Proceeding"), A. John Page & Associates Inc. was appointed Receiver of certain of the assets of 2058756 Ontario Limited ("205"). The major asset of 205 covered by the appointment is the land and buildings located at 100 Central Avenue West, Brockville ("the Property")
  - (ii) Pursuant to the Initial Order the Receiver was and is empowered and authorized to, among other things, with further approval of the Court market any and all of the Property.
  - (iii) The Receiver is scheduled to make a motion before the Court for an order approving the listing of the Property for sale on September 11, 2012.
  - (iv) The Receiver is an independent Court officer;
  - (v) Following its appointment, the Receiver asked the Broker (among others) for its views on the options available to the Receiver to carry out its mandate. The Receiver also asked the Broker to indicate what role the Broker felt it could play in any of those options and how it would charge for such services; ("the Initial Request") and
  - (vi) The Broker responded to the request through a series of emails in which it recommended listing the Property for sale "as is" and, at the same time attempting to lease up the vacant and soon to be vacant space at the Property. The Broker provided details of its proposed remuneration for providing services to assist the Receiver with these two mandates ("the Broker Response").

2. Subject to approval by the Court, the Receiver hereby engages the Broker to market and sell the Property in accordance with the terms and conditions set out in this Agreement.
3. The engagement of the Broker to lease some or all of the vacant and soon to be vacant space at the Property is to be the subject of a separate agreement.
4. The term of this Agreement shall be for a period commencing on the date of the Order approving this Agreement and ending at midnight on the day that is 182 days after that date (the "Term"). The Receiver may terminate this Agreement for any reason on providing the Broker with 10 days written notice of termination.
5. In the event of a termination of the Agreement by the Receiver, the Broker shall be entitled to recover its out-of-pocket costs incurred in carrying out its mandate under this Agreement, up to a maximum of \$20,000 plus HST, unless it is otherwise entitled to a commission in accordance with the terms of this Agreement. The Broker and the Receiver agree that this calculation represents a genuine and accurate pre-estimation of the damages arising from any such termination and the Broker agrees that its claim is strictly limited to this amount and that it is only entitled to recover any such amount from any net proceeds of sale actually received by the Receiver.
6. To the extent that they do not conflict with this Agreement,
  - (i) any terms and conditions set out in the Initial Request; and
  - (ii) the representations and warranties set out in the Broker's Responseare hereby incorporated by reference into this Agreement.
7. The Broker agrees and acknowledges that the Receiver is in control and management of the marketing and sales process and may receive expressions of interest and offers and conduct negotiations directly with prospective purchasers without the involvement of the Broker.
8. The Broker shall act as advisor to the Receiver in respect of this engagement and shall perform such financial and real estate advisory services as are required and requested by the Receiver, including the following:
  - (i) Perform underwriting, financial analysis, pre-marketing due diligence and valuation work on the Property;
  - (ii) Prepare along with the Receiver a marketing plan
  - (iii) Assemble and package due diligence materials prior to marketing launch;
  - (iv) Prepare marketing materials for use in promoting the Property;

- (v) Advise the Receiver of the various steps in achieving the sale of the Property;
- (vi) Compile a list of potential investors that may be interested in acquiring the Property;
- (vii) Execute the marketing plan for the Property;
- (viii) Day-to-day management of the disposition program, including marketing, co-ordination of due diligence, assisting the Receiver and third parties, facilitating tours and information requests, and other duties as required and requested;
- (ix) Providing the Receiver with regular and as required reporting on activities and the progress of the execution of the marketing plan
- (x) Receiving expressions of interest for the Property, if required;
- (xi) Advising the Receiver with respect to such interest and offers;
- (xii) Assisting the Receiver in negotiations, structuring and documentation of the transaction with the purchaser until closing; and
- (xiii) Provide such other advice or services as may be required in order to carry out responsibilities.

The Broker shall have no authority to bind the Receiver and the Receiver is not obliged to accept any offer.

9. Following the earlier of the termination of this Agreement or expiry of the Term, there shall be a holdover period of 60 days (the "**Holdover Period**"). Within five days of the commencement of the Holdover Period the Broker will deliver to the Receiver a list (the "**List**") of persons or entities to whom the Property has been submitted prior to the termination or expiration of this Agreement, which List shall be approved by the Receiver acting reasonably.

If during the Term or prior to the termination of this Agreement, if earlier, the Receiver enters into a binding contract of purchase and sale for part or all of the Property (the "**Sale Agreement**") and that the Sale Agreement has closed or closes within 90 days following the end of the Holdover Period, the Broker shall be entitled to a commission on the Sale Agreement in accordance with this Agreement to be paid from the proceeds of sale on closing.

During the Holdover Period, if the Receiver signs a binding Sale Agreement with any party on the List, and that Sale Agreement closes within 90 days following the end of the Holdover Period the Broker shall be entitled to a commission on the Sale Agreement in accordance with this Agreement to be paid from the proceeds of sale on closing.

The Broker shall be entitled to be paid its commission on closing from and only from the proceeds of any sale of the Property, or any part thereof, by the Receiver calculated at the rate of 3.75% of the gross sale price (not including HST and Land Transfer Tax) plus applicable taxes.

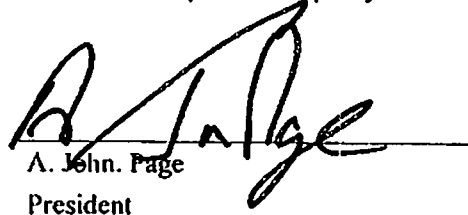
10. The Broker acknowledges that any sale of the Property by the Receiver will be on an "as-is, where-is" basis with no representations or warranties whatsoever. The Broker further acknowledges that any such sale will require the approval of the Court and will be effected through a vesting order.
  
11. For greater certainty, the Broker shall be solely responsible for, among other things, payment of the following expenses in connection with this Agreement and the transactions contemplated in this Agreement:
  - (i) preparation, hosting, and monitoring of any electronic due diligence room;
  - (ii) preparation, design, photography, printing, and other costs associated with marketing and advertising materials;
  - (iii) any lawyers retained by the Broker for advice to the Broker in connection with this Agreement and the transactions referred to in this Agreement;
  - (iv) advertising costs; and
  - (v) any commission for cooperating brokers
  
12. For greater certainty, the following costs shall not be the responsibility of the Broker:
  - (i) building condition reports;
  - (ii) environmental reports;
  - (iii) energy audits;
  - (iv) appraisals;
  
13. Any information
  - (a) about the Property which is designated by the Receiver as confidential; or
  - (b) the marketing and sale processsupplied to the Broker by the Receiver or otherwise (except information that was publicly available) shall be kept confidential by the Broker. The Broker shall not discuss the sales and marketing process with any of the parties to the Proceeding, nor release any information to them, without express direction and authorisation from the Receiver.
  
14. The Broker shall not be entitled to any payment from the Receiver on account of commission, costs, or damages other than from the proceeds of sale on closing of the Property or any part thereof, except damages caused to the Broker arising from any gross negligence or wilful misconduct of the Receiver.



15. Broker agrees to hold the Receiver harmless from all claims, disputes, litigation, judgments and to pay all costs and reasonable solicitors' fees (as invoiced by major Canadian law firms) incurred by the Receiver in connection therewith arising from any activities of the Broker in marketing the Property or otherwise performing its services which are in breach of this Agreement or are engaged in negligently by the Broker.
16. The Broker acknowledges and agrees that it will not represent a buyer in a dual agency relationship or otherwise without the consent of the Receiver.
17. This Agreement shall be governed by and shall be subject to the laws of the Province of Ontario.
18. The obligations of the Broker and the Receiver under this Agreement are subject to an order approving this Agreement having been issued by the Ontario Superior Court of Justice.

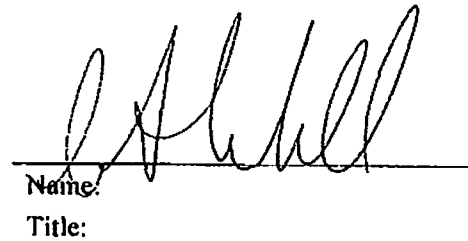
A. JOHN PAGE & ASSOCIATES INC., as  
Receiver and not in its personal capacity.

Per:

  
A. John Page  
President

CBRE LIMITED

Per:

  
Name:  
Title:

I have authority to bind the Corporation

ICICI Bank Canada  
Applicant

-and- 2058756 ONTARIO LIMITED  
Respondent

Court File No. CV-12-9740-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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Lawyers for the Court-Appointed Receiver,  
A. John Page & Associates Inc.

RCP-E 4C (July 1, 2007)