

TO: MAYOR J. LEHMAN AND MEMBERS OF COUNCIL

FROM: P. KRYSIAK, LEGAL COUNSEL

NOTED: I. PETERS, DIRECTOR OF LEGAL SERVICES
M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RE: COLLIER CENTRE

DATE: SEPTEMBER 11, 2017

The purpose of this Memorandum is to advise Members of City Council about the background and status of the development of the property located at 55 Mulcaster St. & 90 Collier Street ("Collier Centre").

On August 30, 2010, by Motion 10-G-322, Council authorized the City to sell the Collier Centre to Mady Collier Centre Ltd. ("Mady") for a sum of \$4 million. The purchase comprised of:

- i. A cash payment of \$500,000
- ii. An agreement by Mady to lease a floor of the office tower to the City for 15 years at a lease rent reduction valued at \$1.25 million ("Rent Reduction Commitment")
- iii. A commitment by Mady to build, operate and maintain 90 public parking spaces, valued at \$2.25 million ("Public Parking Commitment")

The agreement of purchase and sale additionally contained a condition that Mady enter into an offer to lease with a major grocery store providing for occupancy by June 30, 2014 and commit to the provisions of shuttle service.

The sale was completed on July 3, 2012. On that date, the City secured the Rent Reduction Commitment and Parking Public Commitment by registering Development Agreement L17-44 on title that outlined the terms of these commitments and by registering a vendor take back mortgage ("VTB mortgage") in the amount of \$3.5 million. The VTB mortgage was postponed to construction financing in accordance with the agreement of purchase and sale.

All commitments were to be fulfilled by June 30, 2014. The VTB mortgage obliged Mady to pay the City the principal amount of all debts and liabilities owed under the development agreement, up to a maximum of \$3.5 million, by June 30, 2014. The City and Mady also signed an Offer to Lease which reflected the Rent Reduction Commitment and was set to expire on June 30, 2014. Mady's failure to provide the City with occupancy by that date obliged Mady to pay the City a sum of \$1.25 million. Mady's failure to complete construction of the public parking by that date obliged Mady to pay the City a sum of 2.25 million.

The Collier Centre was subject to site plan control. On October 30, 2012, the City registered on title a site plan agreement and associated approved plans in the form of Development Agreement D11-1608.

On November 19, 2012, the City registered on title a subsequent development agreement that set out detailed terms of the public parking commitment including hours of operation, parking fees, location of parking spaces, operation and maintenance of fee payment devices, signage, and the parking garage maintenance schedule. This development agreement was amended on September 22, 2014 to reflect a revised parking allocation plan.



LEGAL SERVICES DEPARTMENT MEMORANDUM

Between July of 2012 and August of 2013, Mady registered four mortgages on title to the Collier Centre:

- i. Aviva Insurance Company of Canada in the amount of \$4 million (postponed to Laurentian Bank of Canada)
- ii. The City of Barrie in the amount of \$3.5 million (postponed to Derek Sorrenti / Olympia Trust Company and Laurentian Bank of Canada)
- iii. Derek Sorrenti / Olympia Trust Company in the amount of \$16.9 million (postponed to Laurentian Bank of Canada)
- iv. Laurentian Bank of Canada in the amount of \$52 million

As a result of the various postponements, the City's VTB mortgage was ranked last behind the other three mortgages.

In November of 2013, Mady requested an extension to fulfill all commitments and extend the balance due date under the VTB to November 30, 2014. By Council Motion 13-G-276, the City granted this extension. By November 30, 2014, none of the commitments had been fulfilled.

In late 2014, the construction of the Collier Centre was approximately two thirds complete. At that time, the construction was halted as Mady had no liquidity with which to satisfy its obligations to various stakeholders and required additional financing in order to complete construction. As of January 30, 2015, to the best of our knowledge there was approximately \$62 million of debt owing on the Collier Centre, including approximately \$30 million to Laurentian Bank, \$12 million in lien claims to construction trades registered against the Project, and approximately \$20 million owing to other creditors of Mady.

On January 30, 2015, Mady applied to the court for protection under the *Companies' Creditors Arrangement Act* ("CCAA"). The court granted the request and appointed Grant Thornton to monitor Mady's business and financial affairs ("Monitor"). The court protection resulted in a stay of all legal proceedings against Mady with respect to the Collier Centre. The stay was extended several times during the course of the CCAA. The CCAA consisted of a number of events. The significant events are set out below.

On April 8, 2015, the court ordered the Monitor to engage Colliers International to list the Collier Centre for sale.

On August 12, 2015, the court approved the sale of the Collier Centre to Fortress Collier Centre Ltd. ("Fortress").

On September 25, 2015, the sale to Fortress was terminated because Fortress was unable to secure the necessary financing. As a result, the Monitor began to re-engage other bidders to determine if they were interested in pursuing the purchase.

On October 26, 2015, Fortress entered into a new agreement of purchase and sale of the Collier Centre.

On November 12, 2015, the court approved the sale to Fortress. The title to the Collier Center vested in Fortress free and clear of all mortgages and liens. As a result, all four registered mortgages, including the City's VTB mortgage, along with all the construction liens, were expunged and discharged from title. The only encumbrances that remained on title were the City's three aforementioned development agreements and an easement.

On January 14, 2016, the court ordered a distribution of the sale proceeds; \$25 million was paid to Laurentian Bank, approximately \$3.8 million was paid to the settled construction lien claimants, and approximately \$400,000 were to be held by the Monitor for the unsettled construction lien claimants.

On June 16, 2016, the court ordered a distribution of the remaining sale proceeds in the sum of approximately \$600,000 and terminated the CCAA proceedings.

At this time, all three City developments agreements, with the Rent Reduction Commitment and Parking Public Commitment set out within, remain registered on title.