

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ICICI BANK CANADA

Applicant

-and-

BAYSIDE MALL LIMITED

Respondent

**SUPPLEMENT TO THE FIRST REPORT OF THE COURT APPOINTED
RECEIVER
OF BAYSIDE MALL LIMITED**

Dated February 12, 2013

Purpose of this Report

The Purpose of this Supplement to the First Report of A. John Page & Associates Inc. in its capacity as Court Appointed Receiver of Bayside Mall Limited dated January 28, 2013 (“**the First Report**”) is to provide the court with an update of certain information provided in the First Report relating to:

- The collection of rents for December 2012 by SAMAK and
- The receipts and disbursement of the Receiver including the fees of the Receiver and its counsel

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

December 2012 Rent Cheques

SAMAK collected approximately \$154,000 of the December 2012 tenant rent payments

(“the December Rents”) prior to our appointment as Receiver on December 5, 2012. On November 20, 2012 the Honourable Mr. Justice Newbould made an endorsement confirming an undertaking made by SAMAK’s counsel, Mr. Apps, that his client would hold the December rent and disburse it only upon the direction of A. John Page & Associates Inc. No such directions were given by us and since that time \$120,000 has been paid from the December Rents to SAMAK and \$21,926.64 has been paid to Wildeboer Dellelce, Mr. App’s law firm. We attach as *Exhibit “A”* a memorandum we prepared dated February 6, 2013 providing more information on the collection and usage of the December Rents.

The Receiver has made demand on SAMAK for the December Rents but has not received them. Mr. Apps indicated by email dated December 5, 2012 that SAMAK “has no intention of turning over the cash left in the Bayside Account...” We attach as *Exhibit “B”* a copy of the Email of Mr. Apps.

We had understood that Mr. Apps would be filing material responding to the December Rent issue. In that regard, the scheduling endorsement of the Honourable Mr. Justice Campbell dated February 6, 2013 (*Exhibit “C”*) provided that SAMAK would file its materials by Monday February 11, 2013. Mr. Apps confirmed this in an email to our counsel, Mr. Whiteley, dated February 6, 2013. No materials have been filed.

As further set down in the Notice of Motion and draft order that is being contemporaneously prepared and served, the Receiver is asking the court to order SAMAK to turn over the December Rents to the Receiver.

SAMAK’s Management of Bayside Mall in December 2012

As far as we can determine SAMAK’s management of Bayside Mall was pursuant to an agreement dated July 2009 (“the SAMAK Agreement”). We have attached a copy of the SAMAK Agreement as *Exhibit “D”*. SAMAK were informed prior to our appointment that

we did not intend to adopt any contract they might have with respect to the management of the Bayside Mall. We confirmed this in writing by letter dated December 5, 2012 a copy of which is attached to *Exhibit "A"* and it was further confirmed in the Transition Agreement (a copy of which is attached as Exhibit "C" to the First Report). According to the SAMAK Agreement SAMAK was entitled to a management fee of \$95,000 per annum ie \$7,916.67 per month. This amount is consistent with the amount posted in the Quickbooks accounting records of Bayside as the management fee due to SAMAK for November 2012. (While the SAMAK Agreement provides for a bonus fee if net operating income exceeds a threshold we are not aware of such a fee being due, perhaps because the net operating income is below the threshold.)

All pre receivership pay arrears of SAMAK personnel who worked at the Bayside Mall were addressed by Larlyn in accordance with the Transition Agreement.

The pro rata entitlement of SAMAK to a management fee for the period from December 1 to and including December 5, 2012 is \$1,276.88 plus HST.

The Receiver's Statement of Receipts and Disbursements

Attached as *Exhibit "E"* is a copy of the Receiver's Interim Statement of Receipts and Disbursement from December 5, 2012 to February 12, 2013. We are asking the court to approve this statement.

The fees of the Receiver for January 2013 are included as a disbursement in the Receiver's Interim Statement of Receipts and Disbursements. The Receiver's fees totalling \$30,129.40 plus HST are more fully set out in the invoice attached to the affidavit of A. John Page that is being filed separately with the court in support of the application seeking their approval.

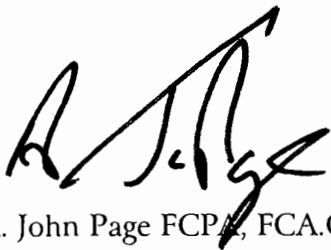
The fees and expenses of Mr. Whiteley for January 2013 totalling \$11,400 plus HST are also included as a disbursement in the Receiver's Interim Statement of Receipts and

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Supplement to the First Report to the Court
February 12, 2013

Disbursements. They are more fully set out in the affidavit that is also being filed with the court in support of the application seeking their approval.

All of which is respectfully submitted this 12th day of February, 2013

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

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

A. John Page FCPA, FCA.CIRP
President

**Exhibits to the Supplement to the First Report of A. John Page & Associates
Inc.
as Court Appointed Receiver of Bayside Mall Limited
dated February 12, 2013**

Memorandum dated February 6, 2013 re December Rent Cheques	A
SAMAK Agreement	B
Email from A. Apps dated December 5, 2012	C
Endorsement of the Honourable Mr. Justice Campbell dated February 6, 2013	D
Statement of Receipts and Disbursements	E

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Exhibit "A"

**Supplement to the First Report
of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated February 12, 2013**

**Memorandum dated February 6, 2013
re December Rent Cheques**

Memorandum

To: Bayside/Sarnia File
From: A. John Page
Date: February 6, 2013
Subject: December Rent Cheques

Purpose of Memorandum

To document the Receiver's findings regarding the collection and usage of rent payments for Bayside Mall in Sarnia for December 2012

Background

Through November 2012 ICICI Bank Canada through its counsel, Heath Whiteley, were taking steps to pursue an application to have Bayside Mall Limited placed into receivership and A. John Page & Associates Inc. appointed as Receiver.

Bayside Mall Limited ("Bayside"), its property manager, SAMAK Management & Construction Inc. ("SAMAK") (a related party), and its principal, Malik Khalid, were, through their counsel Alfred Apps, "hesitant" to consent to the proposed receivership and a number of scheduling and relating preparatory hearings took place in or about November 2012 with a view to enabling a contested appointment hearing to proceed, if necessary. We were not at any of these hearings.

During this period we were acting in a limited monitoring role pursuant to an engagement with ICICI Bank Canada consented to by, among others, Bayside and Mr. Khalid.

We have been informed by Mr. Whiteley that, at a hearing on November 20, 2012 before the Honourable Mr. Justice Newbould, Justice Newbould made an endorsement ("the Newbould Endorsement") confirming an undertaking made by Mr. Apps that his client would hold December rent and disburse only on the direction of the Monitor (ie us). We have attached as Exhibit "A" a copy of the Newbould Endorsement together with an unofficial transcript.

At no time since November 20, 2012 have we "directed" that payments be made from the December rents relating to Bayside Mall.

Activity through the Bayside Mall Bank from November 20 to December 5, 2012

As far as we understand, all banking related to Bayside and the Bayside Mall in the month prior to December 5, 2012 (the date of our appointment) took place through account 3-1-2-20311-184-109271 at Habib Canadian Bank in the name of SAMAK Management & Construction (Sarnia) ("the Habib Sarnia Account"). We attach as Exhibit "B" copies of the bank statements for the Habib Sarnia Account covering the period from November 1 to December 5, 2012.

From November 20 to December 5, 2012 the total sum of \$153,888.73 was deposited to the account. It is our current belief that this relates to December 2012 rent. In an email to Mr. Whiteley dated January 23, 2013 Mr. Apps indicated that he understood that the total December Bayside Mall rent collected by SAMAK from November 26 to December 4, 2012 to be \$155,850.93. We do not know why this number differs from the amounts we identified on the Habib Sarnia Account bank statement.

According to the bank statement, the balance in the Habib Sarnia Account on November 20, 2012 was \$34,220.74, by November 27, 2012 (the first day that December rents were deposited) the balance was \$4,098.11 and the balance on December 5, 2012 was \$6,103.97.

On November 20, 2012 a payment of \$3,000 was made to SAMAK. On November 21, 2012 a payment of \$14,000 was made to SAMAK. Since no December rent monies had been deposited into the Habib Sarnia Account these payments were not in contravention of the undertaking of Mr. Apps as evidenced by the Newbould endorsement.

Total funds disbursed from the Habib Sarnia Account from November 27 to December 5, 2012 was \$151,882.87.

We have analyzed the payments as follows:

December 4, 2012	\$120,000.00	Cheque to SAMAK; Recorded in Quickbooks accounting records as payment of accounts payable
December 4, 2012	21,926.64	Wire transfer to Wildeboer Dellelce (Mr. Apps' law firm)
Misc	9,956.23	Twenty two small individual payments, mainly cheques. The cheques seem to have generally been issued prior to November 20, 2012
	<u>\$151,882.87</u>	

Memorandum
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Demand by the Receiver

On December 5, 2012 we made demand on SAMAK for, among other things, all uncashed cheques and all funds in their Sarnia bank account. We attach a copy of that letter as Exhibit "C". We have received no cheques or funds from SAMAK. At about that time we became aware that Mr. Apps was going to argue that the December rents should remain with SAMAK and not be paid over to the Receiver.

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Exhibits to Memorandum Dated February 6, 2013

Newbould Endorsement	A
Habib Sarnia Account Bank Statements	B
Demand Letter to SAMAK	C

Exhibit "A"

Court File Number: 12-CL-9911

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

ICICI BANK CANADA

Plaintiff(s)

AND

BAYSIDE MALL LTD

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

Application to be heard today.
Responding material to be delivered by Nov 26/12
Any reply material by Nov 27/12.
Con-examination on Nov 28 + 29/12
Hearing date Mr Apps client undertakes to
hold Dec. oral and disposes only on the
direction of the Master.
Hearing date of December 4/12 for 1 hour.
Facts to be delivered by November 30/12
Answer 9:30 set for November 28/12.

November 20/12

Date

John J.

Judge's Signature

Additional Pages _____

ICICI Bank Canada and Bayside Mall Limited
Court File CV 12 9911-00CL

Unofficial Transcription of the Endorsement of the Honourable Mr. Justice Newbould -
November 20, 2012

Application to be served today

Responding materials to be delivered by November 26, 2012

Any reply material by November 27, 2012

Cross-examination on November 28 & 29, 2012

Mr. Apps client undertake to hold December rent and disburse only on the direction of the
Monitor

Hearing date of December 4, 2012 for 1 hour

Facta to be delivered by November 30, 2012

Another 9:30 set for November 28, 2012

The Honourable Mr. Justice Newbould

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Exhibit "B"

 Habib Canadian Bank Member CDIC	<h2 style="margin: 0;">Habib Canadian Bank</h2> <p style="margin: 0;">A Subsidiary of Habib Bank AG Zurich</p>	Nov 15 2012, 04:34:20 PM GMT
Logout	Home	HBZ
		Change Password Secure Mail

User: SAMAK MANAGEMENT & CONSTR

Options

Accounts


Account	Currency	Balance	Title
3-1-2-20311-184-109271	CAD	40,635.29 CR	SAMAK MANAGEMENT & CONSTRUCTION INC (SARNIA)

From Date: 30-Oct-2012 To: 14-Nov-2012 Previous Page
Next Page First Page Last Page Done

Date	Particulars	Debit	Credit	Balance
	Opening Balance			66,284.83 CR
30-Oct-2012	Transfer by Ch.#12382 (Dt. 30-Oct-2012) [Ref: 3-1-2-119-30-Oct-2012]	15,000.00		
	Transfer by Ch.#12383 (Dt. 30-Oct-2012)	10,000.00		
	Charged [Ref: 3-1-1-83-30-Oct-2012]	6.30		
	Cheque Cleared (#12349) [Ref: 3-1-2-73-30-Oct-2012]	154.20		
	Cheque Cleared (#12355)	55.37		
	Cheque Cleared (#12363)	141.25		40,927.71 CR
31-Oct-2012	Handling charge from 27-Sep-2012 to 29-Oct-2012 [Ref: 3-1-1-22-31-Oct-2012]	64.80		
	Cheque Cleared (#12380) [Ref: 3-1-2-27-31-Oct-2012]	8,259.33		32,603.58 CR
01-Nov-2012	Cheque Cleared (#12343) [Ref: 3-1-2-63-01-Nov-2012]	24,830.42		
	DIRECT DEPOSIT BMO SCAR (NOV 01,2012) [Ref: 3-1-2-133-01-Nov-2012]		3,755.43	
	DIRECT DEPOSIT BMO SCAR (NOV 01,2012)		61,060.46	
	DIRECT DEPOSIT BMO SCAR (NOV 01,2012)		335.00	
	DIRECT DEPOSIT BMO SCAR (NOV 01,2012)		422.85	73,346.90 CR
02-Nov-2012	Cheque Cleared (#12351) [Ref: 3-1-2-59-02-Nov-2012]	1,872.12		71,474.78 CR
05-Nov-2012	Cheque Cleared (#12335) [Ref: 3-1-2-69-05-Nov-2012]	15,000.00		56,474.78 CR
08-Nov-2012	Transfer by Ch.#12384 (Dt. 08-Nov-2012) [Ref: 3-1-2-56-08-Nov-2012]	22,500.00		33,974.78 CR
09-Nov-2012	DIRECT DEPOSIT BMO SCAR (NOV 08,2012) [Ref: 3-1-2-95-09-Nov-2012]		3,638.00	
	DIRECT DEPOSIT BMO SCAR (NOV 08,2012)		278.00	
	DIRECT DEPOSIT BMO SCAR (NOV 08,2012)		910.00	
	DIRECT DEPOSIT BMO SCAR (NOV 08,2012)		2,764.51	41,565.29 CR
13-Nov-2012	Cheque 12385 encashed [Ref: 3-1-2-181-13-Nov-2012]	930.00		40,635.29 CR

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SARMA

 <p>Habib Canadian Bank Member CDIC</p>	<h2 style="margin: 0;">Habib Canadian Bank</h2> <p style="margin: 0;">A Subsidiary of Habib Bank AG Zurich</p>			<p>Nov 29 2012, 04:58:35 PM GMT</p>
	<p>Logout</p>	<p>Home</p>	<p>HBZ</p>	<p>Change Password</p>

User: SAMAK MANAGEMENT & CONSTR

Options


Accounts

Account	Currency	Balance	Title
3-1-2-20311-184-109271	CAD	77,835.85 CR	SAMAK MANAGEMENT & CONSTRUCTION INC (SARNIA)

Date	Particulars	Debit	Credit	Balance
	Opening Balance			40,635.29 CR
15-Nov-2012	DIRECT DEPOSIT BMO SCAR (NOV 15,2012) [Ref: 3-1-2-82-15-Nov-2012]		7,516.25	
	DIRECT DEPOSIT BMO SCAR (NOV 15,2012)		4,069.20	52,220.74 CR
16-Nov-2012	Transfer by Ch.#12431 (Dt. 16-Nov-2012) [Ref: 3-1-2-135-16-Nov-2012]	8,000.00		44,220.74 CR
19-Nov-2012	Transfer by Ch.#12432 (Dt. 19-Nov-2012) [Ref: 3-1-2-190-19-Nov-2012]	10,000.00		34,220.74 CR
20-Nov-2012	Transfer by Ch.#12433 (Dt. 20-Nov-2012) [Ref: 3-1-2-172-20-Nov-2012]	3,000.00		
	Cheque Cleared (#12390) [Ref: 3-1-2-128-20-Nov-2012]	305.44		
	Cheque Cleared (#12414)	233.64		
	Cheque Cleared (#12430)	250.70		
	Cheque Cleared (#12391)	49.56		
	Cheque Cleared (#12410)	965.43		
	Cheque Cleared (#12411)	83.20		29,332.77 CR
21-Nov-2012	Transfer by Ch.#12434 (Dt. 21-Nov-2012) [Ref: 3-1-2-76-21-Nov-2012]	14,000.00		
	Cheque Cleared (#12393) [Ref: 3-1-2-37-21-Nov-2012]	564.10		
	Cheque Cleared (#12388)	572.99		
	Cheque Cleared (#12392)	531.91		
	Cheque Cleared (#12394)	666.71		
	Cheque Cleared (#12395)	575.21		
	Cheque Cleared (#12401)	905.20		
	Cheque Cleared (#12408)	429.16		11,087.49 CR
22-Nov-2012	Cheque Cleared (#12409) [Ref: 3-1-2-33-22-Nov-2012]	145.77		
	Cheque Cleared (#12415)	3,691.33		

	Cheque Cleared (#12398)	89.50	
	Cheque Cleared (#12403)	980.84	
	Cheque Cleared (#12406)	134.85	6,045.20 CR
23-Nov-2012	Cheque Cleared (#12402) [Ref: 3-1-2-27-23-Nov-2012]	282.55	
	Cheque Cleared (#12405)	380.04	
	Cheque Cleared (#12413)	198.62	
	Cheque Cleared (#12416)	147.88	5,036.11 CR
26-Nov-2012	Cheque Cleared (#12389) [Ref: 3-1-2-77-26-Nov-2012]	938.00	4,098.11 CR
27-Nov-2012	DIRECT DEPOSIT BMO SCAR (NAV 26,2012) [Ref: 3-1-2-1-27-Nov-2012]		751.90
	DIRECT DEPOSIT BMO SCAR (NAV 26,2012)		211.00
	DIRECT DEPOSIT BMO SCAR (NAV 26,2012)		75,937.16
	Cheque Cleared (#12399) [Ref: 3-1-2-41-27-Nov-2012]	693.75	
	Cheque Cleared (#12400)	327.70	
	Cheque Cleared (#12404)	200.07	79,776.65 CR
28-Nov-2012	Cheque Cleared (#12386) [Ref: 3-1-2-68-28-Nov-2012]	254.25	
	Cheque Cleared (#12387)	10.45	
	Cheque Cleared (#12419)	879.37	
	Cheque Cleared (#12428)	71.59	
	Cheque Cleared (#12420)	24.08	
	Cheque Cleared (#12421)	24.08	
	Cheque Cleared (#12422)	480.93	
	Cheque Cleared (#12423)	24.08	
	Cheque Cleared (#12424)	65.05	
	Cheque Cleared (#12425)	25.96	
	Cheque Cleared (#12426)	24.08	
	Cheque Cleared (#12427)	24.08	77,868.65 CR

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 <p>Habib Canadian Bank Member CDIC</p>	<h2>Habib Canadian Bank</h2> <p>A Subsidiary of Habib Bank AG Zurich</p>				Jan 22 2013, 05:14:11 PM GMT
	Logout	Home	HBZ	Change Password	Secure Mail

User: SAMAK MANAGEMENT & CONSTR

Options

Accounts

Account	Currency	Balance	Title
3-1-2-20311-184-109271	CAD	798.47 CR	SAMAK MANAGEMENT & CONSTRUCTION INC (SARNIA)

[From Date:](#) 29-Nov-2012 [To:](#) 05-Dec-2012 [Previous Page](#)

[Next Page](#) [First Page](#) [Last Page](#) [Done](#)

Date	Particulars	Debit	Credit	Balance
	Opening Balance			77,868.65 CR
29-Nov-2012	Handling charge from 30-Oct-2012 to 27-Nov-2012 [Ref: 3-1-1-9-29-Nov-2012]	32.80		77,835.85 CR
03-Dec-2012	stop payment charges [Ref: 3-1-2-34-03-Dec-2012]	12.50		
	Cheque Cleared (#12412) [Ref: 3-1-2-87-03-Dec-2012]	495.76		
	Cheque Cleared (#12418)	4,517.40		
	Cheque Cleared (#12429)	1,667.88		
	DIRECT DEPOSIT BMO SCAR (DEC 03,2012) [Ref: 3-1-2-113-03-Dec-2012]		58,629.19	
	DIRECT DEPOSIT BMO SCAR (DEC 03,2012)		6,514.70	
	DIRECT DEPOSIT BMO SCAR (DEC 03,2012)		558.00	136,844.20 CR
04-Dec-2012	TT #SCA56098 CAD 21,926.64 To WILDEBOER DELLELCE LLP [Ref: 3-1-2-43-04-Dec-2012]	21,926.64		
	Charges For TT No. 56098	45.00		
	DIRECT DEPOSIT BMO SCAR(DEC 03,2012) [Ref: 3-1-2-44-04-Dec-2012]		11,296.78	
	Cheque Cleared (#12407) [Ref: 3-1-2-88-04-Dec-2012]	55.37		
	Transfer by Ch.#12435 (Dt. 04-Dec-2012) [Ref: 3-1-2-91-04-Dec-2012]	120,000.00		6,135.97 CR
05-Dec-2012	CHQ#012336 RTD UNPAID DUE TO NSF [Ref: 3-1-2-120-05-Dec-2012]		15,000.00	
	Cheque Cleared (#12336) [Ref: 3-1-2-99-05-Dec-2012]	15,000.00		6,135.97 CR

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Exhibit "C"

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December 5, 2012

Samak Management & Construction Inc.
220 Duncan Mill Road, Suite 619
North York, ON
M3B 3J5

Attention: Mr. Malik Khalid

Dear Sirs

Receivership of Bayside Mall Limited ("Bayside")

As you are aware, by order of the Honourable Mr. Justice Wilton-Siegel dated December 5, 2012 ("the Initial Order") A. John Page & Associates Inc. was appointed as Receiver and Manager of Bayside. A copy of the Initial Order is or will shortly be available on our website at www.ajohnpage.com. The major asset of Bayside is the mall located at 150 North Christina St., Sarnia, Ontario ("the Bayside Mall").

We are immediately taking over the Bayside Mall and we wish to make it clear that we are not adopting any contract you may have with respect to the management of the Bayside Mall or otherwise with Bayside. We ask for your assistance in promptly transitioning over any matters that you have been addressing to our property manager, Larlyn Property Management Ltd. Contact details are: Mr. Michael Holmes, President and COO, 1-888-496-0753 ext 3304).

In addition can you immediately contact our Colleen Delaney at 416-364-4894 extension 13 to make arrangements for us to take possession of:

All uncashed cheques (post dated or otherwise) relating to rent and other payments re the Bayside Mall

All funds in your Sarnia bank account relating to Bayside as these funds are being held by you in trust for Bayside

All original books and records in your possession or under your control relating to Bayside and the Bayside Mall including:

- the original and unamended Quickbooks data files containing the accounting records of Bayside together with the administrator password required to access that data
- all bank statements and any cancelled cheques re Bayside
- all original leases and all other correspondence with tenants at Bayside
- all communications regarding any prospective tenants for Bayside
- all tax files including all HST returns and working papers relating to Bayside, Notice of Assessments and correspondence with CRA
- all current and recent supplier and maintenance contracts and related communications



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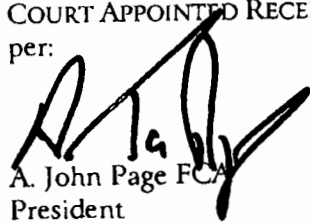
Samak Management & Construction Inc.
December 5, 2012

- an up to date rent roll and a listing of all accounts receivable including unpaid rent
- all unpaid Bayside invoices
- all documentation relating to recent issues relating to the condition of the parking garage
- the current insurance policy
- all information on any recent storm damage, repair work and communications with the insurance company
- all information relating to any outstanding or ongoing maintenance or repair issue including the wall repair issue
- all CAM statements with supporting calculations
- all financial statements of Bayside
- all property tax assessments and invoices and all communications regarding property taxes

We should like to draw your attention to the sections of the Initial Order relating to books and records.

Yours very truly

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



A. John Page FCA
President

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Exhibit "B"

**Supplement to the First Report
of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated February 12, 2013**

SAMAK Agreement

MANAGEMENT AGREEMENT

THIS AGREEMENT made as of this 1st day of July ,2009

BETWEEN: **Bayside Mall Limited**
220 Duncan Mills Road
Suite 619
North York, ON
M3B 3J5

Tel.: (416)-444-5560
Fax: (416)-444-5178

(hereinafter called the "Owner")

OF THE FIRST PART

-AND-

SAMAK Management & Construction Inc.
220 Duncan Mill Road, Suite 619
North York, Ontario M3B 3J5

Tel: 416 644 3220
Fax:416 644 3221

(hereinafter called the "Manager")

OF THE SECOND PART

WHEREAS:

1. The Owner has a leasehold interest in the parcel of land more particularly described in Schedule "A"
Annexed hereto and the building(s) located thereon, municipally known as detailed in Schedule "A" (collectively referred to in this agreement as the "Premises") and as shown on the Site Plan attached hereto as Schedule "C";
2. The Owner has agreed to appoint the Manager as Manager of the Premises for the term and subject to the provisions hereinafter contained and the Manager has agreed to accept such appointment;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the payment of the fees as hereinafter provided, and the mutual covenants and agreements herein contained, and of other valuable consideration (the receipt and sufficiency of which is hereby by each party acknowledged), the Parties hereto agree as follows:

APPOINTMENT OF MANAGER

1. The Owner hereby represents that it is the Owner of a leasehold interest in the Premises with the right to enter into this Agreement. The Owner hereby appoints the Manager as exclusive Manager to manage the Premises on behalf of the Owner, and the Manager does hereby accept such appointment and agrees to observe and perform the terms, obligations and conditions of the Manager contained in this agreement.

The Manager represents and warrants to the Owner that it has and shall continue to have the facilities, personnel and experts to provide to the Owner the functions and services set out in this Agreement relating to the Property, in a competent and efficient manner, as would a prudent Owner, in keeping with the standards of the industry for Building comparable in size, type, age, class and location to the Building.

TERM

2. This Agreement shall be for a Term of one (1) year commencing the 1st day of ~~July, 2009~~ (the "Commencement Date") and ending on the 30th day of ~~June~~, 2010. The above Term will automatically be renewed upon the expiry of each term unless terminated by either party with 60 days prior written notice. This Agreement may not be terminated within the first one (1) year period without Major Cause as defined in paragraph 16 herein.

MANAGER'S SERVICES

3. The Manager agrees to furnish the services of its management organization for the operation, controlling and management of the Premises and assist the third party leasing entity as would a reasonable and prudent Owner, subject always to payment of the fees herein.

ENVIRONMENTAL MATTERS

4. The Owner hereby represents and warrants that as of the date of the execution of this Agreement, after due inquiry and investigation, it has no knowledge of any current or prior violations of, or non-compliance of the Premises or of any use thereof by current or prior occupants with, environmental and occupational health and safety laws, regulations, orders or approvals by authorities having jurisdiction, whether federal, provincial or municipal (the "Environmental Requirements") or regarding the presence on or existence in the Premises, or the leakage or emission from or onto the Premises, of any toxic, hazardous, dangerous or potentially dangerous substance or condition, including without limitation any urea formaldehyde foam type insulation, asbestos, polychloribiphenyl (PCBs), lead, radio active materials, chemicals or petroleum products, nor are there any outstanding notices, orders, or directions outstanding relating to environmental matters requiring any work, repairs, construction or capital expenditures with respect to the Premises, nor has it any environmental audit reports or other studies relating thereto, except as have been fully disclosed to the Manager in writing on or before the execution of this Agreement and detailed in writing in Schedule "B" annexed hereto (referred to as "Project Pre-Existing Information").

AUTHORITY/DUTY OF MANAGER

5. The Owner hereby grants to the Manager the following powers and authority (subject to those powers hereinafter specifically excluded), to be exercised by the Manager on behalf of the Owner, and the Manager agrees to diligently exercise such powers and authority so as to provide efficient management of the Premises (subject always to sufficient funds being made available by the Owner as requested from time to time by the Manager to enable it to do so):

a) To provide the following Leasing Services:

- i) Leasing representation. The cost of any associated leasing personnel compensation shall be to the account of Manager unless specifically set out otherwise hereunder. If the Leasing Manager is required to perform particular functions in regards to the Premises outside of his or her leasing functions; the time attributed to those functions will be a charge to the Property ;
- ii) Provision of a standard form Offer to Lease/Letter Agreement;
- iii) Negotiation of Offers to Lease/Letter Agreements with prospective tenants (subject to final approval of its terms by Owner);
- iv) Recommendations and guidance on the production of necessary Marketing/Leasing material;
- v) Recommendations with respect to the development of Landlord's Work Schedule and Landlord's Standard Form Lease;
- vi) Reporting functions. The cost of providing reports shall be to the account of the Manager;
- vii) General leasing and shopping centre advice.

b) The Manager will retain third party para legal services at the Owner expense, at market rates to prepare and negotiate all tenant leases, on Owner's standard Lease form, based on signed offers to lease approved by Owner. Where the negotiated changes to the standard form are substantial or where the Lease is not on the Owner's Form, then by mutual agreement between the Owner and Manager said document preparation and negotiation may be assigned to legal service providers at the expense of the Owner. On a monthly basis, commencing not later than ~~Aug 25, 2009~~, the Manager will prepare a summary report outlining the spaces being discussed, the retailer/user involved and the status of the discussions.

On a regular basis, the Manager will meet with the Owner to update the Owner as to leasing activity and to discuss any outstanding or new issues with respect to ongoing leasing activities and strategy.

c) To enforce the provisions of tenants' leases;

d) To carry out physical inspections of the Premises from time to time and make such repairs thereto as may be required pursuant to sub-paragraphs (e) and (m) of this paragraph 5;

- e) To maintain the Premises in a state of repair as would be maintained by a prudent Owner but in no event to a standard less than the standard required to fulfill any applicable obligations of the Owner as mortgagor under any mortgage of the Premises or pursuant to the ground lease with the City of Sarnia;
- f) To provide, as employees, agents, or contractors of the Manager and not of the Owner, except as otherwise provided herein, the services of all persons reasonably necessary for the proper maintenance and operation of the Premises;
- g) With the prior consent of the Owner, to employ directly for the Premises, on a full or part-time basis, to supervise and be responsible for, and necessary, to discharge as building Manager such maintenance, secretarial, clerical and janitorial employees as may be reasonably required;
- h) To maintain adequate payroll records with respect to all persons engaged to work in the Premises and to make all payroll reports and returns required by law and to make and remit to the proper authorities, all income tax deductions, employment insurance and workers' compensation payments and any other similar deductions or payments which may from time to time be applicable to such persons;
- i) To purchase all supplies necessary for the proper operation and management of the Premises;
- j) To pay all bills and invoices as they become due (or earlier, in applicable circumstances, so long as funds are available, in order to take advantage of any available discounts) incurred with the Owner's specific or budgetary approval in connection with the operation of the Premises, including utility charges, municipal taxes, advertising costs, wages, insurance premiums, heating or cooling charges, costs of decorating, costs of repairs and other operating expenditures incurred in the operation of the Premises and not otherwise provided for in this Agreement;
- k) To enter into contracts for the supply of electricity, gas, fuel, water, telephone, window cleaning, garbage removal, housekeeping and cleaning services, and such other services as may reasonably be required for the proper operation of the Premises, which agreements shall be negotiated in good faith with persons dealing at arm's length with the Manager and shall be for terms not exceeding one (1) year (or with such other persons and/or for such other terms as the Owner may consent to in writing) and terminable at any time upon thirty (30) days written notice;
- l) To cause the Premises to be heated and cooled to reasonable temperatures according to the season and as may be necessary to meet the Tenant's reasonable requirements, and to cause the heating and cooling equipment to be operated, maintained and kept in repair in accordance with the Owner's obligations as landlord of the Premises;
- m) To cause such decorating, repairs, alterations and replacements to be carried out under the Manager's supervision as may be required to maintain the Premises as hereinbefore provided, provided that no capital improvement, alteration, or change to the Premises costing more than one thousand dollars (\$1,000.00) in the aggregate (over and above any amounts in respect of the same which were

specifically set forth in any budget approved by the Owner) shall be made without prior written consent of the Owner, unless required in circumstances which the Manager reasonably deems to constitute an emergency;

- n) To supervise and be responsible for the operation of the housekeeping and cleaning services within the Premises;
- o) With the prior consent of the Owner, to sue for, and recover, rent and other sums due in respect of the Premises; to execute and prosecute actions to recover possession of the Premises; and with the Owner's approval, to settle, compromise or release such actions or suits. For such purposes, subject to the foregoing, the Owner nominates, constitutes and appoints the Manager as its true and lawful attorney for it, and in the name, place and stead of the Owner, to sue, institute and prosecute such actions as aforesaid, or to settle, compromise or release such actions or suits as fully, and to all intents and purposes as it might or could do personally, the Owner hereby ratifying and affirming all that the Manager, as its attorney, shall lawfully do or cause to be done by virtue of such appointment;
- p) To maintain communications on behalf of the Owner with tenants of the Premises as may be reasonable and proper in the circumstances and in accordance with prudent management practice, and to give all notices and statements required to be sent to tenants of the Premises;
- q) To plan the timing of moves into and out of the Premises of all tenants, and to supervise such activity so that there shall be minimum of disturbance to the operation of the Premises and to other tenants in occupancy;
- r) To develop, to the extent appropriate in the circumstances, a written environmental policy and to establish an environmental management system with a view to identifying any non-compliance or potential non-compliance of the Premises and/or the activities of current occupants of the Premises with the Environmental Requirements defined in Paragraph 4 hereof and the remediation measures or other actions that may be required to deal therewith, and to exercise reasonable care to avoid conditions that may result in non-compliance or potential non-compliance;
- s) To exercise due diligence in dealing with any environmental problems or concerns of which it becomes aware or which are brought to its attention by authorities having jurisdiction;
- t) If the Manager has reasonable grounds for believing that circumstances exist which could constitute or threaten to constitute non-compliance with the Environmental Requirements, to diligently take such steps, including the commissioning of an environmental study at a cost to be approved by the Owner, as it may deem appropriate to determine whether and to the extent that any such non-compliance may exist and the remediation measures or other actions required to deal therewith;
- u) If the Manager, acting reasonably, has concluded that a condition of non-compliance with the Environmental Requirements exists or may exist, to forthwith report to the applicable authority to the extent required by the Environmental Requirements, and to the Owner together with a summary of the remediation

measures or other actions which the Manager recommends be taken to deal with the condition, together with, if it has received a report on the results of the environmental study, a copy of such report; and thereafter to take such remediation measures or other actions as has been recommended by the Manager with a view to rendering the Premises and the activities of occupants of the Premises in compliance with the Environmental Requirements, provided that the Owner:

- (i) has not given notice to the Manager in writing within seven (7) business days of the date of particulars thereof being given by the Manager to the Owner in writing that it objects to the implementation of the Manager's recommendations; and
 - (ii) has made provision reasonably acceptable to the Manager for the funding of any such remediation measures or other actions;
- v) To insure and keep the Premises insured under a policy of insurance in such form, in such amounts, with such deductibles, against such risks and with such insurers as would a reasonable and prudent Owner, naming the Owner as named insured, and Manager as additional named insured, and any other party of interest as their respective interests may appear including as required by any Mortgagee and the City of Sarnia, subject to the approval thereof by the Owner, such approval to be conclusively deemed to have been received by the Manager from the Owner within seven (7) business days of the date of particulars thereof being given by the Manager to the Owner in writing; and to comply, to the extent that it is so empowered hereunder, with all statutory conditions of such policies of insurance and otherwise to oversee the Owner's insurance of the Premises;
- w) To insure the Owner and the Manager against errors and omissions in such amounts, against such risks, and such insurers, as the Manager may consider reasonable to insure the Owner and the Manager among other things against risks associated with non-compliance with the Environmental Requirements, subject to the approval of the Owner, such approval to be conclusively deemed to have been given by the Owner to the Manager in the absence of any written direction to the contrary having been received by the Manager from the Owner within seven (7) business days of the date of particulars thereof being given by the Manager to the Owner in writing;
- x) Subject to the foregoing, to take such reasonable steps, so far as it may be within the Manager's powers to do so, to ensure that all restrictions and obligations with respect to the Premises imposed upon the Owner and of which the Manager has knowledge, or for which the Owner may be liable by law, are observed and fulfilled; and
- y) Without limiting the generality of the foregoing, to be responsible for the care, maintenance and management of the Premises and to carry out such responsibility in a manner that will best serve the interest of the Owner.

COLLECTION AND DISTRIBUTION OF CASH RECEIPTS

6. The Manager shall collect all rental payments and other sums required to be paid by the tenants of the Premises and by others in respect of the use of the Premises or any part thereof (the "Cash Receipts") and shall deposit the Cash Receipts in trust subject to the provisions of this Agreement in an account to be established by it with a financial institution acceptable to the Owner, which account shall be maintained separate and apart from the Manager's other moneys and accounts.
7. The Manager shall:
 - (a) Pay from such account all costs and expenses relating to the operation of the Premises in accordance with the provisions of this Agreement, including maintenance expenses (including maintenance fees), realty taxes, GST, operating, financing expenses, and Management Fees;
 - (b) Distribute from such account to the Owner, or as the Owner may otherwise in writing direct, on a monthly basis not later than the 30th day of the month next following the end of the month, an amount equal to the budgeted surplus less a reasonable reserve for contingencies or anticipated expenditures;
 - (c) Distribute from such account to the Owner, or as the Owner may otherwise in writing direct, within sixty (60) days next following the end of each Management Year, an amount equal to the balance of the funds remaining on deposit less a reasonable reserve for contingencies or anticipated expenditures; and
 - (d) Advise the Owner, in the event that at any time the Manager shall have insufficient funds to meet the actual or anticipated expenses of the Premises, of the amount of the cash contribution (the "Cash Call") required to fund the deficiency, and in the event that the Owner does not meet the Cash Call to permit the Manager to fund the amounts required to be paid by the Manager hereunder, then the Manager may in its sole discretion prioritize, allocate and apply the available funds on account of the liabilities of the Owner in respect of the Premises. PROVIDED that any payments to the Manager other than the regular management fees must have the prior approval of the Owner.

The Manager shall not accept for its own account in the execution of its duties hereunder, any commissions, benefits, reductions, finder's fees or other concessions from tradesmen, suppliers, contractors, insurers or Tenants. If such concessions or benefits are received by the Manager, they shall be remitted to or credited to the Owner forthwith after receipt.

SEPARATE RECORDS

8. The Manager shall at all times maintain books of account and records in accordance with good accounting procedure wherein it records its income and expenses with respect to the Premises and all transactions entered into by it in performance of its obligations pursuant to this Agreement separate and apart from other properties owned, operated or managed by it. The Owner shall have the right at all reasonable

times and intervals to cause such inspection of the books and records so maintained by the Manager to be made as may be reasonable under the circumstances.

9. The Manager shall make available to the auditors of the Owner such information and material as may be required by such auditors for the purpose of their audit and shall otherwise give such co-operation as may be reasonably necessary for such auditors to carry out their duties to the Owner.

STATEMENT/BUDGET

10. The Manager agrees to provide to the Owner, within thirty (30) days following the month end, monthly statements of receipts and disbursements in such form and in such detail as the Owner shall reasonably require. Annually within sixty (60) days following the end of each fiscal year, a Statement of Receipts and Disbursements and a Statement of Income and Expense relative to its operation and management of the Premises for the preceding fiscal year.
11. The Manager covenants and agrees to deliver to the Owner for its approval, annually not later than thirty (30) days prior to the commencement of each fiscal year during the term hereof an Annual Budget for the next ensuing fiscal year in such detail and in such form and with such backup as the Owner shall reasonably require. If the Manager has not received any comments on the Annual Budget from the Owner within seven (7) days of the date of its delivery to the Owner, the Owner shall be deemed to have approved the Annual Budget for the next ensuing fiscal year.

INDEMNIFICATION

12. (a) The Owner agrees to indemnify and save the Manager harmless from all costs, claims and damages which may arise from its management of the Premises provided that the Manager shall have acted in good faith and within the scope of its authority. In particular, the Owner shall indemnify and save harmless the Manager from and against any charges, orders, claims, demands, actions, causes of action, loss, costs, liability or expense, including legal and other professional fees, which may be made or brought against the Manager or which the Manager may suffer or incur as a result of, in respect of, or arising out of the existence of any condition of non-compliance of the Premises and the activities of current or prior occupants of the Premises with the Environmental Requirements, other than due to acts of the Manager causing or contributing to such non-compliance, or omissions of the Manager in reporting to the Owner any such non-compliance of which it has knowledge. If the Owner withholds or unreasonably delays in providing the approval requested by the Manager for errors and omissions insurance pursuant to the provisions of Sub-Paragraph 5(w), then the indemnity provisions of the Owner set out in this Paragraph shall extend to the risks which would otherwise have been insured under such proposed policy.
- (b) The Manager hereby indemnifies and saves the Owner, its affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands or liability, and all damages, costs, and expenses whatsoever, arising directly or indirectly in whole or in part out of any action taken by the

Manager by reason of any breach of this Agreement or any part or parts hereof by the Manager, its employees, servants or persons for whom it is in law responsible or by reason of any negligent or unlawful act or omission or willful misconduct of the Manager, its employees, servants or persons for whom it is in law responsible. The indemnity provided under this Section 12, b) shall not extend to any negligent or unlawful act or omission or willful misconduct of the Owner or any of its employees, servants, agents or persons for whom it is responsible, nor shall it extend to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Owner. This indemnity shall survive the termination of this Agreement.

FEES

13. (a) Management Fees: In consideration of the Manager's services herein, it shall be entitled to receive, a Management Fee (the "Management Fee") equal to Ninety Five Thousand dollars per annum (\$95,000). The Management Fee so payable to the Manager shall be paid in monthly installments, on the 1st day of each month, and adjusted within sixty (60) days following the end of the fiscal year to include an additional bonus fee of 10% of any increases in the Net Operating Income (NOI) of the Premises over the NOI for the previous year. The bonus fee payable within the first sixty (60) days of 2009 will be based on an N.O.I of \$1,200,000 which number will be subject to adjustment with the agreement of both parties once the final 2008 budget has been agreed to by both the Owner and Manager. The above Management Fee so payable to the Manager shall be inclusive of and cover all corporate administrative costs, corporate overhead and indirect costs of the Manager, but shall not include the following which shall be for the Owner's account:
- (i) Salaries and benefits (including severance) paid to staff, and janitorial employees employed directly for the Premises in whole or in part;
 - (ii) all direct expenses for courier, long distance telephone calls, telex, telefax, copying, file set-up, postage, initial accounting setup and yearly review, etc.; and
 - (iii) all expenses for Marketing including leasing brochures, flyers and newsletters.
- (b) Proviso The above fees are subject to the following proviso: It is understood and agreed that the Manager will continue the practice of charging the tenants of the Owner as part of the Common Area Maintenance (CAM) a portion of the above management fee as determined by the Owner and Manager. Such amount charged to and recovered from the tenants shall be received by the Manager and credited to the Owner by deducting such amounts from the Management Fees payable to the Manager as set out above.

- (c) Leasing Fees: The Manager will be entitled to receive leasing fees which amounts shall be calculated on the following basis :
- i) Four dollars (\$4.00) per square foot plus GST of the gross leasable area for newly leased space between 1,000 square feet and 10,000 square feet in size for one tenant and for a term equal to or greater than five (5) years. For any term less than five (5) years and longer than one (1) year the fee will be pro rated.
 - ii) Two dollars (\$2.00) per square foot plus GST of the gross leasable area for renewals or relocations of existing tenants, which are not listed on Schedule "D" of this Management Agreement, on space between 1,000 square feet and 10,000 square feet for one tenant for a term equal to or greater than five (5) years. For any term less than five (5) years and longer than one (1) year the fee will be pro rated.
 - iii) On any space leased to one tenant, which are not listed on Schedule "D" of this Management Agreement, whose area is in excess of 10,000 square feet, four dollars (\$4.00) per square foot plus GST (or two dollar (\$2.00) per square foot plus GST for renewals and relocations) on the first 10,000 square feet plus 50% of the amounts outlined in (i) and (ii) above for any area in excess of 10,000 square feet;
 - iv) Tenant's with Exceptional Renewal Leasing Fee: It is agreed that certain Tenants, as listed on Schedule "D" of this agreement have unusual renewal terms. The Renewal Fees for these tenants will be agreed upon each year as part of the budget approval process.
 - v) For Temporary Leases & License Agreements which have a Term of twelve (12) months or less, the leasing fee payable shall be equal to Ten Percent (10%) of the Gross Rental paid during the Term of the Temporary Lease/License Agreement;
 - vi) For space under 1,000 square feet the leasing fee shall be at a flat fee of \$4,000.00 for newly leased space for a term equal to or greater than five (5) years and for renewals or relocations for space under 1,000 square feet the leasing fee shall be at a flat fee of \$2,000.00 for a term equal to or greater than five (5) years. If the length of term is less than five (5) years but greater than twelve (12) months then the rates specified immediately above shall be proportionately reduced from the rates shown using sixty (60) months as the denominator;

vii) The Leasing Fees described above are payable in the following manner:

Fifty percent (50%) at the time of execution by the Landlord of an unconditional Offer to Lease/Letter of Agreement/Temporary Lease/License Agreement;

Fifty percent (50%) upon the tenant's opening of the Premises for business;

viii) Upon expiry of the Term or early termination of this Agreement the Manager shall, prior to the termination date, prepare a listing of all the tenants with which it is currently conducting negotiations and should either party successfully finalize these arrangements within a period of 180 days of the termination date of this Agreement without any major changes from the terms established by the Manager and approved by the Owner prior to expiry of this Agreement, then the Manager shall be entitled to the full Leasing Fees outlined in section 13)c);

ix) All leasing proposals will be submitted to prospective tenants with a condition requiring the Owner's approval prior to execution of the transaction. When the Owner's standard form of Offer or Letter Agreement has been fully negotiated by the Manager, it will be submitted to the Owner for approval which shall be given or denied within ten (10) business days of submission by the Manager;

x) Where a third party broker is involved in a leasing transaction, the Manager will reduce its leasing fee to 50% of the rates set out in section 13)c) above. The Owner will be responsible for paying directly to the third party broker, such fees as the Owner shall negotiate with the third party broker, with the assistance of the Manager.

(d) Other Services and Fees: For those services not otherwise provided for herein, a fee as agreed with the Owner will be charged on an hourly or commission basis, such work and fees to be identified and approved in advance by the Owner.

NOTIFICATION OF ACTIONS

14. The Manager shall promptly notify the Owner of any suit, proceedings or actions commenced or taken against the Owner, or the Manager, which may be related to the Premises, or the operation thereof.

MANAGER'S RIGHT TO CONTEST

15. The Manager may at any time and from time to time, in the name of the Owner, and at the Owner's expense and with the Owner's approval:
- (a) Object to or contest the validity of any assessment rate, tax, charge or duty levied or assessed against or in respect of the Premises; or
 - (b) Object to or contest the validity and/or applicability of any statute, law, by-law, regulation, ordinance or order of any governmental body or agency affecting the Premises; or
 - (c) Defend any action brought against the Owner relating to the Premises, including the institution of any appropriate counter-claim; and
 - (d) Retain and instruct consultants, experts and other advisors, and counsel, for the purpose of carrying out the foregoing;

And for such purposes, the Owner nominates, constitutes and appoints the Manager as its true and lawful attorney for it, and in the name, place and stead of the Owner, to institute and prosecute or defend such actions as aforesaid, as fully, and to all intents and purposes as it might or could do personally, the Owner hereby ratifying and affirming all that the Manager, as its attorney, shall lawfully do or cause to be done by virtue of such appointment, provided that before taking any such action, the Manager shall have given the Owner not less than seven (7) days prior written notice of the action proposed to be taken and the Owner shall not have given written notice to the Manager of its objection to the proposed course of action. In the event that the Manager initiates any such action, the Manager shall keep the Owner fully informed of its progress and the Owner shall be entitled to give the Manager direction in the conduct thereof as deemed necessary and appropriate.

TERMINATION OF MANAGEMENT AGREEMENT FOR DEFAULT

16. The parties agree that the Owner shall be entitled to terminate this Agreement for Major Cause upon written notice to the Manager, For the purposes of this Agreement, "Major Cause" shall mean default by the Manager in the performance of its duties and obligations hereunder which it has failed to cure or has failed to use all reasonable efforts to commence and diligently continue to cure prior to the expiry of fifteen (15) business days following the delivery by the Owner to the Manager or written notice specifying particulars of the default, or upon the insolvency or bankruptcy of the Manager.

TERMINATION OF MANAGEMENT AGREEMENT ON SALE

17. In the event the Premises are sold, the Owner shall be entitled to terminate this Agreement effective the date of closing of the sale (the "Termination Date") upon payment to the Manager of a termination fee to cover the Manager's transition costs associated with such sale, as follows:

- a) If the Termination Date is during the initial term described in paragraph 2, the termination fee shall be equal to the Management Fees payable for three (3) months;
- b) If the Termination Date is during a renewal term described in paragraph 2, the termination fee shall be equal to the Management Fees payable for a period of two (2) month(s).

NOTICES

18. Any notice or other document required or permitted to be given under this Agreement shall be in writing and shall be delivered, mailed by pre-paid registered mail, or sent by telecopy, addressed to the party to whom it is to be given at the address or, in the case of a telecopy, if applicable, at the facsimile number of such party, in each case shown on the first page hereof, or at such other address or facsimile number as the party to whom such notice or other document is to be given shall have last notified the other in accordance with the provisions of this Paragraph. Such notice or other document shall: (i) if delivered, be deemed to have been given on the date of delivery; (ii) if mailed, shall be deemed to have been given three days after the date of mailing; and (iii) if transmitted by telecopy, shall be deemed to have been given on the date of transmission, provided that if such date of transmission is not a business day, such notice to document shall be deemed to have been given on the first business day thereafter. In the event of the disruption of postal services likely to affect mail delivery thereof, any notice or other document must either be delivered or sent by telecopy.
19. The Owner shall cause all notices which may in any way affect the obligations and responsibilities of the Manager to be directed or forwarded to the Manager.
20. The Manager covenants and agrees that upon the expiration or earlier termination of the term of this Agreement and a new Manager, if any, being appointed, the Manager shall deliver to the new Manager all leases, operating contracts and other records and materials relating to the Premises so as to better enable the new Manager to assume the management and operation thereof together with directions wherein the tenants of the Premises are advised of the change of management and directed to pay all future rent to the new Manager.
Upon termination of this Agreement, the Manager shall forthwith deliver to the Owner:
 - (a) all original records, documents and computer disks, including, without limitation, all Leases, tenant files and correspondence, contracts or agreements for supply of services or materials for the Building, other applicable contracts, and books of account and accounting materials, invoices vouchers and the like maintained in accordance with the provisions of this Agreement;
 - (b) all materials and supplies for Building and for which the Manager has been paid by the Owner and which were purchased in accordance with the provisions of this Agreement;
 - (c) all uncashed cheques and other monies not yet deposited into the bank accounts at the date of termination or received subsequent to the date of

termination by the Manager or its employees, servants or agents for the Building;

- (d) all plans, physical condition reports, surveys, promotional marketing materials, building systems, permits, licences, warranties and guarantees, and other applicable materials relating to the Building; and
- (e) a complete, accurate and up-to-date rent roll and status report for the Building, as of the date of termination,

and any other materials which are in possession or control of the Manager and relate directly or indirectly to the Owner or to the leasing, tenant co-ordination or supervision of the management of the Building, as the case may be. Notwithstanding the foregoing, the Manager may elect to retain copies of such records, documents and books of account and the Owner shall produce at its offices the originals of such records, documents and books of account whenever reasonably required to do so by the Manager, for the purpose of legal proceedings, dealings with any governmental authorities or any tenants of the building. In addition, upon termination of this Agreement, the Manager shall forthwith deliver to the Owner a final accounting (except for amounts in dispute which shall be deposited in trust with a mutually acceptable trustee) and pay over any balance of the Owner's funds held by the Manager relating to the Building, if any, less any amounts owing to the Manager pursuant to this Agreement (except for amounts in dispute which shall be deposited in trust with a mutually acceptable trustee) and any amounts necessary to satisfy commitments made by the Manager to others pursuant to this Agreement prior to the date of termination. The Manager, its officers and employees, shall also immediately cease to have signing authority on all bank accounts for the Building, and cease issuing cheques thereon in its capacity as Manager under this Agreement without the prior written approval of the Owner on a item by item basis.

The Manager shall cooperate fully in effecting and communicating all applicable assignments and in assuring the prompt delivery to the Owner of such materials. The Manager shall also cooperate fully with the Owner and any new property manager retained to replace the Manager to ensure a smooth and complete transition.

GENERAL

21. In its management of the Premises, the Manager covenants and agrees to comply with all applicable laws, by-laws, regulations, or ordinances of all administrative authorities having jurisdiction over the Owner, or the Premises, subject to sufficient funds being made available by the Owner as requested from time to time by the Manager to enable it to do so, and to the provisions of Section 7(d) hereof, and to any specific instructions of the Owner to the contrary.

All information received by the Manager pursuant to this Agreement shall be used only in the course of performing its duties hereunder and may not be disclosed by the Manager to any other person except with the consent of the Owner. The foregoing covenant shall not apply to the extent the Manager is required to disclose such information in legal proceedings among the parties or to the extent such information is in the public domain and not through a breach of this covenant by the Manager.

22. Save for any matter relating to an approval by the Owner hereunder, any disputes as to the interpretation or carrying out of this Agreement shall be resolved in accordance with the Arbitration Act of Ontario.
23. If any term, covenant or condition of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term, covenant and condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.
24. This Agreement shall not be modified or amended except by instrument in writing signed by the parties hereto, or by their successors or assigns.
25. This Agreement and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
26. This Agreement may not be assigned by the Owner. This Agreement may be assigned by the Manager to an associated or affiliated company, and upon such assignment, and the assumption of the obligations of the Manager hereunder, all references in this Agreement to the Manager shall be deemed to be a reference to such assignee of the Manager, and such assignee shall be entitled to all the rights and be subject to all of the liabilities of Manager to the Owner.
27. This Agreement constitutes the entire agreement between the parties and supercedes all previous agreements and understandings between the parties in any way relating to the subject matter hereof. It is expressly understood and agreed that the Manager has not made any representations, inducements, warranties or promises, whether direct, indirect or collateral, express or implied, oral or otherwise, concerning this Agreement, the matters herein, or concerning any other matter, which are not embodied herein.
28. The headings, sub-headings and marginal notes herein contained have been inserted for convenience or reference only and do not form part of this Agreement, nor may such be referred to in the interpretation thereof. This Agreement shall be read with all changes of gender and number required by the context.

IN WITNESS WHEREOF the Owner and the Manager have hereunto signed this Agreement duly attested by hands of their proper signing officers in the behalf the day and year first above written.

DATED at Toronto this 1st day of July, 2009

BAYSIDE MALL LIMITED.

SAMAK Management & Construction Inc.

Per: *M. Sajjad Qureshi*
Name: *M. SAJJAD S. QURESHI*
Title: *President*

Per: *M. Sajjad Qureshi*
Name: *M. SAJJAD S. QURESHI*
Title: *President.*

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

SCHEDULE "A"

Premises known municipally as:
BAYSIDE SHOPPING CENTRE
SARNIA, ONTARIO.
150 Christina Street, North
N7T 7W5
LEGAL DESCRIPTION

ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the City of Sarnia, County of Lambton and Province of Ontario, and being more particularly described as follows:

FIRSTLY

Part of Lot 1 according to Registrar's Composite Plan Number 664 for the city of Sarnia, designated as Part 7 on Reference Plan 25R-3518;

SUBJECT TO an easement for an existing storm sewer located in part of Lochiel Street and part of former Lochiel Street (now closed by By-law No. 8188 of the City of Sarnia, registered as Instrument Number 488095 for the County of Lambton), according to Registered Plan Number 14 for the City of Sarnia, now known as part of Lots 1, 5 and 10 according to Registrar's Composite Plan Number 664 of the City of Sarnia, designated as Parts 2 and 5 on Reference Plan 25R-3477;

AND SUBJECT TO an easement for access to said storm sewer, for excavation and working, for maintenance, repair, restoration and replacement purposes over parts of Lochiel Street and former Lochiel Street (closed as aforesaid), according to Registered Plan Number 14 for the City of Sarnia, now known as part of Lots 1, 5 and 10 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 1, 2 and 3 on Reference Plan 25R-3477 from and below the level of Lochiel Street as the same may exist from time to time; and over parts of the former Lochiel Street (closed as aforesaid) and the former Victoria Street (also closed as aforesaid), according to Registered Plan Number 14 for the City of Sarnia, now known as part of Lots 1, 5 and 10 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 4, 5 and 6 on Reference Plan 25R-3477 at and below the basement floor level of the Parking Structure as the same may exist from time to time;

AND SUBJECT TO an easement through the ramps and driveways of the Parking Structure for the passage of men and equipment for the purpose of the maintenance, repair or replacement of the said storm sewer; and the Corporation of the City of Sarnia for the purpose of the said easements, may store equipment and pile material relative to such maintenance, repair or replacement adjacent thereto in a manner consistent both with the efficient carrying out of the work, and minimizing disturbance and inconvenience to the tenant under the lease registered as Instrument Number 495101, both parties acting reasonably;

AND SUBJECT TO a right-of-way over that part of Lot 1 according to Registrar's Composite Plan Number 664 for the city of Sarnia, designated as Parts 1 and 4 on Reference Plan 25R-3690 in favour of Union Gas Limited, its successors and assigns and its and their servants, workmen, employees and agents, pursuant to Instrument No. 511746.

SECONDLY

Part of Lot 10 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 8 on Reference Plan 25R-3518; and lying at and below a plane having an elevation of 597.20 feet along the most easterly limit of said Part 8, said plane inclining to an elevation of 597.00 feet along the westerly limit of said Part 8; elevations herein are referred to City of Sarnia datum.

THIRDLY

Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 12 on Reference Plan 25R-3518.

FOURTHLY

Parts of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 2 and 3 on Reference Plan 25R-3518.

SUBJECT TO an easement for the benefit of the owners and occupants from time to time of Lot 9, according to Registrar's Composite Plan Number 664 for the City of Sarnia for the passage of pedestrians and vehicles over said Part 3 on Reference Plan 25R-3518;

AND SUBJECT TO an easement to maintain and repair a manhole, storm sewer connections and that part of a storm sewer lying north of said manhole, located within said Part 3 on Reference Plan 25R-3518;

AND SUBJECT TO a right-of-way over that part of Lot 1 according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Parts 1 and 4 on Reference Plan 25R-3690 in favour of Union Gas Limited, its successors and assigns and its and their servants, workmen, employees and agents, pursuant to Instrument No. 511746.

Additional Property Identifier(s) and/or Other Information

FIFTHLY

Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 4 on Reference Plan 25R-3518.

SIXTHLY

Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 5 on Reference Plan 25R-3518.

SEVENTHLY

Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 6 on Reference Plan 25R-3518.

As described in Instrument #790824.

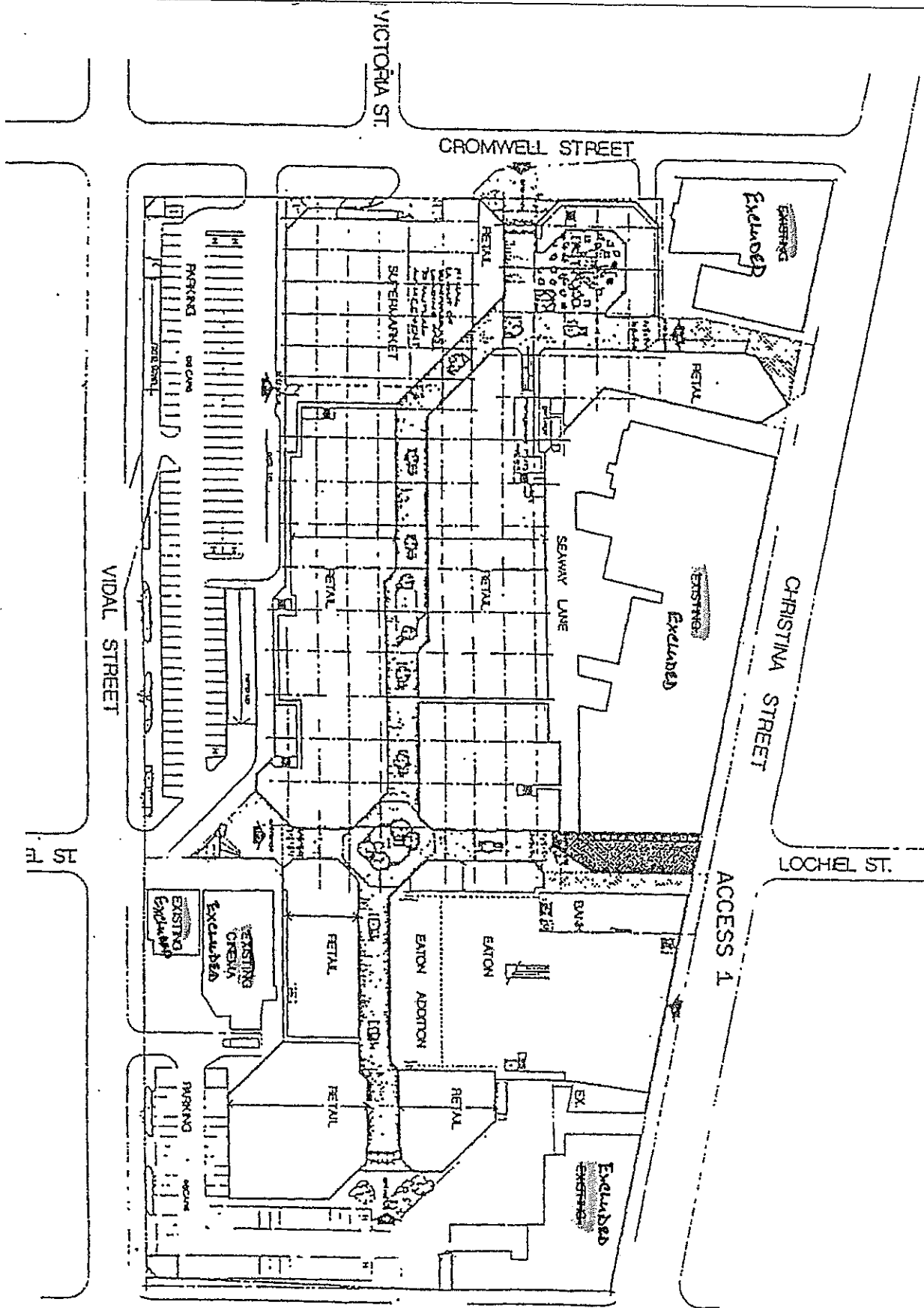
SAVE AND EXCEPT that Part of Lot 1, according to Registrar's Composite Plan Number 664 for the City of Sarnia, designated as Part 1 on Reference Plan 25R3635

SCHEDULE "B"

PROJECT PRE-EXISTING INFORMATION **(In accordance with the provisions of Paragraph 4 hereof)**

"NONE PROVIDED"

SCHEDULE "C"
SITE PLAN (2008)



15 M

Schedule "D"

Tenant's with Exceptional Renewal Leasing Fees

(List to be added later)



Exhibit "C"

**Supplement to the First Report
of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated February 12, 2013**

Email from A. Apps dated December 5, 2012

A. John Page

From: "Alfred Apps" <aapps@wildlaw.ca>
To: "A. John Page" <ajpage@ajohnpage.com>
Cc: <heath@whiteleylitigation.com>
Sent: December 5, 2012 6:26 PM
Subject: Notices of Termination
Mr. Page:

Our client, Samak, has received your notices of termination in respect of both the Sarnia (Bayside Mall) property and the Brockville property and forwarded them to me.

We will be consulting with our client and will respond in due course to the Brockville notice. Needless to say, the termination of the Sarnia agreement is accepted without question inasmuch as we executed a Transition Agreement which was approved by the Court today which, Mr. Whitely represented to the Court, would be executed by you in your capacity as Receiver. The Transition Agreement, in turn, specifies our client's obligations with respect to the delivery of Books and Records and, as clearly provided in His Honour's endorsement, the Transition Agreement, not the Order, governs the matter. We will comply fully with the Transition Agreement provisions related to the delivery of books and records as soon as we receive from yourself or Mr. Whiteley a copy of the fully executed Transition Agreement, executed on behalf of the Receiver, and a copy of the Order as issued and entered, together with His Honour's endorsement. And our client will do so within the timeframes indicated by me to Mr. Whiteley today.

I wish to make absolutely clear, however, that Samak has no intention of turning over the cash left in the Bayside Mall account as it is our position that this is not the property of the debtor. As you may or may not be aware, this issue was raised before His Honour Justice Wilton-Siegel in our appearances before him this week. His Honour was fully and immediately aware that, as in most circumstances (i.e. property management arrangements) such as these, this matter is not as cut and dried as you have represented it to be. Nor did His Honour make any Order for Samak to turn over these funds. Nor did we give any undertaking to turn over the rents to you.

A review of the management agreement which you just terminated makes clear that the trust obligations of Samak are not in any sense absolute and, indeed, are expressly subject to other provisions of the management agreement. Without going into the issues here, inasmuch as you have your own counsel, we would appreciate receiving your view as to the legal basis for your suggestion that the cash in the account, in these circumstances, was the property of the Debtor, or that Samak is obliged to turn over such funds. We will naturally take any such opinion under advisement but, based upon our understanding of the law generally and the Order made today, we do not believe that the claim of Bayside Mall Limited (or of the Receiver in its place and stead) to the cash in the Manager's account has any merit whatsoever.

We look forward to learning the basis of the claim you have asserted. I have not copied your counsel inasmuch as I am not sure whether or not it is also Mr. Wigley in this matter.

Regards,

Alfred Apps
WILDEBOER DELLELCE LLP
Suite 800 | Wildeboer Dellelce Place
365 Bay Street, Toronto, ON M5H 2V1
T 416 361 6211 | F 416 361 1790 | aapps@wildlaw.ca

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13/02/2013



Exhibit "D"

**Supplement to the First Report
of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated February 12, 2013**

**Endorsement of the Honourable
Mr. Justice Campbell dated February 6, 2013**

Court File Number: CV-12-9911CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

ICICI BANK CANADA
Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
<u>Paula Masie</u>		
<u>Heather Whiteley</u>		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: motion Feb 11
- Time Table approved (as follows):

Motion scheduled at conference call to-day
Can consent motion to be heard before
Justice Wilton Siegel Feb. 21/13 for 1 hr.
along with motion of SAMAK in related
receivership CV-12-5740 CL. SAMAK
motion to be served by Mon. Feb. 11/13
in response
The 1 hour is for both motions

Feb. 6/13
Date

[Signature]
Judge's Signature

Additional Pages _____

ICICI Bank Canada and Bayside Mall Limited
Court File CV 12 9911-00CL

Unofficial Transcription of the Endorsement of the Honourable Mr. Justice Campbell -
February 6, 2013

Counsel

Pavle Masic
Heath Whiteley

Motion scheduled at conference call today. On consent motion to be heard before Justice Wilton-Siegel February 21, 2013 for 1 hour along with motion of SAMAK in related Receivership CV-12 9740 CL. SAMAK material to be served by Monday February 11, 2013 in response.

The 1 hour is for both motions.

CJ

February 6, 2013

The Honourable Mr. Justice C. Campbell

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Exhibit "E"

**Supplement to the First Report
of A. John Page & Associates Inc.
Court Appointed Receiver of Bayside Mall Limited
Dated February 12, 2013**

Statement of Receipts and Disbursements

Bayside Mall Limited - Statement of Receipts and Disbursements - ETD

05/12/2012 through 12/02/2013 (in Canadian Dollars) (Cash Basis)

12/02/2013

Page 1

Category Description	05/12/2012- 12/02/2013
INCOME	
Receiver's Certificate Borrowing	750,000.00
TOTAL INCOME	750,000.00
EXPENSES	
HST Input	14,262.73
Insurance	8,747.67
Legal Fees	18,294.50
Misc.	1,718.63
OSB Filing Fee	70.00
Receiver's Fees	89,750.15
TOTAL EXPENSES	132,843.68
OVERALL TOTAL	617,156.32