

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

**KEB HANA BANK as trustee of IGIS GLOBAL PRIVATE PLACEMENT REAL
ESTATE FUND NO. 301 and as trustee of IGIS GLOBAL PRIVATE PLACEMENT
REAL ESTATE FUND NO. 434**

Applicant

- and -

**MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP
(THE ONE) INC., and MIZRAHI COMMERCIAL (THE ONE) GP INC.**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AD INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**AIDE MEMOIRE OF MIZRAHI INC.
(November 13, 2024 Case Conference)**

November 12, 2024

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AIDE MEMOIRE OF MIZRAHI INC

1. On October 18, 2023, Justice Osborne granted an Order appointing a receiver and manager, Alvarez & Marsal Canada Inc. (the “Receiver”) over the assets, undertaking and property of the owners of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario (the “Project”).
2. The Receiver terminated MI as the general contractor. MI brought a motion for an order requiring the Receiver to pay MI’s fees and costs for labour and construction management services for post-receivership work as required by paragraph 17 of the Receivership Order (the “MI Payment Motion”).
3. The Receiver eventually brought a cross-motion for set-off against MI and takes the position that MI is not entitled to further payment.
4. In its notice of cross-motion dated October 18, 2024 (the “Notice of Cross-Motion”) and fifth report dated October 11, 2024 (the “Fifth Report”), the Receiver has made legal arguments on the interpretation of paragraph 17 (“Paragraph 17”) of the receivership order (the “Receivership Order). The Receiver’s proposed interpretation of Paragraph 17, if endorsed by the court, would have a significant impact upon the law of receiverships in general. The parties’ dispute as to the meaning and intention of Paragraph 17 raises an important question of law that should be determined as soon as possible and prior to the return of the Receiver’s motion, which raises many factual issues that are only relevant to MI and the Receiver.
5. On this case conference, MI seeks to timetable a two-day hearing to first deal with the legal question on the interpretation of Paragraph 17. In particular, MI seeks a motion for a determination of a point of law:
 - a. What is the meaning of Paragraph 17 of the Receivership Order? Does it require the Receiver to pay suppliers to the Project in accordance with “normal payment practices”, meaning in accordance with the historical payment practices of the Project or can the Receiver unilaterally decide the quantum of payment?; and

- b. If Paragraph 17 requires the Receiver to pay suppliers to the project in accordance with “normal” or historical payment practices undisputedly in place prior to and at the time of the receivership, is the Receiver entitled to set off the Project’s unproven pre-receivership claims to reduce or eliminate the payments owing pursuant to Paragraph 17, i.e. is pre-post compensation prohibited?
6. The interpretation of Paragraph 17 is a preliminary issue that should be first determined by the Court prior to hearing the remaining issues contained in the Receiver’s cross-motion. MI submits that this determination of a point of law is akin to a motion under Rule 21.01(1)(1):

21.01 (1) A party may move before a judge,

(a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs;

7. The determination of what Paragraph 17 means is raised by the pleadings in this proceeding. If the interpretation of Paragraph 17 sought by MI finds favour with the Court, then a substantial *lis* between the parties will be determined and obviate the need to determine many factual issues raised by the Receiver, and avoid MI delivering voluminous responding materials. The hearing will be shortened and a substantial savings of costs pre-hearing achieved.
8. If MI needs time to prepare an evidentiary response to the Receiver’s motion other suppliers to the Project are delayed having their entitlement determined based on the meaning of Paragraph 17. The meaning of Paragraph 17 should be dealt with prior to responding to and hearing the remaining issues in the Receiver’s cross-motion because this preliminary issue also impacts other suppliers in addition to MI, such as Gamma.
9. If MI is right on its interpretation of Paragraph 17, the Receiver is required to pay post-filing obligations and is not entitled to set-off claims it may have with alleged pre-filing MI liabilities. Resort to the procedure contemplated by Rule 21.01(1)(a) in the circumstances of pre-filing claims, which are factually intensive and not amenable to summary trial, achieves judicial economy. Proceeding with the determination of this

preliminary issue on the meaning of Paragraph 17 will permit an expeditious resolution to the payment of post-filing obligations. It will save time, money and resources, not just for the Project, but for the suppliers of the Project.

The Interpretation of Paragraph 17

10. The Receiver has brought a cross-motion, which provides a position that requires the interpretation of Paragraph 17. MI has taken the position that Paragraph 17 requires the Receiver make payments based on “normal payment practices”, which means to continue to pay MI Payment Practices, as defined in the Receiver’s Fifth Report in paragraph 2.4.
11. In its Fifth Report, the Receiver disagreed with MI’s position and is of the view that Paragraph 17:
 - a. identifies a group of person’s specifically all Persons having oral or written agreements with the Debtors for the supply of goods and/or services to the Debtors and/or the Project (paragraph 7.27(i));
 - b. imposes a prohibition on those persons, specifically a prohibition on discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver (paragraph 7.27(ii));
 - c. requires that “normal prices or charges” for the goods or services provided by paid to such persons as a condition to the Receiver enforcing this prohibition (paragraph 7.27(iii)); and
 - d. allows the Receiver to “determine” such normal prices or charges and to pay them in accordance with “normal payment practices of the Debtors”, a new agreement or a Court order (paragraph 7.27(iv)).
12. The Receiver argues that MI was overpaid relative to the amounts that it was entitled to receive under its contracts and was in excess of the value of the services it provided and that nothing further is owed to MI.¹ This position by the Receiver is factually wrong, but

¹ Receiver’s Notice of Cross-Motion at para 30.

should be the subject of the Receiver's motion against MI. When the Receiver reached its conclusion, its recourse under the Receivership Order was to terminate MI, not deny payments to MI, which are required to be paid by Paragraph 17.

13. MI's claim in the Payment Motion is for time-based labour rates and a 5% construction management fee, **which were always charged and paid for by the Project**. The only time the Project did not pay a 5% construction management fee was from December 2019 to April 2021, when the construction management fee was reduced to 3.5% as a result of an agreement between the beneficial owners. In April 2021, MI was paid a retroactive payment so that the Project had always paid a 5% construction management fee. During the period of time that Clark Construction Management was involved in the Project (from approximately 2014 to October 2020), Clark was paid a 1.5% construction management fee as part of the Project's total liability to pay a construction management fee (whether 3.5% or 5%). **All payments were approved by the Senior Secured Lender**. The Receiver does not dispute what MI was historically paid for time-based labour rates and construction management fees for approximately 9 years of the Project prior to the Receivership.
14. The Receiver is clearly factually wrong to contend that there is no contractual entitlement to the 5% construction management fee. The 2021 Control Agreement entered into by the beneficial owners of the Project, clearly and unequivocally entitles MI to the 5% construction management fee. The Control Agreement is attached at **Tab 1**. It specifically states that MI "shall" be paid a 5% construction management fee and that to the extent MI was ever paid less than a 5% construction management fee that it be paid an amount retroactive to make up this shortfall. Paragraph 6 of the Receivership Order directs the Receiver to pay an amount to MI, which includes a 5% construction management fee.
15. To be clear, there is no dispute as to what MI was historically paid. The Receiver's motion seeks to reach back and claim that the payments MI was paid, which were approved by the Senior Secured Lender, its administrative agent, Altus and (the vast majority) by Coco, the other beneficial owner, should never have been paid. The determination of the point of law will determine whether the language in paragraph 17 is operant and MI must be paid by

the Receiver what it was always paid for the approximate 9 years before the Receivership Order until MI was terminated, or whether the Receiver has the power to trump the language of Paragraph 17 and pay MI (and other suppliers) whatever it decides.

16. If the Receiver is correct on its interpretation of Paragraph 17 there will be an explosion of post-receivership litigation. The timely determination of the meaning of paragraph 17 is pressing and will have a significant impact upon MI's response to the Receiver's claims. MI submits that Paragraph 17 cannot permit the Receiver to "determine such normal prices", let alone seek to set-off the payment obligations required by Paragraph 17.
17. It would be grossly unfair to permit a Receiver to decide, that pursuant to Paragraph 17, MI, or any other supplier of services to the Project, was required to continue to supply services and could later decide after the supplier has provided services that the Receiver has since determined MI was overpaid and will only pay different prices in accordance with what the Receiver believes to be reasonable.
18. This poses a significant threat to the viability of receiverships in Canada. The model order is reasonably understood as 'handcuffing' suppliers to projects that enter receiverships with the goal of maintaining a *status quo* while the Receiver does its work to maximize value for the stakeholders. Permitting an *ad hoc* determination of whether the payments historically made to suppliers should have been made or should continue to be made without disclaiming the underlying agreement is grossly unfair to those who have been ordered and bound to continue to provide work to the Project.
19. The Receiver also claims that Paragraph 17 does not impose an independent payment obligation of any kind on the Receiver.² This is a new and unique point of law, for which MI seeks a determination before it must respond to the many complex factual issues raised by the Receiver's motion. The Receiver claims that the MI Payment Practices were not commercially reasonable and that it therefore paid MI on a different basis. If MI was not

² Receiver's Notice of Cross-Motion at para 15.

prepared to work on the Project in exchange for these payments, the Receiver argues, it could have withdrawn its services.³

20. The Receiver's position effectively creates a rule, not written in Paragraph 17, granting it authority to unilaterally amend a contract with a supplier and places the onus on the supplier to terminate the contract. It should not be up to the Receiver to decide what should be paid and who should be paid contrary to what is specified in Paragraph 17.
21. The plain and ordinary language of paragraph 17 requires the Receiver to pay what the supplier was paid in the past in accordance with the project's normal payment practices, rather than a set-off amount or what the Receiver determines is "commercially reasonable". In other words, the default position should be that a supplier is paid what they were paid in the past prior to the Receivership. If the Receiver does not agree with such payment terms under the contract, the Receiver has the authority to terminate the contract. However, the Receiver must pay in accordance with normal payment practices until the supplier is terminated or if the amended price is agreed upon with the supplier.
22. The rule should not be that a customer may continue to benefit from a supplier's services and later decide after the fact that the amounts owing are not reasonable and decide not to pay what is owed under the contract. The same applies to a receivership. The Receiver does not have rights that are greater than the debtor and does not have the power to unilaterally amend a contract.
23. If Paragraph 17 grants the Receiver the authority to unilaterally amend a contract or ignore historical payment practice and to determine what constitutes normal payment practices, then the supplier should be able to terminate the contract and be paid what is owed under the contract until termination and/or learning of such new price. A set-off would be unfair, especially a set-off claim that necessarily requires an intensive evidentiary record, in contrast to a motion for payment pursuant to paragraph 17, for which there are no significant facts in dispute

³ Receiver's Notice of Cross-Motion at para 16.

24. The Receiver also claims that under Paragraph 17 a party that is not paid based on normal payment practices, a new agreement, or a Court Order is not refrained from discontinuing, altering, interfering with or terminating the supply of such goods and services as may be required by the Receiver.”⁴ This too represents a new frontier for the interpretation of the language in the Model Order.

25. Suppliers of services to the Project understand that they are bound to continue to provide services to the Project. This was the understanding of this Court when the Receivership was granted, as Justice Osborne held in paragraph 62 of the Endorsement granting the Receivership:

[T]he draft receivership order contemplates certain protections being extended to the Developer as set out in the motion materials. These include, for example, a limited stay, and an order that any supplier be restrained from discontinuing goods or services during the receivership provided that, with respect to post-filing supplied, the Developer continues to pay for those goods or services.

26. This was also the understanding of the Senior Secured Lender at the time of the Receivership, as they correctly wrote in paragraphs 76 and 79 of their factum for the return of the receivership application:

76. The Appointment Order extends certain protections to the Developer. First, any Person having an agreement with, or a statutory or regulatory mandate for the supply of goods or services to, the Developer (solely in its capacity as Developer of the Project) are restrained from discontinuing or terminating the supply of goods and/or services during the receivership provided that, with respect to post-filing supply, the Developer continues to pay for those goods and/or services in the ordinary course. Additionally, the Developer is protected by a limited stay of all rights and remedies affecting the Project or the Developer’s performance of its obligations in respect of the Project.

79. The requested relief is appropriately circumscribed to facilitate the proposed Receiver’s oversight of the development and continued construction of the Project. If granted, such relief will ensure that the Developer’s ability to continue with the Project is not undermined by disruption in current contractual relationships, potential litigation or a failure to obtain or maintain necessary Financial Assurances. It is consistent with the overall objective of ensuring that the Receiver

⁴ Receiver’s Fifth Report at para 7.28.

has a meaningful opportunity to determine how best to maximize value for the Project for the benefit of all stakeholders.

27. There needs to be a clear rule that confirms the Receiver's role and a supplier's role under Paragraph 17. A supplier should not suffer where they follow a receivership order, which states they are prevented from discontinuing the supply of services, with the risk that a Receiver may later decide that such payments are unreasonable and not considered "normal prices" and later be told that they could have discontinued providing services.
28. It would be unfair for a Receiver to require a supplier to supply services and later decide that they have the Court behind them and have the power to decide whether the payments are reasonable or not after the services are supplied.
29. If it is established that the Receiver may decide that the payment practices are not reasonable, then the Receiver's decision to pay different amounts than what is under the contract should make this apparent to the supplier. If the supplier disagrees with the Receiver's proposed payments, then the supplier may terminate the agreement. However, the supplier should be paid pursuant to the terms of the contract until the contract is terminated.
30. The court established a rule that when a supplier performs services, as required by Paragraph 17, then the Receiver must pay an amount equal to the normal payment practices for the project. The alternative is anarchy and confusion. As Justice Osborne held in granting the Receivership, these protections are necessary to avoid the Project being "undermined by disruption of current contractual relationships or potential litigation". The Receiver's approach and interpretation of Paragraph 17 creates uncertainty as to whether and when a supplier should continue or terminate services. This raises the question as to whether suppliers should retain counsel early on in a receivership to understand their rights and seek advice. This is costly and unnecessary. It will result in a wave of suppliers seeking to terminate their contracts at the beginning of receiverships, there will be no ability to maintain the *status quo*, value for stakeholders will be lost and projects will suffer inevitable delays and consequent costs.

31. The Receiver's position imposes a requirement that every supplier must go to court if they do not get paid what they think they should be paid and request that they no longer provide its services. It is costly to go to court and expend court time and resources for a supplier to be required to get permission to terminate its services.
32. If a receiver is entitled to decide not to pay a supplier of services, despite clear language in the receivership order requiring payment for the supply of those services, then suppliers will be left in the untenable position of being forced to work by court order with no corresponding requirement that they be paid. This is a dangerous precedent that will have significant impact upon the conduct of construction projects throughout Canada, especially now in an environment of high interest rates, low demand for real estate and a growing number of projects being placed into receivership. The Receiver's conduct in this proceeding should give anyone currently providing services to the Project pause, as they too may be subject to non-payment contrary to the Appointment Order.
33. Finally, MI's request to schedule a motion to deal with the issue on the interpretation of Paragraph 17 raises significant issues for the conduct of receiverships in Canada and should be addressed expeditiously. As discussed in this Aide Memoire, there are many other claims in the Receiver's Fifth Report and its cross-motion materials, which will take time for MI to address and respond to and may require a full trial. Paragraph 17 is an important issue and should be dealt with as soon as possible, rather than waiting for MI's response to the remainder of the Receiver's claims and after weeks of trial.
34. In the alternative, if MI's request to schedule a motion to determine a point of law is not granted, MI seeks production of the following from the Receiver on a confidential basis:
 - a. Detailed cost data for the Project, including identification of what has been paid to Skygrid, subcontracts and any development charges for the Project;
 - b. Documentation to establish the current status of construction for both the exterior and interior of the building;
 - c. The quantity survey reports (if any) since the disclaimer of MI's contract;

- d. The daily log reports of Skygrid;
 - e. Updated costs to complete estimates (since the disclaimer of MI's contract); and
 - f. Updated completion schedule (since the disclaimer of MI's contract).
35. Further to the Reasons of Justice Osborne, dated August 9, 2024, the Receiver produced to MI limited information on the costs paid to Skygrid. This information is effectively useless and does not permit MI to assess the efficiency or effectiveness of Skygrid.
36. The Receiver alleges that Skygrid's performance as general contractor to the Project establishes, in part, that MI has been overpaid. If MI is to prepare a full evidentiary record in response to the Receiver's motion, this information should be produced immediately. MI does not have access to this information which is relevant to the Receiver's allegations concerning the quality of services provided by MI to the Project and the quality of the services provided by Skygrid. MI is not participating in the SISF. MI undertakes to maintain the information and documentation on a confidential basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of November, 2024.

TAB 1

THIS CONTROL AGREEMENT is made as of the _____ day of May, 2021.

BETWEEN:

2819249 Ontario Inc., a corporation existing under the laws of the Cayman Islands

(“**281**”)

- and -

Coco International Inc., a corporation existing under the laws of the Province of Ontario

(“**Coco**” and, together with 281, the “**Sellers**”)

- and -

12823543 Canada Ltd., a corporation existing under the laws of Canada

(the “**Corporation**”)

- and -

Sam M Inc., a corporation existing under the laws of the Province of Ontario

(the “**Buyer**”)

RECITALS:

- A. The Sellers and the Buyer (collectively, the “**Parties**” and individually a “**Party**”) are parties to a purchase agreement (the “**Purchase Agreement**”) dated March 30, 2021, as amended;
- B. Pursuant to the Purchase Agreement the Buyer will acquire all of the issued and outstanding shares in the capital of the Corporation;
- C. The Corporation holds certain shares in the capital of Mizrahi Commercial (THE ONE) GP Inc. (the “**GP**”), and holds certain units in Mizrahi Commercial (The One) LP, a limited partnership formed under the laws of the Province of Ontario (the “**Partnership**”);
- D. 8891303 Canada Inc. (“**889**”) and the Buyer are parties to an amended and restated unanimous shareholders agreement dated as of December 17, 2014 as amended by Amendment # 1 to Unanimous Shareholders Agreement made as of October 20, 2015 and by Amendment #2 to Unanimous Shareholders Agreement dated April 8, 2016 (the “**Shareholders Agreement**”) in relation to the GP;
- E. The GP, 889 and the Buyer are parties to an Amended and Restated Limited Partnership

Agreement dated December 17, 2014, as amended by an Amendment to Partnership Agreement, dated March 10, 2015, Amendment #2 to Partnership Agreement dated April 2015, Amendment #3 to Partnership Agreement dated October 20, 2015 and Amendment #4 to Partnership Agreement dated April 8, 2016 (collectively the "**Partnership Agreement**") in relation to the Partnership;

- F. The LP is the beneficial owner of the properties municipally known as 1 Bloor Street West, 768, 770-772 774-776, 780-784 and 778 Yonge Street, Toronto and all related assets (the "**Project**");
- G. Mizrahi Development Group (The One) Inc. (the "**Nominee**") is the registered owner of the Project;
- H. Pursuant to Articles of Amalgamation dated March 13, 2021, 889 has amalgamated with another corporation to continue as the Corporation, and accordingly the Corporation is the successor to all rights and obligations of 889, including with respect to the Shareholders Agreement and the Partnership Agreement;
- I. The documents required to complete the transactions contemplated by the Purchase Agreement have been exchanged by the Parties and are being held by the Parties' respective solicitors in escrow, pending satisfaction of the following conditions (the "**Escrow Release Conditions**"):
 - a. payment by the Buyer of the aggregate purchase price in accordance with the Purchase Agreement; and
 - b. satisfaction of the Closing Conditions contained in Sections 6.1.4 and 6.3.2 of the Purchase Agreement.
- J. The parties wish to provide for certain matters with respect to the operation and control of the GP and the Partnership during the period from the date hereof until the mutual release of the escrow (the "**Escrow Period**");

NOW THEREFORE the parties agree as follows:

- 1. The Closing Date for the transactions contemplated in the Purchase Agreement shall be the day that the last of the Escrow Release Conditions has been satisfied, provided that if the Escrow Release Conditions are not satisfied on or before August 30, 2022, then this transaction shall be terminated and the Parties shall instruct their respective lawyers to return all escrow deliveries to the Parties who provided same, and the Parties shall have no liability pursuant to the Purchase Agreement.
- 2. Notwithstanding anything to the contrary in the Shareholders Agreement and/or the Partnership Agreement, during the Escrow Period, the following shall apply:
 - (a) The Buyer shall have the sole control and management of all aspects of the Project, and accordingly shall be solely entitled to direct the GP with respect to all matters

related to the business, control and management of the Partnership. Without limiting the generality of the foregoing:

- (i) the Buyer shall provide periodic updates and information to the Sellers with respect to the Project but the Buyer shall not be required to hold or participate in meetings, whether of the LP or the directors and/or shareholders of the GP or the Nominee;
 - (ii) cheques and other payments made on behalf of the Project shall be signed by both representatives of both the Buyer and the Seller, provided that if the Seller refuses or fails to sign within forty-eight (48) hours of receipt of a request for a signature, then the Buyer's representative alone shall authorize and/or sign such cheques or payment(s). Immediately following execution of this Agreement, the Buyer and Seller shall execute and deliver any further agreements and documents, and provide any further assurances, undertakings and information as may be reasonably required to effect any changes to the signing authorities on all bank accounts (including but not limited to any bank accounts of the GP, the Partnership and/or the Nominee at TD Bank and KEB Hana Bank) to reflect the foregoing;
- (b) The Buyer shall have sole authority to execute any documents on behalf of the GP, the Partnership and the Nominee;
- (c) Without limiting the generality of the foregoing, the Buyer shall have the sole authority to cause the GP and the Nominee to:
- (i) take such measures as are necessary or appropriate for the business and affairs of the GP and the Partnership, and the Project;
 - (ii) manage the property, assets and affairs of the GP and the Partnership;
 - (iii) borrow and/or repay funds and/or issue evidence of indebtedness and grant security, to any existing lenders of the GP and Partnership; and
 - (iv) operate any bank accounts of the GP and Partnership and have sole and exclusive signing authority with respect thereto.
- (d) Notwithstanding the foregoing, nothing in this Agreement shall grant the Buyer any rights to:
- (i) issue any additional shares of the GP or units of the Partnership, other than in accordance with the Shareholders Agreement and the Partnership Agreement;
 - (ii) redeem or retract any shares of the GP or units of the Partnership, other than in accordance with the Shareholders Agreement and the Partnership Agreement;

- (iii) windup or dissolve the GP or the Partnership, other than in accordance with the Shareholders Agreement and the Partnership Agreement; or
 - (iv) borrow funds and/or grant security to any new creditors.
 - (e) The Sellers will vote their shares of the GP and units of the Partnership in such manner as may be required to give effect to the provisions of this Agreement, and shall cause any nominees to the board of directors of the GP to vote in such manner as may be required to give effect to the provisions of this Agreement.
3. Upon execution of this Control Agreement, Mizrahi Inc. shall be paid a construction management fee of 5% of hard costs in accordance with the terms of the construction management agreement between Mizrahi Inc. and the GP. To the extent that any payments on account of construction management fees have been made to Mizrahi Inc. prior to the date of this Agreement at a rate less than 5% of the hard costs, the difference between such payments and 5% of the hard costs shall be paid to Mizrahi Inc. immediately upon execution of this Agreement.
 4. Until Closing, Maria Rico shall continue in her position as Senior Financial Consultant – The One as such role is currently constituted; provided that the Buyer may, at its sole option, at any time terminate the appointment of Maria Rico appointment as Senior Financial Consultant-The One by providing written notice of termination to Maria Rico not less than two (2) weeks prior to the termination date.
 5. The parties agree to do or cause to be done, from time to time, all such things, and shall execute and deliver all such documents, agreements and instruments reasonably requested by another party, as may be necessary or desirable to carry out the provisions and intention of this Agreement.
 6. The parties agree that this Agreement is confidential and that they shall not make any disclosure about the existence or contents of this Agreement without the prior written notice to and approval of the other parties hereto, except as is necessary to comply with applicable law; provided that, the parties may, on a confidential basis, advise their respective investors, agents, lenders, accountants and other professional advisors of the contents hereof.
 7. This Agreement shall enure to the benefit of and be binding upon the parties and their legal representatives, heirs, executors, administrators, successors and permitted assigns, as the case may be.
 8. This Agreement shall be interpreted and enforced according to the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflict of law principles.
 9. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic signature and/or transmitted in electronic form and the parties to this Agreement consent thereto. Execution and/or transmission in

electronic form shall be binding to the same extent as an original signed signature page.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF each of the Parties has executed and delivered this Agreement as of the date noted at the beginning of the Agreement.

2819249 ONTARIO INC.

Per: _____


Name: Jenny Virginia Coco
Title: Chief Executive Officer

COCO INTERNATIONAL INC.

Per: _____


Name: Jenny Virginia Coco
Title: Chief Executive Officer

12823543 CANADA LTD.

Per: _____


Name: Jenny Virginia Coco
Title: Chief Executive Officer

SAM M INC.

Per: _____

Name: Sam Mizrahi
Title: President

IN WITNESS WHEREOF each of the Parties has executed and delivered this Agreement as of the date noted at the beginning of the Agreement.

2819249 ONTARIO INC.

Per: _____
Name: Jenny Virginia Coco
Title: Chief Executive Officer

COCO INTERNATIONAL INC.

Per: _____
Name: Jenny Virginia Coco
Title: Vice President

12823543 CANADA LTD.

Per: _____
Name: Jenny Virginia Coco
Title: Vice President

SAM M INC.

Per:  _____
Name: Sam Mizrahi
Title: President

**KEB HANA BANK as trustee of IGIS GLOBAL PRIVATE
PLACEMENT REAL ESTATE FUND NO. 301 and as trustee
of IGIS GLOBAL PRIVATE PLACEMENT REAL ESTATE
FUND NO. 434**

-and-

**MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI
DEVELOPMENT GROUP (THE ONE) INC., and MIZRAHI
COMMERCIAL (THE ONE) GP INC.**

Applicant

Respondents

Court File No. CV-23-00707839-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

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