

Revised: January 21, 2014
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

Court File No. [●]_____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE ●MR.

JUSTICE ●OSBORNE

)
)
)

●WEDNESDAY, THE ●18TH

DAY OF ●OCTOBER, 20●23

PLAINTIFF¹

Plaintiff

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 -

DEFENDANT

Defendant

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

Respondents

ORDER
(~~appointing~~Appointing Receiver)

¹ ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

THIS ~~MOTION~~APPLICATION made by ~~the Plaintiff~~² KEB Hana Bank as trustee of (i) IGIS Global Private Placement Real Estate Fund No. 301 and (ii) IGIS Global Private Placement Real Estate Fund No. 434 (the “Applicant”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing ~~[RECEIVER’S NAME]~~ Alvarez & Marsal Canada Inc. (“A&M”) as receiver ~~and manager~~ (in such ~~capacities~~ capacity, the “Receiver”) without security, of all of the assets, undertakings and properties of ~~[DEBTOR’S NAME]~~ (Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “Debtor Debtors”) acquired for, or used in relation to a business carried on by the ~~Debtor~~ Debtors including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario and legally described on Schedule “A” hereto (the “Project”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~ Joo Sung Yoon (the “Yoon Affidavit”) sworn ~~[DATE]~~ October 17, 2023 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~ the Applicant, counsel for the Receiver, counsel for Sam Mizrahi, Mizrahi Inc. and Sam M Inc. (collectively, the “Mizrahi Group”), and counsel for Coco International Inc. and 12823543 Canada Ltd., no one else appearing ~~for [NAME]~~ although duly served as appears from the affidavit of service of ~~[NAME]~~ Sierra Farr, sworn ~~[DATE]~~ October 17, 2023, and on reading the consent of ~~[RECEIVER’S NAME]~~ A&M to act as the Receiver,

SERVICE AND REFERENCES

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Motion~~ Application and the ~~Motion~~ Application is hereby abridged and validated³ so that this ~~motion~~ application is properly returnable today and hereby dispenses with further service thereof.

² ~~Section 243(1) of the BIA provides that the Court may appoint a receiver “on application by a secured creditor”.~~

³ ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

2. THIS COURT ORDERS that, in this Order, references to the Debtors shall include references to all Debtors, or any of them, unless otherwise specified.

APPOINTMENT

3. ~~2.~~ THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~RECEIVER'S NAME~~ A&M is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the ~~Debtor~~ Debtors acquired for, or used in relation to a business carried on by the ~~Debtor~~ Debtors, including, without limitation, in connection with the Project and the Project itself, including all proceeds thereof (the "Property"). For the avoidance of doubt, the Property includes the lands legally described on Schedule "A" hereto and the buildings located thereon.

RECEIVER'S POWERS

4. ~~3.~~ THIS COURT ORDERS that, subject to the terms of the Receivership Funding Credit Agreement (as defined herein), including, without limitation, the Cash Flow Projections (as defined in the Receivership Funding Credit Agreement), the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or ~~from~~ in respect of the Property, including without limitation, the Debtors' bank accounts wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the ~~Debtor~~ Debtors, including the powers to (i) enter into any agreements, including any agreements for the purchase and sale of condominium units which shall be subject to Court approval, (ii) incur any obligations in the ordinary course of business, (iii) cease to carry on all or any part of the business, or (iv) cease to perform, terminate or disclaim any contracts of the Debtor Debtors, or in respect of the Property, subject to paragraph 5 of this Order;
- (d) make, directly or indirectly, payments owing by the Debtors, or any of them, or owing by Mizrahi Inc. solely in its capacity as developer or general contractor of the Project (in such capacity, the “Developer”), to suppliers, contractors, subcontractors and other creditors, in respect of amounts owing prior to or after the date of this Order, who the Receiver considers to be critical to the business of the Debtors or the Project;
- (e) ~~(d)~~ to engage construction managers, project managers, contractors, subcontractors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and ~~such~~ any other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) ~~(e)~~ to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the ~~Debtor~~ Debtors or any part or parts thereof;
- (g) ~~(f)~~ to receive and collect all monies and accounts now owed or hereafter owing to the ~~Debtor~~ Debtors and, with the consent of the Applicant, to exercise all remedies of the ~~Debtor~~ Debtors in collecting such monies and accounts, including, without limitation, to enforce any security held by the ~~Debtor~~ Debtors;
- (h) ~~(g)~~ to settle, extend or compromise any indebtedness owing to the ~~Debtor~~ Debtors, provided that the Receiver shall obtain the prior consent of the Applicant prior to

settling, extending or compromising any indebtedness owing to the Debtors in excess of \$100,000;

(i) ~~(h)~~ to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of the ~~Debtor~~Debtors, for any purpose pursuant to this Order;

(j) ~~(i)~~ to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the ~~Debtor~~Debtors, the Property or the Receiver, and to settle or compromise any such proceedings, provided that the Receiver shall obtain the prior consent of the Applicant prior to settling or compromising any proceeding where the amount claimed is in excess of \$100,000.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) ~~(j)~~ in consultation with the Applicant, to market, whether directly or indirectly, any or all of the Property, including, without limitation, condominium units and leased premises in the Project, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) ~~(k)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business~~;~~

(i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration

⁴ ~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

for all such transactions does not exceed \$~~_____~~2,000,000, and
provided further that no condominium unit in the Project shall be sold
pursuant to this clause (i); and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause, or in respect of any transaction in respect of condominium units in the Project;

and in each such case notice under subsection 63(4) of the *Ontario Personal Property Security Act*, ~~for~~ section 31 of the *Ontario Mortgages Act*, as the case may be,⁵ shall not be required, ~~and in each case the Ontario Bulk Sales Act shall not apply;~~

- (m) ~~(l)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (n) ~~(m)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and/or the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable, and to conduct any investigations associated with the Debtors' business or the Property as the Receiver deems appropriate;

- (o) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (p) ~~(e)~~ to apply for any permits, licences, approvals or permissions and any renewals thereof, and make any filings, in each case as may be required by any governmental authority ~~and any renewals thereof~~ for and on behalf of and, if thought desirable by the Receiver, in the name of the ~~Debtor~~ Debtors;
- (q) ~~(e)~~ with the consent of the Applicant, to enter into agreements with any trustee in bankruptcy appointed in respect of the ~~Debtor~~ Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the ~~Debtor~~ Debtors;
- (r) ~~(e)~~ to exercise any shareholder, partnership, joint venture, contractual, statutory or other rights which the ~~Debtor~~ Debtors may have; and
- (s) ~~(e)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations ~~-, including opening any mail or other correspondence addressed to any of the Debtors~~;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the ~~Debtor~~ Debtors, and without interference from any other Person.

5. THIS COURT ORDERS that the Receiver shall be at liberty to cease to perform, terminate or disclaim either the Commercial Development Management Agreement (the “Construction Management Agreement”) made as of the 25th day of July, 2014 between Mizrahi Commercial (The One) LP as owner and Mizrahi Inc. as manager in respect of the development and construction services provided to the Project, or the CCDC2 Stipulated Price Contract 2008 made on the 14th day of May, 2019, as amended on the 27th day of September, 2019 (such contract, as so amended, the “GC Agreement”) between Mizrahi Development Group (The One) Inc. as owner and Mizrahi Inc. as contractor, in respect of the general contractor services provided to the Project, subject to providing at least 15 days’ notice to counsel to the Mizrahi Group.

6. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay the amount of \$783,305.03, in respect of the amounts owing to Mizrahi Inc. pursuant to the Construction Management Agreement and/or the GC Agreement for services performed on or prior to August 31, 2023, and the Receiver is further authorized to pay all fees owing under the Construction Management Agreement and the GC Agreement that are properly incurred on or after September 1, 2023, pursuant to the terms of such agreements; provided however that, for the avoidance of doubt, in making any payments pursuant to this paragraph 6, the Receiver is not affirming either the Construction Management Contract or the GC Agreement, and the Receiver shall have no personal liability for any payments or other obligations under either the Construction Management Contract or the GC Agreement.

6A. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay the amount of \$88,218.16, in respect of the amounts owing to 12823543 Canada Ltd. for accounting services performed on or prior to August 31, 2023.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

7. ~~4.~~ **THIS COURT ORDERS** that (i) the ~~Debtor,~~Debtors; (ii) all of ~~its~~their current and former directors, officers, employees, agents, accountants, legal counsel, direct and indirect shareholders, ~~or other equity holders, limited partners, general partners~~ and all other persons acting on ~~its~~their instructions or behalf, ~~and~~; (iii) all construction managers, project managers, contractors, subcontractors and service providers directly or indirectly involved in the Project, and all other persons acting on their instructions or behalf; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person²’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

8. ~~5.~~ **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, agreements, orders, corporate and accounting records, insurance policies, permits, licenses and any other papers, records ~~and~~.

information and cloud-based data of any kind related to the business or affairs of the ~~Debtor~~Debtors or the Property, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof (in each case within the timeframe specified by the Receiver in writing or such other timeframe as may be agreed to between the Receiver and such Person) and grant to the Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph ~~58~~ or in paragraph ~~69~~ of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. ~~6.~~ **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer, in the cloud, or in or on other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers or other account credentials that may be required to gain access to the information.

10. **THIS COURT ORDERS** that all Persons, including, without limitation, the Debtors, Mizrahi Inc., Sam M Inc., 12823543 Canada Ltd., Sam Mizrahi, Jenny Coco, and all construction managers, general contractors, contractors and subcontractors to the Project shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, subcontracts, agreements, permits, licenses and insurance policies and other

documents in respect of the Debtors and/or the Property, solely in relation to the Project. In addition to the foregoing general cooperation and information sharing requirements, all constructions managers, general contractors, contractors, and subcontractors shall, as applicable, be required to do the following things: (a) in respect of any and all such contracts, subcontracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty days' notice of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required.

11. **THIS COURT ORDERS** that, upon termination, disclaimer, expiry or cessation of any contract or agreement between the Debtors and/or or the Receiver and any other Person, such Person shall deliver to the Receiver any Records necessary or desirable for the operation of the Debtors' business or the Project.

12. ~~7.~~ **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

13. ~~8.~~ **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver or the Receiver's counsel except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE ~~DEBTOR~~DEBTORS OR THE PROPERTY

14. ~~9.~~ **THIS COURT ORDERS** that no Proceeding against or in respect of the ~~Debtor~~Debtors or the Property, or the Developer for matters arising after the date of this Order, shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the ~~Debtor~~Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. ~~10.~~ **THIS COURT ORDERS** that all rights and remedies against the ~~Debtor~~Debtors, the Receiver, or affecting the Property, or against the Developer for matters arising after the date of this Order, including, without limitation, licenses and permits required for the Project regardless of who is the legal holder of any such licenses and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the ~~Debtor~~Debtors to carry on any business which the ~~Debtor is~~Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the ~~Debtor~~Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

16. ~~11.~~ **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of the Debtors, the Developer, or in respect of the Project, or held by the ~~Debtor~~Debtors or the Developer, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

17. ~~12.~~ **THIS COURT ORDERS** that all Persons having oral or written agreements with the ~~Debtor~~Debtors, or the Developer or contractual, statutory or regulatory mandates for the supply of goods and/or services to the Debtors, or the Developer and/or the Project, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll ~~services~~and benefit services, warranty services, sub-contracts, trade suppliers, equipment vendors and rental companies, insurance, transportation services, utility, customers, clearing, warehouse and logistics services or other services to the ~~Debtor~~Debtors, or the Developer and/or the Project are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the ~~Debtor~~Debtors's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver or the Developer, as determined by the Receiver, in accordance with normal payment practices of the ~~Debtor~~Debtors or the Developer, as applicable, or, with respect to the Debtors or the Developer, such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

18. **THIS COURT ORDERS** that any Person who has provided any kind of letter of credit, guarantee, surety or bond (collectively, "**Financial Assurance**") to or for the benefit of the Debtors, including where such Financial Assurance has been provided to the Developer, on or before the date of this Order shall be required to continue honouring such Financial Assurance in accordance with its terms, notwithstanding any default of cross-default arising as a result of this Order, the financial circumstances of the Debtors or otherwise. For greater certainty, the guarantees of the Guarantors referred to in paragraph 65 of the Yoon Affidavit shall not be affected by this paragraph and such guarantees are not included in the definition of Financial Assurance.

RECEIVER TO HOLD FUNDS

19. ~~13.~~ **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new bank accounts to be opened by the Receiver or on the instructions of the Receiver into a lawyer's trust account held in trust in accordance with purchase and sale agreements for condominium units in the Project (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

20. ~~14.~~ **THIS COURT ORDERS** that all employees of the ~~Debtor~~Debtors shall remain the employees of the respective Debtor until such time as the Receiver, on the ~~Debtor~~applicable Debtors's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

21. ~~15.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property including, without limitation, condominium units and leased premises in the Project (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and

limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

22. ~~16.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

23. ~~17.~~ **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation (including, without limitation, any personal liability or obligation under or in connection with (i) the Receivership Funding Credit Agreement; (ii) the performance, actions, errors, omissions or negligence by or of any construction manager, project manager, developer, contractor,

subcontractor or other service provider directly or indirectly involved in the Project, and all other persons acting on their instructions or behalf, or (iii) as a result of its appointment or the carrying out of the provisions of this Order), save and except for liability arising from any gross negligence or wilful misconduct on its part, as determined pursuant to a final order of this Court that is not subject to appeal or other review and all rights to seek any such appeal or other review shall have expired, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

24. ~~18.~~ **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, whether incurred prior to, on or subsequent to the date of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and provided further that the Receiver’s Charge shall be subordinate to the security interest of Aviva Insurance Company of Canada (“Aviva”) in the Condo Deposits in the Condo Deposit Account (each as defined in the Yoon Affidavit).⁶

25. ~~19.~~ **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass ~~its~~their accounts from time to time, and for this purpose the accounts of the Receiver and its legal

⁶~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order “unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations”.~~

counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

26. ~~20.~~ **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

27. ~~21.~~ **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow, by way of ~~a revolving credit or otherwise~~ the Receivership Funding Credit Agreement dated as of October 18, 2023 among the Receiver, IGIS Asset Management Co., Ltd. and KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the “Lender”) (with such minor amendments that are not inconsistent with this Order, as the Lender and the Receiver may agree to, the “Receivership Funding Credit Agreement”), such monies from time to time as it may consider necessary or desirable, provided that draws made under the ~~outstanding principal amount does~~ Receivership Funding Credit Agreement do not exceed \$ 315,000,000 (or such ~~greater~~ further amount as this Court may ~~by further Order~~ authorize) ~~at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange,~~ on the terms contained in the Receivership Funding Credit Agreement, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including ~~interim expenditures~~ as required in order to finance ongoing construction and development costs in connection with the Project and costs associated with the Receivership, including professional fees. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed pursuant to the Receivership Funding Credit Agreement, together with interest, fees and charges thereon, as set forth in the Receivership Funding Credit Agreement, and all other amounts the Debtors are responsible for pursuant to the Receivership Funding Credit Agreement, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in

favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and provided further that the Receiver's Borrowings Charge shall be subordinate to the security interest of Aviva in the Condo Deposits in the Condo Deposit Account.

28. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) upon the occurrence of an event of default under the Receivership Funding Credit Agreement or the Receiver's Borrowings Charge, the Lender may immediately cease making advances to the Receiver, make demand, accelerate payment and give other notices; and

(b) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy of the Debtors or the Property.

29. ~~22.~~ **THIS COURT ORDERS** that ~~neither~~ the Receiver's Borrowings Charge ~~nor any other security granted by the Receiver in connection with its borrowings under this Order~~ shall not be enforced without leave of this Court.

30. ~~23.~~ **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "AB" hereto (the "**Receiver's Certificates**") as evidence for any amount borrowed by it pursuant to the Receivership Funding Credit Agreement and this Order.

31. ~~24.~~ **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to the Receivership Funding Credit Agreement and this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

32. ~~25.~~ **THIS COURT ORDERS** that the E-Service ~~Protocol~~Guide of the Commercial List (the "~~Protocol~~Guide") is approved and adopted by reference herein and, in this proceeding, the

service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at ~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~<https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph ~~21~~3 of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocol~~Guide with the following URL: ~~[●]~~<https://www.alvarezandmarsal.com/theone>.

33. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the ~~Protocol~~Guide is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the ~~Debtor~~Debtors's creditors or other interested parties at their respective addresses as last shown on the records of the ~~Debtor~~Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

34. ~~27.~~ **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

35. ~~28.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any or all of the ~~Debtor~~Debtors.

36. ~~29.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully

requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

37. ~~30.~~ **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

38. ~~31.~~ **THIS COURT ORDERS** that the ~~Plaintiff~~Applicant shall have its costs of this ~~motion~~Application, up to and including entry and service of this Order, provided for by the terms of the ~~Plaintiff~~Receivership Funding Credit Agreement, the Applicant's security or, if not so provided by the ~~Plaintiff~~Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the ~~Debtor~~Debtors' ~~s-estate~~ estates with such priority and at such time as this Court may determine.

39. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE “A”

LEGAL DESCRIPTION OF THE PROJECT

PIN 21109-0244 (LT)

FIRSTLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; SECONDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; THIRDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN AT5101384; FOURTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 163R658; SUBJECT TO AN EASEMENT AS IN AT5101384; FIFTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN AT5101384; SIXTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770; SUBJECT TO AN EASEMENT AS IN AT5101384; SEVENTHLY: FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT PT PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, SAVE AND EXCEPT PART 2 ON PLAN 66R-32221; SUBJECT TO AN EASEMENT AS IN AT5101384; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 AND 8 ON PLAN 66R-32221 AS IN AT6077647; SUBJECT TO AN EASEMENT OVER PARTS 4, 5 AND 6 ON PLAN 66R-32221 AS IN AT6077654; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT OVER PART 3 ON PLAN 66R-32221 IN FAVOUR OF PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT AS IN AT6227322; CITY OF TORONTO

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ~~RECEIVER'S NAME~~, Alvarez & Marsal Canada Inc., in its capacity as the receiver and manager (the "Receiver") of the assets, undertakings and properties ~~DEBTOR'S NAME~~ of Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (the "Debtors") acquired for, or used in relation to a business carried on by the ~~Debtor~~ Debtors including, without limitation, in connection with the development 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"), including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number __-CL-_____, has received as such Receiver from ~~the holder of this certificate~~ KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable ~~on demand by the Lender in accordance with the terms of the Receivership Funding Credit Agreement (as defined in the Order)~~ with interest thereon calculated ~~and compounded [daily][monthly not in advance on in accordance with the _____ day terms of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time~~ Receivership Funding Credit Agreement.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable ~~at the main office of the Lender~~ at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

~~{RECEIVER'S NAME}~~ ALVAREZ & MARSAL CANADA INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____
Name:
Title: