

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP
(THE ONE) INC. AND MIZRAHI COMMERCIAL (THE
ONE) GP INC.**

Applicants

**FACTUM
(CCAA Application and Transaction Approval Returnable April 22, 2025)**

April 14, 2025

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PART I. INTRODUCTION

1. Mizrahi Development Group (The One) Inc. and Mizrahi Commercial (The One) GP Inc. (the “**Applicants**” and, together with Mizrahi Commercial (The One) LP (the “**Beneficial Owner**”), the “**Companies**”), by their receiver and manager, Alvarez & Marsal Canada Inc. (“**A&M**” and in such capacity, the “**Receiver**”) bring this application seeking approval of: (a) an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”), among other things, granting the Companies protection thereunder; and (b) an Order (the “**Transaction Approval Order**”), among other things, approving a transaction pursuant to which Tridel Builders Inc. and certain of its affiliates (collectively, “**Tridel**”) will be engaged as the project manager, construction manager and sales manager of the condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario, marketed as “The One” (the “**Project**”), to complete the construction, development and realization of value from same (the “**Transaction**”).¹

2. The Transaction represents the successful culmination of a highly competitive Court-approved SISF, and constitutes the best means available to both maximize value and ensure the completion of the Project for the benefit of stakeholders. This Court granting the Initial Order is a condition precedent to the Transaction, as the transition from the Receivership Proceedings to the CCAA Proceedings will best facilitate the implementation of the Transaction and the ongoing construction and development of the Project, including by providing a better forum in which to market and sell Units in the Residential Component and to operate, lease and ultimately sell each

¹ All capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Order (Appointing Receiver) of this Court dated October 18, 2023 (the “**Receivership Order**”), the Joint Eighth Report of the Receiver and Pre-Filing Report of A&M as Proposed Monitor dated April 3, 2025 (the “**Joint Report**”), or the proposed Initial Order.

of the different components within the Commercial Component, all with a view to maximizing value and recoveries.²

3. For the reasons set out herein and in the Joint Report, the Receiver respectfully requests that the Court grant the relief sought by the Companies on the terms of the proposed Initial Order and the proposed Transaction Approval Order.

PART II. FACTS

A. Background³

4. The Companies are entities established for the sole purpose of developing the Project. On October 18, 2023 (the “**Appointment Date**”), the Senior Secured Lenders, to whom the Companies owed more than \$1.2 billion as at the Appointment Date, sought the appointment of the Receiver for the principal purposes of bringing stability and appropriate oversight to the Project to ensure the continuing construction of same and provided up to \$315 million in funding under the Receivership Funding Credit Agreement dated October 18, 2023 (the “**RFCA**”).

5. On June 6, 2024, the Court approved a SISP in respect of the Project. The SISP was designed to efficiently and effectively canvass the market for any and all potential forms of value maximizing transactions that may be available and acceptable to the Receiver and the Senior Secured Lenders for the sale of the Project, or alternatively, for go-forward arrangements with developers for its construction to completion.⁴

² Joint Report at para 7.1 [[A60:A58](#)].

³ The facts are as more particularly described in the [Sixth Report of the Receiver dated December 11, 2024](#) (the “**Sixth Report**”), and the Joint Report. Additional background information regarding the Companies, the Project and these Receivership Proceedings is set out in the [Affidavit of Joo Sung Yoon dated October 17, 2023](#), the [First Report of the Receiver dated February 26, 2024](#), and the [Second Report of the Receiver dated May 28, 2024](#) [Second Report].

⁴ *Keb Hana as Trustee et al v Mizrahi Commercial (The One) LP et al* (11 June 2024), Toronto, Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Endorsement of Osborne J](#)); *Keb Hana as Trustee et al v Mizrahi Commercial (The One) LP et al* (6 June 2024), Toronto, Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Order \(Approval of SISP\)](#)).

6. As further detailed in the Sixth Report and the Joint Report, the Development Proposal submitted by Tridel was ultimately determined to be the superior proposal and was designated by the Receiver, in consultation with the Broker and the Senior Secured Lenders, as the Selected Qualified Bid.⁵ Accordingly, on December 6, 2024, the Receiver, Tridel and the Senior Secured Lenders entered into the Term Sheet setting out the principal terms and conditions of the Transaction and, on April 3, 2025, following several months of extensive negotiations between the parties, the Definitive Transaction Agreements were executed.

7. Significant additional funding is required to complete the Project. To facilitate the implementation of the Transaction and the completion of construction, the Senior Secured Lenders have agreed to provide funding to the Companies by way of the Debtor-In-Possession Credit Agreement made as of April 3, 2025 (the “**DIP Credit Agreement**”), in the maximum principal amount of \$615 million, subject to the Court’s approval of the proposed Initial Order and Transaction Approval Order in the within CCAA proceedings, and the Court’s approval of the proposed Discharge Order in the Companies’ Receivership Proceedings (among other conditions to funding). The DIP Credit Agreement is the only source of funding available to the Companies to continue and complete the construction of the Project for the benefit of stakeholders.⁶

PART III. ISSUES AND THE LAW

8. The issues to be considered on this application are whether the Court should:

- (a) grant the proposed Initial Order, among other things: (i) granting the Companies protection under the CCAA and extending the benefits and protections of the Initial Order to the Beneficial Owner; (ii) appointing A&M as Monitor of the Companies;

⁵ Joint Report at para 5.5 [[A45:A43](#)]; Sixth Report at para 4.26 [[A200:A198](#)].

⁶ Joint Report at paras 10.4, 10.7 [[A83:A81](#), [A86:A84](#)].

(iii) appointing FAAN as CRO of the Companies; (iv) granting a stay of proceedings in respect of the Companies, the Monitor and any Developer until and including August 15, 2025; (v) authorizing the Companies to enter into and borrow up to \$615 million under the DIP Credit Agreement and granting the related DIP Lender's Charge; and (vi) granting the Administration Charge and continuing the priority charges granted in the Receivership Proceedings; and

(b) grant the proposed Transaction Approval Order, among other things: (i) approving the Transaction and authorizing the execution of the Definitive Transaction Agreements by the CRO on behalf of the Companies, *nunc pro tunc*; (ii) granting the Tridel Charge in favour of the Tridel Parties as security for the Tridel Charge Obligations; and (iii) approving the Tridel Reconfiguration Plan (as defined below).

A. The Proposed Initial Order Should be Granted

(i) *The Applicants are Entitled to Seek Protection Under the CCAA and CCAA Protection Should be Extended to the Beneficial Owner*

9. Each of the Applicants are debtor companies to which the CCAA applies. The CCAA applies to a "debtor company" or affiliated "debtor companies" where the total claims against the debtor or its affiliates exceed \$5 million.⁷ Pursuant to section 2(1) of the CCAA, a "company" includes any incorporated company having assets in Canada and a "debtor company" includes any company that is "bankrupt or insolvent".⁸ Whether a company is insolvent for the purposes of this definition is evaluated by reference to the definition of "insolvent person" in the *Bankruptcy and*

⁷ CCAA, s [3\(1\)](#).

⁸ CCAA, s [2\(1\)](#) ("company" and "debtor company").

Insolvency Act (Canada) (the “**BIA**”), as well as the expanded concept of insolvency adopted in *Stelco*.⁹

10. In this case: (a) the Applicants are affiliated corporations having assets in Canada and are, together with the Beneficial Owner, subject to claims well in excess of \$5 million; and (b) the Companies, including the Beneficial Owner, are insolvent and already subject to the Receivership Order due to their inability to repay their significant secured debt obligations owing to the Senior Secured Lenders and other subordinate secured lenders. Accordingly, the Applicants are eligible for CCAA protection.¹⁰

11. Further, the requirements set out in section 10(2) of the CCAA have been complied with. Specifically: (a) the Companies have prepared a cash flow forecast for the 20-week period from April 12, 2025, to August 29, 2025, together with the required accompanying report to the cash flow forecast; and (b) copies of the Companies’ most recent, unaudited financial statements for the year ended December 31, 2023, have been provided in the Joint Report.¹¹ In addition, Courts have previously granted initial CCAA orders in respect of a company on the application of a receiver or interim receiver of the same company.¹²

12. With respect to the Beneficial Owner, it is a limited partnership and thus not a “debtor company” within the meaning of the CCAA. However, it is well-established that the Court has the jurisdiction to extend CCAA protection to partnerships to ensure that the purposes of the CCAA can be achieved where the operations of a partnership are integral and closely tied to the operations

⁹ *Stelco Inc, Re*, [2004 CanLII 24933](#) (Ont Sup Ct J [Commercial List]) at para [26](#). See also *Target Canada Co (Re)*, [2015 ONSC 303](#) at para [26](#) [*Target*]; *Nordstrom Canada Retail, Inc*, [2023 ONSC 1422](#) at para [26](#) [*Nordstrom*].

¹⁰ Joint Report at para 7.4 [[A63:A61](#)].

¹¹ Joint Report at Appendix “E”, Appendix “I”, Appendix “J” [[A702:A700](#), [A720:A718](#), [A724:A722](#)].

¹² See e.g., *Validus Power Corp et al* (29 August 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00705215-00CL ([Initial Order](#)) [*Validus*]; *PricewaterhouseCoopers Inc v Canada Fluorspar (NL) Inc*, [2022 NLSC 48](#).

of the debtors' business.¹³ In the circumstances of this case, it is appropriate to extend CCAA protection to the Beneficial Owner as it was formed to undertake the development of the Project, is the beneficial owner of the Project, is integral to the Companies' business, and owes the same indebtedness to the Senior Secured Lenders as the Applicants.¹⁴

13. Separate and apart from the statutory requirements, conversion from the Receivership Proceedings to the CCAA Proceedings will facilitate the successful completion and realization of value of the Project. With the implementation of the Transaction, the focus will shift to completing construction and developing and implementing the marketing and sale of residential Units in the Project and the strategy to complete and monetize the Commercial Component. The proposed CCAA Proceedings will facilitate these efforts, including by providing increased flexibility in selling Units, assisting in addressing regulatory issues and providing greater operational flexibility should business operations in the Commercial Component commence, all while maintaining the continuing oversight of the Court and A&M, who will transition from Receiver to Monitor.¹⁵

(ii) The Ontario Court has Jurisdiction

14. Section 9(1) of the CCAA provides that a debtor company may bring an application under the CCAA in the province in which the head office or chief place of business of the company in Canada is situated.¹⁶ The head office and principal place of business of each of the Applicants is in Toronto, Ontario, where the Project is located.¹⁷ Accordingly, this Court is the appropriate forum for these CCAA Proceedings.

¹³ See e.g., *Target* at paras [42–43](#); *4519922 Canada Inc (Re)*, [2015 ONSC 124](#) at para [37](#); *Just Energy Corp (Re)*, [2021 ONSC 1793](#) at para [116](#) [*Just Energy*]; *Nordstrom* at para [30](#); *BBB Canada Ltd*, [2023 ONSC 1014](#) at para [28](#).

¹⁴ Joint Report at para 7.7(i) [[A63:A61](#)].

¹⁵ Joint Report at para 7.2 [[A60:A58](#)].

¹⁶ CCAA, [s 9\(1\)](#); *Target* at paras [29–30](#).

¹⁷ Joint Report at para 7.4 [[A63:A61](#)].

(iii) A&M Should be Appointed as Monitor

15. Section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company's business. A&M has consented to act as the Monitor in the CCAA Proceedings, is a trustee within the meaning of section 2(1) of the BIA, and is not affected by any of the restrictions on entities that may act as Monitor set out in section 11.7(2) of the CCAA.¹⁸ A&M is particularly well-equipped to act as Monitor of the Companies because: (a) it has extensive experience acting as a Court-appointed monitor in CCAA proceedings; and (b) in its capacity as Receiver, A&M has become very familiar with the Project and the various issues that will need to be addressed as part of the proposed CCAA Proceedings.¹⁹ Furthermore, A&M as Receiver will continue to deal with the Receiver Incidental Matters, including the Receivership Litigation and the Assumed Receivership Liabilities, in accordance with the terms of the proposed Discharge Order.²⁰

(iv) FAAN Should be Appointed as CRO

16. The Companies are seeking to have FAAN appointed as CRO pursuant to the proposed Initial Order. FAAN has experience advising in other corporate restructurings, including in the real estate sector, and is familiar with the Project and the business and operations of the Companies, having been engaged as a financial advisor to the Senior Secured Lenders in July 2024.²¹

17. The Court has the statutory authority to make an order appointing a CRO pursuant to section 11 of the CCAA, and courts have held that the appointment of a CRO is appropriate where its expertise will assist the debtor in achieving the objectives of the CCAA and continuing the

¹⁸ Joint Report at paras 8.2, 8.5 [[A78:A76](#)].

¹⁹ Joint Report at para 8.1 [[A77:A75](#)].

²⁰ Joint Report at para 12.1(i) [[A91:A89](#)].

²¹ Joint Report at para 9.3, 9.4 [[A79:A77](#)].

operation of the business during the restructuring process, as will be the case here.²² Should the Transaction be approved and the Initial Order granted by the Court, the CRO, with guidance from Tridel, will make decisions on behalf of the Companies relating to the development of the Project, in consultation with the Monitor and the Senior Secured Lenders, where appropriate.²³

(v) *The Stay of Proceedings Should be Granted*

18. The proposed Initial Order contemplates an initial stay of proceedings until and including August 15, 2025, for the Companies, the Monitor and any Developer, together with other customary relief under a “full” CCAA Initial Order.

19. Although the CCAA contemplates that a stay on an initial application may only be for a 10-day period and that relief on an initial application be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that 10-day period, the rationale for this limitation (that is, avoiding procedural fairness concerns arising from the *ex parte* or limited notice nature of most initial applications under the CCAA) is not applicable in the circumstances.²⁴ With respect to the within application: (a) the Companies have been the subject of highly publicized Court-supervised insolvency proceedings for more than 18 months that have included the same (or substantially similar) relief as that sought under the proposed Initial Order; (b) all parties on the service list in the Receivership Proceedings (including certain additional parties added to the service list and supplemental service list in the CCAA Proceedings), all known creditors, all subcontractors and trades engaged on the Project and all Unit purchasers for whom the Receiver has an email address were provided with approximately

²² CCAA, [s.11](#); *Walter Energy Canada Holdings, Inc (Re)*, [2016 BCSC 107](#) at para [35](#); *DCL Corporation* (20 December 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00691990-00CL ([Endorsement of Conway J](#)) at para [9](#).

²³ Joint Report at para 9.2 [[A79:A77](#)].

²⁴ CCAA, ss [11.02\(1\)](#); Joint Report at para 7.7(iii) [[A64:A62](#)].

17 days' notice of the application;²⁵ and (c) the Transaction, including the contemplated transition to the CCAA Proceedings, was first reported by the Receiver in its Sixth Report dated December 11, 2024, which attached the Term Sheet in respect of the Transaction.²⁶

20. This Court has previously exercised its discretion to issue a stay of proceedings beyond the 10-day period on a CCAA conversion application where the policy rationale for the 10-day stay period is not engaged.²⁷ Furthermore, the Companies will have sufficient liquidity to continue operations during this period with funding under the DIP Credit Agreement.²⁸

21. Extending the stay of proceedings to the Developers (including MI, SKYGRiD and Tridel) is also appropriate in the circumstances. Courts in insolvency proceedings will grant stay protection in favour of third parties where necessary and appropriate to facilitate restructuring efforts and, in doing so, will consider a range of factors, including, but not limited to, whether extending the stay to the third party would help maintain stability and value during the restructuring proceedings.²⁹ The protections requested in favour of the Developers are limited to what is necessary to ensure that construction of the Project continues uninterrupted. If granted, this relief will help facilitate ongoing construction by ensuring that Tridel's ability to continue the construction of the Project is not undermined by the disruption of current contractual relationships

²⁵ A hard copy of the Application Record was delivered on April 7, 2025, to those parties on the supplemental service list in the CCAA Proceedings without an email address, and a letter advising of the within application was sent to stakeholders without an email address on April 11, 2025.

²⁶ Joint Report at para 7.7(iii) [[A64:A62](#)].

²⁷ *Joriki Topco Inc et al* (29 January 2025), Toronto, Ont Sup Ct J [Commercial List] CV-25-00735458-00CL ([Endorsement of Osborne J](#)) at paras [23–27](#); *The Body Shop Canada Limited et al* (5 July 2024), Toronto, Ont Sup Ct J [Commercial List] BK-24-03050418-0031 ([Endorsement of Osborne J](#)) at paras [19–22](#); *Re Cannmart Labs Inc* (2 May 2024), Toronto, Ont Sup Ct J [Commercial List] CV-24-00719639-00CL ([Initial Order \(Continuation Under CCAA\)](#)) at para 18; *Re Tribalscale Inc* (31 July 2020), Toronto, Ont Sup Ct J [Commercial List] CV-20-00645116-00CL ([Initial Order](#)) at para 17; *Re Medifocus Inc* (7 October 2021), Toronto, Ont Sup Ct J [Commercial List] CV-21-00669781-00CL ([Initial Order](#)) at para 16.

²⁸ Joint Report at para 11.1, Appendix I [[A88:A86](#), [A720:A718](#)].

²⁹ See e.g., *KEB Hana as Trustee et al v Mizrahi Commercial (The One) LP et al*, [2024 ONSC 1678](#) at para [28](#); *JTI-Macdonald Corp, Re*, [2019 ONSC 1625](#) at para [15](#) [*JTI-Macdonald*]; *McEwan Enterprises Inc*, [2021 ONSC 6453](#) at paras [42–43](#) [*McEwan*].

on the Project or by any potential litigation against Tridel or the prior Developers. The same relief was granted in the Receivership Proceedings.³⁰

(vi) *Notice and Creditor's List Requirement Exemptions*

22. The proposed Initial Order contemplates that the Monitor shall be exempt from certain requirements under the CCAA, namely the requirement to: (a) publish a notice in a newspaper in Canada advising of the commencement of the CCAA proceedings; (b) send a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available; and (c) prepare a creditors list and make it publicly available in the prescribed manner.³¹

23. At the outset of the receivership, the Receiver sent notice of the Receivership Proceedings to all known creditors, prepared and published a list showing the names of the Companies' creditors and their estimated claims, and created the Case Website.³² In light of having completed these nearly identical steps in the Receivership Proceedings, as well as having provided notice of the within application to all relevant stakeholders, it is appropriate for the Court to dispense with the aforementioned requirements in this case, which will reduce associated professional, mailing and publication expenses. This Court has granted similar relief in similar circumstances where proceedings were continued under the CCAA.³³

³⁰ [Receivership Order](#) at para 14; [Construction Continuance Order](#) at para 7.

³¹ CCAA, [ss 23\(1\)\(a\)\(i\), 23\(1\)\(a\)\(ii\)\(B\), 23\(1\)\(a\)\(ii\)\(C\)](#).

³² Joint Report at para 7.7(iv) [[A65:A63](#)].

³³ *Joriki Topco Inc et al* (28 January 2025), Toronto, Ont Sup Ct J [Commercial List] CV-25-00735458-00CL ([Initial Order](#)) at para 51; *Magna Gold Corp* (27 March 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-006968741-00CL ([Initial Order](#)) at para 43; *Spartan Bioscience Inc* (21 June 2021), Toronto, Ont Sup Ct J [Commercial List] CV-21-00086797-0000 ([Initial Order](#)) at para 38.

(vii) *Payments of Amounts Incurred in the Receivership Proceedings and Continuation of Specified Receivership Orders*

24. The proposed Initial Order contemplates that payments for ongoing construction and other services in relation to the Project will continue to be made by the Companies. Specifically, the Companies may, with the consent of the Monitor, pay amounts owing in respect of obligations incurred by the Companies or the Receiver during the Receivership Proceedings, including in respect of goods and services supplied to the Companies, the Receiver or otherwise in respect of the Project during the Receivership Proceedings (i.e., pre-CCAA filing).³⁴ This Court has allowed debtor companies to pay pre-filing obligations where appropriate, particularly where failure to do so could frustrate the debtor company's ongoing operations.³⁵ In the circumstances, the Companies require the authority to make pre-filing payments to facilitate the orderly transition from the Receivership Proceedings to the CCAA Proceedings, prevent any prejudice to parties who supplied goods and services during the Receivership Proceedings, and ensure goods and services that are integral to the ongoing construction of the Project continue to be provided in the normal course.³⁶

25. In addition, during the Receivership Proceedings, the Receiver sought several Court Orders that addressed the filing and resolution of lien claims and contributed to ensuring the ongoing construction of the Project. The Companies will continue to require the benefit of these Orders in the context of the CCAA Proceedings. Accordingly, continuing these Orders with appropriate conforming changes in accordance with the terms of the proposed Initial Order is appropriate in the circumstances.³⁷

³⁴ Draft Initial Order at para 6(b) [[A773;A771](#)].

³⁵ [McEwan](#) at paras [32-33](#); *Clover Leaf Holdings Company, Re*, [2019 ONSC 6966](#) at para [25](#); *Index Energy Mills Road Corporation (Re)*, [2017 ONSC 4944](#) at para [31](#); *JTI Macdonald* at paras [24-25](#).

³⁶ Joint Report at para 7.7(ii) [[A64;A62](#)].

³⁷ Joint Report at paras 7.16-7.17 [[A71;A69-A76;A74](#)].

(viii) *The Administration Charge Should be Approved*

26. Section 11.52 of the CCAA provides the court with the jurisdiction to grant a priority charge over a debtor company's assets for professional fees and disbursements on notice to affected secured creditors.³⁸ This Court has recognized that, unless such fees are protected with the benefit of an administration charge, the objectives of the CCAA would be frustrated as it is not reasonable to expect professionals to take the risk of not being paid for their services.³⁹

27. The factors to be considered in approving an administration charge are well established. Courts have considered: (a) the size and complexity of the business being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is an unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected; and (f) the position of the Monitor.⁴⁰

28. The Companies seek approval of an Administration Charge in the amount of \$3.5 million to secure the fees and disbursements of the Monitor, counsel to the Monitor and the CRO incurred in connection with the CCAA Proceedings, which Administration Charge shall rank *pari passu* with the Receiver's Charge granted in the Receivership Proceedings. In the circumstances, the Administration Charge should be granted because: (a) the beneficiaries of the Administration Charge will play a critical role in implementing the Transaction and overseeing the CCAA Proceedings; (b) there is no unwarranted duplication of roles, including because the CRO (who will be acting on behalf of the Companies in respect of Project-related decisions) and the Monitor (who will be acting in a supervisory capacity as it relates to the Companies) will have distinct responsibilities in connection with the administration and oversight of the CCAA Proceedings; (c)

³⁸ CCAA, [s.11.52](#).

³⁹ *Timminco Limited (Re)*, [2012 ONSC 506](#) at para 66.

⁴⁰ *Canwest Publishing Inc.*, [2010 ONSC 222](#) at para 54 [*Canwest Publishing*].

the quantum of the Administration Charge is reasonable having regard to the nature of the CCAA Proceedings and the work expected to be required by these professionals on a monthly basis; and (d) the Proposed Monitor and the Senior Secured Lenders support the Administration Charge.⁴¹

(ix) *The DIP Credit Agreement and the DIP Lenders' Charge Should be Approved*

29. Significant additional funding is required to complete the Project. The Senior Secured Lenders have advised that they are prepared to provide such funding by way of the DIP Credit Agreement, should the Transaction be approved and the Initial Order be granted by the Court.

30. In furtherance of the foregoing, the Companies are requesting that this Court: (a) approve the DIP Credit Agreement entered into by the Companies and the Senior Secured Lenders; (b) authorize the Companies to borrow up to \$615 million (plus interest, fees and expenses) under the DIP Credit Agreement; and (c) grant the DIP Lender's Charge in favour of the DIP Lender to secure the obligations under the DIP Credit Agreement, to rank subordinate to the Administration Charge and the Receiver's Charge, and *pari passu* with the Receiver's Borrowings Charge granted in the Receivership Proceedings.⁴²

31. Section 11.2 of the CCAA provides the Court with the express jurisdiction to approve the DIP Credit Agreement and the DIP Lender's Charge, and lists the factors courts must consider in deciding whether to approve a priming charge in connection with interim financing:

11.2(4) Factors to be considered – In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

⁴¹ Joint Report at para 7.10(i) [[A67:A65](#)].

⁴² Joint Report at para 7.10(ii) [[A68:A66](#)].

- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.⁴³

32. In *Canwest Publishing*, Justice Pepall highlighted the importance of meeting the criteria set out in section 11.2(1) in addition to those found in section 11.2(4), namely: (a) whether notice has been given to secured creditors likely to be affected by the security or charge; (b) whether the amount to be granted under a DIP facility is appropriate and required having regard to the debtors' cash-flow statement; and (c) whether the DIP charge secures an obligation that existed before the order approving the DIP was made.⁴⁴

33. Consideration of the foregoing criteria supports the approval of the DIP Lender's Charge as: (a) notice has been given to all of the Companies' secured creditors; (b) the DIP Credit Agreement provides for sufficient funding to ensure that the Companies can complete construction of the Project and finance these CCAA Proceedings; (c) the DIP Lender is not prepared to advance additional funds without the security of a court-ordered priority charge under the CCAA; (d) the DIP Credit Agreement is the only source of funding available to the Companies to complete the construction of the Project for the benefit of stakeholders; (e) the DIP Lender's Charge does not secure a pre-filing obligation, including because the funds advanced under the RFCA are secured

⁴³ CCAA, ss [11.2\(1\)](#), [11.2\(4\)](#).

⁴⁴ *Target* at para [74](#), citing *Canwest Publishing* at para [54](#); *Just Energy* at paras [112-13](#).

only by the Receiver's Borrowings Charge, which is being continued in the CCAA Proceedings;⁴⁵ and (f) the Proposed Monitor is of the view that the economic and other terms of the DIP Credit Agreement are appropriate, including because no fees are being charged by the DIP Lender and the interest rate being charged is less than the RFCA and well below rates charged in other recent real estate development insolvency proceedings.⁴⁶

(x) *The Confidential Appendix Should be Sealed*

34. The Receiver requests that this Court seal Confidential Appendix "1" to the Joint Report, which contains a confidential summary of the LOIs received in the SISP. This Court has the discretion pursuant to section 137(2) of the *Courts of Justice Act* (Ontario) and its inherent jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.⁴⁷ With respect to summaries of bids received in a sale process, this Court has previously granted sealing orders in respect of same.⁴⁸

35. In *Sherman Estate*, the Supreme Court of Canada held that the person asking a court to exercise discretion in a way that limits the open court presumption must establish that: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁴⁹

⁴⁵ This Court has continued or recognized charges from a company's receivership proceedings in connection with its CCAA proceedings upon a conversion application. See e.g., *MJardin Group, Inc et al* (2 June 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00682101-00CL ([Amended and Restated Initial Order](#)) at para 44; *Validus* at para 3.

⁴⁶ Joint Report at para 10.7 [A86:A84].

⁴⁷ *Courts of Justice Act*, RSO 1990, c C.43, s [137\(2\)](#).

⁴⁸ See e.g., *MAV Beauty Brands Inc et al* (24 November 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00709610-00CL ([Order \(Approval, Vesting and Distribution\)](#)) at para 22 [MAV AVO]; *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#) at para [39](#); *Attorney General of Canada v Silicon Valley Bank*, [2023 ONSC 4703](#) at paras [30–33](#).

⁴⁹ *Sherman Estate v Donovan*, [2021 SCC 25](#) at paras [37–38](#).

36. The Receiver respectfully submits that the foregoing test is satisfied. The LOI Summary contains commercially sensitive information that could negatively impact realization efforts in respect of the Project, including as relates to the estimated value of the individual components of the Project, and financial and other details concerning the LOIs that were submitted, as well as more detailed particulars of Tridel’s commercially sensitive fee structure, disclosure of which could undermine the Transaction.⁵⁰ There is no reasonable alternative to a sealing order to mitigate the aforementioned risks, and the Receiver is of the view that no party will suffer prejudice if the LOI Summary is filed under seal.⁵¹

(xi) The Authorization to Change the Companies’ Names is Appropriate

37. The proposed Initial Order authorizes the Companies and the CRO to complete and file the necessary documents to change the legal names and registered addresses of the Companies. The contemplated name changes are appropriate in the circumstances, including to facilitate marketing efforts with respect to the sale of Units in the Project, which will appropriately reflect that the Mizrahi Group is no longer involved in the construction or development of the Project.⁵²

38. Section 186(2) of the *Business Corporations Act* (Ontario) (the “OBCA”) provides that if a corporation is subject to a reorganization (defined in the OBCA to include an order made under the BIA or the CCAA approving a proposal), its articles may be amended by court order to effect any change that might be lawfully made by an amendment under section 168 of the OBCA, which expressly includes a change to the corporation’s name.⁵³ This Court has confirmed that since there are no formal “proposals” under the CCAA, this term should be viewed in the non-technical sense

⁵⁰ Joint Report at paras 5.4, 6.3 [[A45:A43](#), [A49:A47](#)].

⁵¹ Joint Report at para 5.4 [[A45:A43](#)].

⁵² Joint Report at paras 7.21–7.22 [[A77:A75](#)].

⁵³ OBCA, ss [168\(1\)](#), [186\(2\)](#).

of the word so as to encompass any proposal,⁵⁴ such as the proposed Transaction. Although not always expressly under section 186(2) of the OBCA, this Court has granted name change relief in connection with the approval of a transaction or plan under the CCAA on numerous occasions.⁵⁵

39. Given that the Beneficial Owner is not a corporation, the provisions of the OBCA are not applicable to it and the *Limited Partnerships Act* (Ontario) (the “LPA”) governs. Although there is no provision in the LPA equivalent to section 186(2) of the OBCA, there is also no provision in the LPA that would restrict the proposed name change, and courts have previously granted name change relief in respect of limited partnerships.⁵⁶

40. The Ontario Business Registry was served with a copy of the Application Record.⁵⁷

B. The Proposed Transaction Approval Order Should be Granted

(i) The Transaction Should be Approved

41. The Receiver, for and on behalf of the Companies, is seeking approval of a Transaction that does not involve the sale or disposition of assets; rather, it involves a commercial arrangement whereby Tridel, a preeminent developer with an established reputation in the market for delivering high quality, luxury condominiums, has been engaged to complete the construction, development and ultimate realization of value from the Project in exchange for a fee. The possibility of such an arrangement was expressly contemplated by the Court-approved SISP.⁵⁸ It is anticipated that realizations on the Project (for instance, from Unit sales and the monetization of the Commercial

⁵⁴ *Harte Gold Corp (Re)*, [2022 ONSC 653](#) at paras 61–62.

⁵⁵ See e.g., *Nelson Financial Group Ltd* (21 April 2011), Toronto, Ont Sup Ct J [Commercial List] No. 10-8630-00CL ([Order \(Plan Sanction\)](#)) at para 5; *Eastern Meat Solutions Inc. et al* (24 January 2025), Toronto, Ont Sup Ct J [Commercial List] CV-24-00720622-00CL ([Order \(Re: Stay Extension, Change of Corporate Name and Title of Proceeding\)](#)) at paras 8–11; [MAV AVO](#) at para 12.

⁵⁶ See e.g., *Gesco Industries Inc et al* (21 June 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00699824-00CL ([Approval and Vesting Order](#)) at para 16.

⁵⁷ Certificate of Service of Jennifer Linde dated April 7, 2025.

⁵⁸ Second Report at para 6.8 [[A143;A141](#)].

Component) will ultimately be distributed to the Senior Secured Lenders such that they are repaid a portion of the significant secured debt obligations owing to them in much the same way as it was initially contemplated those debts would be repaid. The “build out” and monetization of a development project in the context of a Court-supervised insolvency proceeding has been implemented in a number of prior cases.⁵⁹

42. In light of the nature of the Transaction, this Court’s authority to approve it derives from its broad discretion under section 11 of the CCAA, which authorizes the Court to make any order that it considers appropriate in the circumstances. Nonetheless, the non-exhaustive list of factors enumerated in section 36(3) of the CCAA that a court will consider when deciding whether to approve a sale outside the ordinary course of business is relevant by analogy to this Court’s exercise of discretion under section 11 of the CCAA in the circumstances:

36(3) Factors to be considered – In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

⁵⁹ See e.g., *Beta View Homes Ltd et al* (16 January 2025), Vancouver, BCSC No. S-250121 ([Order Made After Application – Amended and Restated Initial Order](#)); *Station Point Developments Ltd et al* (18 June 2019), Edmonton, ABQB 1903-08169 ([Order \(Appointing Builders’ Lien Trustee and Receiver and Manager\)](#)); *WestLB AG, Toronto Branch v The Rosseau Resort Developments Inc* (22 May 2009), Toronto, Ont Sup Ct J [Commercial List] CV-09-8201-00CL ([Order](#)).

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.⁶⁰

43. These criteria have been held not to be cumulative or exhaustive. Rather, the Court must look at the proposed transaction as a whole and decide if it is appropriate, fair and reasonable.⁶¹

44. In addition, these criteria largely overlap with the factors enumerated in *Soundair*, which guided the Court prior to the enactment of section 36 of the CCAA and continue to be referenced by the Court when it considers the statutory test. The *Soundair* factors are as follows: (a) whether sufficient effort has been made to get the best price and the receiver or debtor (as applicable) has not acted improvidently; (b) whether the interests of all parties have been considered; (c) the efficacy and integrity of the process by which offers have been obtained; and (d) whether there has been unfairness in the working out of the process.⁶²

45. Finally, in *Nortel*, this Court held that it should consider the following four factors when deciding whether to authorize a sale (or transaction) under the CCAA in the absence of a plan: (a) whether a sale transaction is warranted at this time; (b) whether the sale will benefit the whole “economic community”; (c) whether any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business; and (d) whether there is a better viable alternative.⁶³

⁶⁰ CCAA, ss [36\(1\)](#), [36\(3\)](#).

⁶¹ *Bloom Lake, gpl (Arrangement relatif à)*, [2015 OCCC 1920](#) at para [26](#).

⁶² *Royal Bank of Canada v Soundair Corp* (1991), [83 DLR \(4th\) 76](#) (Ont CA) at para [16](#); *Canwest Global Communications Corp*, [2010 ONSC 2870](#) at para [13](#); *Target Canada Co (Re)*, [2015 ONSC 1487](#) at paras [14–17](#).

⁶³ *Nortel Networks Corporation (Re)*, [2009 CanLII 39492](#) (Ont Sup Ct J [Commercial List]) at para [49](#); *Green Growth Brands Inc et al*, [2020 ONSC 3565](#) at para [61](#).

46. Taking into account the above-noted considerations, the Receiver respectfully submits that this Court should exercise its discretion to approve the Transaction for the following reasons:

- (a) A transaction is warranted at this time. As described in the Second Report, many of the decisions relating to the development of the Project that did not impact the Schedule were put on hold pending the outcome of the SISP.⁶⁴ Now that the SISP has successfully culminated in the selection of Tridel as the new developer for the Project, it is the appropriate time to proceed with the Transaction so that critical decisions regarding the development, marketing, branding and monetization of the Project can be made on a timely basis with the benefit of Tridel's input.

- (b) The solicitation process was reasonable. The Transaction is the culmination of over three months of extensive solicitation efforts by the Receiver and the Broker in accordance with the Court-approved SISP that explored all manner of different potential transactions, and follows several months of extensive negotiations among the Receiver, Tridel, the proposed CRO and the Senior Secured Lenders. As part of the solicitation efforts, the Broker broadly canvassed the market by directly contacting 91 select parties about the opportunity and disseminating a marketing brochure, form of NDA and link to a promotional video to over 4,000 potentially interested parties, of which 53 signed an NDA and 50 accessed the data room prepared for Phase 1 of the SISP. These efforts resulted in the receipt of LOIs from 11 bidders, of which four Development Proposals were determined to be Qualified LOIs (no Transaction Proposal was submitted that was determined to be a Qualified

⁶⁴ Joint Report at para 7.2(iii) [[A61;A59](#)].

LOI). The Receiver, after careful consideration and in consultation with the Broker and the Senior Secured Lenders, ultimately designated Tridel's Development Proposal as the Selected Qualified Bid as, among other reasons, Tridel's development and construction experience is best aligned with the size, scope and complexity of the Project, and Tridel's Development Proposal provides for a value maximizing plan for the completion and monetization of the Project.⁶⁵

- (c) The Transaction benefits stakeholders. The Transaction represents the best means of both maximizing the value of the Project for the benefit of the Senior Secured Lenders, as well as ensuring the completion of the Project for the benefit of a wide range of stakeholders, including trades and suppliers engaged on the Project, the City of Toronto and its residents, and Unit purchasers (to the extent their CSA is ultimately affirmed, which has not yet been determined). Notwithstanding the Receiver and Proposed Monitor's view that the Transaction will maximize value, the expectation is that the Senior Secured Lenders will not recover their outstanding pre-receivership secured debt of more than \$1.2 billion (excluding accrued interest since the Appointment Date) in full, with the result that there will be no recoveries for subordinate secured or unsecured creditors. The Receiver and Proposed Monitor is of the view that there was no viable proposal submitted in the SISP that would have resulted in a different outcome.⁶⁶
- (d) The fees payable to Tridel are fair and reasonable. Tridel's fee structure was competitive with other Development Proposals received in the SISP and was further

⁶⁵ Sixth Report at paras 4.6–4.26 [[A193](#);[A191](#)–[A202](#);[A200](#)].

⁶⁶ Joint Report at para 6.23 [[A59](#);[A57](#)].

improved by negotiating various fees and costs, and by revising certain components to be payable on a contingent basis based on revenue targets and costs savings, thereby further contributing to the objective of maximizing value. The Receiver and Proposed Monitor is of the view that the fees contemplated to be paid to Tridel are fair and reasonable considering the size and complexity of the Project, and the circumstances under which Tridel is being retained. With respect to the Tridel Charge, it represents a proper balancing of risk between the parties and is necessary to facilitate the implementation of the Transaction, as Tridel would not be prepared to enter into the Transaction without the benefit of a Court-ordered charge.⁶⁷

- (e) The Receiver and Proposed Monitor Support the Transaction. The Receiver supervised and implemented the SISP, and was actively involved in the negotiation of the DIP Credit Agreement and the Definitive Transaction Agreements on behalf of the Companies. The Receiver and Proposed Monitor is therefore supportive of the proposed Transaction, including because it will ensure the completion of the Project in a manner that maximizes value. In addition, key stakeholders, including certain of the Companies' secured creditors, were consulted or provided confidential updates on the status of the SISP and the Receivership Proceedings generally.⁶⁸
- (f) The Senior Secured Lenders support the Transaction and are willing to provide further funding to the Project if the Transaction is approved. The Senior Secured Lenders have confirmed to the Receiver that they are committed to facilitating the

⁶⁷ Joint Report at paras 6.22(v)–(vii) [[A59:A57](#)].

⁶⁸ Joint Report at paras 6.22(vi), 15.1(xxv) [[A59:A57](#), [A112:A110](#)]; Sixth Report at para 4.20 [[A198:A196](#)].

construction of the Project to completion and realization by funding the construction of the Project and the cost of the CCAA Proceedings in accordance with the terms of the DIP Credit Agreement, should the Transaction be approved and the CCAA relief be granted by the Court.⁶⁹ The credit facility contemplated by the DIP Credit Agreement is the only source of funding available to the Companies to continue, and ultimately complete, construction of the Project. No viable proposals received in the SISF contemplated funding to complete construction being provided by any party other than the Senior Secured Lenders.⁷⁰

(ii) The Tridel Charge Should be Granted

47. The proposed Transaction Approval Order contemplates the granting of the Tridel Charge as security for the Tridel Charge Obligations, which shall rank subordinate to the Administration Charge, the Receiver's Charge, the DIP Lender's Charge and the Receiver's Borrowings Charge.⁷¹

48. In addition to the Court's general authority under section 11 of the CCAA to make any order that it considers appropriate in the circumstances, section 11.52(1)(b) specifically authorizes the granting of a priority charge to secure the fees and expenses of an expert engaged by the company for the purpose of proceedings under the CCAA.⁷² The Companies require the assistance of an experienced developer – in this case, Tridel – to build out the Project to completion in the context of the CCAA Proceedings. Courts have also approved charges securing commercial obligations owing to parties providing services to a debtor company in CCAA proceedings.⁷³

⁶⁹ Joint Report at para 7.2(v) [[A62:A60](#)].

⁷⁰ Joint Report at paras 10.7(i) [[A86:A84](#)].

⁷¹ Joint Report at para 7.10(iii) [[A68:A66](#)].

⁷² CCAA, ss [11](#), [11.52\(1\)\(b\)](#).

⁷³ See e.g., *Hudson's Bay Company, Re* (21 March 2025), Toronto, Ont Sup Ct J [Commercial List] CV-25-00738613-00CL ([Amended and Restated Initial Order](#)) at paras 11, 49.

49. Given the quantum of pre-filing priority secured debt owing to the Senior Secured Lenders and the Companies' other secured lenders, Tridel would not be prepared to enter into the Transaction absent a court-ordered priority charge securing certain of its fees payable in connection therewith, which fees are fair and reasonable considering the size and complexity of the Project and the circumstances under which Tridel is being retained.⁷⁴

(iii) The Tridel Reconfiguration Plan Should be Approved

50. Pursuant to the Reconfiguration and LC Arrangement Order granted in June 2024, the Receiver obtained approval of a Reconfiguration Plan that would reconfigure certain floors in the Project to accommodate the addition of 88 Units.⁷⁵ As further described in the Joint Report, Tridel reviewed the Reconfiguration Plan during the SISF process and, as part of its Development Proposal, proposed a further reconfiguration of certain floors, which would reduce the total number of Units (relative to the Reconfiguration Plan) by 27 Units, resulting in a total of 476 Units (the "**Tridel Reconfiguration Plan**").⁷⁶ After extensive review by the Receiver and its advisors, the Tridel Reconfiguration Plan became an integral part of the Transaction, and the Definitive Transaction Agreements were negotiated on the basis that it would be implemented.⁷⁷

51. In light of the foregoing, the Receiver is seeking approval of the Tridel Reconfiguration Plan on behalf of the Companies. Among other benefits, the specific design changes associated with the reduction in Units are expected to optimize the number of larger Units in the Project, while balancing the velocity of sales of such Units, and are anticipated to generate meaningful additional incremental value, with minimal impact on the Schedule.⁷⁸ Although the Tridel

⁷⁴ Joint Report at paras 6.22(vi)(vii) [[A59:A57](#)].

⁷⁵ Joint Report at para 6.5 [[A50:A48](#)].

⁷⁶ Joint Report at para 6.7 [[A51:A49](#)].

⁷⁷ Joint Report at para 6.18 [[A55:A53](#)].

⁷⁸ Joint Report at para 6.9 [[A52:A50](#)].

Reconfiguration Plan will result in some impacts on existing Unit purchasers, in most cases Equivalent Units will be available to the extent the relevant CSAs are ultimately affirmed, the Receiver has disclaimed the CSAs where Qualified Units are not available, and notice of the Tridel Reconfiguration Plan has been given to all Unit purchasers.⁷⁹

52. This Court has the authority to approve the Tridel Reconfiguration Plan pursuant to section 11 of the CCAA, which authorizes the Court to make any order that it considers appropriate in the circumstances. Approval of the Tridel Reconfiguration Plan is appropriate in the circumstances, including because it will allow for the maximization of value in respect of the Residential Component, while ensuring the same standard of quality construction and luxury of the Project.⁸⁰

PART IV. CONCLUSION

53. For the reasons set out herein and in the Joint Report, the Receiver, on behalf of the Companies, respectfully requests that this Court grant the proposed Initial Order and the proposed Transaction Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of April, 2025.

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⁷⁹ Joint Report at paras 6.7–6.14 [[A51:A49–A54:A52](#)].

⁸⁰ Joint Report at para 6.18 [[A55:A53](#)].

SCHEDULE A
LIST OF AUTHORITIES

1. *Keb Hana as Trustee et al v Mizrahi Commercial (The One) LP et al* (6 June 2024), Toronto, Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Order \(Approval of SISP\)](#))
2. *Keb Hana as Trustee et al v Mizrahi Commercial (The One) LP et al* (11 June 2024), Toronto, Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Endorsement of Osborne J](#))
3. *Stelco Inc, Re*, [2004 CanLII 24933](#) (Ont Sup Ct J [Commercial List])
4. *Target Canada Co (Re)*, [2015 ONSC 303](#)
5. *Nordstrom Canada Retail, Inc*, [2023 ONSC 1422](#)
6. *Validus Power Corp et al* (29 August 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00705215-00CL ([Initial Order](#))
7. *PricewaterhouseCoopers Inc v Canada Fluorspar (NL) Inc*, [2022 NLSC 48](#)
8. *4519922 Canada Inc (Re)*, [2015 ONSC 124](#)
9. *Just Energy Corp (Re)*, [2021 ONSC 1793](#)
10. *BBB Canada Ltd*, [2023 ONSC 1014](#)
11. *Walter Energy Canada Holdings, Inc (Re)*, [2016 BCSC 107](#)
12. *DCL Corporation* (20 December 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00691990-00CL ([Endorsement of Conway J](#))
13. *Joriki Topco Inc et al* (29 January 2025), Toronto, Ont Sup Ct J [Commercial List] CV-25-00735458-00CL ([Endorsement of Osborne J](#))
14. *The Body Shop Canada Limited et al* (5 July 2024), Toronto, Ont Sup Ct J [Commercial List] BK-24-03050418-0031 ([Endorsement of Osborne J](#))
15. *Re Cannmart Labs Inc* (2 May 2024), Toronto, Ont Sup Ct J [Commercial List] CV-24-00719639-00CL ([Initial Order \(Continuation Under CCAA\)](#))
16. *Re Tribalscale Inc* (31 July 2020), Toronto, Ont Sup Ct J [Commercial List] CV-20-00645116-00CL ([Initial Order](#))
17. *Re Medifocus Inc* (7 October 2021), Toronto, Ont Sup Ct J [Commercial List] CV-21-00669781-00CL ([Initial Order](#))
18. *KEB Hana as Trustee et al v Mizrahi Commercial (The One) LP et al*, [2024 ONSC 1678](#)

19. *JTI-Macdonald Corp, Re*, [2019 ONSC 1625](#)
20. *McEwan Enterprises Inc*, [2021 ONSC 6453](#)
21. *Keb Hana as Trustee et al v Mizrahi Commercial (The One) LP et al* (18 October 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Order \(Appointing Receiver\)](#))
22. *Keb Hana as Trustee v Mizrahi Commercial (The One) LP et al* (7 March 2024), Toronto, Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Order \(Construction Continuance and Ancillary Relief\)](#))
23. *Joriki Topco Inc et al* (28 January 2025), Toronto, Ont Sup Ct J [Commercial List] CV-25-00735458-00CL ([Initial Order](#))
24. *Magna Gold Corp* (27 March 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-006968741-00CL ([Initial Order](#))
25. *Spartan Bioscience Inc* (21 June 2021), Toronto, Ont Sup Ct J [Commercial List] CV-21-00086797-0000 ([Initial Order](#))
26. *Clover Leaf Holdings Company, Re*, [2019 ONSC 6966](#)
27. *Index Energy Mills Road Corporation (Re)*, [2017 ONSC 4944](#)
28. *Timminco Limited (Re)*, [2012 ONSC 506](#)
29. *Canwest Publishing Inc*, [2010 ONSC 222](#)
30. *MJardin Group, Inc et al* (2 June 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00682101-00CL ([Amended and Restated Initial Order](#))
31. *MAV Beauty Brands Inc et al* (24 November 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00709610-00CL ([Order \(Approval, Vesting and Distribution\)](#))
32. *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#)
33. *Attorney General of Canada v Silicon Valley Bank*, [2023 ONSC 4703](#)
34. *Sherman Estate v Donovan*, [2021 SCC 25](#)
35. *Harte Gold Corp (Re)*, [2022 ONSC 653](#)
36. *Nelson Financial Group Ltd* (21 April 2011), Toronto, Ont Sup Ct J [Commercial List] No. 10-8630-00CL ([Order \(Plan Sanction\)](#))
37. *Eastern Meat Solutions Inc. et al* (24 January 2025), Toronto, Ont Sup Ct J [Commercial List] CV-24-00720622-00CL ([Order \(Re: Stay Extension, Change of Corporate Name and Title of Proceeding\)](#))

**SCHEDULE B
STATUTORY REFERENCES**

Bankruptcy and Insolvency Act, RSC 1985, c. B-3

Definitions

2. In this Act, ...

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

Companies' Creditors Arrangement Act, RSC 1985, c C-36

Definitions

2 (1) In this Act, ...

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies;

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or
- (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent;

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Affiliated companies

3 (2) For the purposes of this Act,

- (a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. – initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

...

Burden of proof on application

11.02 (3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Interim Financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

...

Interim Financing – Factors to be considered

11.2 (4) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject

to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

11.52 (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Duties and functions

23 (1) The monitor shall

- (a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,
 - (i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and
 - (ii) within five days after the day on which the order is made,
 - (A) make the order publicly available in the prescribed manner,
 - (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and
 - (C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or

provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Courts of Justice Act, RSO 1990, c C.43

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Business Corporations Act, RSO 1990, c B.16

Amendments

168 (1) Subject to sections 170 and 171, a corporation may from time to time amend its articles to add, change or remove any provision that is permitted by this Act to be, or that is, set out in its articles, including without limiting the generality of the foregoing, to,

(a) change its name; ...

...

Reorganization

186 (1) In this section,

“**reorganization**” means a court order made under section 248, an order made under the *Bankruptcy and Insolvency Act* (Canada) or an order made under the *Companies Creditors Arrangement Act* (Canada) approving a proposal.

Articles amended

(2) If a corporation is subject to a reorganization, its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 168.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-25-00740512-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. AND MIZRAHI COMMERCIAL (THE ONE) GP INC.

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**FACTUM
(CCAA Application and Transaction Approval
Returnable April 22, 2025)**

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