

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

B E T W E E N:

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

Applicant

- and -

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

Respondents

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

**FACTUM OF THE RECEIVER
(Discharge Order)
Returnable April 22, 2025**

April 14, 2025

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PART I – INTRODUCTION

1. This factum is filed by Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (collectively, the “**Debtors**”), including an 85-storey 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**”), in support of the Receiver’s motion for an order (the “**Discharge Order**”), among other things:

- (a) discharging the Receiver (provided that the Receiver shall remain Receiver for the performance of the Receiver Incidental Matters);
- (b) passing the Receiver’s accounts and those of its counsel;
- (c) approving the Receiver’s reports and activities;
- (d) granting a release in favour of the Receiver and the other Released Persons (as defined below); and
- (e) ordering that the priority charges granted in the Receivership Proceedings will survive the discharge of the Receiver and remain in full force and effect in accordance with the proposed Initial Order (the “**CCAA Initial Order**”) sought in the *Companies’ Creditors Arrangement Act* (Canada) proceedings of the Debtors (the “**CCAA Proceedings**”).¹

¹ All capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Receivership Order (as defined herein), 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 CCAA Initial Order.

2. A&M was appointed as Receiver pursuant to the Order (Appointing Receiver) of this Court dated October 18, 2023 (the “**Receivership Order**”), to bring stability and appropriate oversight to the Project with a view to ensuring continuing construction and maximizing recovery for the benefit of all stakeholders.

3. In keeping with this mandate, following the completion of a series of significant workstreams to ensure that the Project could be marketed in the most value-maximizing manner possible, the Receiver sought and obtained Court approval of a sale and investment solicitation process (the “**SISP**”) in respect of the Project, which successfully culminated in the Receiver, Tridel Builders Inc. and certain of its affiliates (collectively, “**Tridel**”), and the Senior Secured Lenders entering into a binding Term Sheet in December 2024.

4. The Term Sheet outlined the principal terms and conditions pursuant to which Tridel would be engaged as the project manager, construction manager and sales manager of the Project on a fee for service basis to complete the construction, development and realization of value from the Project (the “**Transaction**”), subject to the execution of definitive agreements detailing the terms and conditions of the Transaction (the “**Definitive Transaction Agreements**”), Court approval of the Transaction, and Court approval of the transition of the Receivership Proceedings to the CCAA Proceedings.

5. The Definitive Transaction Agreements were executed on April 3, 2025, and the Receiver, on behalf of the Debtors, has now brought an application seeking the CCAA Initial Order as well as an Order approving the Transaction. The Receiver also seeks the Discharge Order in these Receivership Proceedings, to be heard concurrently with the CCAA application. If the Court grants the Orders sought, A&M will be discharged as Receiver and appointed as Monitor in the CCAA

Proceedings, such that stakeholders will continue to benefit from the significant knowledge and expertise A&M has gained over the course of the Receivership Proceedings to date.

6. The Receiver has carried out its mandate diligently and in good faith in accordance with the Receivership Order and the other Orders granted by the Court. Its efforts have stabilized the Project, ensured the continuation of construction, addressed certain Project management deficiencies, resulted in various improvements and otherwise laid the groundwork for the Transaction arising from the SISP that will see the Project completed for the benefit of stakeholders in a manner that will maximize its value. In the circumstances, the relief sought is fair, reasonable and appropriate, and will facilitate the orderly transition from the Receivership Proceedings to the CCAA Proceedings.

7. For these and the other reasons set out herein and in the Joint Report, the Receiver respectfully requests that the Court grant the proposed Discharge Order.

PART II – FACTS

A. Background²

8. The Debtors are entities established for the sole purpose of developing the Project. The Senior Secured Lenders, to whom the Debtors owed more than \$1.2 billion as at October 18, 2023 (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

² Additional background information regarding the Debtors, the Project and these Receivership Proceedings is set out in the [Affidavit of Joo Sung Yoon made October 17, 2023](#), the [First Report of the Receiver dated February 26, 2024](#) [First Report], and the [Second Report of the Receiver dated May 28, 2024](#) [Second Report].

same, and preserving and protecting the Property to maximize recoveries from the Project for the benefit of all stakeholders.³

9. Pursuant to the Receivership Order, the Receiver, as borrower, IGIS Asset Management Co., Ltd., as asset manager, and KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530, as lender, entered into a \$315 million Receivership Funding Credit Agreement (the “**RFCA**”) to finance the ongoing construction of the Project and the Receivership Proceedings.⁴ As at March 31, 2025, the Receiver had drawn \$252.8 million (exclusive of accrued interest) under the RFCA.⁵

10. At the time of the Appointment Date, Mizrahi Inc. (“**MI**”) was the general contractor and construction manager of the Project. As further detailed in the Receiver’s First Report, the Receiver determined that it was in the best interests of the Project and its stakeholders to disclaim MI’s Construction Management Agreement and GC Agreement, and to engage SKYGRiD as the new construction manager of the Project, effective March 13, 2024.

11. At the Receiver’s motion heard on March 7, 2024, the Court granted the Construction Continuance Order and the Lien Regularization Order, which, together with the Holdback Release Order and the Lien Claims Resolution Order granted in June 2024 and August 2024, respectively, have operated to ensure the ongoing funding and uninterrupted construction of the Project during the Receivership Proceedings, including during the transition of construction management from MI to SKYGRiD.

³ [First Report](#) at para 1.2; Joint Report at para 6.23 [[E1923; E46](#)].

⁴ Joint Report at para 10.1 [[E1946;E69](#)].

⁵ Joint Report at para 13.3 [[E1960;E83](#)].

12. Construction of the Project has progressed significantly under the oversight of the Receiver. During the period from the Appointment Date to March 31, 2025, an additional 39 floors of tower slabs have been poured through level 81 of the Project, and the installation of the building envelope has advanced by an additional 47 floors through level 58 (which is currently in progress).⁶ The significant construction progress made is due in large part to the implementation of improved construction management practices, including with respect to procurement processes, scheduling and general construction management strategy.⁷

13. On June 6, 2024, the Court approved the SISP in respect of the Project.⁸ 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.⁹

14. The Receiver and the Broker (as defined in the SISP) conducted the SISP in accordance with its terms. Following an extensive public marketing process, a number of Qualified LOIs (as defined in the SISP) for Development Proposals (being proposals for the construction, development and realization of value from the Project) were received. No Qualified LOIs for Transaction Proposals (being proposals for the acquisition of, or investment in, the Project) were received.¹⁰

⁶ Joint Report at para 4.3 [E1907;E30].

⁷ Joint Report at para 4.1 [E1905;E28]; Second Report at para 5.5 [E1993;E116].

⁸ Joint Report at para 1.2 [E1896;E19]; *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 \(Approval of SISP\)](#)); *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](#)).

⁹ Second Report at para 6.1 [E2003;E126].

¹⁰ Joint Report at para 5.2 [E1909;E32].

15. 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 (as defined in the SISP).¹¹ 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 Transaction and on April 3, 2025, following extensive negotiations amongst the parties, the Definitive Transaction Agreements were executed.

16. At the time of the Appointment Date, it was understood that funding beyond the maximum amount available under the RFCAs would likely be required to complete the construction of the Project. Based on the updated Cost to Complete, significant additional funding is required to complete the Project in a manner that maximizes value. The Senior Secured Lenders have advised that they are prepared to provide such funding to the Debtors by way of the Debtor-In-Possession Credit Agreement made as of April 3, 2025 (the “**DIP Credit Agreement**”), provided that the Transaction is approved and implemented, the CCAA Initial Order is granted, and the proposed Discharge Order is granted (among other conditions to funding).¹²

17. The proposed Discharge Order is being sought so that A&M may be discharged as Receiver and the transition of the Receivership Proceedings to the CCAA Proceedings can occur in a seamless manner. A&M will be discharged as Receiver of the Property, provided that it shall remain Receiver for the performance of the Receiver Incidental Matters to ensure that the Receiver will continue to have the ability to attend to matters necessary to complete the administration of the Receivership Proceedings, including outstanding litigation. It is contemplated that A&M will

¹¹ Sixth Report at para 4.26 [E2064;E187].

¹² Joint Report at para 10.4 [E1947;E70].

be appointed as Monitor in the CCAA Proceedings such that it will continue to oversee the Project and report to the Court and stakeholders on a continuing basis.

B. Approval of the Fees and Activities of the Receiver and its Counsel

18. The proposed Discharge Order provides for the approval of the fees and disbursements of the Receiver and its counsel incurred from October 18, 2023, to March 15, 2025, and October 19, 2023, to March 16, 2025, respectively (the “**Relevant Period**”). The Relevant Period will represent almost the entirety of the duration of the Receivership Proceedings, should the proposed Discharge Order be approved and the Receiver be discharged in accordance with the terms thereof.¹³

19. The Receiver delivered the Joint Report in support of this motion, which attaches affidavits from representatives of the Receiver and its counsel that provide a comprehensive listing of the accounts sought to be passed, including each account and summaries identifying the individual professionals who have worked on this matter, their hourly billing rates and total number of hours worked, among other information.¹⁴ The accounts included in each of the A&M Fee Affidavit and Goodmans Fee Affidavit have been redacted to protect privileged and confidential information.¹⁵

20. The accounts for the Receiver and its counsel for the Relevant Period total approximately \$9,583,162.00 and \$5,917,984.50, respectively, exclusive of disbursements and applicable taxes.¹⁶

¹³ To facilitate the transition to the contemplated CCAA Proceedings, the proposed Discharge Order provides that the fees and disbursements of the Receiver and its counsel for the period after March 15, 2025, and March 16, 2025, respectively, shall be deemed to be the fees of the Monitor and its counsel, approval of which shall be sought in accordance with the CCAA Initial Order.

¹⁴ Affidavit of Stephen Ferguson sworn April 2, 2025 (the “**A&M Fee Affidavit**”) [E2634:E757]; Affidavit of Brendan O’Neill sworn April 2, 2025 (the “**Goodmans Fee Affidavit**”) [E3108:E1231].

¹⁵ A&M Fee Affidavit at para 4 [E2635:E758]; Goodmans Fee Affidavit at para 4 [E3109:E1232].

¹⁶ A&M Fee Affidavit at para 5 [E2635:E758]; Goodmans Fee Affidavit at para 5 [E3109:E1232]; Joint Report at paras 12.3–12.4 [E1957:E80].

21. The evidence is that the Receiver and its counsel billed amounts at standard hourly rates consistent with the relevant market and that they, in their professional judgment, considered fair and reasonable in the circumstances of these proceedings.¹⁷

22. The scope of work undertaken by the Receiver and its counsel has been significant and their efforts have generated substantial benefits for the Project and its stakeholders. These efforts are detailed in the twelve reports and supplemental reports filed with the Court to date and include, among other things:

- (a) ensuring the uninterrupted construction of the Project since the Appointment Date, which has involved facilitating the construction of an additional 39 floors of tower slabs and an additional 47 floors of building envelope;
- (b) overseeing all payments made to contractors, subcontractors, trades, consultants and other suppliers during the Receivership Proceedings;
- (c) assisting with the preparation of a revised Project construction schedule, cost to complete, procurement schedule and related budget and addressing various Project management and scope gap deficiencies that were identified;
- (d) reviewing and implementing a number of initiatives directed at cost savings and/or value maximization, including reconfiguration alternatives for the Residential Component;

¹⁷ A&M Fee Affidavit at para 8 [E2636;E759]; Goodmans Fee Affidavit at para 7 [E3110;E1233]; Joint Report at para 12.6 [E1958;E81].

- (e) successfully transitioning construction management of the Project from MI to SKYGRiD;
- (f) obtaining Court Orders that have facilitated the ongoing construction and funding of the Project, including the Lien Regularization Order, Construction Continuance Order, Holdback Release Order and Lien Claims Resolution Order;
- (g) diligently attending to complex litigation matters involving MI, and working to resolve or advance disputes with various other stakeholders;
- (h) undertaking a thorough investigation regarding an approximately \$18 million discrepancy identified in the Debtors' books and records relating to certain advances from CERIECO to the Debtors;
- (i) with the assistance of the Broker, completing a comprehensive and successful SISP in respect of the Project, which has resulted in the proposed Transaction with Tridel;
- (j) negotiating and documenting the Term Sheet with Tridel, and participating in the negotiation and documentation of the Definitive Transaction Agreements as well as the DIP Credit Agreement with the Senior Secured Lenders;
- (k) planning for the next phase of development of the Project, which is anticipated to include the Debtors transitioning to CCAA Proceedings and Tridel taking over as construction manager, project manager and sales manager of the Project as of the Effective Date of the Transaction; and

- (l) preparing and bringing the CCAA application on behalf of the Debtors.¹⁸

C. Proposed Release

23. The proposed Discharge Order grants a customary release in favour of the Receiver and its directors, officers, employees, affiliates, shareholders, agents, legal counsel and other advisors (collectively, the “**Released Persons**”) from any and all liability that the Released Persons now or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Receiver while acting in its capacity as Receiver (including, without limitation, as relates to any Receiver Incidental Matters) or the Receivership Proceedings, save and except for any gross negligence or wilful misconduct on a Released Person’s part with respect to that Released Person alone.¹⁹

24. The proposed Discharge Order also confirms that the Unresolved Lien Claims and the Unresolved Receivership Claims (each as defined in the Discharge Order) shall not be released, it being understood that the Receiver and the other Released Persons shall have no personal or corporate liability in respect of such matters and recourse for same shall be limited to the Lien Charges or the applicable claim reserve to be maintained by the Monitor in respect of the Unresolved Receivership Claims, as applicable.²⁰ The Unresolved Receivership Claims, which include the ongoing litigation with MI, shall remain subject to the jurisdiction of the Court in the CCAA Proceedings, as expressly contemplated in the proposed CCAA Initial Order.

¹⁸ Joint Report at para 12.6 [E1958;E81].

¹⁹ Draft Discharge Order at para 12 [E3452;E1575].

²⁰ Draft Discharge Order at paras 14–15 [E3453;E1576].

PART III – ISSUES, LAW & ANALYSIS

25. The issue on this motion is whether the Court should grant the Discharge Order, among other things:

- (a) discharging A&M as Receiver, provided that the Receiver shall remain Receiver for the performance of the Receiver Incidental Matters;
- (b) passing the accounts of the Receiver and its counsel;
- (c) approving the Receiver’s reports and activities; and
- (d) granting the release in favour of the Receiver and the other Released Persons.

A. The Receiver’s Reports, Activities and Professional Fees

(i) *Approval of the Accounts of the Receiver and its Counsel is Appropriate*

26. The jurisdiction of this Court to pass the accounts of the Receiver and its counsel is confirmed in the Receivership Order, which directs that: “the Receiver and its counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List for the Ontario Superior Court of Justice.”²¹

27. The overarching test on a motion to pass accounts is to consider the “overriding principle of reasonableness”, with the predominant consideration in such assessment being the overall value contributed by the Receiver and its counsel.²² As stated by this Court in *Laurentian*, “[t]he Court

²¹ [Receivership Order](#) at para 25.

²² *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at para 9 [*Laurentian*]; *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) at paras [13–15](#).

does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation.”²³ Rather, as the Court of Appeal for Ontario stated in *Diemer*, “[t]he focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took.”²⁴

28. The Appointment Order provides 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 [the Receivership Order], in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.”²⁵ The evidence is that the Receiver and its counsel charged standard hourly rates that are consistent with relevant market rates.²⁶ Although this does not oust the need for the Court to consider whether the fees claimed are fair and reasonable, it has been held that where standard rates have been charged under an order so directing, this is a relevant consideration supporting approval.²⁷

29. The following factors assist courts in evaluating the quantum of a court-appointed officer’s fees. These factors are not intended to be an exhaustive list and other factors may be material in any particular case:

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;

²³ [Laurentian](#) at para 9.

²⁴ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at para 45 [*Diemer*].

²⁵ [Receivership Order](#) at para 24.

²⁶ A&M Fee Affidavit at para 8 [[E2636;E759](#)]; Goodmans Fee Affidavit at para 7 [[E3110;E1233](#)]; Joint Report at para 12.6 [[E1958;E81](#)].

²⁷ *Diemer* at para 48; *Confectionately Yours Inc (Re)* (2002), 219 DLR (4th) 72 at paras 52–54 (Ont CA).

- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;
- (e) the court officer's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.²⁸

30. Applying these factors to the present case, the Receiver respectively submits that its accounts, as well as those of its counsel, should be approved:

- (a) the Project is a soon-to-be 85-storey “super-tall” luxury residential and commercial development located in the heart of Toronto that had only been constructed to level 42 when the Receiver was appointed, but now stands 81 levels tall. As of October 31, 2023, the total secured indebtedness in respect of the Project was approximately \$1.9 billion (inclusive of interest). Dozens of contractors, trades, consultants and other suppliers are involved in the ongoing development and construction of the Project, and \$252.8 million has been drawn under the RFCA since the Appointment Date to fund ongoing construction and the Receivership Proceedings. A further

²⁸ [Diemer](#) at para 33; [Laurentian](#) at para 10.

\$615 million is contemplated to be provided by the Senior Secured Lenders under the DIP Credit Agreement to fund the construction of the Project to completion. The Project is, by any measurement, a complex, valuable and significant asset that owes billions of dollars to creditors;²⁹

- (b) when the Receiver was appointed, the Project was significantly behind schedule and, among other construction management control deficiencies identified, lacked a current and accurate Project construction schedule (or any formal tracking of progress against such schedule) and budget (or any formal tracking of costs incurred against such budget), had no formal procurement process or consideration of same in the Project schedule, had significant subcontracting scope gaps, and had no payment certification process in place.³⁰ Upon its appointment, the Receiver, with the assistance of its advisors, worked diligently to review all aspects of the Project, prepared a comprehensive construction schedule and cost to complete, and implemented appropriate changes that allowed construction to proceed efficiently and effectively, all the while preparing the Project for the SISP. In this regard, the Receiver, among other things: (i) oversaw the implementation of improved construction management procedures; (ii) successfully transitioned construction management of the Project from MI to SKYGRiD; (iii) assisted SKYGRiD in negotiating new contracts and transitioning existing subcontractors who had a contract with MI to new contracts with SKYGRiD, while also addressing gaps in scopes of work and negotiating improved and/or standard terms; (iv) sought and

²⁹ Joint Report at paras 4.2–4.3, 7.4, 10.5, 13.3 [[E1906;E29–E1907;E30](#), [E1927;E50](#), [E1947;E70](#), [E1960;E83](#)].

³⁰ [First Report](#) at para 4.8.

obtained Court Orders which have supported the efficient and effective management and resolution of trade and supplier matters; and (v) considered various reconfiguration alternatives and implemented a reconfiguration of the Residential Component that will assist in maximizing value;³¹

- (c) the Receivership Proceedings have required extensive involvement of the Receiver and its counsel to stabilize the Project and ensure continuing and uninterrupted construction for the benefit of stakeholders. Significant efforts were undertaken by the Receiver and its counsel to manage trades, consultants and other suppliers engaged on the Project, and to liaise with stakeholders, including secured creditors, condominium unit purchasers, Tarion Warranty Corporation, the Home Construction Regulatory Authority and the City of Toronto, all the while diligently attending to complex litigation matters, disputes and investigations;³²
- (d) the Receiver, with the assistance of the Broker, conducted a robust SISP through which Tridel has been selected to complete the development of the Project for the benefit of stakeholders, with \$615 million of additional funding from the Senior Secured Lenders pursuant to the DIP Credit Agreement. The engagement of a market leading developer to complete the Project is a significant achievement that will deliver substantial benefits to stakeholders;³³
- (e) the Receiver and its counsel have devoted significant professional time to the various work streams described herein and in the Receiver's reports to the Court.

³¹ Joint Report at para 4.1 [[E1905;E28](#)].

³² Joint Report at paras 12.6, 14.1 [[E1958;E81](#), [E1960;E83](#)].

³³ Joint Report at paras 4.1(vi), 12.6 [[E1958;E81](#)].

The time spent, and thus the resulting fees and expenses, are commensurate with the significant responsibilities undertaken by the Receiver. A significant majority of the work has been undertaken by a core team of professionals who have developed considerable knowledge of the Project and the various issues in the case. Where appropriate, work has also been delegated to lower cost professionals;³⁴ and

- (f) the Receiver and its counsel are experienced professionals who have been integral in these Receivership Proceedings and have at all times demonstrated diligence and thoroughness.

31. The Receiver submits that the fees and disbursements of the Receiver and its counsel are reasonable and appropriate in the circumstances having regard to the scope of activity undertaken by the Receiver in the Receivership Proceedings, and have been validly incurred in accordance with the provisions of the Receivership Order.³⁵ Furthermore, the Receiver has confirmed that the fees and disbursements of its counsel set out in the invoices appended to the Goodmans Fee Affidavit relate to advice sought by the Receiver and assistance provided the Receiver's counsel in respect of the Receivership Proceedings and that, in the Receiver's view, its counsel's fees and disbursements are properly chargeable, reasonable and appropriate.³⁶

32. Accordingly, for the reasons set out above, consideration of the applicable factors supports the approval of the accounts of the Receiver and its counsel as being fair and reasonable.

³⁴ A&M Fee Affidavit at para 6 [[E2635;E758](#)]; Goodmans Fee Affidavit at para 6 [[E3109;E1232](#)].

³⁵ Joint Report at para 12.6 [[E1958;E81](#)].

³⁶ Joint Report at para 12.5 [[E1958;E81](#)].

(ii) *Approval of the Receiver's Reports and Activities is Appropriate*

33. This Court has held that there are good policy and practical reasons for approving a court officer's reports and activities, including that Court approval:

- (a) allows the court officer to move forward with the next steps in the proceedings;
- (b) brings the court officer's activities before the Court;
- (c) allows an opportunity for the concerns of stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the court officer not otherwise provided by the applicable legislation; and
- (f) protects creditors from the delay in distribution that would be caused by: (i) re-litigation of steps taken to date; and (ii) potential indemnity claims by the court officer.³⁷

34. This Court has held that the above-noted observations apply to the activities of a Court-appointed receiver because the activities of any court officer "can and should be considered by the Court as against the mandate, powers and authority of that officer."³⁸

³⁷ *Target Canada Co (Re)*, [2015 ONSC 7574](#) at para [12](#); *Laurentian* at paras [13–14](#).

³⁸ *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#) at para [66](#).

35. In this case, the Receiver's reports contemplated to be approved by the proposed Discharge Order (being all reports issued by the Receiver since its Second Report) and the activities of the Receiver throughout the Receivership Proceedings should be approved. All activities of the Receiver were necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order, and were in each case in the best interests of the Debtors' stakeholders generally. Approving the Receiver's reports and activities will facilitate the conclusion of the Receivership Proceedings and the transition to the CCAA Proceedings. Moreover, only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.³⁹

B. Discharge and Release of the Receiver

(i) The Discharge of the Receiver is Appropriate

36. Courts frequently grant orders discharging a receiver on terms similar to those sought in the proposed Discharge Order,⁴⁰ which will provide flexibility to allow the Receiver to perform the Receiver Incidental Matters, including, without limitation, as relates to the Assumed Receivership Liabilities, the Receivership Litigation and the exercise of any contractual or related rights of the Receiver.⁴¹

³⁹ Draft Discharge Order at para 8 [E3451; E1574].

⁴⁰ See e.g., *Sam M (180 SAW) LP Inc et al* (18 December 2024), Toronto, Ont Sup Ct J [Commercial List] CV-24-00715326-00CL ([Discharge Order](#)) at paras 7–8; *33 Yorkville Residences Inc et al* (22 March 2023), Toronto, Ont Sup Ct J [Commercial List] CV-20-00637297-00CL ([Approval and Discharge Order](#)) at paras 11–12 [*33 Yorkville*]; *Bank of Montreal v 1100225 BC Unlimited Liability Company (formerly Ingenious Packaging Group ULC)* (12 May 2021), Toronto, Ont Sup Ct J [Commercial List] CV-18-601960-00CL ([Discharge Order](#)) at paras 6–9 [*Bank of Montreal*]; *Urbancorp (Leslieville) Developments Inc et al* (14 September 2020), Toronto, Ont Sup Ct J [Commercial List] CV-16-11409-00CL ([Order \(Final Distributions, Approval of Activities and Fees & Discharge\)](#)) at paras 16–19.

⁴¹ Draft Discharge Order at para 3 [E3449; E1572].

37. The discharge of the Receiver will be effective immediately upon the approval of same, which timing is anticipated to coincide with the approval of the CCAA Initial Order in the Debtors' CCAA Proceedings, if granted.⁴²

38. The Receiver submits that it is appropriate for this Court to discharge A&M as Receiver in accordance with the terms of the proposed Discharge Order, including because:

- (a) the Receivership Proceedings are anticipated to transition to the CCAA Proceedings in accordance with the terms of the proposed CCAA Initial Order;
- (b) the Receiver will retain the authority to attend to the performance of the Receiver Incidental Matters, which expressly include, but are not limited to, the Assumed Receivership Liabilities and the Receivership Litigation, thereby ensuring that the Receiver will continue to be able to appropriately address these matters moving forward for the benefit of stakeholders and in a manner that appropriately preserves the parties' respective rights and prevents any prejudice from the proposed transition to the CCAA Proceedings;
- (c) the DIP Credit Agreement expressly contemplates that funding thereunder may be used to fund any Receiver Incidental Matters;⁴³ and
- (d) the Receiver has duly and properly discharged and performed its duties and obligations in the Receivership Proceedings in compliance and in accordance with

⁴² Draft Discharge Order at para 3 [[E3449;E1572](#)].

⁴³ Joint Report at para 10.6 [[E1948;E71](#)].

the *Bankruptcy and Insolvency Act* (Canada), the Receivership Order and all other Orders of the Court made in the Receivership Proceedings.

(ii) *The Release of the Released Persons is Appropriate*

39. The Receiver also seeks approval of a standard release for the Receiver and the other Released Persons so as to achieve certainty and finality for the Released Persons at the conclusion of the Receivership Proceedings. The proposed release has terms similar to releases granted in other cases,⁴⁴ and is subject to the usual carve-outs for gross negligence and wilful misconduct.⁴⁵ The Receiver has diligently fulfilled its duties as set out in the Receivership Order, and the contemplated release will facilitate the transition to the CCAA Proceedings and the implementation of the Transaction.

40. It is contemplated that the Debtors will assume various specified Assumed Receivership Liabilities (such as, for instance, obligations under the RFCA and obligations owing to SKYGRiD under its construction management contract), and that payments for ongoing construction and other services in relation to the Project will continue to be made in the normal course. In addition, the proposed Discharge Order confirms that the proposed release shall not release the Unresolved Lien Claims and the Unresolved Receivership Claims, it being understood that the Receiver and the other Released Persons shall have no personal or corporate liability in respect of such matters and recourse for same shall be limited to the Lien Charges or the applicable claim reserve to be maintained by the Monitor in respect of the Unresolved Receivership Claims, as applicable.⁴⁶

⁴⁴ See e.g., *33 Yorkville* at para 12; *Bank of Montreal* at para 8.

⁴⁵ Draft Discharge Order at para 12 [E3452;E1575].

⁴⁶ Draft Discharge Order at paras 14–15 [E3453;E1576].

Accordingly, appropriate provision has been made for both ongoing normal course obligations in the Receivership Proceedings as well as for contested claims.

41. Courts have recognized that upon the completion of a receiver's mandate, a discharge and release should be granted in the absence of any improper or negligent conduct.⁴⁷ In light of the contemplated approval of the Transaction and the transition to the CCAA Proceedings, the Receiver has completed its mandate and there is no evidence of any improper or negligent conduct. The Receiver is therefore entitled to close its books and move forward.

PART IV – ORDER REQUESTED

42. For the reasons set out herein, the Receiver respectfully requests that this Court grant the proposed Discharge Order.

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

Goodmans LLP

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⁴⁷ *Pinnacle v Kraus*, [2012 ONSC 6376](#) at para 47; *Yukon (Government of) v Yukon Zinc Corporation*, [2022 YKSC 58](#) at paras 25–29.

**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. *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 \(Appointing Receiver\)](#))
4. *Laurentian University of Sudbury*, [2022 ONSC 2927](#)
5. *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#)
6. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)
7. *Confectionately Yours Inc (Re)* ([2002](#)), [219 DLR \(4th\) 72 \(Ont CA\)](#)
8. *Target Canada Co (Re)*, [2015 ONSC 7574](#)
9. *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#)
10. *Sam M (180 SAW) LP Inc et al* (18 December 2024), Toronto, Ont Sup Ct J [Commercial List] CV-24-00715326-00CL ([Discharge Order](#))
11. *33 Yorkville Residences Inc et al* (22 March 2023), Toronto, Ont Sup Ct J [Commercial List] CV-20-00637297-00CL ([Approval and Discharge Order](#))
12. *Bank of Montreal v 1100225 BC Unlimited Liability Company (formerly Ingenious Packaging Group ULC)* (12 May 2021), Toronto, Ont Sup Ct J [Commercial List] CV-18-601960-00CL ([Discharge Order](#))

13. *Urbancorp (Leslieville) Developments Inc et al* (14 September 2020), Toronto, Ont Sup Ct J [Commercial List] CV-16-11409-00CL ([Order \(Final Distributions, Approval of Activities and Fees & Discharge\)](#))
14. *Pinnacle v Kraus*, [2012 ONSC 6376](#)
15. *Yukon (Government of) v Yukon Zinc Corporation*, [2022 YKSC 58](#)

I certify that I am satisfied as to the authenticity of every authority.

Date: April 14, 2025



Signature

**SCHEDULE “B”
STATUTORY REFERENCES**

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of *receiver*

(2) Subject to subsections (3) and (4), in this Part, *receiver* means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition *receiver* in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the 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.

Meaning of *disbursements*

(7) In subsection (6), *disbursements* does not include payments made in the operation of a business of the insolvent person or bankrupt.

Courts of Justice Act, R.S.O. 1990, c. C.43

Injunctions and receivers

101(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

**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**

**MIZRAHI COMMERCIAL
(THE ONE) LP, et al.**

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

Applicant

Respondents

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

**FACTUM OF THE RECEIVER
(Discharge Order)**
Returnable April 22, 2025

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