

**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

**(SISP Approval, Reconfiguration, Letters of Credit Arrangement and Holdback Release)
Returnable June 6, 2024**

June 2, 2024

Goodmans LLP

Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto ON M5H 2S7

Brendan O'Neill LSO#: 43331J
boneill@goodmans.ca

Christopher Armstrong LSO#: 55148B
carmstrong@goodmans.ca

Mark Dunn LSO#: 55510L
mdunn@goodmans.ca

Jennifer Linde LSO#: 86996A
jlinde@goodmans.ca

Tel: 416.979.2211

Fax: 416.979.1234

Lawyers for the Receiver

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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:¹

- (a) an order (the “**SISP Approval Order**”), among other things: (i) approving the proposed sale and investment solicitation process (the “**SISP**”) in respect of the Project; (ii) authorizing and directing the Receiver and Jones Lang LaSalle Real Estate Services, Inc. (“**JLL**”), in its capacity as the Receiver’s real estate broker (in such capacity, the “**Broker**”), to implement the SISP pursuant to the terms thereof; and (iii) approving the agreement amended and restated as of May 25, 2024, engaging the Broker (the “**Broker Agreement**”);
- (b) an order (the “**Reconfiguration and LC Arrangement Order**”), among other things: (i) approving the Letters of Credit Arrangement pursuant to which the Receiver has arranged for the issuance of letters of credit by RBC in favour of the City of Toronto in respect of certain municipal requirements; (ii) granting RBC a charge on the RBC Collateral Account and the RBC Collateral (each as defined below) as additional security for the payment of any obligations incurred by RBC

¹ Capitalized terms used herein and not otherwise defined have the meaning given to them in the Receivership Order or the Second Report of the Receiver dated May 28, 2024 (the “**Second Report**”).

in connection with the letters of credit; (iii) approving the Reconfiguration Plan for the Residential Component of the Project to accommodate the addition of another 88 condominium units; and (iv) approving the Second Report and the actions, conduct and activities of the Receiver as set out therein; and

- (c) an order (the “**Holdback Release Order**”), among other things, authorizing the Receiver to pay the Holdback Amount (as defined below) on behalf of the Nominee to the Holdback Parties (as defined below) in the amounts specified in Appendix “C” to the Second Report (the “**Holdback Schedule**”), and to pay any additional holdback amount pursuant to the Provincial Lien Legislation owing to a Holdback Party for the period following the Effective Date (as defined below) where such Holdback Party has fully completed its scope of work in relation to the Project as determined by the Receiver and such Holdback Party is not required by the Construction Manager for continued construction on the Project, in each case subject to the Holdback Release Conditions being satisfied (or waived) as determined by the Receiver.

2. A&M was appointed as Receiver pursuant to the Order (Appointing Receiver) (the “**Receivership Order**”) of this Court dated October 18, 2023 (the “**Appointment Date**”). Since the Appointment Date, the Receiver has completed a series of significant pre-SISP work streams, such as engaging a new Construction Manager, working to prepare a revised draft Budget, Schedule and Cost to Complete and developing the Reconfiguration Plan, to ensure that core Project-related matters had been advanced to a point that the Project could be marketed in the most value-maximizing manner possible. With those efforts now largely complete, the Receiver seeks approval of the SISP, which, if approved, will canvass the market for any and all value maximizing

opportunities for the Project, while also ensuring that the construction and development of the Project continues for the benefit of the Project's stakeholders.

3. In addition to seeking approval of the SISP, the Receiver is seeking approval of the additional relief described above, which is necessary to, among other things, ensure the Project's compliance with municipal requirements, enhance the value of the Project, and provide for a fair and appropriate mechanism to release the Holdback Amount to the Holdback Parties that will facilitate the continuation of construction without interruption.

4. For the reasons specified herein and in the Second Report, the Receiver respectfully requests that this Court grant the proposed SISP Approval Order, Reconfiguration and LC Arrangement Order and Holdback Release Order.

PART II – FACTS

A. Background²

5. The Debtors are entities established for the sole purpose of developing the Project. The Applicant sought the appointment of the Receiver pursuant to the Receivership Order for the principal purposes of bringing stability and appropriate oversight to the Project to ensure the continuing construction of same, and preserving and protecting the Property to maximize recoveries from the Project for the benefit of all stakeholders.³

6. 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

² Additional background information regarding the Debtors, 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 (the "**First Report**") and the Second Report.

³ First Report at para 1.2; Motion Record, Tab 2, Appendix A, p 96 [CL p [E636;E98](#)].

Estate Fund No. 530 (the “**RFCA Lender**”), as lender, entered into a \$315 million Receivership Funding Credit Agreement to finance ongoing construction of the Project.⁴

7. As detailed in the First Report, in late February 2024, the Receiver determined that it was in the best interests of the Project and its stakeholders to disclaim the GC Agreement and the Construction Management Agreement with Mizrahi Inc., the former general contractor and developer of the Project (in such capacity, the “**Former Developer**”), and engage the Construction Manager as the new construction manager for the Project, effective March 13, 2024 (the “**Effective Date**”).⁵

8. At the Receiver’s motion heard on March 7, 2024, this Court granted the Construction Continuance Order and the Lien Regularization Order, which together have operated to ensure, among other things, the ongoing funding and uninterrupted construction of the Project during the transition of construction management from the Former Developer to the Construction Manager.⁶

B. The Proposed SISP Approval Order

(i) The SISP

9. The Receiver, its counsel and the Broker have been working to design the SISP, which has been developed to identify any and all potential forms of value maximizing transactions or arrangements that may be available and acceptable to the Receiver and to the Applicant and the RFCA Lender (together, the “**Senior Secured Lenders**”) and will result in the sale or completion of the Project, thereby benefiting the Project’s stakeholders as a whole.⁷

⁴ First Report at para 8.1; Motion Record, Tab 2, Appendix A, p 141 [CL p [E681;E143](#)].

⁵ First Report at para 5.1; Motion Record, Tab 2, Appendix A, p 117 [CL p [E657;E119](#)].

⁶ Second Report at para 5.3; Motion Record, Tab 2, p 35 [CL p [E575;E37](#)].

⁷ Second Report at para 6.1; Motion Record, Tab 2, p 48 [CL p [E588;E50](#)].

10. The SISP authorizes and directs the Receiver and the Broker to solicit bids from interested parties to:

- (a) acquire or invest in the Project (or either of the Residential Component or the Commercial Component of the Project) pursuant to one or more sale or investment transactions (a “**Transaction Proposal**”) that individually or in the aggregate meets the minimum bid threshold of \$1.2 billion required by the Senior Secured Lenders (the “**Minimum Bid Threshold**”); or
- (b) enter into an arrangement with the Senior Secured Lenders to complete the construction, development and realization of value from the Project on terms acceptable to the Receiver and the Senior Secured Lenders (a “**Development Proposal**” and together with a Transaction Proposal, the “**Opportunities**”).⁸

11. A summary of the key stages and milestones of the SISP is as follows:

Milestone	Date(s)
Phase 1: Formal Marketing Process and Initial Due Diligence Period	June 6, 2024 – July 30, 2024
Phase 1 Bid Deadline	July 30, 2024
Phase 2: Due Diligence Period for Qualified Bidders	August 13, 2024 – September 24, 2024
Phase 2 Bid Deadline	September 24, 2024
Court Approval of Successful Bid	Not later than the week of October 14, 2024 (subject to Court availability)

⁸ Second Report at para 6.8; Motion Record, Tab 2, p 52 [CL p [E592;E54](#)].

12. The SISP is a two-phase process that will thoroughly canvass the market for a potential transaction and give interested parties sufficient time to perform diligence and pursue the Opportunities.

13. The SISP has been designed to provide maximum flexibility so that the Receiver may react to any circumstances that could arise during the course of the SISP and extend timelines or adjust procedures, as necessary, to maximize the prospect of securing qualified and implementable transactions through the SISP.⁹ The inclusion of the Minimum Bid Threshold and the agreement of the Senior Secured Lenders not to bid in the SISP will provide guidance and certainty to Potential Bidders.¹⁰ The Minimum Bid Threshold represents approximately 80% of (or a 20% discount to) the secured indebtedness owed to the Senior Secured Lenders at this time.¹¹

14. Having substantially completed its pre-SISP work streams, the Receiver is seeking approval of the SISP at this time to determine whether there is a third-party transaction available that will maximize value and facilitate the completion of the Project, or alternatively establish that the Senior Secured Lenders, as the priority economic stakeholder in the Project, will need to facilitate the completion of the construction and realization of the Project, either on their own or in conjunction with a new developer that may emerge from the SISP.

15. The Senior Secured Lenders have confirmed that, even in the event that there is no acceptable transaction that emerges from the SISP, they are nonetheless committed to facilitating the continued construction of the Project to completion through a stand-alone transaction.¹² In such circumstances, the Senior Secured Lenders expect to achieve recoveries through, among other

⁹ Second Report at para 6.28; Motion Record, Tab 2, p 66 [CL p [E606;E68](#)].

¹⁰ Second Report at para 6.28; Motion Record, Tab 2, p 66 [CL p [E606;E68](#)].

¹¹ Second Report at para 6.18; Motion Record, Tab 2, p 56 [CL p [E596;E58](#)].

¹² Second Report at para 6.19; Motion Record, Tab 2, p 57 [CL p [E597;E59](#)].

things, sales of condominium units and realizations from the fully developed Commercial Component.¹³

C. The Proposed Reconfiguration and LC Arrangement Order

(i) Letters of Credit Arrangement

16. The Debtors currently have six letters of credit (each, an “LC”) outstanding totalling approximately \$2.24 million which are cash collateralized. The LCs support various obligations of the Debtors to the City of Toronto necessary for the ongoing construction of the Project.¹⁴ The issuer of the LCs has advised the Receiver it will not renew them as they mature.¹⁵ In addition, the City of Toronto has required that the Debtors provide a \$1 million LC to secure an indemnity (the “**City Indemnity**”) relating to a temporary street occupation permit for the Project.¹⁶ The permit and, by extension, the City Indemnity are important to the continued construction of the Project.

17. RBC has agreed to replace the existing LCs and to provide a new LC to secure the City Indemnity (together with any future LCs that may be required to be posted in connection with the Project as requested by the Receiver and agreed to by RBC, the “**Replacement LCs**”) on the terms contemplated by the Letters of Credit Arrangement.¹⁷

18. In light of the foregoing, the Receiver is seeking approval of the Letters of Credit Arrangement to ensure the Debtors are able to continue to provide the necessary financial

¹³ Second Report at para 6.19; Motion Record, Tab 2, p 57 [CL p [E597;E59](#)].

¹⁴ Second Report at para 5.25; Motion Record, Tab 2, p 46 [CL p [E586;E48](#)].

¹⁵ Second Report at para 5.26; Motion Record, Tab 2, p 46 [CL p [E586;E48](#)].

¹⁶ Second Report at para 5.27; Motion Record, Tab 2, p 47 [CL p [E587;E49](#)].

¹⁷ Second Report at para 5.28; Motion Record, Tab 2, p 47 [CL p [E587;E49](#)].

assurance in connection with municipal requirements and the maintenance of construction permits necessary for the continued construction of the Project.

(ii) Reconfiguration Plan

19. Since the Appointment Date, the Receiver has assessed and evaluated various potential value maximizing opportunities and alternatives for the Project, including alternatives to the existing floor plate configuration of the Residential Component of the Project. As part of these efforts, the Receiver has developed the Reconfiguration Plan, which contemplates that floors level 62 and above in the Residential Component will be reconfigured to accommodate the addition of another 88 condominium units.¹⁸

20. The Receiver, in consultation with its advisors, has determined that implementing the Reconfiguration Plan will improve the saleability of condominium units in the Project and maximize value realization, including by facilitating faster sales of smaller units.¹⁹

D. The Proposed Holdback Release Order

21. Since the Effective Date, as part of the Receiver's overarching efforts to move the construction of the Project forward with certainty and stability, the Construction Manager has been meeting with subcontractors and suppliers to transition their contracts with the Former Developer to new subcontracts with the Construction Manager. As a condition to entering into a new subcontract with Skgyrid, certain subcontractors and suppliers require that their proportional

¹⁸ Second Report at para 7.6; Motion Record, Tab 2, p 69 [CL p [E609;E71](#)].

¹⁹ Second Report at paras 7.10 and 7.20; Motion Record, Tab 2, pp 69 and 72 [CL pp [E609;E71](#) and [E612;E74](#)].

entitlement to the pre-Effective Date statutory holdback under the Provincial Lien Legislation be released to them.²⁰

22. The Receiver is aware of 38 subcontractors from whom statutory holdback was retained in accordance with the Provincial Lien Legislation (the “**Holdback Parties**”), totalling approximately \$13 million for work performed prior to the Effective Date (the “**Holdback Amount**”).²¹ The Receiver has undertaken efforts to reconcile the Holdback Amount and, to date, has received confirmation from 35 of 38 subcontractors (who collectively account for approximately 99.7% of the total Holdback Amount) that their records agree with those of the Debtors.²² In addition to these diligence efforts, notice of the proposed payment of the Holdback Amount was provided on May 28, 2024, by way of email to all known contractors, subcontractors, suppliers and consultants to the Project for which the Receiver has contact information.²³

23. Pursuant to the proposed Holdback Release Order, the Receiver is seeking authorization from the Court to pay the Holdback Parties their proportionate share of the Holdback Amount in accordance with the Holdback Schedule, as well as to pay any post-Effective Date holdback amounts owing to subcontractors where such Holdback Party has fully completed its scope of work in relation to the Project as determined by the Receiver and is not required by the Construction Manager for continued construction on the Project.²⁴ The payment of any Holdback Amount will be subject to the satisfaction or waiver of the Holdback Release Conditions as determined by the Receiver.²⁵

²⁰ Second Report at para 5.14; Motion Record, Tab 2, p 41 [CL p [E581;E43](#)].

²¹ Second Report at para 5.15; Motion Record, Tab 2, p 41 [CL p [E581;E43](#)].

²² Second Report at para 5.17; Motion Record, Tab 2, p 42 [CL p [E582;E44](#)].

²³ Certificate of Service of Jennifer Linde dated May 28, 2024.

²⁴ Second Report at para 5.16; Motion Record, Tab 2, p 41 [CL p [E581;E43](#)].

²⁵ Second Report at para 5.18; Motion Record, Tab 2, p 42 [CL p [E582;E44](#)].

PART III – ISSUES, LAW & ANALYSIS

24. The issues to be considered on this motion are whether the Court should:
- (a) grant the proposed SISP Approval Order, among other things, approving the SISP, authorizing and directing the Receiver and the Broker to implement the SISP, and approving the Broker Agreement and the retention of the Broker thereunder;
 - (b) grant the proposed Reconfiguration and LC Arrangement Order, among other things, approving the Letters of Credit Arrangement, the Reconfiguration Plan and the Second Report and the activities of the Receiver described therein; and
 - (c) grant the Holdback Release Order, among other things, authorizing the Receiver to release and distribute the Holdback Amount to the Holdback Parties.
25. For the reasons set out herein, the Receiver respectfully submits that it is just and convenient to grant the foregoing relief.

B. The SISP Approval Order Should be Granted

(i) The Broker Agreement Should be Approved

26. The Receiver requires sophisticated real estate advisory services to effectively implement the SISP and maximize realizations from the Property.
27. Notwithstanding the existing authority to retain a real estate broker under paragraph 4(e) of the Receivership Order, given the importance of the selection of JLL to the conduct of the SISP and the Receiver's overarching objective of marketing the Project in the most value-maximizing

manner possible for the benefit of all stakeholders, the Receiver has determined that it is appropriate to seek approval of the Broker Agreement.

28. The broad discretion contained in section 243(1)(c) of the *Bankruptcy and Insolvency Act* (“**BIA**”)²⁶ provides the statutory basis for the Court to approve the Receiver’s engagement of JLL and courts regularly exercise their discretion to authorize and approve a Court-appointed receiver’s entry into key agreements, including agreements engaging a real estate broker.²⁷

29. In the present case, the Receiver conducted a request for proposals process to solicit competitive proposals on a confidential basis from five reputable real estate brokers regarding the opportunity to assist in developing and implementing the SISP. After carefully considering the proposals received and consulting with the Senior Secured Lenders and their advisors, the Receiver selected JLL as the successful candidate because, among other reasons: (a) JLL is a market-leading real estate broker that has substantial experience in selling residential, hotel and commercial properties, including the marketing and sale of assets through insolvency proceedings; (b) JLL has a broad and extensive sales network across Canada, the United States and internationally; and (c) JLL’s proposed fee structure is reasonable and appropriate and aligned with soliciting all potential forms of interest in the SISP.²⁸ Courts have recognized that the quantum and nature of an advisor’s remuneration, as well as its industry experience, are important factors to consider when approving its engagement.²⁹

²⁶ [Bankruptcy and Insolvency Act, RSC 1985, c B-3](#), as amended [BIA], s [243\(1\)\(c\)](#).

²⁷ See, e.g., *Third Eye Capital Corporation v Ressources Dianor Inc/Dianor Resources Inc*, [2019 ONCA 508](#) [*Dianor Resources*] at para [85](#). See also *Victoria Avenue Holdings Inc et al* (29 October 2021), Ont Sup Ct J [Commercial List] CV-21-00665375-00CL ([Order \(Approval of Broker Engagement, Sale Process and Ancillary Matters\)](#)); *30 Roe Investments Corp* (14 December 2022), Ont Sup Ct J [Commercial List] CV-22-00674810-00CL ([Amended Sale Process Approval Order](#)).

²⁸ Second Report at paras 6.12–6.14; Motion Record, Tab 2, pp 53–55 [CL pp [E593;E55](#) to [E595;E57](#)].

²⁹ See *Danier Leather Inc (Re)*, [2016 ONSC 1044](#) at para [47](#); *Colossus Minerals Inc (Re)*, [2014 ONSC 514](#) at para [32](#).

30. For the foregoing reasons, it is appropriate for this Court to exercise its discretion to approve the Broker Agreement and the engagement of JLL thereunder.

(ii) The SISP Should be Approved

31. The SISP was developed by the Receiver in consultation with its professional advisors and discussed extensively with the Senior Secured Lenders, and contemplates a comprehensive, fair and transparent process. In particular, the Receiver notes that:

- (a) any interested party that executes a non-disclosure agreement (a “**Participating Bidder**”) will be given the opportunity to participate in the SISP;
- (b) the timeline of the SISP, which is contemplated to run for a total period of approximately four (4) months, with Phase 1 being over 50 days, will ensure that the Property is adequately exposed to the market in Canada and abroad;
- (c) the information expected to be made available to Participating Bidders, notably the revised draft Budget, Schedule and Cost to Complete, will allow them to make an informed decision and submit offers in respect of the Opportunities;
- (d) the SISP contemplates solicitation of a broad array of transaction alternatives, including a Development Proposal pursuant to which a property developer could, among other things, seek to enter into an arrangement with the Senior Secured Lenders to complete the construction, development and realization of value from the Project;
- (e) the inclusion of the Minimum Bid Threshold (in the context of a Transaction Proposal) and the agreement of the Senior Secured Lenders not to bid in the SISP

are necessary and appropriate features, as without them, Potential Bidders would be hesitant to invest time and resources in a potential bid given the possibility of a credit bid from the Senior Secured Lenders for the full amount of their debt; and

- (f) any “Selected Qualified Bid” that is selected in accordance with the terms of the SISP will require this Court’s approval.

32. Although the decision to approve a sale process is distinct from the approval of a proposed sale transaction, courts have held that the reasonableness and adequacy of any sale process proposed by a court-appointed receiver are to be assessed in light of the factors that a court will take into account when considering the approval of a proposed sale.³⁰ The Court of Appeal summarized those factors in *Soundair* as follows:

- (a) whether the receiver has made a sufficient effort to get the best price and 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 are to be obtained; and
- (d) whether there has been unfairness in the working out of the process.³¹

33. In addition to considering the *Soundair* factors, the Court must also assess: (a) the fairness, transparency and integrity of the proposed process; (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and (c) whether the sale process

³⁰ *Choice Properties Limited Partnership v Penady (Barrie) Ltd*, [2020 ONSC 3517](#) at para [15](#) [*Choice Properties*]; *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#) at para [6](#) [*CCM Master*]; *Royal Bank of Canada v Soundair Corp* (1991), [4 OR \(3d\) 1 \(CA\)](#) at p 9 [*Soundair*].

³¹ [Soundair](#) at p 9.

will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.³² In considering sale process matters, substantial deference should be given to the business judgement and recommendations of a receiver as an officer of the Court with significant expertise in insolvency proceedings.³³

34. The SISP was designed to accommodate the current status of the Project (which, at this time, is only partially constructed) and the scale of the indebtedness encumbering the Project, which indebtedness amounts to approximately \$1.5 billion for the Senior Secured Lenders alone.³⁴ Accordingly, the SISP provides optionality for Participating Bidders in that they may submit either a Transaction Proposal or a Development Proposal, either of which are expected to result in the completion of the Project.³⁵ The inclusion of the Minimum Bid Threshold for a Transaction Proposal, being approximately 80% of the total amount owing to the Senior Secured Lenders, was a requirement of the Senior Secured Lenders and therefore necessary to include to preserve the integrity and efficacy of the SISP, as any offer that does not meet the Minimum Bid Threshold would not be acceptable to the Senior Secured Lenders.

35. As a result of the nature, scale and partially built status of the Project, it is impossible to know at this time what an interested third party might be willing to pay for the Project. What is certain, however, is that the Senior Secured Lenders are not prepared to accept any Transaction Proposal in respect of the Project that does not meet the Minimum Bid Threshold. Accordingly, the SISP will serve as a “market test”, as it is only by running the SISP that the Receiver can

³² *Ontario Securities Commission v Bridging Finance Inc*, [2021 ONSC 5338](#) at paras [7–8](#); *Choice Properties* at para [16](#); *CCM Master* at para [6](#).

³³ *Marchant Realty Partners Inc v 2407553 Ontario Inc*, [2021 ONCA 375](#) at paras [10](#), [15](#) and [19](#). See also *Ontario Securities Commission v Bridging Finance Inc*, [2022 ONSC 1857](#) at paras [43–45](#).

³⁴ Second Report at para 6.15; Motion Record, Tab 2, p 55 [CL p [E595;E57](#)].

³⁵ Second Report at para 6.26; Motion Record, Tab 2, p 65 [CL p [E605;E67](#)].

determine with certainty whether there are any interested parties willing to purchase the Project for an amount of consideration that is acceptable to the Senior Secured Lenders and potentially provide value to other stakeholders.

36. This Court has previously cited with approval the notion that an appropriate purpose of a sale process is to identify whether there is a transaction available in the market that would be acceptable to senior creditors and establish whether any funds might be available to junior creditors, and courts have routinely approved sale processes that have bid thresholds or require a qualified bid to pay out or otherwise be acceptable to a senior secured creditor.³⁶

37. In addition to the foregoing, the Receiver recommends that this Court approve the SISP for the following reasons:

- (a) **The SISP is commercially reasonable.** The SISP is commercially reasonable as it will broadly canvass the market for any type of executable transaction and provide interested parties sufficient time to complete diligence and submit a proposal. The SISP will assist in determining whether there is interest in the market for a third party owner to take over the Project or alternatively to partner with the Senior Secured Lender in the continuing development of the Project, or whether the Senior Secured Lenders will need to facilitate the completion of the construction and realization of the Project on a stand-alone basis. The SISP will also demonstrate

³⁶ See *Sino-Forest Corporation (Re)*, [2012 ONSC 2063](#) [*Sino-Forest*] at para 42. See also *Sino-Forest Corporation (Re)* (30 March 2012), Ont Sup Ct J [Commercial List] CV-12-9667-00-CL ([Sale Process Order](#)) [*Sino-Forest Sale Process Order*]; *Wayland Group Corp et al* (13 January 2020), Ont Sup Ct J [Commercial List] CV-19-00632079-00CL ([SISP & KERP Approval Order](#)); *Biosteel Sports Nutrition Inc* (21 September 2023), Ont Sup Ct J [Commercial List] CV-23-00706033-00CL ([SISP Approval Order](#)); *Contract Pharmaceuticals Limited et al* (22 December 2023), Ont Sup Ct J [Commercial List] CV-23-00711401-00CL ([SISP Approval Order](#)) [CPL SISP Approval Order].

whether there is any value in the Project beyond the amounts owed to the Senior Secured Lenders.

- (b) **The SISP is consistent with similar sale processes approved in other Canadian insolvency proceedings.** The terms of the SISP were developed based on forms of sale processes approved in other Canadian insolvency proceedings, including those involving the sale of significant real estate projects.³⁷ Further, as noted above, this Court has approved sale processes which include minimum bid thresholds or similar concepts. For example, in *Sino-Forest*, the sale process required that all offers include a minimum consideration threshold amount equal to 85% of the aggregate principal amount of the notes issued by the debtor in that case, plus all accrued and unpaid interest on same.³⁸ This is substantially identical to the present case, where the Senior Secured Lenders are requiring a minimum consideration threshold amount equal to approximately 80% of their secured debt in the context of a Third Party Transaction. In addition, in *Contract Pharmaceuticals Limited*, the sale process contemplated that no bid could be designated as the successful bid unless it would pay out in cash all principal, interest, fees and costs outstanding under a secured creditor's loan agreement, or was otherwise consented to by such secured creditor.³⁹
- (c) **The interests of all parties have been considered.** In developing the SISP, the Receiver has considered the interests of all stakeholders and has developed a sale

³⁷ See e.g., *33 Yorkville Residences Inc et al* (4 June 2020), Ont Sup Ct J [Commercial List] CV-20-00637297-00CL ([Order \(Approval of SISP\)](#)); *The Clover On Yonge Inc et al*, (4 June 2020), Ont Sup Ct J [Commercial List] CV-20-00637301-00CL ([Order \(Approval of SISP\)](#)).

³⁸ See [Sino-Forest Sale Process Order](#).

³⁹ See [CPL SISP Approval Order](#).

process designed to maximize the value of and interest in the Project for the benefit of stakeholders. The Receiver consulted extensively with the Senior Secured Lenders in the development of the SISP and shared the SISP with other secured creditors under NDA, and discussed and considered comments from those parties where provided.⁴⁰ Further, the SISP requires that offers in respect of the Property include specific statements concerning the proposed treatment of stakeholders in the Project, including, among others, secured creditors, condominium unit purchasers, subcontractors, consultants and suppliers engaged on the Project, and lien claimants (if any).⁴¹ In assessing bids submitted in the SISP, the Receiver will consider the terms and conditions of any proposed treatment of Project stakeholders and whether such terms and conditions will benefit stakeholders as a whole.

38. Finally, the SISP has been designed not only to seek Transaction Proposals that meet the Minimum Bid Threshold, but also to seek Development Proposals to identify a potential development partner to, among other things, partner with the Senior Secured Lenders to complete the construction and development of the Project. As a result, even in the event that no acceptable Third Party Transaction is identified through the SISP, there is an alternative path that provides additional flexibility for the Receiver to explore a potential development transaction that is in the best interests of stakeholders.⁴²

⁴⁰ Second Report at para 6.22; Motion Record, Tab 2, p 58 [CL p [E598;E60](#)].

⁴¹ Draft SISP Approval Order, Schedule A at para 21; Motion Record, Tab 3, p 247 [CL p [E787;E249](#)].

⁴² Second Report at para 6.20; Motion Record, Tab 2, p 57 [CL p [E597;E59](#)].

C. The Reconfiguration and LC Arrangement Order Should be Granted

39. This Court's authority to approve the Letters of Credit Arrangement and the Reconfiguration Plan is derived from section 243(1)(c) of the BIA. As the Supreme Court of Canada has held, the "very expansive wording" of section 243(1)(c) has been interpreted as giving judges "the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise" in the context of a Court-ordered receivership.⁴³ This broad jurisdiction permits the Court "to do not only what 'justice dictates' but also what 'practicality demands.'⁴⁴ Courts also routinely approve the proposed course of conduct of court officers (for instance, in the context of proposed sales, settlements, the commencement of litigation and other material steps), which serves the dual purpose of bringing the proposed course of action before the Court for consideration and scrutiny, and ensuring the court officer is able to advance the course of action without fear of subsequent criticism or liability.⁴⁵

40. As relates to the Letters of Credit Arrangement, given the financial position of the Debtors and the City of Toronto's financial assurance requirements, practicality demands that the Receiver find alternative means to provide financial assurance to the City of Toronto to ensure compliance with municipal requirements and maintain the Project's construction permits.

41. The Receiver has agreed to an arrangement with RBC to provide such alternative means, which arrangement requires that: (a) the Receiver fund a GIC account (the "**RBC Collateral Account**") to collateralize the Replacement LCs (the "**RBC Collateral**"); (b) RBC be permitted

⁴³ See *Peace River Hydro Partners v Petrowest Corp.*, [2022 SCC 41](#) [*Peace River*] at para [148](#), citing *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#) [*Third Eye*] at para [20](#).

⁴⁴ See *Dianor Resources* at para [57](#); *Canada (Minister of Indian Affairs and Northern Development) v Curragh Inc.*, [1994 CanLII 7468, 114 D.L.R. \(4th\) 176](#) (Ont Ct J (GD)) at para [16](#).

⁴⁵ *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at para 14 [*Laurentian*].

to register a financing statement under the *Personal Property Security Act* (Ontario) against A&M in its capacity as Receiver over the cash and GICs held in the RBC Collateral Account; and (c) RBC be granted a charge on the RBC Collateral Account and the RBC Collateral.⁴⁶

42. Given that compliance with municipal requirements and the maintenance of construction permits with the City of Toronto are necessary to the ongoing construction of the Project, the Receiver respectfully submits that the Letters of Credit Arrangement represents the best path forward to address this issue and that the Court should exercise its discretion to approve same.

43. With respect to the Reconfiguration Plan, the Receiver, after extensive consultation with its advisors, has determined that it is not only desirable, but necessary to improve the saleability of condominium units in the Project and to maximize value realization. The original Project configuration for the floors affected by the Reconfiguration Plan contemplated a small number of large, and very expensive condominium units. The Receiver has been advised that there is a very limited market for these condominiums. If the Reconfiguration Plan is not implemented, there is a risk that condominium units in the Project will remain unsold for a significant period of time given current market conditions.⁴⁷ Relative to the forecast sales velocity that could realistically be achieved under the existing configuration of the Residential Component, the Reconfiguration Plan is anticipated to generate substantial additional net realizable value when compared to the existing configuration. Further, given the current status of ongoing construction, it is required that the Reconfiguration Plan be implemented now, or the opportunity will be lost.⁴⁸

⁴⁶ Second Report at para 5.29; Motion Record, Tab 2, p 47 [CL p [E587;E49](#)].

⁴⁷ Second Report at para 7.4; Motion Record, Tab 2, p 68 [CL p [E608;E70](#)].

⁴⁸ Second Report at paras 7.10–7.11; Motion Record, Tab 2, pp 69–70 [CL pp [E609;E71](#) and [E610;E72](#)].

44. In light of the above, the Receiver respectfully submits that it is appropriate for this Court to approve the Reconfiguration Plan and that it is in the best interests of stakeholders to do so, including because it represents the best option available within existing practical constraints to maximize returns from the Project and has been designed to maintain the same standard of quality construction and luxury of the Project, while providing for condominium units that are more sellable in the current market.⁴⁹

(i) *The Second Report of the Receiver Should be Approved*

45. 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

⁴⁹ Second Report at para 7.20; Motion Record, Tab 2, p 72 [CL p [E612;E74](#)].

- (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.⁵⁰

46. The same 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.”⁵¹

47. In this case, the Second Report and the activities described therein should be approved because, among other reasons:

- (a) the activities described in the Second Report were necessary and undertaken in good faith pursuant to the Receiver’s duties and powers set out in the Receivership Order and the other orders of this Court granted in these receivership proceedings;
- (b) the activities were undertaken in the best interests of Project stakeholders; and
- (c) the Second Report was served on the Service List, and posted on the Receiver’s website on May 28, 2024, for review by the Project’s creditors and other stakeholders and no party has provided any adverse comment on the Receiver’s activities described in the Second Report to date.

D. The Holdback Release Order Should be Granted

48. As with the relief sought in the Reconfiguration and LC Arrangement Order, this Court’s authority to grant the relief sought in the proposed Holdback Release Order is derived from

⁵⁰ *Target Canada Co, Re*, [2015 ONSC 7574](#) at para 12; *Laurentian* at paras 13-14.

⁵¹ *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#) at para 66.

section 243(1)(c) of the BIA and this Court's broad mandate to react to any circumstances that may arise in the context of insolvency proceedings.⁵²

49. The proposed form of Holdback Release Order provides a fair and appropriate mechanism to allow for the release of the Holdback Amount rightfully earned by the Holdback Parties, while facilitating the entry into new subcontracts with Skygrid for those Holdback Parties continuing on the Project, and the timely and efficient conclusion of any arrangements with those Holdback Parties who have completed their scope of work on the Project, or who will be completing their scope of work in the near term.⁵³

50. In the absence of the Receiver being authorized to release the Holdback Amount, negotiations between Skygrid and several key subcontractors will likely come to a standstill given the subcontractors' position that their proportional entitlement to the Holdback Amount be released prior to entering into any new subcontract, thereby putting the continued and unimpeded construction of the Project at risk. Further and equally important, the proposed relief makes the Project more attractive for the purposes of the SISP by facilitating the final resolution of matters that predate the Effective Date.

51. Notably the proposed Holdback Release Order authorizes, but does not require, the Receiver to release the Holdback Amount owing to a subcontractor. Prior to making any payment out of the Holdback Amount, the Receiver will require that the Holdback Release Conditions have been satisfied or waived in respect of each Holdback Party, which conditions include the execution of a Holdback Release Agreement.⁵⁴ This mechanism provides flexibility to the Receiver to ensure

⁵² BIA, s 243(1)(c); *Peace River* at para 148, citing *Third Eye* at para 20.

⁵³ Second Report at para 5.16; Motion Record, Tab 2, p 41 [CL p [E581;E43](#)].

⁵⁴ Second Report at para 5.18; Motion Record, Tab 2, p 42 [CL p [E582;E44](#)].

that subcontractors have performed their obligations to the Project and that all pre-Effective Date matters are resolved before a subcontractor receives final payment for its pre-Effective Date work.

52. The release of the Holdback Amount contemplated by the Holdback Release Order is consistent with the Provincial Lien Legislation in force in relation to the Project (i.e., the *Construction Act* as it existed immediately prior to July 1, 2018).⁵⁵ Among other things, the Provincial Lien Legislation contemplates that holdback under a subcontract may be released where the subcontract has been certified completed and all liens in respect of the completed subcontract have expired or been satisfied, discharged or otherwise provided for.⁵⁶ Given that no certification process was in place for the pre-Effective Date period, the proposed Holdback Release Order provides that upon execution by the Receiver and the Holdback Party of the Holdback Release Agreement (which will require the positive agreement of the subcontractor and will establish as a condition of payment that there be no claims or liens of sub-subcontractors or suppliers under or in connection with the relevant subcontract), the original and/or existing subcontract between the Holdback Party and the Former Developer will be deemed to have been certified complete.⁵⁷

53. The execution by the Receiver of any Holdback Release Agreement and the resulting release of the applicable subcontractor's entitlement to the Holdback Amount is akin to a settlement agreement in the circumstances, which Courts regularly approve in the context of insolvency proceedings. Generally speaking, the Court will consider the following when asked to approve a settlement agreement: (a) whether the settlement is fair and reasonable; (b) whether it

⁵⁵ [Construction Act, RSO 1990, c C.30](#) [*Construction Act*].

⁵⁶ The relevant Provincial Lien Legislation contemplates a 45-day period from the earlier of (among other things) the date of last supply or the date a subcontract is certified to be complete within which to register a lien. Significantly more than 45 days have passed since the Effective Date.

⁵⁷ Draft Holdback Release Order at para 8; Motion Record, Tab 5, p 269 [CL p [E810](#); [E272](#)].

provides substantial benefits to other stakeholders; and (c) whether it is consistent with the purpose and spirit of the relevant insolvency legislation.⁵⁸

54. In the circumstances, the release of the Holdback Amount is fair and reasonable and does not prejudice the rights, statutory or otherwise, of any party. The Receiver is not aware of holdback amounts owing to any parties other than the Holdback Parties, notice of the proposed release of the Holdback Amount (which followed extensive noticing of the Lien Regularization Order) has been provided to the service list and all known subcontractors and suppliers on the Project for whom contact information is available, and aside from the lien claim filed by the Former Developer which the Receiver believes should be addressed together with the other disputes as part of the MI Payment Motion, the only pending lien claims pursuant to the Lien Regularization Order have been filed by subcontractors with whom there are pending disputes unrelated to holdback.⁵⁹ Authorizing the release of the Holdback Amount will benefit stakeholders by: (a) ensuring that the Holdback Parties are paid the amounts they have rightfully earned once the Holdback Conditions are satisfied; (b) facilitating the Construction Manager's engagement of subcontractors, in turn facilitating ongoing construction; and (c) assisting in finally resolving pre-Effective Date matters that will advance these receivership proceedings, including the pursuit of a transaction through the SISP.⁶⁰

⁵⁸ *Maple Bank GmbH (Re)*, [2016 ONSC 7218](#) at para 8. See also *Labourers' Pension Fund of Central and Eastern Canada v Sino-Forest Corporation*, [2013 ONSC 1078](#) at para 49.

⁵⁹ Second Report at para 5.19; Motion Record, Tab 2, p 44 [CL p [E584;E46](#)]. In addition to the lien claim of Cult Iron Works Limited ("Cult") referenced in the Second Report, on May 30, 2024, a Lien Notice was filed by Gamma Windows and Walls International Inc. ("Gamma"). The Holdback Schedule includes amounts for each of Cult and Gamma that the Receiver does not understand to be disputed.

⁶⁰ Second Report at para 5.20; Motion Record, Tab 2, p 44 [CL p [E584;E46](#)].

55. In light of the foregoing, the Receiver respectfully submits that granting the proposed Holdback Release Order is appropriate in the circumstances.

PART IV – ORDERS REQUESTED

56. For the foregoing reasons, the Receiver respectfully requests that the proposed SISP Approval Order, the proposed Reconfiguration and LC Arrangement Order and the proposed Holdback Release Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of June, 2024.



Goodmans LLP

Brendan O’Neill LSO# 43331J
boneill@goodmans.ca

Christopher Armstrong LSO#: 55148B
carmstrong@goodmans.ca

Mark Dunn LSO#: 55510L
mdunn@goodmans.ca

Jennifer Linde LSO#: 86996A
jlinde@goodmans.ca

Lawyers for the Receiver

SCHEDULE "A"

LIST OF AUTHORITIES

- 1) *Third Eye Capital Corporation v Ressources Dianor Inc/Dianor Resources Inc*, [2019 ONCA 508](#)
- 2) *Victoria Avenue Holdings Inc et al* (29 October 2021), Ont Sup Ct J [Commercial List] CV-21-00665375-00CL ([Order \(Approval of Broker Engagement, Sale Process and Ancillary Matters\)](#))
- 3) *30 Roe Investments Corp* (14 December 2022), Ont Sup Ct J [Commercial List] CV-22-00674810-00CL ([Amended Sale Process Approval Order](#))
- 4) *Danier Leather Inc (Re)*, [2016 ONSC 1044](#)
- 5) *Colossus Minerals Inc (Re)*, [2014 ONSC 514](#)
- 6) *Choice Properties Limited Partnership v Penady (Barrie) Ltd*, [2020 ONSC 3517](#)
- 7) *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#)
- 8) *Royal Bank of Canada v Soundair Corp* (1991), [4 OR \(3d\) 1 \(CA\)](#)
- 9) *Ontario Securities Commission v Bridging Finance Inc*, [2021 ONSC 5338](#)
- 10) *Marchant Realty Partners Inc v 2407553 Ontario Inc*, [2021 ONCA 375](#)
- 11) *Ontario Securities Commission v Bridging Finance Inc*, [2022 ONSC 1857](#)
- 12) *Sino-Forest Corporation (Re)*, [2012 ONSC 2063](#)
- 13) *Sino-Forest Corporation (Re)* (30 March 2012), Ont Sup Ct J [Commercial List] CV-12-9667-00-CL ([Sale Process Order](#))
- 14) *Wayland Group Corp et al* (13 January 2020), Ont Sup Ct J [Commercial List] CV-19-00632079-00CL ([SISP & KERP Approval Order](#))
- 15) *Biosteel Sports Nutrition Inc* (21 September 2023), Ont Sup Ct J [Commercial List] CV-23-00706033-00CL ([SISP Approval Order](#))
- 16) *Contract Pharmaceuticals Limited et al* (22 December 2023), Ont Sup Ct J [Commercial List] CV-23-00711401-00CL ([SISP Approval Order](#))
- 17) *33 Yorkville Residences Inc et al* (4 June 2020), Ont Sup Ct J [Commercial List] CV-20-00637297-00CL ([Order \(Approval of SISP\)](#))

- 18) *The Clover On Yonge Inc. et al*, (4 June 2020), Ont Sup Ct J [Commercial List] CV-20-00637301-00CL ([Order \(Approval of SISP\)](#))
- 19) *Peace River Hydro Partners v Petrowest Corp*, [2022 SCC 41](#)
- 20) *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#)
- 21) *Canada (Minister of Indian Affairs and Northern Development) v Curragh Inc*, [1994 CanLII 7468, 114 D.L.R. \(4th\) 176](#) (Ont Ct J (GD))
- 22) *Laurentian University of Sudbury*, [2022 ONSC 2927](#)
- 23) *Target Canada Co, Re*, [2015 ONSC 7574](#)
- 24) *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#)
- 25) *Maple Bank GmbH (Re)*, [2016 ONSC 7218](#)
- 26) *Labourers' Pension Fund of Central and Eastern Canada v Sino-Forest Corporation*, [2013 ONSC 1078](#)

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.

Construction Act, R.S.O. 1990, c. C.30 (as it existed immediately prior to July 1, 2018)

Expiry of liens

31. (1) Unless preserved under section 34, the liens arising from the supply of services or materials to an improvement expire as provided in this section.

Contractor's liens

(2) Subject to subsection (4), the lien of a contractor,

(a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the forty-five-day period next following the occurrence of the earlier of,

(i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published as provided in section 32, and

(ii) the date the contract is completed or abandoned; and

- (b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of substantial performance, expires at the conclusion of the forty-five-day period next following the occurrence of the earlier of,
 - (i) the date the contract is completed, and
 - (ii) the date the contract is abandoned.

Liens of other persons

(3) Subject to subsection (4), the lien of any other person,

- (a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the forty-five-day period next following the occurrence of the earliest of,
 - (i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published, as provided in section 32, and
 - (ii) the date on which the person last supplies services or materials to the improvement, and
 - (iii) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract; and
- (b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the forty-five-day period next following the occurrence of the earlier of,
 - (i) the date on which the person last supplied services or materials to the improvement, and
 - (ii) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract.

Separate liens when ongoing supply

(4) Where a person has supplied services or materials to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract and has also supplied, or is to supply, services or materials after that date, the person's lien in respect of the services or materials supplied on or before the date of substantial performance expires without affecting any lien that the person may have for the supply of services or materials after that date.

Declaration of last supply

(5) Where a person who has supplied services or materials under a contract or subcontract makes a declaration in the prescribed form declaring,

- (a) the date on which the person last supplied services or materials under that contract or subcontract; and
- (b) that the person will not supply any further services or materials under that contract or subcontract,

then the facts so stated shall be deemed to be true against the person making the declaration.

Certificate re subcontract

33. (1) Upon the request of the contractor, the payment certifier on the contract may determine whether a subcontract has been completed, and, if the payment certifier so determines, shall certify the completion of the subcontract in the prescribed form; alternatively, the owner and the contractor may jointly make the declaration and certify completion in the prescribed form.

Date subcontract deemed completed

(2) Where a subcontract is certified to be completed, the subcontract shall be deemed to have been completed on the date of certification.

Services or materials supplied after subcontract certified completed

(3) If services or materials are supplied to the improvement under or in respect of a subcontract after the date the subcontract is certified to be completed, those services or materials shall be deemed to have been last supplied on the date of certification.

Copy of certificate

(4) Within seven days of the date the subcontract is certified to be completed, the payment certifier or the owner and the contractor, as the case may be, shall give a copy of the certificate,

- (a) to the subcontractor whose subcontract has been certified as complete; and
- (b) to the owner and the contractor, where certification is by the payment certifier.

Notice of intention to register in accordance with the *Condominium Act, 1998*

Definitions

33.1 (1) In this section,

“declaration” means a declaration as defined in the *Condominium Act, 1998*; (“déclaration”)

“description” means a description as defined in the *Condominium Act, 1998*; (“description”)

“registered” means registered as defined in the *Condominium Act, 1998*. (“enregistré”)

Notice required

(2) An owner of land described in a description that is intended to be registered together with a declaration in accordance with the *Condominium Act, 1998* shall publish notice of the intended registration in a construction trade newspaper at least five and not more than 15 days, excluding Saturdays and holidays, before the description is submitted for approval under subsection 9 (3) of the *Condominium Act, 1998*.

Contents

(3) The notice shall be in the prescribed form and shall include,

- (a) the owner’s name and address for service;
- (b) a concise overview of the land described in the description, including reference to the lot and plan number and the parcel number or numbers of the land; and
- (c) if, to the best of the owner’s knowledge, information and belief, a contractor supplied services or materials to an improvement in respect of the land during the 90-day period preceding the day on which the description is to be submitted for approval under subsection 9 (3) of the *Condominium Act, 1998*, the contractor’s name, address and, if known, address for service.

Liability for failure to comply

(4) An owner who fails to comply with this section is liable to any person entitled to a lien who suffers damages as a result.

**KEB HANA BANK as trustee of IGIS GLOBAL MIZRAHI COMMERCIAL
PRIVATE PLACEMENT REAL ESTATE FUND NO. (THE ONE) LP, et al.
301 and as trustee of IGIS GLOBAL PRIVATE
PLACEMENT REAL ESTATE FUND NO. 434**

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

Applicant

Respondents

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

**FACTUM OF THE RECEIVER
(SISP Approval, Reconfiguration, Letters of Credit
Arrangement and Holdback Release)
Returnable June 6, 2024**

GOODMANS LLP

Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Brendan O'Neill (LSO# 43331J)
Christopher Armstrong (LSO# 55148B)
Mark Dunn (LSO# 55510L)
Jennifer Linde (LSO# 86996A)

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Receiver