

**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**

**SECOND REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA INC.**

MAY 28, 2024

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1.0 INTRODUCTION

- 1.1 On October 18, 2023 (the “**Appointment Date**”), pursuant to an order (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), Alvarez & Marsal Canada Inc. was appointed as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties (collectively, the “**Property**”) of Mizrahi Commercial (The One) LP (the “**Beneficial Owner**”), Mizrahi Development Group (The One) Inc. (the “**Nominee**”), and Mizrahi Commercial (The One) GP Inc. (“**GP Inc.**” and, together with the Beneficial Owner and the Nominee, the “**Debtors**”) acquired for, or used in relation to, a business carried on by the Debtors, including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower (the “**Project**”) located on the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario (“**One Bloor**”).
- 1.2 In connection with the Receiver’s motion heard on March 7, 2024, the Receiver prepared and filed with the Court, the First Report of the Receiver dated February 26, 2024 (the “**First Report**”), attached without appendices as **Appendix “A”**, and the Supplemental Report to the First Report of the Receiver dated March 6, 2024 (the “**Supplemental Report**”), attached as **Appendix “B”**.
- 1.3 The First Report described, among other things, the Receiver’s activities since the Appointment Date, including the Receiver’s decision to disclaim the Construction Management Agreement and the GC Agreement (each as defined in the First Report) entered into with Mizrahi Inc. (“**MI**”, or the “**Former Developer**”) with the consent of KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530

(the “**RFCA Lender**”), and to engage SKYGRiD Construction Inc. (“**Skygrid**”, or the “**Construction Manager**”) as the new construction manager of the Project, effective March 13, 2024 (the “**Effective Date**”).

- 1.4 The First Report also provided information regarding the relief sought by the Receiver pursuant to the Construction Continuance and Ancillary Relief Order (the “**Construction Continuance Order**”) and the Lien Regularization Order (the “**Lien Regularization Order**”), both as described below.
- 1.5 The Supplemental Report provided an update and additional information regarding the status of the transition of the Project from the Former Developer to the Construction Manager, as well as an overview of the Receiver’s position with respect to a Notice of Motion served on February 26, 2024 by MI (the “**MI Payment Motion**”) seeking to compel the payment by the Receiver of the amounts specified therein and certain other unspecified amounts.
- 1.6 On March 7, 2024, the Court granted:
 - (i) the Construction Continuance Order which, as described in the First Report, was designed to promote a smooth transition of construction management from the Former Developer to the Construction Manager and the ongoing construction of the Project by, among other things, delineating the respective obligations and liabilities of the Former Developer and the Construction Manager towards the contractors, subcontractors and other suppliers required to continue supplying goods and/or services to the Project pursuant to the Receivership Order; and

- (ii) the Lien Regularization Order which, as outlined in the First Report, established a Court-supervised streamlined process, administered by the Receiver, to replace the various technical requirements under the *Construction Act*, R.S.O. 1990, c. C.30, as amended (the “**Provincial Lien Legislation**”) for claiming, preserving and perfecting a lien claim under the Provincial Lien Legislation (a “**Lien Claim**”) by providing, among other things, that any person wishing to assert a Lien Claim against the Project (an “**Asserting Lien Claimant**”) shall do so by delivering a lien notice to the Receiver (a “**Lien Notice**”) in accordance with the Lien Regularization Order, following which such Asserting Lien Claimant shall be deemed to have preserved and perfected its Lien Claim and will be granted a lien charge against the Project equivalent to, and only to the extent of, any security that would be granted in respect of a Lien Claim under the Provincial Lien Legislation.
- 1.7 Additional details regarding the Debtors and the Project, including an overview of the circumstances leading to the appointment of the Receiver, is contained in the application record dated October 17, 2023 of the Debtors’ pre-filing senior secured lenders, KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 301 and of IGIS Global Private Placement Real Estate Fund No. 434 (collectively, the “**Applicant**” and, together with the RFCA Lender, the “**Senior Secured Lenders**”), which includes the affidavit of Joo Sung Yoon sworn October 17, 2023 (the “**Yoon Affidavit**”). The Yoon Affidavit, the First Report (with appendices), the Supplemental Report and other Court-filed documents and notices in these receivership proceedings (the “**Receivership Proceedings**”) can be found on the Receiver’s case website at: www.alvarezandmarsal.com/theone (the “**Case Website**”).

2.0 PURPOSE OF THIS REPORT

2.1 This purpose of this Second Report (the “**Second Report**”) is to:

- (i) provide an update on the status of construction of the Project and on the transition of construction management to Skygrid;
- (ii) provide a summary of the key terms of the proposed sale and investment solicitation process (the “**SISP**”) and the relief sought by the Receiver pursuant to the proposed Order (Approval of SISP) (the “**SISP Approval Order**”);
- (iii) provide an overview of the relief sought by the Receiver pursuant to the proposed Order (Reconfiguration and Letters of Credit Arrangement) (the “**Reconfiguration and LC Arrangement Order**”) which seeks the approval of, among other things:
 - (a) the Reconfiguration Plan (as defined below) and the implementation thereof by the Receiver; and
 - (b) the replacement of existing letters of credit in respect of certain municipal requirements and the provision of an additional letter of credit in respect of the City Indemnity (as defined below) and related security arrangements to be established by the Receiver;
- (iv) provide an overview of the relief sought by the Receiver pursuant to the proposed Order (Holdback Release) (the “**Holdback Release Order**”), including, among other things, authorization for the Receiver to pay the Holdback Amount (as defined below) on behalf of the Nominee to various subcontractors in such amounts as specified in the Holdback Schedule (as defined below), subject to satisfaction or

waiver of the Holdback Release Conditions (as defined below) as determined by the Receiver in its sole discretion;

- (v) provide an update on matters related to the MI Payment Motion;
- (vi) provide information regarding the Debtors' receipts and disbursements since the Appointment Date;
- (vii) provide information regarding the Updated Cash Flow Forecast (as defined below);
- (viii) describe the Receiver's activities since the date of the First Report; and
- (ix) provide an overview of the Receiver's conclusions and recommendations in respect of the foregoing.

3.0 TERMS OF REFERENCE AND DISCLAIMER

- 3.1 In preparing this Second Report, the Receiver has obtained and relied upon unaudited financial information, books and records, and other documents of the Debtors, and has held discussions with, and been provided with certain additional information from, management and employees of MI, Coco International Inc. ("**Coco**"), and Skygrid (collectively, the "**Information**").
- 3.2 The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly,

the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

3.3 Future-oriented financial information referred to in this Second Report was prepared based on estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations in such future-oriented financial information could be significant.

3.4 This Second Report has been prepared to provide general information regarding these Receivership Proceedings and to provide the Court with further information regarding the relief sought in the Receiver's motion returnable June 6, 2024 (the "**Receiver's Motion**"). Accordingly, the reader is cautioned that this Second Report is not appropriate for any other purpose, and that the Receiver will not assume any responsibility or liability for any losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Second Report.

3.5 Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

4.0 STATUS OF CONSTRUCTION

4.1 As originally designed, the Project, when fully constructed, is intended to be comprised of:

- (i) a commercial component (the "**Commercial Component**") occupying four underground parking levels and 16 aboveground levels comprised of the ground

floor and concourse retail spaces, food and beverage (“**F&B**”) spaces on levels three and four, and a premium hotel space on levels five through 16; and

- (ii) a residential component (the “**Residential Component**”) occupying levels 17 through 84, with an outdoor amenity space for the exclusive use of the penthouse residents (commonly referred to as a “Wintergarden”) on level 85.

4.2 As of the Appointment Date, the construction of the Commercial Component’s structure was well advanced. Accordingly, since the Appointment Date, the Receiver’s focus has been primarily on advancing and overseeing the construction of the Residential Component, which has progressed significantly. The current status of each of the Commercial Component and the Residential Component is described below.

Commercial Component

- 4.3 The Project’s parking facility (residential and non-residential) is included in the Commercial Component of the Project and is comprised of four levels of stacked underground parking for approximately 296 cars.
- 4.4 The retail area of the Project includes: (i) approximately 9,365 square feet of premium retail space on the ground floor and approximately 7,000 square feet of additional retail and storage space on the concourse; and (ii) approximately 37,000 square feet of F&B space on levels three and four, with a small F&B space contemplated on the ground level.
- 4.5 Level five, a portion of level six, and levels seven through sixteen of the Project have been designed to accommodate a premium hotel, including a lobby, amenities (outdoor pool, gym and other facilities) and approximately 138 hotel suites.

4.6 An overview of the current status of construction of the Commercial Component is as follows:

- (i) the construction of the parking facility is effectively complete, save for final finishes and certain final installations to make the facility operable, including finishing the elevator lobbies;
- (ii) the concrete structure, core, and curtainwall (the building façade) of the retail, F&B and hotel levels are complete;
- (iii) the mechanical, electrical and plumbing distribution is completed in the common areas of the Commercial Component; and
- (iv) the commencement of work with respect to layout, framing, drywall and finishing, as well as furniture, fixtures and equipment remains outstanding.

Residential Component

4.7 The Residential Component includes low-rise, mid-rise, high-rise, and penthouse condominium suites on 60 levels, as well as 8 levels of storage and mechanical equipment, and the Wintergarden area on level 85.

4.8 An overview of the current status of construction of the Residential Component is as follows:

- (i) the concrete structure and core of the Residential Component is complete through level 57, with concrete pouring for level 58 currently in preparation;

- (ii) the curtainwall is complete through level 24, with levels 25 and 26 currently being installed;
- (iii) standpipe for the fire suppression system is currently installed to level 57, standpipe for water service is installed to level 50, and in-suite distribution piping is partially installed to level 36;
- (iv) gas service to the suites is installed up to level 35;
- (v) HVAC distribution from the mechanical rooms to the residential suites is complete up to level 37; and
- (vi) electrical main services are on-line up to level 18, with electrical main services installed up to level 50 (not yet on-line).

4.9 Since commencing its engagement as Construction Manager, Skygrid has continued to advance the Project under the supervision of the Receiver with a focus on completing the Project as a premium luxury building. To that end, Skygrid has developed and implemented numerous improvements to the construction management of the Project, including with respect to reporting, project management controls, and trade and supplier management.

5.0 UPDATE ON THE TRANSITION OF CONSTRUCTION MANAGEMENT

5.1 Pursuant to a disclaimer notice (the “**Disclaimer Notice**”) delivered by the Receiver to the Former Developer on February 26, 2024, the GC Agreement and the Construction Management Agreement were disclaimed effective as of the Effective Date. Also on February 26, 2024, the Receiver entered into an engagement letter with Skygrid (the

“Skygrid Engagement Letter”) pursuant to which Skygrid took over as Construction Manager on the Effective Date.

- 5.2 During the period between the date of the Disclaimer Notice and the Effective Date (the **“Transition Period”**), the Receiver, Knightsbridge Development Corporation (**“KDC”**), the Receiver’s project manager, and Skygrid worked with the Former Developer to ensure the ongoing stability of the Project on a go-forward basis, and to assist Skygrid as it prepared to commence its role as Construction Manager.
- 5.3 During the Transition Period, construction of the Project continued as scheduled with no material disruptions, and trades, suppliers and Project Employees (as defined below) worked cooperatively with Skygrid and were generally supportive of the transition, resulting in a smooth and successful transition to Skygrid as Construction Manager.
- 5.4 Transition-related activities undertaken by the Receiver up to the date of the Supplemental Report are described therein. Those undertaken since the date of the Supplemental Report have included:
- (i) with the assistance of KDC, continuing to work with Skygrid to provide Project-related information, and assisting Skygrid in completing its transition-related tasks and achieving its related goals;
 - (ii) assisting Skygrid with gaining access to the construction management software system used by MI for the purposes of backing-up of Project data and migrating to the software system used by Skygrid;

- (iii) publishing a notice of the Lien Regularization Order on March 21, 2024 in the *Daily Commercial News*;
- (iv) contacting trades and consultants to notify them of the construction management transition, changes in invoicing arrangements, the establishment of an accounting cut-off as of the Effective Date, and responding to inquiries with respect to the transition;
- (v) arranging for the preparation of a report from the Senior Secured Lenders' cost consultant, Finnegan Marshall Inc. ("**Finnegan Marshall**"), to capture total costs incurred by MI prior to the Effective Date, and developing a process for Finnegan Marshall to provide payment certificates for all construction draws going forward;
- (vi) as authorized by the Construction Continuance Order, making payments directly to contractors, subcontractors and trade suppliers in the normal course for their work on the Project (excluding certain invoices submitted by MI, which are discussed further below);
- (vii) assisting Skygrid in sourcing an alternative and more cost-effective location for the Project's site office (the "**Site Office**"), which is currently located in a space leased by MI at 2 Bloor Street West;
- (viii) arranging for the installation of new security cameras at the Site Office, securing the sales centre office and the hotel "mock-up" site previously maintained by MI, ensuring the return of keys and key cards from MI employees, and changing alarm codes in respect of same;

- (ix) together with Skygrid, KDC, and the Project's façade engineers, attending the Vietnam production facility of the curtainwall supplier to the Project during the week of March 11, 2024, to develop and enhance working relationships, and discuss production workflow, contract status, warranty status, the production schedule, and enhanced quality control plans;
- (x) together with KDC, assisting Skygrid and Finnegan Marshall in the preparation of the revised Project construction schedule (the "**Schedule**"), anticipated cost to complete (the "**Cost to Complete**"), procurement schedule, and the related budget (the "**Budget**"), each provided to the Receiver, in draft form, in May 2024;
- (xi) communicating with MI to request all books and records related to the Project, working with the Receiver's legal counsel in respect of same, and meeting with and communicating with MI's legal counsel regarding the portion of such records not provided by MI, which the Receiver anticipates will be the subject of a motion to be brought against MI to compel the production of certain records, as described further below;
- (xii) assisting Skygrid in the transition of 14 former MI employees who were fully dedicated to the Project (the "**Project Employees**") and who were offered and accepted employment with Skygrid (representing 56% of the total number of MI employees who were previously dedicated to the Project);
- (xiii) attending the meeting held by Skygrid to onboard transitioned Project Employees;

- (xiv) attending calls with the Debtors' insurance advisors to arrange for the addition of Skygrid to certain insurance policies, update information where required, and address any other transition-related insurance matters;
- (xv) confirming the transfer of the Notice of Project from the Ministry of Labour from the Former Developer to Skygrid;
- (xvi) communicating with Tarion Warranty Corporation ("**Tarion**") through its legal counsel regarding matters related to warranty, bonding and deposit insurance in connection with the transition of construction management of the Project to Skygrid;
- (xvii) communicating with the Home Construction Regulatory Authority ("**HCRA**") to advise of Skygrid's engagement and of the transition of construction management generally; and
- (xviii) pro-actively communicating with and responding to inquiries from trades, consultants, suppliers and other stakeholders, including purchasers of condominium units (each a "**Unit**") in the Project (each a "**Unit Purchaser**") and the City of Toronto, regarding transition matters.

5.5 As noted above and further discussed in the First Report, KDC and the Receiver identified a number of deficiencies in the construction management practices of the Former Developer. Skygrid has implemented improved construction management practices, including with respect to procurement processes, scheduling and general construction management strategy.

CCDC 5B Contract

- 5.6 As contemplated by the Skygrid Engagement Letter, following the Effective Date, the Receiver and Skygrid began negotiating a definitive CCDC 5B 2010 Construction Management Contract – for Services and Construction, with mutually agreed upon Supplementary Conditions (the “**CCDC 5B Contract**”), to govern Skygrid’s engagement as Construction Manager.
- 5.7 To facilitate continuing negotiations, the deadline to execute the CCDC 5B Contract contemplated in the Skygrid Engagement Letter was mutually extended by the Receiver and Skygrid. As of the date of this Second Report, the CCDC 5B Contract is substantially complete and the Receiver anticipates executing same prior to the return date of the Receiver’s Motion.

Unremitted Supplier Invoices

- 5.8 As described in the Supplemental Report, the Receiver became aware of certain vendor invoices that were funded to the Debtors through loan advances from the Applicant prior to the Appointment Date and paid to MI in the normal course, but which were not paid on to the respective vendor by MI. Accordingly, during the Transition Period, the Receiver sent communications to trades, consultants and suppliers of the Project to request that they provide the Receiver with a statement of account so that the Receiver could reconcile any unpaid amounts.
- 5.9 Through this reconciliation, the Receiver identified invoices totalling approximately \$1 million related to goods and/or services provided to the Project during the period from

February 2023 to February 2024 that had been funded for payment, but were not paid by MI and remained outstanding.

- 5.10 In addition, on March 27, 2024, a Lien Notice was delivered to the Receiver by Proline Hardware Ltd. (“**Proline**”) regarding a Lien Claim in the amount of approximately \$70,000, of which approximately \$49,000 related to invoices previously funded to MI for payment, with the remainder relating to Proline’s February invoice which was not yet due to be paid in the normal course.
- 5.11 In light of the reconciliation issues identified by the Receiver and the receipt of the Proline Lien Notice, the Receiver withheld payment of invoices totalling approximately \$995,000 that were submitted by MI related to its February 2024 services and fees until the Receiver had completed its reconciliation and the Proline Lien Notice had been withdrawn.
- 5.12 Following discussions among the Receiver and MI regarding the outstanding invoices, the entirety of the outstanding balance, including the amount of Proline’s Lien Claim, was paid to the applicable suppliers, including approximately \$975,000 paid directly by the Receiver. MI and the Receiver agreed that the amounts paid by the Receiver would be set-off against MI’s February invoices.
- 5.13 The Lien Notice filed by Proline was irrevocably withdrawn on April 19, 2024, and on May 3, 2024, the Receiver remitted payment to MI of approximately \$20,000 in respect of MI’s February 2024 invoices not otherwise satisfied by direct vendor payments made by the Receiver.

Transition of Trade and Supplier Contracts and Proposed Holdback Release

- 5.14 As described in the First Report, prior to the transition of construction management to Skygrid, many of the subcontractors and other suppliers working on the Project had a contractual relationship with MI, and not the Debtors. Accordingly, since the Effective Date, Skygrid has been meeting with trades and suppliers to transition their contracts with MI to new subcontracts with Skygrid, and in the process has been addressing gaps in scopes of work, as well as negotiating improved and/or industry standard terms.¹ The Receiver and Skygrid have been advised that certain subcontractors are requiring that their proportional entitlement to the Holdback Amount be released as a condition to entering into a new subcontract with Skygrid.
- 5.15 The Receiver is aware of 38 subcontractors from whom statutory holdback has been retained in accordance with the Provincial Lien Legislation (the “**Holdback Parties**”). Such holdback, totalling approximately \$13.0 million for work performed prior to the Effective Date (the “**Holdback Amount**”), is currently held by the Receiver in segregated holdback bank accounts (the “**Holdback Accounts**”).
- 5.16 Pursuant to the proposed Holdback Release Order, the Receiver is seeking authorization from the Court to pay the Holdback Amount to the respective Holdback Parties to, among other things:

¹ As described in the First Report, as a result of the Former Developer’s lack of formalizing fixed price subcontracts, certain subtrades have been working off purchase orders, letters of intent, or on a “time and materials” basis for extended periods of time. Skygrid and the Receiver’s efforts to address this issue remain ongoing.

- (i) in the case where the individual Holdback Party will continue working on the Project, facilitate a “fresh start” moving forward and assist in facilitating negotiations and the entry into a new subcontract with Skygrid; and
- (ii) in the case where the scope of work of a Holdback Party was completed prior to the Effective Date, facilitate the timely and efficient conclusion of such Holdback Party’s dealings in relation to the Project.²

5.17 The Receiver understands that Skygrid is in the process of inspecting the work of the Holdback Parties for any deficiencies and/or incomplete work. In addition, to reconcile the Holdback Amount, the Receiver has sent notices to or otherwise communicated with each of the Holdback Parties to confirm that the holdback amount in their records agrees with the Debtors’ records. As of the date of this Second Report, the Receiver has received confirmation from 35 of 38 vendors who account for approximately 99.7% of the total Holdback Amount. A list of the Holdback Parties and what the Receiver understands are their respective proportional entitlements to the Holdback Amount (the “**Holdback Schedule**”) is attached as **Appendix “C”**.

5.18 Prior to the payment of any portion of the Holdback Amount to individual Holdback Parties, the Receiver intends to ensure that the following conditions (the “**Holdback Release Conditions**”) are met, which conditions may be waived by the Receiver as determined appropriate, in consultation with the RFCA Lender:

² In the case where the scope of work of a Holdback Party has been completed in the period following the Effective Date as determined by the Receiver or is nearing completion and such Holdback Party is not required by the Construction Manager for continued construction on the Project, the Receiver also seeks authorization to release such Holdback Party’s proportional entitlement to any post-Effective Date holdback amount.

- (i) the associated work has passed the inspection of Skygrid, the Project consultants and, as applicable, municipal authorities;
- (ii) the Receiver and the respective Holdback Party have agreed on the Holdback Amount payable to the Holdback Party;
- (iii) in the case of a Holdback Party with an ongoing scope of work, that Holdback Party has executed a new subcontract with Skygrid for the remaining scope in a form acceptable to Skygrid and the Receiver, and in the case of a Holdback Party whose services are no longer required on the Project, their scope of work has been fully completed; and
- (iv) the Holdback Party has executed the Holdback Release Agreement substantially in the form attached as **Appendix “D”** (the “**Holdback Release Agreement**”), which Holdback Release Agreement shall, among other things: (a) release, among others, the Receiver, the Debtors, the Former Developer and the lenders to the Project from any and all claims related to the underlying subcontract or the Project, including, without limitation, any claims in respect of holdback deficiencies; and (b) confirm that the Debtors and the Receiver and their respective successors and assigns will be entitled to the benefit of any and all warranties provided for the Holdback Party’s work, and that any warranty rights may be assigned to any purchaser of all or any part of the Project and/or to any lender with security over all or part of the Project or to any successor or assignee of such lender’s interest.

5.19 The Receiver notes that: (i) based on the reconciliation it performed, as described above at paragraph 5.17, as well as its review of the Project’s books and records, the Receiver is not

aware of holdback amounts owing to any parties other than the Holdback Parties; (ii) notice of the proposed payment of the Holdback Amount will be provided to all known contractors, subcontractors and suppliers to the Project for which the Receiver has contact information, which includes the Holdback Parties; (iii) aside from MI's Lien Claim³ (discussed in greater detail below), the only pending Lien Claim pursuant to the Lien Regularization Order relates to the Cult Lien (as defined below), for which a portion of the Holdback Amount will be reserved (and in respect of which monies have been funded into Court to vacate the lien previously filed); and (iv) 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) 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, and it has been significantly more than 45 days since the Effective Date.

- 5.20 In light of the foregoing, the Receiver respectfully recommends that the Court authorize the Receiver to pay the Holdback Amount to the Holdback Parties in accordance with the Holdback Schedule and grant the other requested relief under the Holdback Release Order. The Receiver believes that the relief requested in the proposed form of Holdback Release Order provides an appropriate mechanism to allow for the release of the Holdback Amount rightfully earned by the Holdback Parties, as they have requested, and at the same time contributes to ensuring the continued and unimpeded construction of the Project, including

³ The Receiver understands that prior to the receivership, no holdback was taken on MI's general contractor invoices with the result that MI was paid in full for such invoices. Although the Receiver disagreed with this practice, following the Appointment Date, the Receiver agreed to pay the full amount of MI's invoices (to the extent agreed to by the Receiver), including paying the relevant holdback amount from its general construction account. As such, the Receiver is of the view that MI has no entitlement to the Holdback Amount. The Receiver believes any remaining holdback entitlements of MI in respect of the amounts in dispute between the Receiver and MI are encompassed in the MI Payment Dispute Reserve (as defined below).

facilitating Skygrid's engagement of the subcontractors. Further, such relief makes the Project more attractive for the purposes of the SISF by finally resolving matters that predate the Effective Date.

Trade and Consultant Claims

Lien Claims under the Lien Regularization Order

- 5.21 As of the date of this Second Report, there have been three Lien Notices delivered (or deemed to have been delivered) pursuant to the Lien Regularization Order. The first is the Proline Lien Notice, discussed above, which has been irrevocably withdrawn. The second, which is described further in the First Report, is the Lien Notice deemed to have been delivered by Cult Iron Works Limited ("**Cult Iron**") in respect of its Lien Claim in the amount of \$444,669.05 (the "**Cult Lien**"). Prior to the granting of the Lien Regularization Order, the Receiver posted approximately \$500,000 of security with the Court in respect of the Cult Lien, and the Cult Lien was vacated from title to One Bloor. The Receiver and its legal counsel are in discussions with Cult Iron and its counsel in an attempt to resolve this Lien Claim. The third Lien Notice, discussed further below, was delivered by MI to the Receiver on April 26, 2024, in respect of a purported Lien Claim in the amount of approximately \$11 million.

Fees of Core Architects

- 5.22 In January 2024, Core Architects Inc. ("**Core**"), the Project's architect, advised the Receiver that it was of the view that it was entitled to a significant increase in its fees for work performed on the Project (the "**Proposed Fee Adjustment**").

- 5.23 The Receiver and Core are currently engaged in discussions regarding the Proposed Fee Adjustment. The Receiver will determine next steps once it has fully considered the issue, based on: (i) its ongoing discussions with Core; (ii) its own investigation into the Proposed Fee Adjustment; and (iii) substantial consultation with KDC and Finnegan Marshall. During discussions in respect of the Proposed Fee Adjustment, Core's work on the Project has continued in the normal course.

Claim by Seele

- 5.24 seele GmbH ("**seele**") entered into subcontracts with the Former Developer with respect to the supply of certain specially designed glass elements to the Project in the period prior to the Appointment Date, and is engaged in a dispute with MI relating to its work on the Project that has given rise to an arbitration and a court application. The Receiver is engaging with seele to explore the possibility of a negotiated resolution to seele's claims.

Transition of Letters of Credit

- 5.25 The Debtors currently have six letters of credit (each, an "**LC**") totalling approximately \$2.24 million issued by KEB Hana Bank Canada ("**KEB Hana**"), which are cash collateralized. The LCs support various obligations of the Debtors to the City of Toronto, including in connection with a heritage easement and required improvements to be undertaken related to park areas, streetscaping, storm sewers and tree planting.
- 5.26 On April 9, 2024, KEB Hana advised the Receiver by email that it would not be renewing each of the LCs as they mature.

- 5.27 Further, as a condition to the renewal of a temporary street occupation permit for the Project that allows for street closures during concrete pumping operations, the City of Toronto requires that the Debtors provide an indemnity in favour of the City of Toronto (the “**City Indemnity**”).⁴ Due to an action brought against the Debtors that also named the City of Toronto as a defendant, as well as the current financial position of the Debtors, the City of Toronto is requiring that the City Indemnity be backstopped by an LC in the amount of \$1 million.
- 5.28 The Receiver has been in discussions with Royal Bank of Canada (“**RBC**”) who has agreed to replace the existing LCs, as well as to provide a new LC to backstop 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**”), subject to completing customary internal approvals. The current Replacement LCs will total approximately \$3.24 million.
- 5.29 As part of this arrangement, RBC is requiring that: (i) the Receiver fund a GIC account in the name of the Receiver (the “**RBC Collateral Account**”) to collateralize the Replacement LCs (the “**RBC Collateral**”); (ii) RBC be permitted to register a financing statement under the *Personal Property Security Act* (Ontario) against A&M over the cash and GICs held in the RBC Collateral Account; and (iii) RBC be granted a charge (the “**RBC Charge**”) on the RBC Collateral Account and the RBC Collateral (items (i), (ii) and (iii) collectively forming the “**Letters of Credit Arrangement**”). The proposed

⁴ The Indemnity Agreement underlying the City Indemnity has been executed by the Receiver and the City of Toronto, with effect from April 2, 2024.

Reconfiguration and LC Arrangement Order approves the Letters of Credit Arrangement and grants the RBC Charge.

- 5.30 The Replacement LCs are required to ensure ongoing compliance with municipal requirements and the maintenance of construction permits necessary for the continued construction of the Project. Accordingly, the Receiver respectfully requests that the Court approve the Letters of Credit Arrangement pursuant to the proposed form of Reconfiguration and LC Arrangement Order.

6.0 THE SISP

- 6.1 The Receiver, its counsel and the proposed Broker (as defined below) have been working to design a SISP that will efficiently and effectively canvass the market for any and all potential forms of value maximizing transactions or investments that may be available and acceptable to the Receiver and the Senior Secured Lenders for the sale of the Project at this time, or alternatively, for go-forward arrangements with developers or others for its construction to completion, and sale of Units and the Commercial Component at a later date once the Project is fully constructed and completed.

- 6.2 In addition to designing the SISP with these objectives in mind, the Receiver and its advisors, in consultation with the Senior Secured Lenders and their advisors as well as various other Project advisors, have also undertaken a series of significant pre-SISP work streams to ensure that certain core Project-related matters have been developed and advanced to a point that the Project is ready to be marketed at this time in the most value-maximizing manner possible. These endeavours, which are summarized below, have been intentionally developed and advanced *before* launching the SISP so that the Project can be

marketed in a manner that will be most attractive to potentially interested parties, notwithstanding that the Project is still under construction. These pre-SISP undertakings have included the following work streams, among others:

- (i) **The Reconfiguration Plan** – as discussed further in Section 7 below, the Receiver and its advisors, in consultation with the Senior Secured Lenders and their advisors, considered, developed and finalized a comprehensive Reconfiguration Plan for the upper floors of the Project (that have yet to be constructed) that will add an additional 88 Units to the Project, and substantial additional net realizable value, which the Receiver believes will be of significant benefit in the context of marketing the Project. This process involved not only developing the Reconfiguration Plan, but also addressing related zoning and planning matters associated with the proposed reconfiguration;
- (ii) **Confirming Arrangements with the Construction Manager of the Project** – as discussed above, the Receiver disclaimed the GC Agreement and Construction Management Agreement with the Former Developer, engaged Skygrid as the new Construction Manager of the Project, and has substantially progressed the definitive CCDC 5B Contract such that any potentially interested parties will be able to understand the precise terms of the main construction contract for the Project, which will be a core diligence item for any interested parties;
- (iii) **Confirming Arrangements with the Trades for the Project** – as discussed above, the Receiver, its advisors and Skygrid have spent considerable time liaising with subcontractors and trade suppliers engaged on the Project with a view to addressing

outstanding issues in advance of the SISP, such that the contractual arrangements with the trades for the Project may be finalized in the near term. These efforts have included the development of a form of subcontract to be entered into with Skygrid as well as the proposed Holdback Release Order;

- (iv) **Revised Budget, Schedule and Cost to Complete** – working with KDC, the Project consultants, Finnegan Marshall and Skygrid, the Receiver has completed a revised draft Budget, Schedule and Cost to Complete, all of which are core diligence items that any interested parties will need to review in order to evaluate the opportunities available in the SISP;
- (v) **Selecting an Experienced and Reputable Broker for the SISP** – as discussed below, the Receiver and its advisors, in consultation with the Senior Secured Lenders and their advisors, undertook the RFP Process (as defined below) to select an experienced and reputable real estate brokerage and advisory firm for the SISP and have engaged Jones Lang LaSalle Real Estate Services, Inc. (“**JLL**” or the “**Broker**”) for that process. JLL has conducted its diligence, provided input with respect to the design of the SISP, assisted in the development of marketing materials to be used in the SISP, and is now ready to commence the SISP under the supervision of the Receiver once approved by the Court; and
- (vi) **Creating the SISP Data Room** – working with JLL, the Receiver has undertaken an extensive review of all Project information and documentation, including contracts, leases, and financial information, and uploaded same to an electronic data room that has been developed and is ready for the SISP launch.

- 6.3 These key work streams (among others) have required significant work, time and collaboration among the Receiver and various advisors to complete; however, the Receiver believes that completing each of these work streams in advance of launching the SISP was critical to enhancing the Opportunities (as defined below) to be marketed in the SISP.
- 6.4 In addition to the above matters, construction has continued on the Project and is now nearing a stage at which decisions impacting the Project as a whole, including the go-forward plan in respect of existing condominium sales agreements (each, a “CSA”) and the existing agreements related to the hotel and retail spaces, as well as the go-forward marketing and branding strategy for the Project, will also need to be addressed.
- 6.5 Taking all of this together, it is the Receiver’s view that now is the appropriate time to market the Project to solicit any and all potential forms of value maximizing transactions or investments that may be available in the market and acceptable to the Receiver and the Senior Secured Lenders for the sale of the Project at this time, or alternatively, for go-forward arrangements with developers or others for its construction to completion, and sale of Units and the Commercial Component at a later date once the Project is fully constructed and completed.
- 6.6 The SISP will also demonstrate whether there is value in the Project beyond the amounts owed to the Senior Secured Lenders.
- 6.7 It is the Receiver’s view that a broadly marketed and flexible SISP in the form presented is the best way to proceed at this time in order to solicit interest and determine these matters within a reasonable timeframe, and that the timing is now appropriate to commence such a

SISP in light of the now ready state of the Project to be effectively marketed in a value-maximizing manner to any and all interested parties.

6.8 Accordingly, the Receiver is seeking the Court's approval of the proposed SISF which, as described in further detail below, will solicit interest in the opportunity to either:

- (i) acquire or invest in the Project (or either of the Residential Component or the Commercial Component) pursuant to one or more sale or investment transactions (a "**Transaction Proposal**") that individually or in the aggregate have a purchase price or investment amount equal to or exceeding \$1.2 billion, being the minimum bid threshold required by the Senior Secured Lenders (the "**Minimum Bid Threshold**"); or
- (ii) 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 each of the Receiver and the Senior Secured Lenders (a "**Development Proposal**", and together with the Transaction Proposal, the "**Opportunities**" and each an "**Opportunity**").

Broker Selection Process

6.9 As described in the First Report, in anticipation of the proposed SISF, the Receiver commenced a request for proposals process (the "**RFP Process**") and contacted five real estate brokerage and advisory firms (collectively, the "**Potential Brokers**") identified as having the requisite expertise, qualifications and capabilities to assist with the

development, planning and implementation of the SISP. The Potential Brokers were asked to submit a proposal in respect of the contemplated SISP by February 7, 2024.

- 6.10 Upon execution of a non-disclosure agreement, the Potential Brokers were granted access to an electronic data room populated with certain information relevant to the Project, and the Receiver held meetings with the Potential Brokers to provide additional information and clarification to enable them to better understand the status of the Project and the RFP Process generally. Four of the five Potential Brokers ultimately submitted a proposal to the Receiver.
- 6.11 After reviewing the Potential Brokers' proposals, the Receiver, in consultation with its legal counsel, the Senior Secured Lenders and their advisors, selected JLL as the third-party broker to assist in the development and implementation of the SISP.
- 6.12 The Receiver's decision was based on a combination of factors, including: (i) JLL is qualified, experienced and capable of acting as the broker during the SISP; (ii) JLL has substantial experience in residential, hotel and commercial asset disposition, including the marketing and sale of assets through insolvency proceedings; (iii) JLL has a broad and extensive sales network across Canada, the United States and internationally; and (iv) JLL's proposed fee structure for the SISP is reasonable and appropriate.
- 6.13 The Receiver and JLL initially executed an engagement letter for the broker services on March 22, 2024, which was subsequently amended and restated as of May 25, 2024 (as amended and restated, the "**Broker Agreement**"), attached without Schedule A (RECO Information Guide) as **Appendix "E"**, which Broker Agreement is subject to Court

approval. As described in the Broker Agreement, JLL shall earn a transaction fee in accordance with the following:

- (i) for any Third Party Transaction (as defined in the Broker Agreement), a flat fee of \$1.9 million (plus HST);
- (ii) in the event of a transaction (which may include a transaction implemented pursuant to a Development Proposal or a Transaction Proposal for either of the Commercial Component or Residential Component), whether through a credit bid, other restructuring transaction, distribution order, or otherwise, and whether implemented pursuant to the Receivership Proceedings or an alternative court process, through which the Senior Secured Lenders become owners of the Property, or entitled to the proceeds of disposition thereof (a “**Senior Secured Creditor Transaction**”), a base fee of \$550,000 (plus HST), plus an additional amount depending on the type of the transaction, as outlined below:

Transaction Type	Additional Amount
Development Proposal without a Developer Investment	\$100,000 (plus HST)
Transaction Proposal for only the Commercial Component	\$200,000 (plus HST)
Transaction Proposal for only the Residential Component	\$700,000 (plus HST)

- (iii) in the event of a Senior Secured Creditor Transaction with a Developer Investment (as defined in the Broker Agreement), the transaction fee shall be calculated in accordance with the following table (plus HST):

Developer Investment	Transaction Fee
Below \$100 million	\$800,000
Above \$100 million to and including \$200 million	\$875,000
Above \$200 million to and including \$300 million	\$950,000
Above \$300 million to and including \$400 million	\$1,025,000
Above \$400 million to and including \$500 million	\$1,100,000
Above \$500 million to and including \$600 million	\$1,175,000
Above \$600 million to and including \$700 million	\$1,250,000
Above \$700 million to and including \$800 million	\$1,325,000
Above \$800 million to and including \$900 million	\$1,400,000
Above \$900 million to and including \$1 billion	\$1,475,000
Above \$1 billion to and including \$1.1 billion	\$1,550,000
Above \$1.1 billion	\$1,900,000

6.14 Pursuant to the proposed SISP Approval Order, the Receiver is seeking approval of the Broker Agreement and the retention of JLL under the terms thereof, as well as authorization to make the payments contemplated under the Broker Agreement when earned and payable in accordance with the terms and conditions of the Broker Agreement. The Receiver believes that such relief is appropriate in the circumstances, and that JLL’s fee structure is reasonable and in line with the Receiver’s overarching objective of efficiently soliciting all potential forms of interest in the Project through the SISP. The relief sought will also provide the requisite comfort to JLL that any transaction fee it earns will be paid.

Lender Participation

6.15 As of March 31, 2024, the Senior Secured Lenders (which, for the avoidance of doubt, include the RFCA Lender) are owed approximately \$1.5 billion (the “**Senior Secured Lender Claims**”) on a combined basis under the credit agreement dated August 30, 2019 (as amended, the “**Credit Agreement**”) and the Receivership Funding Credit Agreement dated October 18, 2023 (the “**RFCA**”).

6.16 The components of the Senior Secured Lender Claims as at March 31, 2024 are summarized in the following table:

Senior Secured Lender Claims	(in \$millions)
Advances under the RFCA	\$144.1
Accrued interest and fees under the RFCA	\$9.0
Advances under the Credit Agreement (pre-receivership)	\$731.3
Pre-funded interest under the Credit Agreement (pre-receivership)	\$193.4
Accrued interest, applicable margin, and other fees and costs related to the Credit Agreement	\$401.2
Total Senior Secured Lender Claims	\$1,479.0

6.17 The Receiver’s legal counsel, Goodmans LLP (“**Goodmans**”), has conducted a review of the loan and security documentation relating to the Credit Agreement and has provided an Ontario law security review opinion to the Receiver which concludes that, subject to customary assumptions and qualifications: (i) the security documentation relating to the Credit Agreement creates validly perfected security interests in favour of KEB Hana, in its capacity as administrative agent under the Credit Agreement (the “**Administrative Agent**”) for and on behalf of the Applicant (together with the Administrative Agent, the “**Secured Parties**”), in the collateral specified in the security documentation to which the *Personal Property Security Act* (Ontario) applies and which is charged under the security documentation; and (ii) the charges registered against title to One Bloor in favour of the Secured Parties create a good and valid fixed charge over One Bloor.

6.18 The Senior Secured Lenders have advised the Receiver that they will not support any Transaction Proposal, or a combination of Transaction Proposals, with a purchase price (or

combined purchase price) of less than the Minimum Bid Threshold, being approximately 80% of the Senior Secured Lender Claims.

- 6.19 The Senior Secured Lenders have also advised the Receiver that, in the event that there are no Successful Bid(s) (as defined below) and the SISP is terminated, the Senior Secured Lenders are committed to facilitating the continued construction of the Project to completion through a Senior Secured Creditor Transaction. In such circumstances, upon completion of the Project, the Senior Secured Lenders expect to achieve recoveries through, among other things, sales of Units and realizations from the fully developed Commercial Component.
- 6.20 As noted above, the proposed SISP contemplates that interested developers may submit a Development Proposal pursuant to the SISP. Accordingly, in the event that no Successful Bid(s) for a Third Party Transaction are identified in the SISP and a Senior Secured Creditor Transaction is ultimately pursued, developers interested in assisting the Senior Secured Lenders with such a transaction will have been canvassed, allowing any Senior Secured Creditor Transaction to proceed on a timely basis in conjunction with a selected developer. The Receiver is aware that the Senior Secured Lenders have already engaged in preliminary discussions with certain developers regarding the possibility of a development arrangement, including providing access to limited confidential information concerning the Project as has been consented to by the Receiver. The Receiver is of the view that the proposed SISP will provide any and all existing or additional interested developers with the opportunity and time necessary to formulate and make a Development Proposal for consideration under the SISP.

6.21 The SISP does not involve a formal “stalking horse bid” or “credit bid” from the Senior Secured Lenders at the outset. The reason for this (as is often the case in SISPs) is that the Senior Secured Lenders have determined that, as discussed above, they need to see the results of the SISP in order to determine the best path forward. In any event, as discussed, 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.

Overview of the SISP

6.22 The terms of the proposed SISP were developed in consultation with JLL, who provided input to the Receiver on the time required to market the Project and on market considerations impacting the design of the SISP. The terms of the SISP were also discussed extensively with the Senior Secured Lenders and their advisors. Further, the proposed SISP was also provided to, and discussed with, other significant Project stakeholders who have signed non-disclosure agreements with the Receiver. A copy of the SISP is attached as Schedule “A” to the proposed SISP Approval Order.

6.23 The following table provides a high-level summary of the key stages and milestones (each, a “**Milestone**”) contemplated under the SISP, which assumes the Court will have granted the SISP Approval Order on the date of the hearing of the Receiver’s Motion. Any of the Milestones may be extended by the Receiver if it considers it appropriate to do so, after consultation with the Broker and with the consent of the Senior Secured Lenders.

Milestone	Date(s)
Phase 1: Formal marketing process and initial due diligence period	June 6 to July 30, 2024
Phase 1 Bid Deadline	July 30, 2024
Phase 2: Due diligence period for Qualified Bidders	August 13 to September 24, 2024
Phase 2 Bid Deadline	September 24, 2024
Court approval of Successful Bid	No later than the week of October 14, 2024 (subject to Court availability)

6.24 The key terms of the SISP are summarized in the following table:⁵

SUMMARY OF SISP		
Milestone / Step	Timeline	Description of Activities
Finalization of Marketing Materials	Within 5 Business Days after the issuance of the SISP Approval Order	<p>JLL and the Receiver will:</p> <ul style="list-style-type: none"> • prepare a list of potential bidders for each Opportunity (the “Bidder List”); • prepare a marketing brochure (the “Brochure”) describing the Opportunities and a form of non-disclosure agreement (the “NDA”) to be signed by Potential Bidders (as defined below); • prepare a confidential information memorandum (the “CIM”) containing detailed Project information; and • cause a notice of the SISP to be posted on the Case Website.
Solicitation of Interest	Following completion of the above steps	<ul style="list-style-type: none"> • JLL, with the assistance of the Receiver, will send the Brochure and the NDA to all parties on the Bidder List and any other party who wishes to participate in the SISP who requests a copy of the Brochure and is identified to JLL or the Receiver as a potential bidder (each such party being a “Potential Bidder”).
Phase 1	During the period June 6 to July 30, 2024 (a period of 54 days)	<ul style="list-style-type: none"> • JLL, under the supervision of the Receiver, will solicit non-binding letters of intent (“LOIs”) in respect of each Opportunity. • A Potential Bidder, upon execution of the NDA, will be deemed a “Participating Bidder” and will be provided with a copy of the CIM and access to an electronic data room developed for Phase 1 and such other due diligence materials relating to the Project as the Receiver, in its reasonable business judgement, in

⁵ See the SISP appended to the proposed SISP Approval Order for the full terms of the SISP.

SUMMARY OF SISP		
Milestone / Step	Timeline	Description of Activities
		consultation with JLL, determines necessary or appropriate, provided that the Receiver and JLL reserve the right to restrict any Participating Bidder's access to selected due diligence information where such information or materials contain proprietary or sensitive competitive information.
Phase 1 Bid Deadline	5:00 pm (Toronto time) on July 30, 2024	<ul style="list-style-type: none"> • LOIs must be delivered to the Receiver and JLL on or before the Phase 1 Bid Deadline to be considered a "Qualified LOI". • Qualified LOIs must indicate whether the Participating Bidder is making a Transaction Proposal or a Development Proposal and must meet certain other criteria as set out in the SISP, including, among other things, those listed below. <p>In the case of a Transaction Proposal:</p> <ul style="list-style-type: none"> • The purchase price/investment amount must equal or exceed the Minimum Bid Threshold, or in the case of a Transaction Proposal for the Residential Component or the Commercial Component only, the purchase price/investment amount would, if combined with a Transaction Proposal for the other component of the Project, equal or exceed the Minimum Bid Threshold. <p>In the case of a Development Proposal:</p> <ul style="list-style-type: none"> • The LOI must provide a detailed description of the structure of the proposed arrangement and related transaction, including any proposed investment in the Project; the specific terms or other material attributes of any proposed ongoing financing; and any fees, entitlements, interests or other consideration sought by the Participating Bidder in connection with the Development Proposal; • The LOI must include a preliminary description of the Participating Bidder's plans for the development of the Project (the "Development Plan"), which may include: (i) a pro forma model and estimated timeline to complete construction of the Project; (ii) any proposed construction changes and the impacts, if any, on the construction schedule; (iii) proposed sales, marketing and branding strategies for the Residential Component; and (iv) the proposed business plan for the Commercial Component, including the hotel, F&B and parking components; and • The proposal must be acceptable (solely for the purposes of proceeding to Phase 2) to the Senior Secured Lenders in their sole and absolute discretion.
Phase 1 Assessment of LOIs and	Within 7 business days following the Phase 1 Bid Deadline (or such	<ul style="list-style-type: none"> • LOIs received during Phase 1 will be reviewed by the Receiver, in consultation with JLL and the Senior

SUMMARY OF SISP		
Milestone / Step	Timeline	Description of Activities
Continuation or Termination of the SISP	later date as may be determined by the Receiver in consultation with JLL and the Senior Secured Lenders)	<p>Secured Lenders, to determine whether they are Qualified LOIs that meet the criteria set out in the SISP.</p> <ul style="list-style-type: none"> • LOIs determined to be Qualified LOIs will then be assessed by the Receiver, in consultation with JLL and the Senior Secured Lenders, to determine whether there is a reasonable prospect of obtaining a “Qualified Bid” (as defined below). To that end, the Receiver will consider, among other things, the criteria outlined in the SISP, including: <ul style="list-style-type: none"> ○ the form and amount of consideration offered; ○ the demonstrated financial capability of the Participating Bidder to consummate the proposed transaction; and ○ the Participating Bidder’s experience with the development and operation of large, mixed-use, high-rise development projects in urban centres, whether it is registered with Tarion and the HCRA as a builder and/or vendor, and its capacity to obtain financing for the transaction. • If one or more Qualified LOIs are received and the Receiver, in consultation with JLL and the Senior Secured Lenders, determines there is a reasonable prospect of obtaining a Qualified Bid, the SISP shall continue to Phase 2. In making such a determination, the Receiver may consider whether separate LOIs for a Transaction Proposal for the Residential Component and the Commercial Component could, collectively, result in a reasonable prospect of obtaining a Qualified Bid, or whether separate LOIs for a Transaction Proposal for the Commercial Component and a Development Proposal for the Residential Component could, collectively, result in a reasonable prospect of obtaining a Qualified Bid. • If the Receiver, in consultation with JLL and the Senior Secured Lenders, determines that no Qualified LOI has been received, or there is no reasonable prospect of a Qualified LOI resulting in a Qualified Bid, the Receiver may give notice of the termination of the SISP by email to the service list and Participating Bidders who submitted LOIs.
Phase 2	During the period August 13 to September 24, 2024 (a period of 42 days)	<ul style="list-style-type: none"> • A bid process letter for Phase 2 will be sent to all Participating Bidders who submitted Qualified LOIs and have been selected by the Receiver to participate in Phase 2 (“Qualified Bidders”). • Qualified Bidders will conduct additional due diligence and prepare a final binding proposal (a “Final Bid”) to be submitted on or before the Phase 2 Bid Deadline.

SUMMARY OF SISP		
Milestone / Step	Timeline	Description of Activities
		<ul style="list-style-type: none"> During Phase 2, Qualified Bidders will be given access to a data room developed for Phase 2, a form of transaction agreement and such further due diligence materials and Project information, if any, that the Receiver in its reasonable judgement, in consultation with JLL, determines appropriate. Final Bids must contain a duly authorized and executed transaction agreement setting out the definitive terms and conditions of the Transaction Proposal or the Development Proposal, as applicable, together with all exhibits and schedules thereto. Final Bids for a Transaction Proposal must be based on, and accompanied by, a mark-up of the form of transaction agreement showing amendments and modifications made thereto.
Phase 2 Bid Deadline	5:00 pm Toronto Time on September 24, 2024	<ul style="list-style-type: none"> To be considered a qualified Final Bid (“Qualified Bid”), a Final Bid must be received by the Phase 2 Bid Deadline and meet certain requirements as set out in the SISP, including, among other things, the following: <ul style="list-style-type: none"> it must include the amount to be paid, invested or financed, as applicable, and written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Receiver, in consultation with JLL and the Senior Secured Lenders, to make a reasonable determination as to the Participating Bidder’s financial and other capabilities to consummate the transaction; in the case of a Transaction Proposal: (i) it must set out the purchase price or investment amount and full details regarding the Property to be included and any Property to be excluded from the bid; (ii) the purchase price or investment amount, in the aggregate, must equal or exceed the Minimum Bid Threshold; and (iii) it must include details of any liabilities to be assumed by the Qualified Bidder; in the case of a Development Proposal, it must: (i) set out any proposed investment in the Project, the terms of any proposed ongoing financing, and any fees or other consideration sought; (ii) include the Participating Bidder’s final proposed Development Plan; and (iii) must be acceptable to the Senior Secured Lenders in their sole and absolute discretion; and it is not conditional upon: (i) approval from the Qualified Bidder’s board of directors (or comparable governing body) or equity holder(s); (ii) the outcome of any due diligence by the

SUMMARY OF SISP		
Milestone / Step	Timeline	Description of Activities
		Qualified Bidder; or (iii) the Qualified Bidder obtaining financing.
Evaluation and Selection of the Successful Bid	As soon as possible after the Phase 2 Bid Deadline	<ul style="list-style-type: none"> The Receiver, in consultation with JLL and the Senior Secured Lenders, will review each Final Bid and, if one or more Qualified Bids is received, the Receiver, exercising its reasonable business judgment and following consultation with JLL and the Senior Secured Lenders may: <ul style="list-style-type: none"> negotiate with one or more bidders who submitted a Qualified Bid, including requesting that such bidder improve or otherwise modify the terms of its Qualified Bid; and select the Qualified Bid that it considers to be the best bid (the “Selected Qualified Bid”) based on its evaluation of such bid pursuant to the criteria outlined in the SISP. Once a Selected Qualified Bid has been selected, JLL and the Receiver, in consultation with the Senior Secured Lenders and their advisors, shall negotiate and settle the terms of a definitive agreement in respect of the Selected Qualified Bid, all of which will be conditional upon Court approval at which time the Selected Qualified Bid will become the “Successful Bid” and the person(s) who made the Selected Qualified Bid will be the “Successful Bidder”. If the Receiver, after consultation with the Broker and the Senior Secured Lenders, determines at any point during Phase 2 that there is no reasonable prospect of obtaining a Final Bid resulting in a Qualified Bid, or determines that no Qualified Bid has been received at the end of Phase 2, then the Receiver, with the consent of the Senior Secured Lenders, may designate one or more Final Bids as Qualified Bids; failing which the Receiver may give notice of the termination of the SISP by email to the service list and Qualified Bidders who submitted Final Bids.
Approval Motion for Successful Bid	Not later than the week of October 14, 2024 (subject to Court availability)	<ul style="list-style-type: none"> As soon as reasonably practicable after the selection of the Successful Bid, the Receiver will make a motion to the Court for an order approving the Successful Bid and authorizing the Receiver to enter into any and all necessary agreements with respect to the Successful Bid and to undertake such other action as may be necessary or appropriate to give effect to the Successful Bid.

6.25 Additional notable terms of the SISP include the following:

- (i) each of the Opportunities will be presented and implemented on an “as is, where is” basis and without surviving representations or warranties of any kind, nature or description by the Debtors, the Receiver, JLL or any of their respective affiliates, except to the extent set forth in a definitive final agreement executed with a Successful Bidder and approved by the Court;
- (ii) the Receiver, after consultation with JLL and the Senior Secured Lenders, will have the right to modify the existing terms, conditions or requirements for the SISP or adopt such other terms, conditions or requirements for the SISP that in the Receiver’s reasonable business judgement will better promote the purpose of the SISP, provided that the adoption of any terms, conditions or requirements that materially deviate from the SISP shall require the prior consent of the Senior Secured Lenders or an order of the Court;
- (iii) any Secured Creditor (as defined in the SISP) will have the right to credit bid its secured debt against the assets secured thereby, including principal, interest and any other secured obligations owing to such Secured Creditor by the Debtors, provided that any such Secured Creditor shall be required to pay in full in cash on the closing of any transaction any obligations in priority to its secured debt (unless the holder of such priority obligation agrees to accept a lower payment than the total amount of obligations owed to them) and the reasonable fees and expenses of the Receiver necessary to conclude the Receivership Proceedings;

- (iv) the Receiver will have the right to not accept any Qualified Bid or to otherwise terminate the SISP;
- (v) the Receiver will be permitted, in its discretion, to provide general updates and summary information in respect of the SISP to any Secured Creditor and its legal and financial advisors, if applicable, on a confidential basis, upon: (a) irrevocable written confirmation from such Secured Creditor that neither it nor any of its affiliates will participate as a bidder in the SISP; and (b) such Secured Creditor executing a confidentiality agreement in form and substance satisfactory to the Receiver; and
- (vi) the completion of any Transaction Proposal or Development Proposal shall be subject to the approval of the Court and the requirement of approval of Court may not be waived.

The Receiver's Considerations on the Proposed SISP

- 6.26 The proposed SISP is designed to identify any all potential forms of value maximizing transactions or arrangements that will result in the sale or completion of the Project, and that are acceptable to the Receiver and the Senior Secured Lenders.
- 6.27 The process contemplated by the SISP is comprehensive, fair, transparent, and provides for significant flexibility as to the form of ultimate transaction, including the possibility of a Development Proposal being pursued should no Transaction Proposal be received that meets the relevant criteria under the SISP. As noted above, the Receiver, with the consent of the Senior Secured Lenders, may select a Development Proposal as the Selected

Qualified Bid, or, alternatively, if no Development Proposal has been received that is acceptable to the Receiver and the Senior Secured Lenders, the Receiver may terminate the SISP and the Senior Secured Lenders may pursue a transaction on a stand-alone basis, in each case subject to further approval of the Court.

6.28 The Receiver recommends that the Court grant the proposed SISP Approval Order for the following reasons:

- (i) it is the Receiver's view that the SISP is commercially reasonable;
- (ii) the SISP contemplates a comprehensive, fair, open and transparent process developed in consultation with JLL, as well as with input from the Senior Secured Lenders and certain other stakeholders, and is intended to broadly canvass the market in an efficient manner to maximize the value of and interest in the Project;
- (iii) 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 in the SISP. It is the Receiver's view that without these features 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;
- (iv) the SISP was designed to ensure 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;

- (v) the Receiver is of the view that the information expected to be made available to Participating Bidders will allow such parties to make an informed decision and to prepare a bid in respect of an Opportunity;
- (vi) it is the Receiver's view that the SISP timeline and the Milestones contemplated therein are appropriate and will allow Participating Bidders to perform diligence and submit offers in respect of the Opportunities; and
- (vii) the SISP, including the Milestones contemplated therein, have been approved by the Senior Secured Lenders.

7.0 PROPOSED RECONFIGURATION

- 7.1 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. In particular, the Receiver has considered alternative floor plates for the currently unconstructed levels of the Residential Component above level 61 (the "**Upper Levels**"), which in the current floor plate configuration, are the largest, most expensive Units in the Project as there are only two or four Units per floor on the Upper Levels (all of the floors below level 62 have either six or ten Units per floor).
- 7.2 In the Project's existing configuration (the "**Base Configuration**"), the Upper Levels include 69 Units with an average size of over 2,600 square feet per Unit, only 19 (or 28%) of which are subject to a CSA (as compared to the levels below level 62 which include 345

Units with an average size of approximately 1,000 square feet per Unit, 94% of which are subject to a CSA).

- 7.3 Of the 19 Units in the Upper Levels that are subject to a CSA, the CSA for nine of those Units is in default with respect to the deposit requirements of the CSA (collectively, the “**Default Units**”). As of the date of this Second Report, the provisions of the CSA for the remaining ten Units (the “**Qualified Units**”) have all been met.
- 7.4 The Reconfiguration Advisors (as defined below) have indicated that there is an extremely limited market for Units of the size and sale price of those located in the Upper Levels under the Base Configuration, and that the timeline that may be required to sell the volume of such Units that remain available would be significant, as is evidenced by the high number of Units in the Upper Levels that currently remain unsold (72% of these Units remain unsold and, as discussed, nine of the 19 sold Units in the Upper Levels are in deposit default).
- 7.5 In considering alternative configurations of the Upper Levels, the Receiver sought input from multiple real estate advisors, including two that are engaged by the Receiver, as well as JLL, KDC, Skygrid, Bousfield Inc., Strategy Corp Inc. (“**Strategy Corp**”), Goodmans and the Project’s architect and engineering consultants (collectively, the “**Reconfiguration Advisors**”) to provide information on the current market conditions, fair market values, anticipated velocity of sale, as well as the limits of such reconfiguration posed by zoning requirements, site plans, permits and the existing infrastructure of the Project, all while ensuring that any reconfiguration would maintain the Project’s existing aesthetics, high quality construction and luxury look and finishes.

- 7.6 As a result of input from the Reconfiguration Advisors, two potential reconfiguration options for the Upper Levels were developed by the Receiver, one of which would add an additional 60 Units to the Project, and the second of which would add an additional 88 Units to the Project. After careful analyses with the Reconfiguration Advisors, and extensive consultation with the Senior Secured Lenders and their advisors, the Receiver has determined it is appropriate to proceed with the option to add 88 additional Units to the Upper Levels (the “**Reconfiguration Plan**”) to enhance the value of the Project.
- 7.7 Under the Reconfiguration Plan, the Upper Levels will be reconfigured as follows:
- (i) levels 62 and 76 will be modified from a four-Unit layout to a six-Unit layout;
 - (ii) levels 63 to 75 will be modified from a four-Unit layout to a ten-Unit layout; and
 - (iii) levels 79 to 81 will be modified from a two-Unit layout to a four-Unit layout.
- 7.8 The changes described above will increase the total Unit count of the Project by 88 Units, from 415 Units (including one Unit comprised of two Units combined) to 503 Units.
- 7.9 In order to simplify the design and construction process, and to avoid impacting the Schedule, the design drawings for the proposed four-, six-, and ten-Unit layouts contemplated in the Reconfiguration Plan are consistent with the respective layouts contemplated in the Base Configuration.
- 7.10 The Receiver prepared a cost benefit analysis to compare the economic impacts of the Reconfiguration Plan against the Base Configuration. When considering the current market conditions and forecast sales velocity that could realistically be achieved, the

Reconfiguration Plan is anticipated to generate substantial additional net realizable value when compared to the Base Configuration.

- 7.11 As mentioned above, concrete pouring for level 58 is currently in the preparation phase. The Schedule contemplates that concrete pouring at level 62 (the first level impacted by the Reconfiguration Plan) will begin in approximately one month, at the end of June 2024. Accordingly, the Receiver is actively working with the Reconfiguration Advisors and other stakeholders to plan for this change.
- 7.12 Updates to the design drawings to reflect the Reconfiguration Plan are currently underway with the Project's consultants. To ensure that construction of the Reconfiguration Plan can advance smoothly, the Receiver and the Project's consultants are in the process of preparing summary materials that highlight the proposed changes for review and confirmation by the City Planning Division. The Receiver has also engaged with Tarion in respect of the Reconfiguration Plan in order to discuss new home warranty coverage for the proposed addition of 88 Units to the Residential Component.
- 7.13 The Receiver notes that the Reconfiguration Plan provides for virtually identical Units (i.e., same square footage, exposure and layout) to be constructed for eight of the ten Qualified Units, and for four of the nine Default Units on a higher floor than contemplated under the Base Configuration ("**Equivalent Unit**").
- 7.14 The Receiver continues to consider design alternatives that will allow for the creation of Equivalent Units, or otherwise provide for an acceptable alternative for the remaining two Qualified Units that do not have a specific location in the standard floorplates described above under the Reconfiguration Plan. Based on consultation with Skygrid and the

Project's consultants, the Receiver understands that it is feasible, from a design and constructability perspective, to combine certain Units in the Reconfiguration Plan to provide an Equivalent Unit to the remaining two Qualified Units.

- 7.15 Of the five Default Units for which there is no Equivalent Unit available, three of the parties had not paid any deposit at all, and two of the parties had paid only \$20,000 of their required deposit amount (which, at this time, total approximately \$870,000 in one case and over \$6.2 million in the other case). These purchasers (the “**Defaulting Purchasers**”) are in default under the terms of the applicable CSAs.
- 7.16 The Defaulting Purchasers' failure to pay the deposits they agreed to pay (or in some cases, no deposit at all) together with other concerns identified by the Receiver relating to the Defaulting Purchasers, raised significant concerns about whether the Defaulting Purchasers were willing or able to complete the sale transactions contemplated by the applicable CSAs. The Defaulting Purchasers were:
- (a) non-Canadian residents, who each signed a CSA to purchase a Unit (3 Units in total) but did not pay any of the required deposit of approximately \$1.6 million per Unit. These transactions were each entered into on December 30, 2022, being the eve of tax changes that came into effect on January 1, 2023, that adversely impacted foreign buyers purchasing residential real estate in Canada;
 - (b) a foreign company which paid only \$20,000 of the required \$870,000 in deposits;
and
 - (c) an individual who paid only \$20,000 of the required \$6.2 million in deposits.

- 7.17 In light of the significant deposit defaults in respect of the five Default Units, and doubts about whether the purchasers could or would complete the sale transactions, the Receiver sent default notices to the purchasers of each of the five Default Units for which there is no Equivalent Unit on May 1, 2024 (each, a “**Default Notice**”). The Default Notices required that each Defaulting Purchaser cure their default by May 13, 2024, by paying the overdue deposits, failing which the CSA would be terminated and any deposit amounts paid forfeited. None of these purchasers responded to the Receiver’s notice, nor have any paid any further deposit amounts. Accordingly, the CSA for each of these five Default Units has been terminated.
- 7.18 The Receiver will continue to monitor and assess the status of the remaining four Default Units; however the Receiver notes that three of the four remaining Default Units are not impacted by the Reconfiguration Plan and remain unchanged in terms of exposure, layout, and floor location.
- 7.19 Pursuant to the provisions of the Exclusive Listing Agreement dated July 12, 2017, between MI and the Nominee, in the event that a CSA is terminated as a result of default by the purchaser, any commission paid to MI is to be promptly returned. To date, MI has been paid approximately \$1.82 million in commissions in respect of the five terminated Default Units. Accordingly, on May 15, 2024, the Receiver wrote to MI to advise of the termination of the CSAs for the five terminated Default Units and to request that the associated commissions be returned by June 1, 2024.
- 7.20 It is appropriate in the Receiver’s view to proceed with the Reconfiguration Plan as: (i) it is the best option available within existing practical constraints to maximize returns from

the Project; (ii) it has been designed to maintain the same standard of quality construction and luxury of the Project, while providing for Units that are sellable in the current market; (iii) it was developed in conjunction with the Reconfiguration Advisors and supported by the Senior Secured Lenders; and (iv) given the anticipated length of time required for the market to absorb Units of the size and sale price of those in the Upper Levels in the Base Configuration, the Reconfiguration Plan provides for a significantly reduced timeline within which to realize the maximized returns. For these reasons, the Reconfiguration and LC Arrangement Order contemplates the approval and implementation of the Reconfiguration Plan as described herein.

- 7.21 It is the Receiver's intention to market the Project in the SISP based on the Reconfiguration Plan and it is the Receiver's view that its approval at the time of the SISP will provide certainty for the marketing process.

8.0 UPDATE ON THE MIZRAHI INC. MOTION FOR PAYMENT

- 8.1 On February 26, 2024, MI served the MI Payment Motion seeking to compel payment by the Receiver of: (i) \$4,086,007.53 for the period from October 18, 2023 up to February 22, 2024; and (ii) an unspecified amount for the period after February 22, 2024. The core allegation underlying the MI Payment Motion is that paragraph 17 of the Receivership Order requires that the Receiver continue paying MI using the same payment practices utilized by the Debtors in the pre-receivership period (the "**MI Payment Practices**").
- 8.2 The Receiver does not agree with MI's interpretation of the Receivership Order. The Receiver carefully considered the Receivership Order, and determined that its mandate included assessing whether MI was actually entitled to the amounts that it claimed.

- 8.3 In the Receiver's view, the Receivership Order confers on the Receiver the right to adopt the "normal payment practices", enter into a new agreement with respect to compensation (which it tried to do unsuccessfully, as described in the First Report), or ask the Court to fix fair compensation for the services that MI provided since the commencement of the Receivership Proceedings. The Receiver also believes that certain potential claims against MI should be considered as part of the MI Payment Motion.
- 8.4 On March 18, 2024, MI and the Receiver (and certain other stakeholders) attended at a case conference before Justice Osborne with respect to scheduling the MI Payment Motion. Justice Osborne accepted the Receiver's proposed litigation schedule, which contemplates delivery by the Receiver of its responding materials by May 31, 2024, and a hearing for the motion in September 2024. No specific hearing date has been set. A copy of Justice Osborne's endorsement is attached as **Appendix "F"**.
- 8.5 The Receiver is currently in the process of preparing a response to the MI Payment Motion. The Receiver has, among other things:
- (i) conducted a detailed review of the underlying contractual arrangements between MI and the Debtors;
 - (ii) reviewed certain relevant aspects of the Project history in order to assess whether the MI Payment Practices were properly authorized by the Debtors;
 - (iii) evaluated MI's performance during the period after the Receiver was appointed;
- and

- (iv) investigated payment practices in the industry generally, in order to assess whether the amounts claimed by MI are consistent with market rates for similar services.

8.6 The Receiver is also investigating certain potential claims against MI. This investigation has been delayed because MI has refused to provide complete financial information about the Project to the Receiver, as described below.

The Receiver's Request for Information

8.7 As part of the Receiver's investigation of certain potential claims against MI, the Receiver is reviewing aggregate Project Costs (as defined below) and the related funding sources of same. The Receiver understands that prior to advancement of financing by the Senior Secured Lenders, funds for the Project may have been comingled within bank accounts held by MI. The Receiver is currently in the process of reviewing the Project's sources of financing and the corresponding flow of funds.

8.8 For example, as noted in the First Report, CERIECO Canada Corp. ("**CERIECO**") is a secured creditor who advanced funds to finance the initial stages of the Project's construction. The Receiver understands that CERIECO advanced approximately \$200 million to the Project (the "**CERIECO Advances**"), which was paid directly into one bank account held by MI (the "**MI Account**"). MI has advised that these amounts were either transferred to the Project's bank accounts held at TD Canada Trust and KEB Hana (the "**Project Accounts**") or used to pay Project expenses. Other amounts were, according to MI, used to pay Project expenses directly from the MI Account. In total, almost \$90 million was paid into the MI Account and never paid to the Project Accounts. The Receiver

requires certain documents to confirm these assertions but MI has refused to produce fully unredacted bank statements for the MI Account.

- 8.9 Certain CERIECO Advances were also paid directly to the Project Accounts, being segregated bank accounts that relate solely to the Project. The Receiver has access to complete bank statements for the Project Accounts.
- 8.10 The Project Accounts do not, however, provide complete information about the Project's finances because some amounts were paid directly into and out of the MI Account without being paid to the Project Accounts.
- 8.11 As part of the Receiver's review of the Project's financial records, the Receiver asked for bank statements for the MI Account (the "**MI Account Statements**"). MI provided redacted MI Account Statements, but refused to provide complete copies of the MI Account Statements. The redacted MI Account Statements show payments from CERIECO into the MI Account and certain transfers from the MI Account to the Project Accounts. The redacted statements do not show any payment of Project expenses by MI from the MI Account.
- 8.12 When the Receiver made its initial request, MI was still working as the general contractor on the Project. The Receiver determined that compelling production of the MI Account Statements at that time could harm its relationship with MI and potentially impede progress on the Project. As a result, it did not move to compel production of unredacted MI Account Statements at that time.

- 8.13 In addition to the MI Account Statements, the Receiver has asked MI to provide it with all documents, including emails, relating to the Project as part of the transition of construction management from MI to Skygrid. All of these documents (including the MI Account Statements) are “Records” within the meaning of the Receivership Order and the Receivership Order specifically requires that they be produced.
- 8.14 MI agreed to provide the requested Project documents to the Receiver, but it has not fully produced them to date. MI advised that it engaged a third-party service provider to conduct a review of the documents and that they would be provided within 3-4 weeks of April 8, 2024. The May 8, 2024 deadline set by MI passed without the production of the required documents, or any explanation from MI. Correspondence from counsel to MI relating to this issue, dated April 8, 2024 and April 19, 2024, is attached as **Appendix “G”**.
- 8.15 To date, the Records requested by the Receiver have not been fully provided. No Project-related emails have been produced since March 19, 2024. As of the date of this Second Report, Project-related emails have been provided to the Receiver for seven out of the 27 Project Employees. Certain key Project Employees who transitioned from MI to Skygrid, including project managers, have yet to receive copies of their historical email records, resulting in ongoing issues with the performance of their work and communications with trades and suppliers.
- 8.16 Counsel to the Receiver wrote to MI on April 1, 2024 and requested production of the MI Account Statements and certain ancillary documents.

- 8.17 On April 8, 2024, MI responded to the Receiver to advise that it was under no obligation to provide unredacted copies of the MI Account Statements. It claimed that all information relating to the Project was shown in the redacted records.
- 8.18 On April 16, 2024, counsel to the Receiver wrote to counsel to MI to again request that all relevant Records be produced, without alteration (i.e., without redaction). This email is attached as **Appendix “H”**.
- 8.19 On April 19, 2024, MI responded to re-iterate its refusal to produce the MI Account Statements. It said that under “no circumstances (absent a court order) will MI agree to deliver unredacted bank statements”. MI re-iterated its position that all relevant information was shown on the redacted MI Account Statements.
- 8.20 The Receiver does not agree with MI’s position. Based on its review of the redacted MI Account Statements, MI has redacted information relating to the payment of Project expenses from the MI Accounts.
- 8.21 On May 2, 2024, MI wrote to concede that the redacted bank statements it had provided did not contain all of the information about the Project. It offered to provide different redacted statements that would show Project-related payments from the MI Accounts, but insisted that the Receiver agree in advance that MI is entitled to redact non-Project related expenses.
- 8.22 The Receiver is not prepared to agree to MI’s terms, for several reasons. First, the MI Account statements are Records within the meaning of the Receivership Order. Nothing in the Receivership Order allows a party to redact information from Records that are produced

to the Receiver. Second, even assuming that the redactions proposed by MI are possible, they will take significant time to complete. This is an unnecessary delay, because unredacted documents must be produced immediately. Third, the Receiver does not believe that MI will suffer any prejudice if it produces unredacted statements for the MI Accounts. If all Project funds were used appropriately, as MI alleges, then the Receiver can confirm this, and the MI Account statements can be returned to MI or destroyed. On May 9, 2024, the Receiver wrote to require that complete and unredacted copies of the MI Accounts be produced.

8.23 On May 27, 2024, counsel to MI sent over certain additional information to the Receiver. This information does not include Project emails or unredacted statements for the MI Accounts. The Receiver is in the process of reviewing this information to determine if it is relevant.

8.24 As of the date of this Second Report, the Records requested by the Receiver, including the Project emails, have not been produced by MI to the Receiver. Accordingly, a motion will likely be required to compel production of these Records.

MI Lien Notice to Receiver and Other Disputes with MI

8.25 On April 26, 2024, MI delivered a Lien Notice to Receiver pursuant to the Lien Regularization Order claiming that it is owed \$11,041,387.76 (the “**MI Lien Amount**”). The Lien Notice provides no other information with respect to the MI Lien Amount, or the basis for MI’s entitlement to same.

- 8.26 The Receiver was initially unable to evaluate MI's Lien Claim based on the information provided by MI. Accordingly, on May 2, 2024, the Receiver delivered a request for particulars, pursuant to paragraph 22 of the Lien Regularization Order, seeking full particulars of, among other things, the methodology by which the MI Lien Amount was calculated, confirmation that the MI Lien Amount includes the amount claimed in the MI Payment Motion and confirmation of whether any of the MI Lien Amount seeks payment of statutory holdback. The Receiver's request for particulars is attached as **Appendix "I"**. Pursuant to the Lien Regularization Order, MI was required to deliver a response by May 12, 2024.
- 8.27 On May 16, 2024, MI wrote to provide certain further details to the Receiver to support a revised MI Lien Amount of \$10,845,564.30.
- 8.28 Based on the Receiver's analysis of the information provided by MI, the *maximum amount* of the Lien Claim is \$7,073,999.35. To be clear, the Receiver denies that MI is entitled to any additional payment in satisfaction of the Lien Claim, or at all. However, in an effort to narrow the dispute with MI, the Receiver prepared an analysis summarizing the Receiver's reconciliation of the Lien Claim to the information available to it, and proposed certain adjustments in its letter to counsel to MI dated May 26, 2024, attached hereto as **Appendix "J"**, that the Receiver believes will simplify (although not eliminate) the disputes relating to the Lien Claim.
- 8.29 The events described above, including MI's refusal to produce Records and its delivery of the Lien Notice (which appears to overlap with, and should be determined at the same time as, the MI Payment Motion) will require an adjustment to the schedule for the adjudication

of the MI Payment Motion. Counsel to the Receiver is working with counsel to MI to schedule a case conference to address this issue.

8.30 In addition, MI has taken the position that it is entitled to immediate payment of a 5% construction management fee (“**CM Fee**”) on amounts invoiced by subcontractors but held back pursuant to the Provincial Lien Legislation. In its May 9, 2024 letter, referenced above and attached as **Appendix “K”**, counsel to the Receiver advised MI that even if it is entitled to a CM Fee on holdback amounts (which the Receiver does not admit) then that fee would be payable when the underlying holdback amounts are paid.

8.31 MI has not responded to the Receiver’s position. However, the Receiver believes that the claim for the CM Fee on holdback amounts can and should be addressed together with the other disputes between the parties as part of the MI Payment Motion.

9.0 UPDATE ON 15-19 BLOOR MATTERS

9.1 As described in the First Report, the Receiver retained Loopstra Nixon LLP (“**Loopstra**”) in connection with an outstanding appeal to the Ontario Land Tribunal (“**OLT**”) of a refusal by the City of Toronto to approve Official Plan and Zoning By-law Amendments to permit, *inter alia*, an increase in height and density for the lands known municipally as 15-19 Bloor Street West (“**15-19 Bloor**”), being the site immediately west of the Project (the “**Appeals**”).

9.2 In connection with the Appeals, the Receiver and Loopstra attended a voluntary mediation in January 2024. Parties to the mediation included the applicant for the development proposal at 15-19 Bloor (the “**15-19 Applicant**”), the City of Toronto, the local ratepayer’s

association and the condominium corporation immediately south of 15-19 Bloor. While the majority of the Appeals were resolved amongst the parties, informal settlement discussions between the 15-19 Applicant and the Receiver continued following the mediation session in January. As a consequence of these discussions, together with the revisions to the proposal that were agreed to by the 15-19 Applicant through the mediation process, a contingent settlement in principle was reached regarding the built form of the proposal between the 15-19 Applicant and the Receiver.

- 9.3 In light of this, the hearing in respect of the Appeals, which had been scheduled to commence on June 10, 2024, was cancelled and a case management conference has been scheduled for July 15, 2024. The settlement in principle in respect of the Receiver's position in the Appeals is contingent upon the Receiver being satisfied that there are no material and unacceptable wind impacts on the Project as a result of the proposal. The 15-19 Applicant is currently undertaking a wind tunnel study, which will be peer reviewed by the wind impacts consulting engineer that has been retained on behalf of the Receiver. If the wind impacts consulting engineer identifies concerns with the wind study, which cannot be resolved to the satisfaction of the Receiver, the parties have agreed to request that the OLT schedule a hearing in the fall of 2024 to deal with those concerns.

10.0 RECEIPTS AND DISBURSEMENTS

- 10.1 Actual receipts and disbursements for the period from October 18, 2023 to April 30, 2024 (the "**Reporting Period**") are summarized in the following table:

Cash Flow Report	
<i>\$000s</i>	Actual
HST Refunds, Interest and Other Receipts	11,630
Total Receipts	\$11,630
<u>Disbursements:</u>	
Construction Costs	(86,309)
Design Related Costs	(3,108)
General, Administrative & Marketing	(2,828)
Land & Development Costs	(3,667)
Financing Commitment Fee	(4,725)
Restructuring Professional Fees	(11,841)
Total Disbursements	(\$112,479)
Net Cash Flow	(\$100,849)
<u>Cash Balance: Construction Account:</u>	
Opening Cash	31,148
Net Cash Flow	(100,849)
Advances	148,872
Ending Cash: Construction Account	\$79,171

10.2 During the Reporting Period:

- (i) total receipts of approximately \$11.6 million were comprised of HST refunds, accrued interest and other miscellaneous collections; and
- (ii) total disbursements of \$112.5 million were incurred in the ordinary course of construction and included ongoing approved Project costs (the “**Project Costs**”), comprised of payments to contractors, subcontractors and other suppliers, construction management fees paid to the Former Developer and Skygrid, payments of the applicable holdback amounts into the Holdback Accounts, costs

for various consultants including design, engineering, and architectural consultants, and for certain non-construction costs, including property taxes, insurance, permits, administrative costs, and the Receiver's fees and expenses incurred in exercising its powers and duties as Receiver, including those of the Receiver's independent legal counsel.

10.3 The opening cash balance of \$31.1 million relates to the Debtors' cash balance (excluding amounts in the Holdback Accounts) at the commencement of these Receivership Proceedings, which the Receiver took possession of immediately following its appointment.

10.4 As at April 30, 2024, the Receiver had drawn \$148.9 million under the RFCA. The Receiver's cash balance as at April 30, 2024 was \$79.2 million.⁶ The Receiver continues to ensure it has sufficient cash on hand to fund a minimum of three months of disbursements and to address potential contingencies that may arise during this period.

11.0 UPDATED CASH FLOW FORECAST

11.1 The RFCA provides that, upon agreement with the RFCA Lender, the Receiver may amend and resubmit the cash flow projections attached as Schedule A to the RFCA. Accordingly, the Receiver has prepared an updated cash flow forecast, together with notes and a summary of assumptions, which is attached hereto as **Appendix "L"** (the "**Updated Cash Flow Forecast**"). The Updated Cash Flow Forecast covers the six-month period from May

⁶ In addition to these funds held in the Receiver's construction account, the Receiver is also holding additional amounts in the Holdback Accounts.

1, 2024, to October 31, 2024 (the “**Forecast Period**”). The SISP is contemplated to be completed before the end of the Forecast Period.

11.2 The Receiver notes the following with respect to the Updated Cash Flow Forecast:

- (i) receipts are limited and primarily include HST refunds. There are no receipts from the sale of Units or related deposits contemplated during the Forecast Period;
- (ii) during the Forecast Period, total disbursements are projected to be approximately \$138.1 million and include ordinary course Project Costs, as well as the costs of these Receivership Proceedings;
- (iii) the opening cash balance of \$79.2 million, together with the incremental funding available under the RFCA is projected to provide the Receiver with sufficient liquidity to fund the costs included in the Updated Cash Flow Forecast through the Forecast Period;
- (iv) there is forecast to be approximately \$100 million of available liquidity at the end of the Forecast Period. In the event additional time is required to complete the SISP, this liquidity will fund the continued construction during that time; and
- (v) as referenced in the endorsement of Osborne J. dated March 7, 2024, the Receiver has confirmed to the Court that it will continue to hold in reserve an amount of not less than \$6 million pending resolution of the issues that are the subject of the MI Payment Motion (the “**MI Payment Dispute Reserve**”).

- 11.3 At the date of this Second Report, the Receiver is in compliance with, or has obtained limited waivers in respect of, all requirements under the RFCA.

Cost to Complete

- 11.4 The RFCA contemplates a maximum of \$315 million in financing for the purpose of funding the ongoing construction of the Project. As noted in the Yoon Affidavit, at the time of the Appointment Date, funding beyond the maximum amount available under the RFCA would likely be required to complete construction of the Project.
- 11.5 In connection with the Milestones provided for under the RFCA, the Receiver and its advisors, including Skygrid since the Effective Date, have devoted significant time and effort to obtaining an accurate understanding of the status of construction of the Project and of the Cost to Complete and the Schedule. As of the date of this Second Report, based on the revised Budget, Schedule and Cost to Complete, the Receiver expects that the Project will be completed in the second half of 2027, and that the Cost to Complete will exceed the maximum funding provided for under the RFCA.
- 11.6 Despite the revised timeline for completion of the Project and the revised Cost to Complete, the Senior Secured Lenders continue to be supportive of the Project and have advised the Receiver that they are committed to facilitating the completion of the Project, including through a Senior Secured Creditor Transaction in the event that the SISP does not culminate in a Successful Bid.

12.0 THE RECEIVER'S ACTIVITIES SINCE THE DATE OF THE FIRST REPORT

12.1 In addition to those activities described elsewhere in this Second Report, the Receiver's activities since the date of the First Report have included, among other things, the following:

- (i) preparing and filing the Supplemental Report to the First Report to Court of the Receiver dated March 6, 2024;
- (ii) attending the Court hearing held on March 7, 2024, regarding the motion seeking approval of the Construction Continuance Order and the Lien Regularization Order;
- (iii) coordinating the uploading on the Case Website of all Court-filed materials in respect of these Receivership Proceedings;
- (iv) monitoring and responding to stakeholder and other inquiries made to the Receiver's email account and telephone hotline for these Receivership Proceedings;
- (v) communicating on a daily basis with KDC to discuss, among other things: (a) the day-to-day management and oversight of the construction of the Project; (b) the activities of the Former Developer prior to the Effective Date and those of the Construction Manager thereafter; (c) matters related to safety and security on the Project site; (d) matters related to the trades, consultants and suppliers engaged on the Project; and (e) strategic advice in relation to construction activities;

- (vi) together with KDC, attending site meetings and participating in discussions and meetings with key trades, consultants and suppliers engaged on the Project;
- (vii) monitoring the leased real property located at 625 Church Street where hotel “mock-up” suites have been built to ensure that each remains secure;
- (viii) effective June 1, 2024, making appropriate arrangements to exit the MI branded sales office located at 181 Davenport Road (the “**Sales Office**”) and together with KDC, Skygrid and select design consultants, remove all Project records and fixture and furnishings from the Sales Office;
- (ix) attending at the Site Office on a regular basis to meet with senior management and employees of MI during the period prior to the Effective Date, and senior management and employees of Skygrid following the Effective Date, and consultants, trades and other suppliers to the Project;
- (x) communicating with KDC in respect of monthly accounting services for the Project;
- (xi) preparing and filing all outstanding annual returns on behalf of each of GP Inc. and the Nominee on March 18, 2024;
- (xii) preparing and submitting the Interim Report of the Receiver dated April 17, 2024, in accordance with subsection 246(2) of the *Bankruptcy and Insolvency Act* (Canada);

- (xiii) liaising with Finnegan Marshall and terminating the Receiver's engagement of Altus Group Limited, whose mandate was, as a result of the engagement of Finnegan Marshall, no longer required;
- (xiv) working with real estate market advisors engaged by the Receiver to obtain market information and intelligence in respect of comparable Units in the Yonge-Bloor area, including the estimated fair market value of each Unit in the Project, to provide insight regarding current residential market trends and possible value maximizing opportunities for the Project, including the Reconfiguration Plan;
- (xv) together with KDC, conducting regular meetings with Skygrid, MI (during the period prior to the Effective Date), and consultants and trades engaged on the Project to continue to develop the Schedule, Cost to Complete, and critical path work streams;
- (xvi) continuing to review the Debtors' insurance coverage, and working with the Project's insurance broker to ensure that satisfactory insurance coverage is in place;
- (xvii) communicating with the Canada Revenue Agency ("CRA") regarding these Receivership Proceedings, filing required HST returns, and continuing to respond to information requests from the CRA in respect of HST audits relating to the periods January 1, 2023 to October 17, 2023, and October 18, 2023 to October 31, 2023;

- (xviii) engaging Ernst & Young LLP (“EY”) to prepare the Debtors’ 2023 year-end tax returns, communicating with EY and gathering information required by EY in respect of that engagement;
- (xix) together with Strategy Corp and/or the Receiver’s legal counsel, attending to various municipal and real property matters relating to the Project, including but not limited to permit applications, Section 37 of the *Planning Act* (Ontario) requirements, matters relating to the severance of the lands and premises of the Commercial Component and the Residential Component (the “**Severance**”), and an anticipated application for Land Titles Absolute;
- (xx) as required by the RFCA, completing the Severance on May 22, 2024, such that the Residential Component and Commercial Component are now separate legal parcels;
- (xxi) meeting with legal counsel to Coco to obtain historical information in respect of the Project and certain related litigation matters;
- (xxii) with the assistance of Strategy Corp and KDC, engaging a public art enterprise for the purposes of installing hoarding artwork that reflects Indigenous culture for the benefit and enjoyment of the community, as required by the City of Toronto in connection with ongoing permitting for the Project;
- (xxiii) communicating with the parties to various litigation involving the Debtors or the Project, including to ensure that such litigation does not interfere with these Receivership Proceedings;

- (xxiv) communicating with the HCRA about these Receivership Proceedings and the Project, including in respect of the proposed SISP;
- (xxv) continuing to review the Project's books and records in respect of certain identified transactions from the period prior to the Appointment Date that warrant further review;
- (xxvi) communicating with Tarion in respect of a notification to the Receiver that Tarion is conducting an analysis of the Project pursuant to the *Ontario New Home Warranties Plan Act*, and providing certain requested documentation in respect of same;
- (xxvii) continuing to interface with Unit Purchasers;
- (xxviii) communicating with the Senior Secured Lenders and the Project's other secured creditors and their respective advisors from time to time to discuss the status of these Receivership Proceedings and the Project; and
- (xxix) drafting this Second Report and assisting with the preparation and review of materials in respect of the Receiver's Motion.

13.0 CONCLUSION AND RECOMMENDATION

- 13.1 For the reasons set out in this Second Report, the Receiver is of the view that the relief sought in the Receiver's Motion is reasonable, appropriate and necessary having regard to the circumstances outlined herein. Accordingly, the Receiver respectfully requests that the Court make an order granting the relief sought in the Receiver's Motion.

All of which is respectfully submitted,

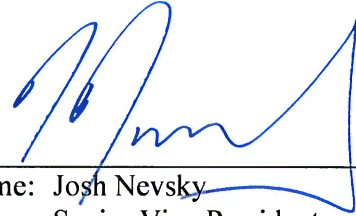
**Alvarez & Marsal Canada Inc., in its capacity as receiver and manager of
Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc.,
and Mizrahi Commercial (The One) GP Inc.**

Per:

A blue ink signature, appearing to be 'SF', written over a horizontal line.

Name: Stephen Ferguson
Title: Senior Vice-President

Per:

A blue ink signature, appearing to be 'JN', written over a horizontal line.

Name: Josh Nevsky
Title: Senior Vice-President

APPENDIX “A”

**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**

**FIRST REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA INC.**

FEBRUARY 26, 2024

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1.0 INTRODUCTION

1.1 On October 18, 2023 (the “**Appointment Date**”), pursuant to an Order (Appointing Receiver) (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), Alvarez & Marsal Canada Inc. was appointed as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties (collectively, the “**Property**”) of Mizrahi Commercial (The One) LP (the “**Beneficial Owner**”), Mizrahi Development Group (The One) Inc. (the “**Nominee**”), and Mizrahi Commercial (The One) GP Inc. (“**GP Inc.**” and, together with the Beneficial Owner and the Nominee, the “**Debtors**”) acquired for, or used in relation to, a business carried on by the Debtors, including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower (the “**Project**”) located on the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario (“**One Bloor**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**.

1.2 The principal purpose of these receivership proceedings (the “**Receivership Proceedings**”) is to bring stability and appropriate oversight to the Project, while preserving and protecting the Property to maximize recoveries from the Project for the benefit of stakeholders, including by ensuring ongoing efficient construction of the Project with funding from KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the “**RFCA Lender**”).

1.3 The purpose of this first report (the “**First Report**”) is to:

- (i) provide background information with respect to the Debtors, the Project, and an overview of the Receivership Proceedings to date;
- (ii) describe the Receiver’s activities and material findings since the Appointment Date;
- (iii) provide an overview of the Receiver’s decision to disclaim the Construction Management Agreement and the GC Agreement (each as defined below) in accordance with the terms of the Receivership Order, and to enter into the Skygrid Engagement Letter (as defined below), such that effective March 13, 2024 (the “**CM Effective Date**”), Mizrahi Inc. (“**MI**”) shall no longer act as developer or general contractor (in such capacities, the “**General Contractor**”) of the Project and SKYGRiD Construction Inc. (“**Skygrid**”) shall take over as construction manager of the Project;
- (iv) provide information regarding the relief sought by the Receiver pursuant to the proposed Construction Continuance and Ancillary Relief Order (the “**Construction Continuance Order**”), attached at Tab 3 of the Receiver’s Motion Record;
- (v) provide information regarding the relief sought by the Receiver pursuant to the proposed Lien Regularization Order (the “**Lien Regularization Order**”), attached at Tab 4 of the Receiver’s Motion Record;
- (vi) provide information regarding the Debtors’ receipts and disbursements since the Appointment Date;

- (vii) provide information on the updated cash flow forecast for the four-month period ending May 31, 2024;
- (viii) provide information on the Receiver's intended next steps in the Receivership Proceedings, which will include the implementation of a sale and investment solicitation process (the "**SISP**") (as further described below); and
- (ix) provide an overview of the Receiver's conclusions and recommendations in respect of the foregoing.

2.0 TERMS OF REFERENCE AND DISCLAIMER

- 2.1 In preparing this First Report, the Receiver has obtained and relied upon unaudited financial information, books and records, and other documents of the Debtors, and has held discussions with, and been provided with certain additional information from, management and employees of MI, and Coco and the Coco Lender (each as defined below) (collectively, the "**Information**").
- 2.2 The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

- 2.3 Future-oriented financial information referred to in this First Report was prepared based on estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations in such future-oriented financial information could be significant.
- 2.4 This First Report has been prepared to provide general information regarding these Receivership Proceedings and to provide the Court with further information regarding the relief sought in the Receiver's motion, returnable March 7, 2024 (the "**Receiver's Motion**"). Accordingly, the reader is cautioned that this First Report is not appropriate for any other purpose, and that the Receiver will not assume any responsibility or liability for any losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report.
- 2.5 Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.
- 2.6 Further information regarding the Debtors, the Project and these Receivership Proceedings, as well as copies of public Court materials filed in connection with same, are available on the Receiver's case website at: www.alvarezmarsal.com/theone (the "**Case Website**").

3.0 BACKGROUND

- 3.1 Background information with respect to the Debtors and the Project, including a detailed overview of the circumstances leading to the appointment of the Receiver, is contained in the application record dated October 17, 2023 of the Debtors' senior secured lenders, KEB

Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 301 and of IGIS Global Private Placement Real Estate Fund No. 434 (collectively, the “**Applicant**” or the “**Senior Secured Lenders**”), which includes the affidavit of Joo Sung Yoon sworn October 17, 2023 (the “**Yoon Affidavit**”). Copies of these materials are available on the Case Website.

- 3.2 The Debtors are comprised of the following entities: (i) the Beneficial Owner, an Ontario-based limited partnership formed to undertake the development of the Project; (ii) GP Inc., the Beneficial Owner’s sole general partner, incorporated under the laws of Ontario; and (iii) the Nominee, a corporation incorporated under the laws of Ontario that is wholly owned by GP Inc.
- 3.3 The Nominee is the registered owner of One Bloor as bare trustee on behalf of the Beneficial Owner. Sam Mizrahi (“**Mizrahi**”) and Jenny Coco (“**Coco**”) (and/or her family and other related persons or entities) each have a 50% indirect interest in the Beneficial Owner through their respective indirect ownership of the Beneficial Owner’s two limited partners, being Sam M Inc. and 12823543 Canada Ltd., each of which hold 50% of the common shares of GP Inc., and in turn, hold a 50% equity interest in the Project.
- 3.4 Construction of the Project commenced more than six years ago, in mid-2017. To assist with financing the Project, the Debtors and the Senior Secured Lenders, among others, entered into the Credit Agreement (as defined below) in August 2019. At the time the Credit Agreement was executed, the Project was expected to be completed by December 31, 2022. This date has been extended on numerous occasions and the cost to complete the Project has significantly increased, such that anticipated gross expenditures

(including financing costs) for the Project are currently expected to be in excess of \$2 billion, which is more than \$600 million greater than originally projected when the Credit Agreement was signed. Notwithstanding these delays and cost overruns, construction of the Project has generally continued uninterrupted since 2017, and has continued without interruption during the course of these Receivership Proceedings.

3.5 Based on the Receiver's review of the Debtors' books and records¹, as of October 31, 2023, the total secured indebtedness in respect of the Project was approximately \$1.9 billion², inclusive of interest, as set out below:

Secured Indebtedness	(in \$millions)
Senior Secured Lenders	1,259
Aviva (as defined below)	102 ³
Hana Lender (as defined below)	58
Coco Lender (as defined below)	183
CERIECO (as defined below)	254
Total	\$1,856

¹ The Receiver notes that the Debtors' books and records include different numbers than those that were presented in the Yoon Affidavit, predominantly based on the effective date of the underlying balances and the inclusion/exclusion of certain accrued interest. As of the date of this First Report, the above balances have not been reconciled with each of the above-noted secured creditors or independently verified by the Receiver and accordingly the above balances may change. In addition, the Receiver and its counsel have not undertaken a formal review of the security granted by the Debtors in favour of subordinated secured creditors.

² Amounts borrowed by the Receiver pursuant to the RFCA (as defined and discussed below) are incremental to the secured indebtedness summarized above, and are secured by a prior ranking super-priority charge in favour of the RFCA Lender (as defined below) granted pursuant to the Receivership Order.

³ At this time, this amount is only a potential debt relating to indemnity obligations of certain of the Debtors in respect of a Tarion (as defined below) bond and deposit insurance provided by Aviva (discussed further below). The potential debt is presented based on the total deposits paid by Unit Purchasers (as defined below) to date less amounts remaining in the Deposit Trust Account (as defined below), representing an approximation of potential indemnity claims by Aviva.

Senior Secured Lenders

- 3.6 The Yoon Affidavit provides a comprehensive overview of the Debtors' secured indebtedness owing to the Senior Secured Lenders, including the security held by the Senior Secured Lenders in respect of same.
- 3.7 The Beneficial Owner and the Nominee, as borrower (in such capacity, the "**Borrower**"), the Senior Secured Lenders, as lender, IGIS Asset Management Co., Ltd. ("**IGIS**"), as asset manager, GP Inc., Mizrahi, Coco, MI and KEB Hana Bank Canada are parties to a credit agreement dated August 30, 2019 (as amended, the "**Credit Agreement**"). As of the Appointment Date, based on the Debtors' books and records, the Borrower had incurred indebtedness under the Credit Agreement totalling approximately \$1.26 billion, inclusive of principal, interest and certain fees, costs and expenses.
- 3.8 The Senior Secured Lenders were granted various security for the obligations under the Credit Agreement, including, among other things: (i) a general security agreement with the Borrower dated August 30, 2019, which grants a security interest over all of the Borrower's current and after-acquired property located at, used primarily in connection with, or arising from One Bloor, in respect of which financing statements have been registered under the *Personal Property Security Act* (Ontario) (the "**PPSA**"); and (ii) a demand debenture from the Nominee dated August 30, 2019, as amended, in the principal amount of \$957 million, a charge in respect of which was registered against title to One Bloor pursuant to the *Land Titles Act* (the "**LTA**") on August 30, 2019.

Other Secured Creditors

3.9 In addition to the obligations owing to the Senior Secured Lenders, approximately \$600 million of the total secured indebtedness of the Debtors, as summarized in the table above, is owing to other secured creditors. With one exception, the debts owing to these parties (the “**Subordinated Debt**”), outlined below, is subordinated to the debt owing to the Senior Secured Lenders:

- (i) Aviva Insurance Company of Canada Inc. (“**Aviva**”) in the total approximate amount of \$102 million⁴ in respect of potential indemnity obligations of certain of the Debtors pertaining to: (a) Aviva’s bond issued to Tarion Warranty Corporation (“**Tarion**”) on behalf of the Nominee in connection with the Project, in the amount of \$8,320,000; and (b) excess deposit condominium insurance (“**ECDI**”) issued to the Nominee in respect of the Project, which coverage limit is \$201,680,000. The Nominee and Aviva are parties to a deposit trust agreement dated November 24, 2017 (the “**Deposit Trust Agreement**”), requiring the Nominee to deposit funds received from purchasers of condominium units in the Project (“**Unit Purchasers**”) into a designated trust account (the “**Deposit Trust Account**”). The Receiver understands a total of \$105 million in deposits have been funded by Unit Purchasers, approximately \$102 million of which was used to fund construction prior to these Receivership Proceedings. As of the Appointment Date, there was approximately \$4.04 million held in the Deposit Trust Account, including interest. As security, the Nominee granted Aviva: (a) a charge against One Bloor in the

⁴ As indicated in footnote 3, above, this amount is a potential debt.

principal sum of \$210 million, registered against title to One Bloor pursuant to the LTA; and (b) a security interest in respect of deposits in the Deposit Trust Account and all accrued interest on same, in respect of which financing statements have been registered under the PPSA. Aviva holds first ranking security over the funds in the Deposit Trust Account, in priority to the Senior Secured Lenders;

- (ii) NongHyup Bank, in its capacity as trustee of Hana Private Real Estate Investment Trust No. 137 (the “**Hana Lender**”), in the total approximate amount of \$58 million, in respect of amounts owing by the Borrower pursuant to a credit agreement dated May 29, 2020, for a term loan facility in the maximum principal amount of \$55 million. The Hana Lender’s debt is secured by, among other things:
 - (a) a charge against One Bloor in the principal sum of \$75 million, registered against title to One Bloor pursuant to the LTA; and
 - (b) a security interest over all of the Borrower’s interest in all present and after-acquired personal property, in respect of which financing statements have been registered pursuant to the PPSA;
- (iii) Coco International Inc. (the “**Coco Lender**”), a corporation controlled by Coco (or other related persons or entities), in the total approximate amount of \$183 million, in respect of amounts owing pursuant to a credit agreement dated August 5, 2015, pursuant to which the Coco Lender agreed to provide a \$75 million credit facility to the Beneficial Owner. The Coco Lender’s debt is secured by, among other things, a charge against title to One Bloor in the principal sum of \$75 million, registered against title to One Bloor pursuant to the LTA; and

- (iv) CERIECO Canada Corp. and its agent 10216267 Canada Corp. (collectively, “CERIECO”), in the total approximate amount of \$254 million⁵, in respect of amounts owing pursuant to several agreements whereby CERIECO advanced a contractor’s loan in the amount of \$213 million in connection with the first stage of construction of the Project. Advances under these agreements are secured by, among other things: (a) a charge against One Bloor in the principal sum of \$213 million, registered against title to One Bloor pursuant to the LTA; and (b) a security interest over the Borrower’s interest in all present and after-acquired personal property, in respect of which a financing statement has been registered pursuant to the PPSA.

3.10 The Receiver understands that as a result of the Aviva Priority Agreements, the Coco Priority Agreements, the CERIECO Priority Agreements and the Hana Priority Agreements (all as defined and described in the Yoon Affidavit), in addition to the timeliness and good standing of the security registrations made on behalf of the Senior Secured Lenders, the Senior Secured Lenders have first priority security over One Bloor and all other Property, other than the deposits held in the Deposit Trust Account, over which the Senior Secured Lenders have second priority security to Aviva. The table below sets out the secured creditors’ respective priorities, in descending order:

⁵ The Receiver is currently reviewing the amount owed to CERIECO in light of certain discrepancies between the Debtors’ records and the amount claimed by CERIECO in public court filings.

One Bloor	All Property other than One Bloor and the deposits in the Deposit Trust Account	Deposits in the Deposit Trust Account
Senior Secured Lenders Aviva Hana Lender Coco Lender CERIECO	Senior Secured Lenders Hana Lender Coco Lender CERIECO	Aviva Senior Secured Lenders Hana Lender Coco Lender CERIECO

3.11 A comprehensive overview of the Subordinated Debt and related security is provided in the Yoon Affidavit.

4.0 OVERVIEW OF THE RECEIVER'S KEY ACTIVITIES TO DATE

4.1 Since its appointment, the Receiver has worked to stabilize the Project and continue construction without disruption, while analyzing a path forward to maximize value for stakeholders. The Receiver's initial activities in respect of these Receivership Proceedings have included, among other things, the following:

- (i) reviewing and commenting on the Applicant's Court materials in respect of the relief sought at the hearing of the application to appoint the Receiver, which took place on October 18, 2023;
- (ii) registering a copy of the Receivership Order on title to One Bloor immediately upon the appointment of the Receiver;
- (iii) activating the Case Website and coordinating the uploading on the Case Website of all Court-filed materials in respect of these Receivership Proceedings;

- (iv) activating the Receiver's telephone hotline and email account for these Receivership Proceedings, and responding to inquiries received through those contact points;
- (v) preparing and sending out initial communications regarding these Receivership Proceedings to consultants, trades, suppliers, and other Project stakeholders, including, among others, retail space lessees, insurers, Unit Purchasers, Tarion, Aviva, the Home Construction Regulatory Authority ("**HCRA**"), and Hyatt Hotels of Canada, Inc.;
- (vi) engaging Knightsbridge Development Corporation ("**KDC**") to act as the Receiver's project manager (the "**Project Manager**") to, among other things:
 - (a) undertake day-to-day management and general oversight of the construction of the Project; (b) oversee the activities of MI, in its capacity as General Contractor;
 - (c) advise on safety and security on the Project site; (d) assist with overseeing and communicating with trades, consultants and suppliers engaged on the Project; and
 - (e) providing strategic advice in relation to construction activities, both in process and planned;
- (vii) together with KDC, regularly attending at the Project site to review and ensure that appropriate safety and security measures were and remain in place;
- (viii) together with KDC, attending initial site meetings and participating in introductory discussions and meetings with key trades, consultants and suppliers engaged on the Project;

- (ix) securing the books and records of the Debtors, including those that were in the possession of MI and Coco;
- (x) securing the leased real property at 181 Davenport Road, which functions as the Project's sales office, and at 402-625 Church Street where hotel "mock-up" suites have been built;
- (xi) pausing all condominium unit sales efforts and existing broker arrangements;
- (xii) attending at the Project's site office at 2 Bloor Street West (the "**Site Office**") on a regular basis to meet with senior management and employees of MI, consultants, trades and other suppliers to the Project;
- (xiii) performing electronic back-ups of books and records maintained at the Site Office, including, among other things, the Procore records, accounting records, Project files, as well as books and records maintained at Coco's offices, comprised of accounting and related records;
- (xiv) communicating with Coco in respect of monthly accounting services for the Project, which were provided by Coco up to November 30, 2023, and transitioning such services to KDC effective December 1, 2023;
- (xv) establishing receivership accounts in respect of the Project, namely a construction account (the "**Construction Account**") and holdback accounts (collectively, the "**Holdback Account**"), and transferring funds from the Project's existing bank accounts into the Construction Account and the Holdback Account;

- (xvi) preparing and sending the Notice and Statement of the Receiver on October 27, 2023, in accordance with subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”);
- (xvii) engaging Altus Group Limited (“**Altus**”), who was engaged as the Senior Secured Lenders’ cost consultant prior to these Receivership Proceedings, to continue to act as cost consultant on the Project to review, monitor, and report on construction costs and assist with a review of the Project’s construction schedule (the “**Schedule**”) and budget (the “**Budget**”);
- (xviii) engaging real estate market advisors (the “**Market Advisors**”) to provide the Receiver with market information and intelligence in respect of comparable condominium units in the Yonge-Bloor area, including the estimated fair market value of each condominium unit in the Project, and to provide insight regarding current residential market trends and possible value maximizing opportunities for the Project;
- (xix) engaging a pre-construction service advisor (the “**Pre-construction Service Advisor**”) to assist the Receiver in its review of the Schedule and Budget, and to assist the Receiver in better understanding the anticipated cost to complete the Project (the “**Cost to Complete**”);
- (xx) together with KDC, conducting regular meetings with MI, consultants and trades engaged on the Project to better understand the status of the Schedule, Cost to Complete, Budget, critical path work streams and Project pro-forma details;

- (xxi) reviewing the Debtors' existing insurance coverage, arranging for the Receiver to be listed as a named insured and loss payee on the Debtors' insurance policies, and working with the Project's insurance broker to ensure that satisfactory insurance coverage is in place;
- (xxii) communicating with the Canada Revenue Agency ("**CRA**") to advise of these Receivership Proceedings and to arrange for new HST and tax accounts for the period of the Receivership Proceedings, filing required HST returns, and responding to information requests from the CRA in respect of HST audits relating to the periods January 1, 2023 to October 17, 2023, and October 18, 2023 to October 31, 2023;
- (xxiii) engaging StrategyCorp Inc. ("**StrategyCorp**") to provide government relations services to assist the Receiver and KDC with various municipal matters relating to the Project;
- (xxiv) together with StrategyCorp and/or Goodmans LLP as counsel to the Receiver ("**Goodmans**"), attending to various municipal matters relating to the Project, including but not limited to permit applications, Section 37 of the *Planning Act* (Ontario) requirements, potential legal severance of the lands and premises of the commercial component of the Project from the balance of the Project (the "**Severance**"), and an anticipated application for Land Titles Absolute;
- (xxv) communicating with the parties to various litigation involving the Debtors or the Project, including to ensure that such litigation does not interfere with these Receivership Proceedings;

- (xxvi) in connection with the HCRA's inspection of the Nominee, communicating with the HCRA in response to its request for information about these Receivership Proceedings and the Project;
- (xxvii) reviewing the Project's books and records to identify transactions that may warrant further review, and beginning that review;
- (xxviii) reviewing and considering agreements and arrangements relating to the Project, including the various agreements with MI, leases, hotel agreements and material subcontractor agreements and arrangements and meeting with stakeholders in respect of same;
- (xxix) reviewing the condominium sales agreements (each a "CSA") entered into by Unit Purchasers, identifying potential issues relating to those agreements and reviewing deposits received and commissions paid to MI in connection with condominium sales;
- (xxx) interfacing with Unit Purchasers;
- (xxxi) meeting with the RFCA Lender and Senior Secured Lenders, CERIECO, Aviva, the Hana Lender, the Coco Lender and their respective advisors from time to time to discuss the status of these Receivership Proceedings and the Project, and preparing a draft confidential report for those stakeholders that signed a Stakeholder NDA (as defined below);
- (xxxii) carrying out the further analysis and activities discussed below in connection with the Receiver's decision to disclaim the Construction Management Agreement and

the GC Agreement with MI and to negotiate and enter into the Skygrid Engagement Letter, such that as of the CM Effective Date, Skygrid will take over as construction manager of the Project, and MI shall no longer act as General Contractor of the Project; and

(xxxiii) drafting this First Report and assisting with the preparation of materials in respect of the Receiver's Motion.

Construction Status

- 4.2 Since the Appointment Date, the Receiver has devoted significant time and effort to reviewing and understanding the status of the Project, particularly as it relates to the Schedule, Budget and Cost to Complete.
- 4.3 As noted above, shortly following the Appointment Date, the Receiver and KDC met with the Project's consultants, including architects and engineers, and key trades engaged on the Project, to understand the current status of construction, as well as the scope and nature of the work still to be commenced and advanced. The Receiver and KDC also met with representatives of MI, all of whom were generally cooperative and provided the information requested by the Receiver regarding the status of Project construction.⁶
- 4.4 Since the Appointment Date, construction of the Project has progressed significantly. At the time of the Appointment Date, tower slabs in the building superstructure were poured to level 42 and window curtain wall on the building envelope was installed through level 11. Since the Appointment Date, an additional eleven floors of tower slabs have been

⁶ The principal of MI is Mizrahi.

poured through level 53 and the installation of the window curtain wall has advanced by an additional five floors through level 16. Other key construction activities, including mechanical, electrical and plumbing work, are well underway as the building enclosure progresses.

- 4.5 In addition to ensuring ongoing construction, the Receiver, with the assistance of KDC, continues to engage with Project consultants and trades through, among other things, regular attendances at site meetings, site visits, and design coordination meetings. Furthermore, in consultation with KDC, consultants, trades and the Receiver's various advisors, the Receiver continues to assess and evaluate various potential value maximizing opportunities and alternatives for the Project.

Project Management

- 4.6 Upon its appointment, the Receiver noted that no liens were registered against the Project, relationships with trades and consultants were generally positive, and despite delays and cost overruns, construction of the Project had continued without interruption. In addition, the Receiver and MI developed a working relationship, and MI was cooperating with the Receiver in all material respects.
- 4.7 As a result, while the Receiver considered alternative options to MI as General Contractor of the Project at the outset of these Receivership Proceedings, the Receiver determined that at that time there was no immediate need to replace MI, and that retaining MI as General Contractor, at least for an interim period, would assist to minimize any disruption resulting from the commencement of the Receivership Proceedings and to provide stability for trades during the transition of the Project into receivership.

4.8 Subsequent to its appointment, and as part of its review of all aspects of the Project, the Receiver, with the assistance of KDC, performed an assessment of MI's project management controls in respect of the Project and identified several areas of control deficiencies. Such deficiencies include, but are not limited to:

- (i) lack of a current and accurate Schedule (which, prior to the Appointment Date, the Receiver understands had last been updated in November 2022) and Budget;
- (ii) lack of a formal procurement process, which would include a documented tendering and bid leveling process, and consideration of procurement dates in the Schedule;
- (iii) delays or the inability to formalize fixed price subcontracts written by the *Canadian Construction Association* or the *Canadian Construction Documents Committee* ("CCDC") with certain subtrades, resulting in groups of subtrades working off purchase orders, letters of intent, or on a "time and materials" basis for extended periods of time, thereby increasing the risk to the Project's Budget and Schedule;
- (iv) identified scope gaps in certain trade subcontracts resulting in the need to issue significant change orders;
- (v) lack of a formal change management process and an inadequate committed cost approval process;
- (vi) limitations in MI's use of Procore (a construction management software), as a significant volume of construction documentation had not been uploaded to the Procore database;

- (vii) lack of a payment certification process in place with Project consultants, and no formal tracking of costs incurred against the Budget as construction progresses;
- (viii) no formal tracking of progress against the Schedule, and lack of monthly updates to same;
- (ix) unreliable monthly construction management reports issued by MI; and
- (x) lack of holdback taken on MI's General Contractor invoices.

4.9 The Receiver has raised many of these concerns with MI. The Receiver understands that MI does not agree that all of the deficiencies identified by the Receiver and KDC exist and/or believes that a number of issues have been addressed throughout the Receivership Proceedings.

4.10 In order to ensure stability on the Project and address certain of the Project's construction management deficiencies, and in order to promote the timely development of a proper Schedule, Budget and Cost to Complete (all of which are critical to the development of an appropriate realization strategy and required by the RFCA), the Receiver, together with KDC, developed and implemented numerous improvement measures and controls, which include, but are not limited to:

- (i) a committed cost approval process for purchase orders and change orders;
- (ii) a payment approval process for all costs incurred on the Project;

- (iii) a revamped Owner-Architect-Contractor meeting process with enhanced information, reporting, and tracking of responsibilities amongst the different parties;
- (iv) a formal process, including timeline and activities, to update the Schedule and the Budget, develop the Cost to Complete, and track progress in respect of same;
- (v) a documented procurement process for tendering and bid leveling;
- (vi) a requirement that MI improve the quality of its monthly construction management reports and revise the format of same such that information can be incorporated into the Cost to Complete and used to update the Schedule and Budget;
- (vii) a requirement that MI prepare a revised baseline Schedule and Budget, and assistance to MI in respect of same⁷;
- (viii) a process to update Procore to ensure that all relevant documentation is uploaded to the database in a timely manner and remains current; and
- (ix) a review and reconciliation of outstanding holdback on MI's General Contractor invoices issued to the Project to date.

4.11 Although construction of the Project has continued to progress, and MI has generally continued to cooperate with the Receiver, there has been an increasing strain on the working relationship between MI and the Receiver relating to the above-noted deficiencies,

⁷ As of the date of this First Report, MI has not provided the Receiver with a revised baseline Schedule and Budget in a form satisfactory to the Receiver.

and more recently because of, among other issues, the inability of MI and the Receiver to agree on terms for MI's post-receivership work. This issue is further described below.

5.0 REPLACEMENT OF MIZRAHI INC. AS GENERAL CONTRACTOR

5.1 As noted above, the Receiver, in consultation with the RFCA Lender and the Senior Secured Lenders, and with the consent of the RFCA Lender, has determined that it is in the best interest of the Project and its stakeholders to disclaim the GC Agreement and the Construction Management Agreement, as authorized by paragraph 5 of the Receivership Order (the “**Disclaimer**”). The Receiver reached this conclusion after a careful consideration of many relevant factors, including but not limited to the following:

- (i) the Receiver has concerns (including those described above) regarding MI's performance on the Project;
- (ii) the Receiver has determined that the Disclaimer is more likely to facilitate a successful SISP; and
- (iii) the Receiver and MI did not reach agreement on terms to govern MI's continued service as General Contractor for the Project, and this dispute has undermined the Receiver's ability to work constructively with MI on the Project.

MI's Contracts and Compensation

5.2 Following the Appointment Date, the Receiver reviewed the contracts relating to MI's role on the Project, with the assistance of its counsel. MI's role as General Contractor, and compensation for its work, appears to be governed by a series of agreements that are briefly

described below. Based on its review, the Receiver concluded that the amounts paid to MI by the Debtors prior to the Appointment Date did not align with the contracts the parties had entered into. These discrepancies, together with the Receiver's conclusion that the amounts claimed by MI were above comparable market rates, are what gave rise to the Receiver's decision to pay less than the amounts invoiced by MI and to attempt to negotiate a mutually agreeable go-forward arrangement with MI, as described in greater detail below.

- 5.3 The Receiver understands that MI has acted as the General Contractor for the Project since its inception.⁸
- 5.4 MI and the Nominee entered into a Commercial Development Management Agreement dated July 25, 2014, entered into between the Beneficial Owner, as owner, and MI, as manager (the "**Construction Management Agreement**"). The Construction Management Agreement, without all schedules, is attached hereto as **Appendix "B"**.
- 5.5 MI has advised the Receiver that the primary agreement governing its role as General Contractor in respect of the Project is a CCDC 2 Stipulated Price Contract, entered into between the Nominee, as owner, and MI, as contractor, on May 14, 2019 (the "**GC Agreement**"). The GC Agreement, without all schedules, is attached hereto as **Appendix "C"**. In very simple terms, the GC Agreement requires that MI complete specified work comprising most of the construction work on the Project for a fixed, total

⁸ The Receiver notes that by agreement dated July 2017 (the "**Clark Construction Management Agreement**"), MI entered into an agreement (as "Owner" of the Project) with a third party construction management firm, Clark Construction Management Inc. ("**Clark**"). The Receiver understands that MI terminated the Clark Construction Management Agreement by Termination Notice dated October 26, 2020, following which MI has performed some or all of the work that Clark formerly performed under the Clark Construction Management Agreement.

price, excluding taxes, of approximately \$583.2 million (the “**Contract Price**”). While not specified in the GC Agreement, the Receiver understands that the Contract Price was calculated based on the following:

Cost Category	Budget ⁹
Construction Hard Costs	510,656,521
Design and Post Contract Contingency	20,006,850
Hotel and Retail Finishes	24,731,000
Construction Management Fees (5%)	27,769,719
Total	\$ 583,164,090

- 5.6 The GC Agreement provided that MI was to be paid based on progress certified by the Senior Secured Lenders’ cost consultant, Altus. By way of example, if Altus certified that the Project was 20% complete, then MI would be entitled to 20% of the Contract Price, plus HST and less a 10% holdback, as required by the GC Agreement and the *Construction Act* (Ontario) (the “**Provincial Lien Legislation**”).
- 5.7 MI also agreed, in the GC Agreement, to commence work on August 1, 2017 (although the GC Agreement was executed in May 2019) and achieve substantial performance of its work by December 31, 2022 (the “**Contract Schedule**”). The GC Agreement provided that the Contract Price and Contract Schedule could be adjusted in accordance with certain terms.
- 5.8 An important element of the GC Agreement (and almost all fixed price construction contracts) is that it shifted some risk associated with cost increases on the Project to MI. In other words, since MI agreed to complete its work for the fixed Contract Price and in

⁹ Based on the Altus Preliminary Report No. 1 as at July 31, 2019.

accordance with the Contract Schedule, MI would benefit from any cost savings and would bear the risk of any cost increases, subject to the price and schedule adjustment terms in the GC Agreement.

- 5.9 The GC Agreement was amended by Amending Agreement dated September 27, 2019 (the “**First Amendment**”), to change certain aspects of MI’s scope of work, the Contract Schedule, and the specifications and drawings for the Project. This First Amendment, without all exhibits, is attached hereto as **Appendix “D”**.
- 5.10 In addition, certain of the financial terms of the GC Agreement may have been altered pursuant to a Mediator’s Proposal in November 2019. The Mediator’s Proposal was the culmination of a mediation of various disputes between the equity owners of the Debtors, Mizrahi and Coco. In order to resolve those disputes, the parties agreed to the Mediator’s Proposal which, among other things, reduced MI’s CM Fee (as defined below) of 5% to 3.5% for a period of time. The Mediator’s Proposal is not attached to this Report, because it is confidential. To the knowledge of the Receiver, the Mediator’s Proposal was not reflected in any formal amendment to the GC Agreement.¹⁰
- 5.11 In May 2021, Sam M Inc. and 12823543 Canada Ltd., among others, entered into a Control Agreement (the “**Control Agreement**”) to govern the operation of the Project pending completion of a contemplated purchase of Coco’s interest in same. The Debtors are not party to this Control Agreement, which purported to increase MI’s CM Fee back to 5%.

¹⁰ The Receiver notes that the Mediator’s Proposal provided that the proposed revisions to the fee structure would be reflected in a formal amendment.

The Receiver understands that the Control Agreement was terminated in or around August 2022, because the underlying transaction did not proceed.

5.12 The Receiver also understands that, in connection with the execution of the Credit Agreement, the Beneficial Owner, the Nominee, MI and KEB Hana Bank Canada also entered into the Agreement Re: Developer Agreements dated August 30, 2019 (the “**Agreement Re: Developer Agreements**”), which, among other things, clarified the obligations that remained owing to MI under the Construction Management Agreement and the GC Agreement. A copy of the Agreement Re: Developer Agreements is attached hereto as **Appendix “E”**. The Agreement Re: Developer Agreements reflects: (i) that nothing remained owing to MI pursuant to the Construction Management Agreement or in connection with development management services for the Project; and (ii) that \$3,749,402.69 of the \$24,020,316.30 CM Fee payable to MI had been paid as at August 30, 2019. As of October 31, 2023, MI had received CM Fees totalling approximately \$20 million¹¹, or approximately 72% of the budgeted total per the Contract Price, even though less than 50% of the Project had been completed at that point.

5.13 By further Amending Agreement dated May 4, 2022 (the “**Second Amendment**”), MI and the Nominee agreed to amend the GC Agreement to replace the Contract Price and Contract Schedule with an agreement to amend both the Contract Price and Contract Schedule “to reflect the updated progress reporting by the Consultant¹² as provided from time to time.”

The Second Amendment is attached hereto as **Appendix “F”**.

¹¹ Based on Altus Report No. 52 as at October 31, 2023.

¹² Consultant is a reference to Altus, in its capacity as the Consultant pursuant to the GC Agreement.

5.14 The Second Amendment effectively replaced a fixed Contract Price and completion date with an unlimited Contract Price and unspecified completion date. It does not specify how Altus is to determine the Contract Price or Contract Schedule. The Receiver also has concerns about whether the Second Amendment, which was executed by Mizrahi alone on behalf of each of the counterparties of the agreement, being MI and the Nominee, is enforceable.¹³ The Receiver understands that Altus was not made aware of the Second Amendment until August 2023. Further, the Agreement Re: Developer Agreements provides that the Developer and the Nominee will not agree to any amendment of the GC Agreement without the consent of KEB Hana Bank Canada as administrative agent for the Senior Secured Lenders. To the knowledge of the Receiver, consent was not provided by KEB Hana Bank Canada for the Second Amendment.

5.15 In any event, as described below, it is the Receiver's view that none of the agreements between MI and the Debtors specifically authorized the compensation that was actually being paid to MI before the Receiver's appointment.

Amounts Paid to MI Prior to the Appointment Date

5.16 Prior to the Appointment Date, the Receiver understands that, on a monthly basis, MI issued an invoice to the Project for, among other things, the following:

- (i) costs in respect of subtrades working on the Project (the "**Hard Costs**");

¹³ Mizrahi executed the Second Amendment on behalf of both MI and the Nominee, relying on the terms of the Control Agreement. In the Receiver's view, it is unclear whether the Control Agreement conferred authority on Mizrahi to execute a long-term agreement such as the Second Amendment.

- (ii) out-of-pocket recoverable costs, including various equipment rentals, storage, materials, and other third party costs (the “**Recoverable Costs**”);
- (iii) labour costs related to MI’s direct and indirect labour charged at time-based rates (the “**Labour Costs**”); and
- (iv) a 5% construction management fee (“**CM Fee**”) on the sum of the Hard Costs, the Recoverable Costs and the Labour Costs.

5.17 Based on the Receiver’s review of the Debtors’ books and records, during the 12-month period from October 1, 2022 to September 30, 2023, MI received CM Fees totalling approximately \$6.3 million (exclusive of HST). Based on the General Contractor invoices reviewed by the Receiver, MI charged an average of \$1.6 million (exclusive of HST) per month in Labour Costs during the 12-month period prior to the Appointment Date.

Disclaimer of the Construction Management Agreement and the GC Agreement

5.18 Following its review described in the preceding paragraphs, the Receiver determined that the amounts paid to MI were not in accordance with the GC Agreement, or any other agreement between MI and the Debtors. In addition, KDC advises that such amounts are at or above the high end of compensation paid for projects of a similar scale in Toronto, Ontario.

5.19 In light of these issues, and the performance concerns identified above, the Receiver determined that continued payment of all costs included in the General Contractor invoices was not commercially reasonable or supportable by the applicable documentation, nor in the best interest of the Project or its stakeholders.

- 5.20 The Receiver's concerns and conclusions were conveyed in discussions between MI and the Receiver, and in a detailed memo provided by the Receiver to MI.
- 5.21 The Receiver understands that MI does not agree with the Receiver's position. The Receiver also understands that MI believes its pre-receivership fees were reasonable and authorized by the Construction Management Agreement and GC Agreement, and that MI disagrees with the Receiver's concerns about its performance as General Contractor.
- 5.22 The Receiver engaged in negotiations with MI in an attempt to reach a mutually acceptable go-forward arrangement in respect of a number of issues, including go-forward payment terms. The parties did not reach an agreement. As a result, the Receiver and MI continued to disagree on, among other things, the appropriate amount required to be paid to MI in respect of its role as General Contractor on the Project (the "**Payment Dispute**").
- 5.23 Despite the Payment Dispute, the Receiver continued to pay the CM Fee, but solely in respect of the Hard Costs, Recoverable Costs, and MI's actual out-of-pocket direct and indirect labour costs incurred on the Project. The Receiver could see no basis for reimbursing MI for the incremental profit margin on Labour Costs and at the same time paying the CM Fee on the sum of: (i) Labour Costs; (ii) Recoverable Costs; and (iii) Hard Costs. This resulted in a monthly reduction of approximately \$1 million relative to the amounts claimed by MI in the General Contractor invoices delivered to the Receiver.
- 5.24 Relatedly, in making the payments that the Receiver determined were appropriate and properly incurred, as an additional Project control, the Receiver required that MI sign a form of payment letter (the "**Payment Letter**") pursuant to which MI acknowledged and agreed that the Receiver was making the monthly payment, and that MI would undertake

to use the funding provided pursuant to the Payment Letter to make payment to the specified trades, employees and other service providers who had completed work on the Project in the relevant period. Copies of the October 2023 and November 2023 Payment Letters (for September 2023 and October 2023 costs, respectively) and covering emails are attached hereto as **Appendix “G”**.

5.25 In late December 2023, the Receiver determined that it was necessary and appropriate to modify the form of Payment Letter to include certain additional terms relating to the ownership of Project materials and holdback matters, as well as to expressly include language confirming that, consistent with paragraph 6 of the Receivership Order, in making payments to MI, the Receiver was not affirming the Construction Management Agreement and the GC Agreement. Although MI signed the revised Payment Letter, shortly following its execution Mizrahi advised he was not aware of the changes to the form of Payment Letter, and MI indicated it opposed the new form of Payment Letter and took the position that the December 2023 Payment Letters should be rescinded and deemed null and void. Copies of the December 2023 Payment Letters (for November 2023 costs) and covering emails are attached hereto as **Appendix “H”**.

5.26 In early January 2024, in light of ongoing issues between the Receiver and MI relating to the Payment Dispute and the appropriate form of Payment Letter, the Receiver and MI had an all-hands meeting with their respective counsel to discuss and attempt to resolve these issues. However, and despite continuing without prejudice negotiations over January and into February, the parties did not reach a resolution.

The SISP

5.27 While it was negotiating with MI, the Receiver was also working to design a SISP that would maximize the value of the Project and the likelihood of its efficient and orderly completion. These efforts are described further in Section 11.0 below.

5.28 In the course of considering the SISP and discussing matters relating to the SISP with its advisors, the RFCA Lender and Senior Secured Lenders, and certain other stakeholders who had signed the Stakeholder NDA¹⁴ and their respective advisors, the Receiver formed a view that MI's continued involvement as General Contractor of the Project would not enhance the prospects of completing a value maximizing SISP.

Misalignment between MI and the Receiver

5.29 As the Receiver's mandate progressed, as required by the RFCA, the Receiver began to consider alternative ways to maximize the value of the Project, including potential changes to how the Project should be completed. While the Receiver wanted to evaluate all potential options for maximizing value, MI remained focused on completing the Project as originally envisioned. This dynamic created misalignment between MI and the Receiver and instances where MI began to allege the Receiver was responsible for delaying the implementation of MI's original plans for the Project. This further contributed to tensions in the working relationship between MI and the Receiver.

¹⁴ The Receiver notes that MI declined to sign the Stakeholder NDA.

Decision to Disclaim

5.30 In light of the factors discussed above and following consultations with the RFCA Lender and Senior Secured Lenders and their advisors, the Receiver determined that it was appropriate to explore the possibility of engaging a new construction manager, as authorized by paragraph 4(e) of the Receivership Order. As described in greater detail below, following its review, including discussions with alternative potential construction managers, the Receiver ultimately determined that it was in the best interests of the Project to disclaim the Construction Management Agreement and the GC Agreement, and to retain Skygrid as construction manager for the Project on the terms and conditions described below.

5.31 Accordingly, the Receiver, with the consent of the RFCA Lender as required by the RFCA, issued a notice of Disclaimer to counsel to Mizrahi, Mizrahi Inc. and Sam M Inc. on February 26, 2024, with the disclaimer to be effective on March 13, 2024 (being the CM Effective Date), in accordance with the Receivership Order. A copy of the notice of Disclaimer is attached hereto as **Appendix “I”**.

Engagement of Skygrid

5.32 The Receiver carefully considered all of its options before deciding to disclaim the Construction Management Agreement and the GC Agreement, and undertook appropriate contingency planning efforts before determining to proceed with the Disclaimer. Among other things, the Receiver consulted with KDC, the RFCA Lender, the Senior Secured Lenders and certain significant stakeholders that had signed the Stakeholder NDA, interviewed other contractors with relevant experience, and undertook various other

diligence efforts in order to ensure that appropriate contingency plans were developed to mitigate the impact of the Disclaimer on the progress of the Project. Following this review, the Receiver determined that retaining Skygrid as the new construction manager was in the best interests of the Project.

- 5.33 As part of the Receiver's contingency planning efforts, the Receiver worked with KDC to identify contractors that might be willing and able to serve as construction manager for the Project. Based on those discussions, and KDC's recommendation, the Receiver solicited proposals on a confidential basis from two construction managers regarding the opportunity to manage construction of the Project on an ongoing basis, including for an interim period until the completion of the SISP. These proposals were reviewed by the Receiver, in consultation with the RFCA Lender and Senior Secured Lenders and their advisors.
- 5.34 The Receiver selected Skygrid as the successful candidate because, among other reasons:
- (i) Skygrid is a local and experienced construction manager, with 192 completed projects, 31 active projects and approximately 280 employees, thereby having the breadth and depth of experience necessary to provide the oversight required for a development of the scale and complexity of the Project;
 - (ii) Skygrid has experience taking over large development projects, while construction is in progress and in the context of insolvency proceedings, including multiple roles in the recent Cresford Group insolvency proceedings that also involved major condominium projects;
 - (iii) Skygrid was willing to accept an engagement for only an interim period up until the completion of the SISP, with the understanding that the ultimate owner of the Project could decide whether or not to continue the retention of Skygrid;
 - (iv) Skygrid's fees are competitive with prevailing market rates (and less than the

other proposal received by the Receiver), and are lower than the fees MI asserts are payable to it; and (v) the RFCA Lender advised the Receiver that it consented to the retention of Skygrid, as required by the RFCA.

5.35 As of the date of this First Report, the Receiver and Skygrid have negotiated and entered into an Engagement Letter dated February 26, 2024, attached hereto as **Appendix “J”** (the **“Skygrid Engagement Letter”**). A summary of the key terms of the Skygrid Engagement Letter is provided below:

- (i) Interim Period: From the date of the Skygrid Engagement Letter until the CM Effective Date, Skygrid shall provide the construction management services and/or work outlined in the Skygrid Engagement Letter (collectively, the **“Services”**) on a strictly consultative and hourly basis, at the hourly rates set forth in the Skygrid Engagement Letter;
- (ii) Prepayment Amount: Upon execution of the Skygrid Engagement Letter, the Receiver shall pay Skygrid the sum of \$100,000, plus HST, as a pre-payment of the Skygrid CM Fee (as defined below), and said sum shall be applied against Skygrid’s final invoice;
- (iii) Period Before Execution of the Definitive CCDC 5B Contract: From the CM Effective Date until such time as the Receiver and Skygrid execute the final CCDC 5B 2010 Construction Management Contract – for Services and Construction, with Supplementary Conditions to be mutually agreed (the **“Definitive CCDC 5B Contract”**), which shall be no later than 21 calendar days after execution of the

Engagement Letter, Skygrid shall perform the Services in accordance with the terms and conditions of the Skygrid Engagement Letter;

- (iv) Period After Execution of the Definitive CCDC 5B Contract: Following the execution of the Definitive CCDC 5B Contract, the Services shall continue in accordance with the terms and conditions to be agreed to in Definitive CCDC 5B Contract;
- (v) Construction Manager's Fee: For all Services provided by Skygrid following the CM Effective Date and prior to any termination of the Skygrid Engagement Letter or the Definitive CCDC 5B Contract (such period being, the “**Effective Period**”), Skygrid shall be entitled to: (a) a percentage fee of 2.85% of the hard costs of construction (the “**Skygrid CM Fee**”); and (b) hourly rates as set forth in the Skygrid Engagement Letter, in both cases plus HST;
- (vi) Additional Fee: For all Services performed by Skygrid during the Effective Period, Skygrid shall also be entitled to payment of an additional percentage fee of 0.35% of the hard costs of construction, plus HST (the “**Additional Fee**”), accruing from the CM Effective Date to the date of termination by the Receiver of the Engagement Letter or of any Definitive CCDC 5B Contract. In the event that the Receiver and Skygrid execute the Definitive CCDC 5B Contract and Skygrid continues to be the construction manager until total completion of the Project, then Skygrid shall be paid an Additional Fee based on terms and conditions to be agreed to in the Definitive CCDC 5B Contract;

- (vii) Termination Rights: The Receiver reserves the right to cancel or terminate (at its sole and unfettered discretion) the whole or any part of the Skygrid Engagement Letter or the Services, and the Receiver may cancel any part or component of the Skygrid Engagement Letter without terminating same;
- (viii) Limitation on Liability of Skygrid: Skygrid shall have no liability in respect of any services, labour work and/or materials of any kind provided to the Project by any contractor, subcontractor, trade supplier, consultant or other third party for any period prior to the date of execution of the Skygrid Engagement Letter; and
- (ix) No Personal Liability of Receiver: The Receiver has entered into the Skygrid Engagement Letter solely in its capacity as Receiver and not in its personal or corporate capacity, and neither the Receiver nor any of its representatives shall have any personal liability under or in connection with the Skygrid Engagement Letter or the Definitive CCDC 5B Contract, and the Receiver has expressly disclaimed any such liability.

5.36 For the reasons noted above and to ensure the continuing construction of the Project under the oversight of an experienced construction manager, as indicated in the proposed Construction Continuance Order, the Receiver seeks approval of the engagement of Skygrid pursuant to paragraph 4(e) of the Receivership Order, the related Skygrid Engagement Letter, as well as the subsequent execution of the Definitive CCDC 5B Contract.

5.37 In comparison to the amounts historically charged by MI as General Contractor, the Skygrid Engagement Letter is anticipated to provide significant cost savings to the Project.

On a monthly basis, these savings can be summarized as follows:¹⁵

- (i) The Skygrid CM Fee of 3.2%, compared to MI's CM Fee of 5%, is anticipated to provide monthly savings of approximately \$200,000;
- (ii) Skygrid's estimated labour costs, compared to MI's labour costs (including the incremental profit charged and paid to MI prior to the commencement of the Receivership Proceedings) is anticipated to provide monthly savings of approximately \$800,000; and
- (iii) the improved controls, processes and efficiencies that Skygrid is anticipated to bring to the development and construction of the Project are expected to provide further incremental savings to the Budget and benefits to the Schedule.

6.0 PROPOSED CONSTRUCTION CONTINUANCE ORDER

6.1 As noted above, a key priority for the Receiver is to continue to ensure stability and the ongoing construction of the Project, including during the transition of the Project to Skygrid as the new construction manager. Accordingly, in addition to the proposed Lien Regularization Order (described below), the Receiver is seeking approval of the proposed Construction Continuance Order in order to promote a smooth transition to the new construction manager.

¹⁵ Illustrative costs savings noted in 5.37(i) and 5.37(ii) are estimated based on the average monthly costs MI has billed to the Project during the Receivership Proceedings.

- 6.2 The overarching goal of the Construction Continuance Order is to ensure that the transition to a new construction manager does not interfere with the progress of the Project or destabilize construction in any way. The Receiver has also sought to ensure, through the proposed Construction Continuance Order, that continuing construction following the transition does not prejudice any party.
- 6.3 Many of the subcontractors currently working on the Project have a contractual relationship with MI, and not the Debtors. The funds required to pay subcontractors have been provided by the Debtors throughout the Project and, since the Receiver was appointed, the Receiver has paid many subcontractors and trades directly, as authorized pursuant to the Receivership Order.
- 6.4 Because many subcontractors have contracts with MI, the Disclaimer could create uncertainty about the status of those contracts. That uncertainty could, in a worst-case scenario, destabilize construction and impair progress on the Project.
- 6.5 The Receivership Order already anticipated and partially addressed some aspects of this concern. Pursuant to the Receivership Order, all Persons (defined broadly in the Receivership Order to include, among others, contractors and subcontractors) having oral or written agreements with the Debtors, or MI (defined in the Receivership Order as the “Developer”) or contractual, statutory or regulatory mandates for the supply of goods and/or services to the Debtors, or the Developer and/or the Project are restrained until further Order of the Court from discontinuing, altering, interfering with or terminating the supply of goods or services as may be required by the Receiver.

- 6.6 Importantly, the obligation to continue services provided for in the Receivership Order applies to Persons that have contracts with MI. The obligation to continue providing goods or services to the Project is not predicated upon a direct contractual relationship with the Debtors and, as a result, the Disclaimer does not give rise to any rights on behalf of subcontractors, trades, suppliers or other service providers having contractual arrangements with MI to stop providing goods or services to the Project.
- 6.7 The Receiver understands that the transition of the Project to a new construction manager could potentially raise questions for some parties as to, among other things, liability for payments and other contractual obligations. The Construction Continuance Order seeks to address these questions by providing clarity and certainty with respect to these matters in a fair and reasonable manner, as follows:
- (i) Limitation on Liability of MI: As noted above, MI has contracts with many of the subcontractors working on the Project. The Receiver does not believe that MI should have liability under these contracts for events that occur after it ceases to serve as General Contractor. Accordingly, the Construction Continuance Order provides that MI shall have no liability in respect of the supply of services or materials to the Project by any contractor, subcontractor, trade supplier or other Person on or after the CM Effective Date (a “**Post-Disclaimer Supply**”), and MI shall continue to benefit from the stay of proceedings provided for in the Receivership Order, pending further Order of the Court; provided, however, that nothing in the Construction Continuance Order shall release MI from any liability that does not relate to a Post-Disclaimer Supply, including but not limited to liabilities relating to services or materials supplied to or ordered for the Project

before the CM Effective Date, and claims for delay, lost profit, termination or demobilization costs;

- (ii) Limitation on Liability of Skygrid: Neither Skygrid nor the Receiver has complete information about amounts that could potentially be owed to subcontractors for work on the Project to date. In order to shield Skygrid from liability for events that pre-date its involvement in the Project, the Construction Continuance Order provides that Skygrid, in its capacity as construction manager of the Project, shall have no liability in respect of services or materials provided to the Project by any contractor, subcontractor, trade supplier or other Person for any period prior to the CM Effective Date, and shall benefit from the stay of proceedings provided for in the Receivership Order; and
- (iii) No Affirmation and No Personal Liability: The transition from MI to Skygrid will require that the Receiver make payments directly to subcontractors, contractors and other suppliers working on the Project, at least for an interim period. The Receiver is not, however, waiving any of the protections set out in the Receivership Order or affirming or assuming any contract with any subcontractor, contractor or other supplier. Accordingly, the Construction Continuance Order provides that the Receiver, in making payments directly or indirectly to suppliers, contractors, subcontractors and other creditors in accordance with paragraph 4(d) the Receivership Order, is not affirming or assuming (and has not affirmed or assumed) any agreement or mandate for the supply of goods and/or services to the Debtors, MI and/or the Project, and the Receiver shall have no personal liability for any payments or other obligations under any such agreement or mandate.

6.8 Further, in addition to seeking approval of the engagement of Skygrid as discussed further above, the Construction Continuance Order contemplates certain ancillary matters to promote the orderly transition of the Project to the new construction manager:

- (i) Transfer of Materials: MI currently has possession of, or has arranged for the storage by third parties of, significant material required to proceed with construction of the Project. The Receiver must ensure that the Disclaimer does not interrupt access to these materials required to progress construction of the Project. Accordingly, the Construction Continuance Order requires that any Person shall permit the Receiver or its designee to access and take possession of any Project Materials (as such term is defined in the Construction Continuance Order), which include, among other things, materials, plans, models, consulting reports, contracts, invoices, listings of trades and suppliers (including addresses and contact information) and listings of equipment owned and obtained through the Project; and
- (ii) No Interference: In connection with the above, no Person shall interfere with the Receiver's possession of the Project Materials, or the Receiver taking possession of the Project Materials, without leave of the Court. The Receiver is at liberty to pay such amounts as it determines are appropriate in connection with obtaining possession of any Project Materials, and any disputes regarding amounts required to be paid by the Receiver in connection with any Project Materials shall be determined by this Court on a motion brought by the Receiver or other interested Person on not less than five (5) days notice.

7.0 PROPOSED LIEN REGULARIZATION ORDER

7.1 Ensuring stability and the ongoing construction of the Project has been a key priority for the Receiver since the commencement of these Receivership Proceedings. Notwithstanding that the transition of the Project to a new construction manager is in the best interests of the Project, such a transition presents some risk that liens could be registered against the Project, in turn impacting the Receiver's ability to obtain future advances under the RFCA.¹⁶

7.2 To ensure that any construction liens are addressed in an orderly and fair manner and that funding of construction of the Project continues uninterrupted, the Receiver, with the support of the RFCA Lender and the Senior Secured Lenders, is seeking approval of the proposed Lien Regularization Order.

Overview of Proposed Lien Regularization Order

7.3 As at the date of this First Report, the Receiver understands there are approximately 44 suppliers, subcontractors and other trades actively engaged on the Project. To the Receiver's knowledge, with certain limited exceptions, subcontractors and trades have been paid the amounts invoiced and agreed to by MI and the Receiver. There is nonetheless a risk that some subcontractors and trades, upon learning that MI will no longer be the General Contractor of the Project, may proceed with registering liens against the Project in

¹⁶ As is customary in construction financing agreements, the Receiver's ability to obtain financing advances under the RFCA is subject to, and conditional upon, satisfaction of certain conditions precedent, including that no Default or Event of Default (each as defined in the RFCA) will have occurred or be continuing on the proposed date of the applicable financing advance, or would result from same. If construction liens were registered on title to One Bloor and not timely vacated by the Receiver, it could trigger a Default that would in turn impact the Receiver's ability to obtain future advances.

respect of any latent claims that they may have against MI. There is also a risk that MI could register a lien against the Project. Accordingly, the Receiver seeks the Court's approval of the proposed Lien Regularization Order to manage this risk and assist in ensuring continuing access to financing under the RFCA to fund ongoing construction of the Project.

- 7.4 In Ontario, the statutory scheme to preserve and perfect a construction lien under the Provincial Lien Legislation has numerous technical requirements, including (generally speaking) that a lien be registered on title thereby preserving the lien, and thereafter perfected by issuing a statement of claim and registering a certificate of action on title.
- 7.5 Without the process provided for under the proposed Lien Regularization Order, the Receiver would need to consent to lift the stay of proceedings under the Receivership Order for each lien claimant individually to allow such claimant to preserve and perfect its Lien Claim to comply with Provincial Lien Legislation, and then the Receiver would also have to proceed with vacating each registered lien by posting security so that the Receiver could continue to obtain funding under the RFCA. There is also a practical risk that the amount and quantum of liens asserted against the Project would be too high for the Receiver to be able to vacate liens without issue and within a reasonable timeframe, putting continued construction at risk.
- 7.6 The proposed Lien Regularization Order would establish a Court-supervised streamlined process, administered by the Receiver, to replace the various technical requirements for preserving and perfecting a lien under the Provincial Lien Legislation. The Lien Regularization Order is intended to address the practical issues created by these technical

requirements without prejudicing the lien claimants' rights in any way and, in fact, gives such claimants certainty as to how their claim will be dealt with.

7.7 The Receiver notes that in similar circumstances, the Court has exercised its jurisdiction to establish claims processes for lien claimants similar to the process provided for in the proposed Lien Regularization Order, notably in the *Companies' Creditors Arrangement Act* proceedings of *Comstock Canada Ltd. et al.* (Regional Senior Justice Morawetz, as he then was), *FirstOnSite G.P. Inc.* (Justice Newbould) and *Carillion Canada Inc. et al.* (Justice Hainey).¹⁷

7.8 Below is a summary of the process provided for in the proposed Lien Regularization Order:¹⁸

- (i) any person (an “**Asserting Lien Claimant**”) who wishes to assert a lien claim under the Provincial Lien Legislation (a “**Lien Claim**”) against the Project will do so by delivering a lien notice (a “**Lien Notice**”) to the Receiver, counsel to the Receiver, and counsel to the Applicant and RFCA Lender, within the time frame prescribed by the Lien Regularization Order;
- (ii) all Lien Claims preserved by any person prior to the granting of the proposed Lien Regularization Order that have not been vacated from title to One Bloor will be

¹⁷ See the Lien Regularization Order of Regional Senior Justice Morawetz, as he then was, granted in the matter of *Comstock Canada Ltd. et al.* dated August 7, 2013 (Court File No. CV-13-10181-00CL); the [Amended and Restated Initial Order](#) of Justice Newbould granted in the matter of *FirstOnSite G.P. Inc.* dated April 21, 2016 (Court File No. CV-16-11358-00CL); and the [Lien Regularization Order](#) dated March 14, 2018, and subsequent [Amended Lien Regularization Order](#) dated May 23, 2019, of Justice Hainey granted in the matter of *Carillion Canada Inc. et al.* (Court File No. CV-18-590812-00CL).

¹⁸ See the Lien Regularization Order attached as Tab 4 to the Receiver's Motion Record for the full terms of the proposed Order.

vacated and such persons deemed to have delivered a Lien Notice in accordance with the Lien Regularization Order;

- (iii) by delivering a Lien Notice, an Asserting Lien Claimant shall be deemed to have preserved and perfected its Lien Claim and will be granted a lien charge against the Project (a “**Lien Charge**”) equivalent to, and only to the extent of, any security that would be granted in respect of a Lien Claim under the Provincial Lien Legislation. The Lien Charge is not intended to increase or decrease the scope of the charge that would secure a Lien Claim under Provincial Lien Legislation in the normal course; and
- (iv) at a later time, the Receiver will bring a motion on notice to the service list seeking approval of a process for reviewing, determining or challenging: (a) the validity or timeliness of any Lien Notice; (b) the validity or quantum of the amounts set out in any Lien Notice; (c) the entitlement of any Asserting Lien Claimant to a Lien Charge; and (d) the attachment, quantum or priority of any Lien Charge. The Receiver shall also be entitled to seek a determination by the Court of any of the foregoing with respect to any Lien Claim at any time upon notice to the relevant Asserting Lien Claimant.

- 7.9 The proposed Lien Regularization Order provides that the priority of a Lien Charge shall:
- (i) with respect to other Lien Charges arising pursuant to the proposed Lien Regularization Order, be equivalent to the priority granted under the Provincial Lien Legislation; (ii) rank subordinate to the Receiver’s Charge and the Receiver’s Borrowings Charge (each as defined in the Receivership Order); and (iii) with respect to other creditors of the Debtors,

be equivalent to such priority as is accorded to Lien Claims under the Provincial Lien Legislation and the federal laws of Canada applicable in Ontario.

7.10 It is the Receiver's expectation that none of the subcontractors or trades engaged on the Project will in fact need to file any liens against the Project based on the fact that, to the knowledge of the Receiver, the substantial majority of subcontractors and trades have been paid all amounts to which they are entitled at this time; however, for the reasons discussed above, the Receiver has determined that it is prudent and in the best interests of the Project to seek the approval of the proposed Lien Regularization Order at this time in order to assist in a smooth transition and ensure the Receiver has access to ongoing funding under the RFCA to continue construction.

7.11 In addition to serving the Receiver's Motion Record, which includes the proposed Lien Regularization Order, on the parties listed on the Service List for these Receivership Proceedings, the Receiver intends to provide notice of the Receiver's Motion to all contractors, subcontractors and other trade suppliers engaged on the Project for whom it has contact information.

8.0 RECEIVERSHIP FUNDING CREDIT AGREEMENT

8.1 Pursuant to paragraph 27 of the Receivership Order, the Receiver is empowered to borrow under a non-revolving term credit facility, by way of the Receivership Funding Credit Agreement dated October 18, 2023, among the Receiver, the RFCA Lender and IGIS, in the maximum principal amount of \$315 million (the "**RFCA**"), to fund: (i) ongoing approved Project costs ("**Project Costs**"); (ii) the Receiver's fees and expenses incurred in exercising its powers and duties as Receiver, including those of the Receiver's independent

legal counsel (such fees and expenses, the “**Receivership Costs**”); and (iii) the fees of the RFCA Lender and IGIS, including their fees, costs and expenses incurred in the preparation, negotiation and administration of the RFCA and the Receivership Proceedings.

- 8.2 The Receivership Order provides that advances under the RFCA are subject to a super-priority charge (being, the Receiver’s Borrowings Charge) over the Property, subject only to the Receiver’s Charge, the security interest of Aviva in the deposits in the Deposit Trust Account, and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
- 8.3 Advances under the RFCA are to be made in accordance with the projected cash flow forecast included therein.
- 8.4 The RFCA provides that, following its initial advance of \$80 million on October 25, 2023, the RFCA Lender may make monthly advances of up to \$30 million to fund Project Costs and Receivership Costs, based on actual expenditures from the immediately preceding month, and subject to the satisfaction of certain conditions precedent in the RFCA.
- 8.5 As at the date of this First Report, and as more fully described below, the Receiver has received funding in connection with two draws totaling \$98.9 million under the RFCA (comprised of the initial \$80 million draw and a subsequent \$18.9 million draw in January 2024). As described further below, as part of its contingency planning in connection with the Disclaimer and transition to Skygrid as new construction manager, the Receiver recently made, and the RFCA Lender approved, a third draw request in the amount of \$50 million to ensure it has sufficient funding on hand to fund construction through the transition period and beyond.

Overview of RFCA Milestones

8.6 Ongoing funding commitments under the RFCA are subject to certain conditions, including, among other things, the achievement of certain milestones (the “**Milestones**”) which are set out below, along with their respective deadlines (with reference to the “Closing Date” being the Appointment Date) and current status:

- (i) *Retention of the Project Manager on terms acceptable to the RFCA Lender within one month of the Closing Date (November 18, 2023)* – KDC was engaged as Project Manager on October 23, 2023, with the approval of the RFCA Lender.
- (ii) *Delivery to the RFCA Lender of a report on the fair market price for each condominium unit in the Project within two months of the Closing Date (December 18, 2023)* – The Receiver engaged the Market Advisors to provide the fair market value of each condominium unit, and the Receiver delivered a report in respect of same, as well as other related information, to the RFCA Lender on December 18, 2023.
- (iii) *Delivery to the RFCA Lender of a comprehensive report setting out the Project Costs incurred to date, the Cost to Complete, and expected Project revenues, in form acceptable to the RFCA Lender, within four months of the Closing Date (February 18, 2024)* – Based on information provided by Altus, KDC, MI, the Pre-construction Service Advisor and Finnegan Marshall Inc.¹⁹ in connection with the Project costs incurred to date, the Cost to Complete and expected Project revenues,

¹⁹ Finnegan Marshall Inc. was engaged by the Senior Secured Lenders in January 2024 to act as their independent cost consultant.

the Receiver prepared and delivered a report to the RFCA Lender on February 18, 2024.

- (iv) *Completion of the Severance by March 31, 2024* – The Receiver and its legal counsel are considering and advancing Severance-related matters in consultation with the RFCA Lender and their counsel and will report further on this milestone in the Receiver’s next report to the Court.
- (v) *Development of a plan acceptable to the RFCA Lender with respect to the treatment of CSAs existing prior to the Closing Date (the “CSA Plan”) and approval of such CSA Plan by the Court, within three months and two weeks of the Closing Date (February 1, 2024) (revised to April 1, 2024)* – The Receiver sought and received an extension of the deadline for this Milestone from the RFCA Lender to April 1, 2024. During the course of these Receivership Proceedings, it became clear to the Receiver that any CSA Plan will be dependent upon the outcome of a SISP and will, by necessity, require input from the ultimate owner of the Project. The Receiver is also reviewing options to optimize floor plan configuration based on input from the Market Advisors and other Project consultants, including architects and engineering consultants.
- (vi) *Delivery of a business plan in form acceptable to the RFCA Lender setting out an execution strategy for the Project including stabilization, value enhancement and the anticipated receivership termination timeline (the “Initial Business Plan”), within six months of the Closing Date (April 18, 2024)* – The Receiver, together

with its advisors, is currently advancing the Initial Business Plan, a significant component of which will include the contemplated SISP.

- (vii) *Delivery to the RFCA Lender of an updated Business Plan every six months after delivery of the Initial Business Plan* – As these Receivership Proceedings progress, in particular, once the outcome of the SISP has been determined, critical decisions regarding the future of the Project will continue to develop and the Initial Business Plan will evolve and be updated by the Receiver.

8.7 Throughout the Receivership Proceedings, the Receiver and its counsel and advisors have continued to work closely with the RFCA Lender and the Senior Secured Lenders, and their counsel and advisors, including without limitation, through regular calls, updates and reporting. The amounts advanced under the RFCA have allowed for the continued uninterrupted development of the Project as part of the Receivership Proceedings.

9.0 RECEIPTS AND DISBURSEMENTS

9.1 Actual receipts and disbursements for the period from October 18, 2023 to January 31, 2024 (the “**Reporting Period**”) are summarized in the following table:

Cash Flow Report	
<i>\$000s</i>	Actual
HST Refunds, Interest and Other Receipts	6,364
Total Receipts	\$6,364
<u>Disbursements:</u>	
Construction Costs	(54,464)
Design Related Costs	(1,416)
General, Administrative & Marketing	(2,150)
Land & Development Costs	(1,818)
Financing Commitment Fee	(4,725)
Restructuring Professional Fees	(6,195)
Total Disbursements	(\$70,768)
Net Cash Flow	(\$64,404)
<u>Cash Balance: Construction Account</u>	
Opening Cash	31,148
Net Cash Flow	(64,404)
Advances	98,872
Ending Cash: Construction Account	\$65,616

9.2 During the Reporting Period:

- (i) total receipts of approximately \$6.4 million were comprised of HST refunds, accrued interest and miscellaneous receipts; and
- (ii) total disbursements of \$70.8 million were incurred in the ordinary course of construction and included Project Costs, comprised of payments to contractors, subcontractors and other suppliers, construction management fees paid to MI, costs for various consultants including design, engineering, and architectural consultants, and for certain non-construction costs, including property taxes, insurance, permits, administrative costs, and Receivership Costs.

- 9.3 The Receiver notes that in comparison to the cash flow forecast attached to the RFCA, the Debtors' cash flow results have actualized favourably. At the time the cash flow forecast was prepared, limited information was available to the Receiver and accordingly, the forecast was prepared on a conservative basis. The majority of the positive variances can be attributed to this conservative approach.
- 9.4 The opening cash balance of \$31.1 million relates to the Debtors' cash balance (excluding amounts in their holdback account) at the commencement of these Receivership Proceedings, which the Receiver took possession of immediately following its appointment.
- 9.5 As at January 31, 2024, the Receiver had drawn \$98.9 million under the RFCA. The Receiver's cash balance as at January 31, 2024 was \$65.6 million.²⁰
- 9.6 Subsequent to January 31, 2024, the Receiver requested an additional \$50.0 million under the RFCA. The Receiver elected to request the additional \$50.0 million in order to ensure it has sufficient funding available to at a minimum fund at least three months' of construction costs, to address any potential contingencies that may arise during this period, and to support a smooth transition to the new construction manager.
- 9.7 Following the \$50 million draw, the remaining availability under the RFCA, net of accrued interest, will be approximately \$163.6 million.

²⁰ In addition to these funds held in the Receiver's Construction Account, the Receiver is also holding approximately \$14.2 million in the Holdback Account.

10.0 UPDATED CASH FLOW FORECAST

10.1 The RFCA provides that, with RFCA Lender approval, the Receiver may amend and resubmit the cash flow projection attached as Schedule A to the RFCA. The Receiver has prepared an updated cash flow forecast, together with notes and a summary of assumptions, which is attached hereto as **Appendix “K”** (the “**Updated Cash Flow Forecast**”). The Updated Cash Flow Forecast covers the four month period from February 1, 2024, to May 31, 2024 (the “**Forecast Period**”).

10.2 The Receiver notes the following with respect to the Updated Cash Flow Forecast:

- (i) limited receipts are forecast, as the CRA continues its audit of input tax credits;
- (ii) during the Forecast Period, total disbursements are projected to be approximately \$103 million and include funding ongoing construction in the ordinary course, as well as the costs of these Receivership Proceedings; and
- (iii) the opening cash balance of \$65.6 million, together with the incremental funding available under the RFCA (including the \$50.0 million of additional RFCA funding) is projected to provide the Receiver with sufficient liquidity to fund the costs included in the Updated Cash Flow Forecast through the Forecast Period.

Cost to Complete

10.3 The RFCA contemplates a maximum of \$315 million in financing for the purpose of funding the ongoing construction of the Project. As noted in the Yoon Affidavit, at the time of the Appointment Date, the Budget to July 2025 suggested that funding beyond the

maximum amount available under the RFCA would likely be required to complete construction of the Project.

10.4 In connection with the Milestones provided for under the RFCA, the Receiver, along with its advisors, has devoted significant time and effort to obtaining an accurate understanding of the status of construction of the Project and the current Cost to Complete and related timeline. As of the date of this First Report, based on revised Budget, Schedule and Cost to Complete work undertaken since the Appointment Date, the Receiver expects that the Project will not be completed by the timeframe previously projected (being March 2025), and that the Cost to Complete will exceed the maximum funding provided for under the RFCA.

10.5 Despite the revised timeline of completion of the Project and the revised Cost to Complete, the Receiver notes that the RFCA Lender and Senior Secured Lenders have advised that they are committed to facilitating the completion of the Project, whether through a transaction identified through a SISP or otherwise.

11.0 RECEIVER'S CONTEMPLATED NEXT STEPS

11.1 Following the hearing of the Receiver's Motion, the Receiver intends to finalize the design of the SISP for the Project, and then return to Court to seek approval of the SISP. The Receiver understands that the Senior Secured Lenders intend to participate in the SISP. The Receiver has been working closely with the Senior Secured Lenders and their counsel, as the priority and largest economic stakeholders, to design a SISP that results in a transaction that will see the Project being funded and continued until it is fully developed and completed. There are different forms of participation in a SISP that the Senior Secured

Lenders can take to ensure completion of the Project and, at this time, the exact nature and details of the Senior Secured Lenders participation in the SISP remain under discussion.

- 11.2 In anticipation of the proposed SISP, on or about January 17, 2024, the Receiver commenced a request for proposals process (the “**RFP Process**”) for real estate brokers. As part of the RFP Process, the Receiver contacted five real estate brokerage and advisory firms (collectively, the “**Potential Brokers**”) identified as having the requisite expertise, qualifications and capabilities to assist with the planning and implementation of the SISP.
- 11.3 The Potential Brokers were asked to submit a proposal in respect of the contemplated SISP by February 7, 2024.
- 11.4 In order to facilitate and assist the Potential Brokers in conducting necessary due diligence to prepare and submit proposals, the Receiver established an electronic data room populated with certain information relevant to the Project, and each of the Potential Brokers was given the opportunity to request further information.
- 11.5 Upon execution of a non-disclosure agreement in a form acceptable to the Receiver, the Potential Brokers were granted access to the data room, and the Receiver held meetings with the Potential Brokers to provide additional information and clarification to enable them to better understand the status of the Project and the RFP Process generally. Four of the five Potential Brokers ultimately submitted a proposal and the Receiver, in consultation with the RFCA Lender and Senior Secured Lenders, is in the process of reviewing all proposals to determine which is the most favourable.

11.6 At the next hearing, the Receiver expects to seek Court approval of:

- (i) the engagement of the selected broker who will serve as the exclusive consultant to the Receiver for the purpose of conducting the SISP; and
- (ii) the SISP, including the timeline to solicit potential transactions for the Project.

12.0 OTHER RECEIVERSHIP UPDATES

Condominium Matters

12.1 Shortly after the Appointment Date, the Receiver sent communications to all Unit Purchasers to advise: (i) of these Receivership Proceedings; (ii) of the existence of Tarion deposit insurance and ECDI through Aviva; (iii) that the Receiver is reviewing all existing CSAs in conjunction with a review of the fair market value of each applicable unit to determine what, if any, steps will be taken with respect to these agreements; and (iv) that the Receiver will provide additional information once its review is complete.

12.2 While it reviews all options in respect of the CSAs, the Receiver has paused all condominium unit sales, assignments and cancellations.

Receiver's Review of CSAs and Deposits

12.3 As at the date of this First Report, the Receiver has conducted a review of all CSAs and related deposits, and notes the following in respect of sales:

- (i) while the Receiver noted a number of exceptions, the standard CSA for the Project calls for an initial deposit on execution of the CSA plus an additional amount due within 30 days of execution that together, total 5% of the gross sale price, plus

additional 5% increments to be paid within 90, 180 and 360 days after execution of the CSA, with a final 5% due on occupancy. Based on these standard requirements and the execution dates of the CSAs, Purchasers should have paid deposits to date amounting to 20% of the gross sale price;

- (ii) the current design of the residential component of the Project contemplates 416 condominium suites of varying size and price, 345 of which the Debtors' records indicate have been sold and are subject to a CSA (collectively, the **"Purchased Units"**);
- (iii) the aggregate gross sale price of the Purchased Units is approximately \$673.2 million, including four units sold to parties related to Mizrahi with a combined gross sale price of approximately \$22.4 million;
- (iv) on a combined basis, the CSAs for the Purchased Units require deposits to date totalling approximately \$129 million, with another approximately \$36 million due on occupancy;
- (v) the Debtors' records indicate that most Unit Purchasers paid the required deposits on time. Approximately \$105 million of deposits have been paid to date; and
- (vi) a limited number of CSAs (but material from a value perspective) are currently in default because the Unit Purchaser did not pay the required deposits when they were due. A total of 25 Unit Purchasers owe overdue deposits totalling approximately \$24 million.

Commissions paid to MI

12.4 Pursuant to an exclusive listing agreement dated July 12, 2017, between the Nominee, as vendor, and MI, as agent (the “**ELA**”), MI has the exclusive right to sell the Project condominium units. It is also entitled to be paid commissions on these sales.

12.5 Certain key provisions of the ELA are as follows:

- (i) commissions of 4.89% of the net sale price are payable in respect of all sales other than those to “Friends and Family” for which commissions of 2.5% of the net sale price are payable;
- (ii) commissions are payable: (a) 33% after 10 days of execution of the APS; (b) 33% upon construction financing; and (c) 34% upon occupation;
- (iii) MI is to receive \$100,000 per month against commissions earned to a maximum of \$3.6 million from August 1, 2017, until the conclusion of the sales program, at which time advances will be reconciled against the commissions payable and any required adjustments will be made upon such final accounting;
- (iv) upon termination of a CSA due to default by a Unit Purchaser, any commissions paid are returnable to the Nominee. If a CSA is terminated for any other reason, to the extent the Nominee has received 50% or more of deposits on the respective condominium unit from Harris, Sheaffer LLP (“**Harris**”), MI is to be paid 50% of such funds up to the amount of outstanding commissions payable; and

- (v) the term of the ELA was originally three years from the date of execution but was revised thereafter to be five years, plus an additional 3 years (being July 12, 2025).

- 12.6 In addition to the ELA, the Receiver noted four agreements with third-party brokers to which either MI or the Nominee are the counterparties.
- 12.7 Prior to the receivership, total commissions of approximately \$19.4 million have been paid to MI, and commissions and other amounts totaling approximately \$900,000 have been paid to certain of the third-party brokers.
- 12.8 The Receiver is conducting a detailed review of commissions paid and will report further in respect of same, as well as any next steps with respect to the ELA, upon completion of its review.

Deposit Insurance

- 12.9 The Receiver understands that the *Condominium Act* (Ontario) requires that deposits be held in trust until, among other things, sufficient security for such deposits has been provided for, following which deposit amounts can be released from trust for the purpose of funding ongoing construction. Such security includes: (i) insurance coverage provided by Tarion, an organization that, among other things, provides deposit insurance to homebuyers and administers Ontario's new home warranty program which, in respect of new condominium unit purchases, provides deposit protection for the first \$20,000 of a unit purchaser's deposit; and (ii) third-party ECDI for deposit amounts in excess of \$20,000 that are released from trust.

- 12.10 The Debtors have obtained ECDI from Aviva up to a limit of approximately \$201 million. The Receiver has continued to pay the quarterly premium of approximately \$250,000 in respect of the ECDI to Westmount Guarantee Services Inc. (“**Westmount**”). The Receiver understands Westmount acts as agent to Aviva and manages all aspects of the Tarion bond and deposit insurance facilities, including the security, premium, fees and deposit releases.
- 12.11 Pursuant to the Deposit Trust Agreement, Harris was retained by the Nominee to act as escrow agent and hold all Unit Purchaser deposits received in connection with the CSAs in trust.
- 12.12 As at December 31, 2023, Harris was holding approximately \$3.17 million in respect of deposits, plus an additional \$908,565 in interest, and has released approximately \$102 million of deposits that the Receiver understands were used to fund construction.

Secured Creditor Communications

- 12.13 As discussed above, since the Appointment Date, the Receiver has communicated with representatives of the Coco Lender, the Hana Lender, Aviva and CERIECO in conference calls, in-person meetings and by email to discuss and provide updates in respect of the Receivership Proceedings. The Receiver developed a form of confidentiality agreement that it offered to all of these parties, each being a significant stakeholder in the Project (the “**Stakeholder NDA**”), several of which executed the Stakeholder NDA and have received confidential reporting from the Receiver regarding key matters arising during the

Receivership Proceedings, as now are more publicly disclosed in the context of this First Report.²¹

- 12.14 The Receiver has also provided information and updates regarding the Receivership Proceedings to the RFCA Lender and Senior Secured Lenders, who are also subject to confidentiality obligations in respect of the Project. The primary purpose of this information sharing is to: (i) keep these lenders apprised of the progress of Project construction; (ii) provide updates in respect of the Receiver's various ongoing work streams; (iii) seek input and approval, where required or appropriate, from the RFCA Lender in respect of certain key matters, including, for example, with respect to the Disclaimer, and the engagement of Skygrid as new construction manager of the Project; and (iv) ensure that the RFCA Lender has the information required by the RFCA to allow for further advances.

Management of Disputes and Settlements

- 12.15 The Receivership Order provides for a stay of proceedings, rights and remedies against or in respect of the Debtors, the Property, or the Developer for matters arising after the date of the Receivership Order. Since the Appointment Date, the Receiver has devoted time to managing various disputes involving the Debtors, the Developer and the Project, and to communicating with parties involved in same in connection with the stay of proceedings. Certain activities of the Receiver and its counsel in this regard are set out below.

²¹ As noted above, the Stakeholder NDA was also offered to MI, who declined to execute it.

Apple Settlement

- 12.16 Shortly after the Appointment Date, the Receiver was made aware of a settlement between Apple Canada Inc. (“**Apple**”) and the Nominee of certain litigation pertaining to a commercial lease agreement between the parties dated March 23, 2016 (as amended, the “**Lease Agreement**”). The Receiver understands that the terms of the settlement were agreed to on or about September 10, 2023, the eve of the scheduled trial of certain disputes in respect of the Lease Agreement. The Receiver has reviewed email correspondence from counsel to the parties confirming same, including correspondence to the judge seized of the matter indicating that the parties had settled the dispute.
- 12.17 Despite the agreement reached on September 10, 2023, the formal settlement documentation, the terms of which remain strictly confidential, was not fully executed until after the Appointment Date. In light of this timing, the Receiver informed counsel to the Nominee (Daoust Vukovich LLP and Morse Shannon LLP) and counsel to Apple (McCarthy Tétrault LLP) that signatures were to be held in escrow pending the Receiver’s review of the matter.
- 12.18 In connection with its review, the Receiver and its counsel reviewed legal memos prepared by counsel to the Nominee regarding the merits of the parties’ positions, as well as the potential benefits of a settlement. Based on its review, the Receiver was satisfied that the terms of the settlement agreed to among the parties prior to the Appointment Date were reasonable.
- 12.19 The Receiver sought and obtained the consent of the Applicant to proceed with implementing the settlement in accordance with the Receivership Order. In addition, the

Receiver consulted and discussed this matter with certain other significant stakeholders in the Project, none of whom objected to the settlement. In connection with the implementation of the settlement, the Receiver, with the consent of the Applicant and following consultation with other significant stakeholders, agreed to pay certain legal fees owing to counsel to the Nominee in the litigation.

CERIECO Litigation

- 12.20 Following the Appointment Date, counsel to CERIECO (Babin Bessner Spry LLP) contacted the Receiver to discuss the CERIECO Guarantee Litigation and the CERIECO Dentons Litigation (each as defined and described in the Yoon Affidavit). In light of the stay of proceedings imposed by the Receivership Order, CERIECO sought agreement from the Receiver regarding the terms by which these actions may continue against the non-Debtor defendants. The Receiver and CERIECO are in the process of finalizing these terms.
- 12.21 The Receiver understands that the CERIECO Guarantee Litigation and the CERIECO Dentons Litigation were consolidated into one action on or about November 27, 2023. Goodmans, as counsel to the Receiver, has since served a Notice of Change of Lawyer in connection with this matter, going on the record, and will receive any documents served in the litigation going forward. The Notice of Change was served to ensure that the Receiver stays apprised of any developments in the ongoing litigation, without prejudice to the stay of all Proceedings (as defined in the Receivership Order) relating to the Debtors or the Property.

Khavari Litigation

12.22 The Receiver became aware of a claim by Khashayar Khavari and Mohammad Mahdi Tajbakhsh against MI, the Nominee and GP Inc., among others, in which the plaintiffs claim an equity interest in the Project, as well as an interest in the general contractor fees earned by MI as General Contractor of the Project. Counsel to the Receiver engaged with counsel to the plaintiffs in this matter and, on behalf of the Receiver, agreed to the terms by which the plaintiffs would discontinue their action as against the Debtors in light of the stay of proceedings imposed by the Receivership Order. Goodmans has served a Notice of Change of Lawyer in connection with this matter so that it may stay informed on the litigation going forward.

Transition of Dentons Mandates

12.23 Prior to the Appointment Date, Dentons Canada LLP (“**Dentons**”) acted as counsel to the Debtors on various matters relating to the Project, including, among other matters: (i) a *Provincial Offences Act* summons relating to a noise complaint from July 2023; (ii) opposition by the Debtors to a development application relating to the adjacent property at 15-19 Bloor Street West (discussed further below); (iii) opposition by Mappro Realty Inc. to a permit obtained by the Debtors to stage construction material on Balmuto Street and to subsequent renewals of same; and (iv) a nuisance action by Mappro Realty Inc. in connection with item (iii) above, seeking an injunction to prohibit the use of Balmuto Street for construction staging and damages in the amount of \$3 million (the “**Mappro Litigation**”).

12.24 Following discussions with Dentons and certain significant Project stakeholders, the Receiver determined that Dentons' Project mandates should be transferred to Goodmans or other counsel, as applicable. In connection with this transition, the Receiver made payment of certain of Dentons' pre-filing invoices as a critical vendor payment pursuant to paragraph 4(d) of the Receivership Order, on the condition that Dentons support the transition of its Project mandates and the transfer of all relevant books and records to Goodmans or other counsel, as applicable. Dentons continues to provide transition support to the Receiver and Goodmans, as needed, but otherwise no longer acts as counsel on Project-related matters. Further, with respect to the Mappro Litigation, Goodmans served a Notice of Change of Lawyer in connection with this matter and will receive any documents served in the litigation going forward.

15-19 Bloor Street West

12.25 The Receiver retained Loopstra Nixon LLP in connection with an outstanding appeal to the Ontario Land Tribunal of a refusal by the City of Toronto to approve Official Plan and Zoning By-law Amendments to permit, *inter alia*, an increase in height and density for the lands known municipally as 15-19 Bloor Street West, being the site immediately west of the Project (the "**Appeals**").

12.26 In connection with the Appeals, the Receiver attended a voluntary mediation in January 2024. Parties to the mediation included the applicant for the development proposal at 15-19 Bloor, the City, the local ratepayers association and the condominium corporation immediately south of 15-19 Bloor Street West. At this time, the results of the mediation process remain confidential. In the Receiver's view, they do not materially impact these

Receivership Proceedings. As the appeal and mediation process continues to develop, the Receiver will provide updates to the Court with available and non-confidential information.

Trade Claims

- 12.27 Since the Appointment Date, the Receiver has managed a number of trade-related matters, including in respect of construction lien claims (or potential claims) and related issues. As of the date of this First Report, only one construction lien has been registered against the Project in respect of a claim that has not yet been resolved, as briefly outlined below.
- 12.28 In connection with its work on the Project, Cult Iron Works Limited (“**Cult Iron**”) registered a lien claim against the Project in the amount of \$444,669.05 (the “**Cult Lien**”). The Receiver consented to a temporary lift of the stay of proceedings provided for under the Receivership Order such that Cult Iron could perfect the Cult Lien, following which the Receiver proceeded with a motion to vacate same. In connection with its motion, the Receiver posted security with the Ontario Superior Court of Justice in the total amount of \$494,669.05, inclusive of \$50,000 as security for costs. The Cult Lien has since been vacated from title to One Bloor, and the Receiver and KDC continue to work with MI to address Cult Iron’s claim and resolve the underlying issues.


13.0 CONCLUSION AND RECOMMENDATION

- 13.1 For the reasons set out in this First Report, the Receiver is of the view that the relief sought in the Receiver’s Motion is reasonable, appropriate and necessary having regard to the circumstances outlined herein. Accordingly, the Receiver respectfully requests that the Court make an order granting the relief sought in the Receiver’s Motion.

All of which is respectfully submitted,


**Alvarez & Marsal Canada Inc., in its capacity as receiver and manager of
Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc.,
and Mizrahi Commercial (The One) GP Inc.**

Per:



Name: Stephen Ferguson
Title: Senior Vice-President

Per:



Name: Josh Nevsky
Title: Senior Vice-President

APPENDIX “B”

**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**

**SUPPLEMENTAL REPORT TO THE FIRST REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA INC.**

MARCH 6, 2024

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1.0 INTRODUCTION

- 1.1 On October 18, 2023 (the “**Appointment Date**”), pursuant to the Order (Appointing Receiver) (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), Alvarez & Marsal Canada Inc. was appointed as receiver and manager (in such capacities, 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**”).
- 1.2 In connection with the Receiver’s motion returnable March 7, 2024 (the “**Receiver’s Motion**”), the Receiver prepared and filed with the Court the First Report of the Receiver dated February 26, 2024 (the “**First Report**”), describing, among other things, the Receiver’s activities since the Appointment Date, including its decision to disclaim the GC Agreement and the Construction Management Agreement with Mizrahi Inc. (“**MI**” or the “**Former Developer**”), and to engage SKYGRiD Construction Inc. (“**Skygrid**”) as the new construction manager of the Project, effective March 13, 2024 (the “**Effective Date**”).
- 1.3 The First Report, the Receivership Order and copies of other public Court materials filed in connection with these Receivership Proceedings are available on the Receiver’s website at: www.alvarezandmarsal.com/theone (the “**Case Website**”).
- 1.4 This report is the supplemental report to the First Report (the “**Supplemental Report**”). The purpose of this Supplemental Report is to provide the Court and Project stakeholders with an update and additional information, in advance of the Receiver’s Motion, regarding:

- (i) the status of the transition of the Project from the Former Developer to Skygrid as the new construction manager; and
- (ii) an overview of the Receiver's position with respect to the MI Payment Motion (as defined below) and its scheduling.

1.5 This Supplemental Report should be read in conjunction with the First Report and is subject to the restrictions and limitations described therein. Capitalized terms used and not defined in this Supplemental Report have the meanings given to them in the First Report or the Receivership Order, as applicable.

2.0 UPDATE ON TRANSITION TO NEW CONSTRUCTION MANAGER

2.1 As reported in the First Report, on February 26, 2024, with the consent of the RFCA Lender as required by the RFCA, the Receiver:

- (i) issued a disclaimer notice to the Former Developer and counsel to Mizrahi, the Former Developer and Sam M Inc. on February 26, 2024 (the “**Disclaimer Notice**”), with such disclaimer to become effective on the Effective Date; and
- (ii) entered into the Skygrid Engagement Letter, with Skygrid's role as construction manager to become effective on the Effective Date.

2.2 Accordingly, as of the Effective Date, the Former Developer shall no longer act as developer or general contractor of the Project and Skygrid shall take over as construction manager of the Project.

2.3 As described in the First Report, the proposed Construction Continuance Order and the proposed Lien Regularization Order (together, the “**Proposed Orders**”) sought by the

Receiver in the Receiver's Motion are intended to support a smooth transition during and after the interim period between the date of the Disclaimer Notice and the Effective Date (the "**Transition Period**"), and to assist in ensuring the stability and ongoing construction of the Project on a go-forward basis.

- 2.4 As of the date of this Supplemental Report, the transition process has, in the Receiver's view, commenced smoothly with construction of the Project continuing as scheduled and no material disruption among the trades, suppliers or Project Employees (as defined below). These parties have generally been supportive of the transition and many have expressly advised the Receiver that they will continue to work with Skygrid to ensure that the transition goes smoothly.
- 2.5 In terms of Project funding, the Receiver received its third draw request under the RFCA in the amount of \$50 million on February 29, 2024. Accordingly, as of the date of this Supplemental Report, the Receiver is holding approximately \$103.4 million of cash on hand.
- 2.6 Further, payments owing to contractors, subcontractors and trade suppliers for their work on the Project during the January 2024 period were made by the Receiver in the ordinary course during the last week of February 2024. As of 9:00 am on the date of this Supplemental Report, no liens have been registered against the Project.
- 2.7 Since the commencement of the Transition Period, the Receiver, KDC and Skygrid have held numerous meetings with representatives of MI to discuss and advance various transition-related matters such that Skygrid can commence its role as construction manager

on March 13, 2024. To date, MI has cooperated and assisted the Receiver and Skygrid through a number of transition-related matters.

2.8 During the Transition Period to date, the Receiver's activities have included:

- (i) initiating a key stakeholder communication plan whereby letters to advise of the Disclaimer and the engagement of Skygrid, as well as other relevant Project and transition-related information, were sent to trades, consultants, suppliers and other stakeholders, including, among others, Unit Purchasers, the HCRA and the City of Toronto;
- (ii) posting the materials filed in connection with the Receiver's Motion, including the First Report and the Proposed Orders, as well as a link to the letter that was sent to all trades, contractors and suppliers engaged on the Project, to the Case Website;
- (iii) accompanying KDC and Skygrid on site tours of the Project, to, among other things, assess the safety and security protocols in place, and assess the overall status of construction of the Project in advance of the Effective Date;
- (iv) working with Skygrid and providing the necessary Project-related information such that Skygrid can commence its engagement as construction manager on the Effective Date;
- (v) together with KDC, attending numerous meetings with Skygrid, MI, and the Project's trades and consultants to familiarize Skygrid with certain contract, purchase order and other related matters to assist in transitioning the oversight of such matters to Skygrid;

- (vi) discussing with each of Tarion and Aviva and their respective legal counsel matters related to bonding, warranty, and deposit insurance;
- (vii) coordinating with MI, Skygrid, trades and consultants an accounting cut-off at the Effective Date;
- (viii) attending calls with the Debtors' insurance broker to address any insurance-related matters in respect of the transition; and
- (ix) together with KDC, responding to inquiries from trades and certain other Project stakeholders.

2.9 On February 26, 2024, the Receiver understands MI held a “town hall” meeting with MI employees to advise them of the Disclaimer and the transition to Skygrid as the new construction manager.

2.10 On February 27, 2024, Skygrid held a series of introductory meetings, which the Receiver also attended, with MI employees who are currently fully dedicated to the Project (the “**Project Employees**”). Since that time, Skygrid has held individual meetings with each Project Employee to explore opportunities for go-forward employment with Skygrid with a view to having the majority of the Project Employees remain in their current roles on the Project. As of the date of this Supplemental Report, the Receiver understands that Skygrid has offered employment to 15 Project Employees (representing approximately 60% of total Project Employees). Skygrid continues to hold discussions with certain of the remaining Project Employees and additional offers of employment may be extended to such Project Employees.

- 2.11 During the Transition Period to date, Skygrid has also held a number of meetings with the key Project consultants and trades to discuss the current status of their respective scope of work, contract and other matters, and go-forward considerations.
- 2.12 Further updates with respect to transition matters will be provided in the Receiver's next report to the Court.

3.0 MIZRAHI INC. MOTION FOR PAYMENT

- 3.1 On February 26, 2024, the same day that the Receiver issued the Disclaimer Notice and after service of the First Report, MI served a Notice of Motion (the "**MI Payment Motion**") seeking to compel payment by the Receiver of: (i) \$4,086,007.53 for the period from October 18, 2023 up to February 22, 2024 (the "**Claimed Amounts**"); and (ii) an unspecified amount for the period after February 22, 2024.
- 3.2 The core allegation underlying the MI Payment Motion is that paragraph 17 of the Receivership Order requires that the Receiver continue paying MI using the same payment practices instituted by the Debtors in the pre-receivership period (the "**MI Payment Practices**").
- 3.3 Counsel to MI has proposed a very compressed schedule for the MI Payment Motion that contemplates a hearing in early April 2024. The Receiver does not believe that this schedule is fair, or realistic. The Receiver requires time to assess the issues raised in the MI Payment Motion and to prepare a response to same, as the MI Payment Motion requires a detailed assessment of the history of the Project, amounts paid to MI to date, and the value of MI's work on the Project. In addition, the Debtors have significant potential claims against MI which may be greater than the amounts claimed in the MI Payment

Motion, and those claims should be adjudicated at the same time as the MI Payment Motion.

- 3.4 The Receiver has proposed an alternative schedule leading to a September 2024 hearing date. The Receiver believes this date is reasonable given the extent and nature of the issues between MI and the Debtors, as discussed further below.

Interpretation of Receivership Order

- 3.5 The MI Payment Motion is founded on the assertion that the Receivership Order requires that the Receiver continue the MI Payment Practices whether or not they are authorized by any contract between MI and the Debtors, and without considering whether the MI Payment Practices were reasonable.
- 3.6 The Receiver does not agree with MI's interpretation of the Receivership Order. The Receiver carefully considered the Receivership Order, and determined that its mandate included assessing whether MI was actually entitled to the amounts that it claimed.
- 3.7 Paragraph 17 of the Receivership Order applies to any Person with an oral or written agreement to supply goods and/or services to the Debtors, MI or the Project. It stops such Persons from terminating the supply of goods and/or services without leave of the Court provided that they are paid, "as determined by the Receiver":
- (i) in accordance with normal payment practices of the Debtors or the Developer, as applicable, **or**
 - (ii) with respect to the Debtors or the Developer, such other practices as may be agreed upon by the supplier or service provider and the Receiver, **or**

(iii) as may be ordered by the Court.

3.8 In the Receiver's view, the Receivership Order confers on the Receiver the right to adopt the "normal payment practices", enter into a new agreement with respect to compensation (which as described in the First Report, it tried to do, unsuccessfully), or ask the Court to fix fair compensation for the services that MI provided since the commencement of the Receivership Proceedings. As further detailed below, the Court requires an appropriate evidentiary record to consider each of the foregoing matters.

Non-Urgent Nature of the MI Payment Motion

3.9 The Receiver does not believe that the MI Payment Motion is urgent. As noted in the First Report, the Receiver has disclaimed the Construction Management Agreement and the GC Agreement. As a result, MI will not act as developer or general contractor on the Project going forward. The MI Payment Motion will not impact the progress of the Project, nor the Receivership. There is therefore no "real-time" element to the MI Payment Motion. MI is, in effect, advancing a claim for damages caused by an alleged breach of the Receivership Order. The Receiver is prepared to litigate the MI Payment Motion efficiently and expeditiously, but requires a full and fair opportunity to respond.

3.10 The Receiver also notes that the dispute underlying the MI Payment Motion is not new. The Receiver outlined its position by e-mail dated November 26, 2023, which is included in the MI Payment Motion and appended as Exhibit "Q" to the Affidavit of Mark Kilfoyle. MI has, for reasons that are unclear, redacted the e-mail in its motion material.

Investigation of the Facts Underlying the MI Payment Motion

- 3.11 The Receiver must fully investigate the facts relevant to the MI Payment Motion before it is heard. As noted previously, the Receiver does not agree with MI's interpretation of the Receivership Order. The Receiver also believes that the MI Payment Motion significantly oversimplifies the issues that must be determined in order to resolve the amounts owed between MI and the Debtors.
- 3.12 MI seeks what is, in effect, summary judgment on an as-yet unquantified claim that is likely to exceed \$6 million once fully quantified.¹ The MI Payment Motion is based on historical information, and the supporting affidavits contain 1,800 pages of historical accounting and payment information that allegedly supports MI's position. The Receiver requires time to review and understand this information, particularly because it has no firsthand knowledge of the relevant facts.
- 3.13 The Receiver will provide a further report setting out a substantive response to the MI Payment Motion. In this Supplementary Report, it only seeks to illustrate the issues that are relevant to the MI Payment Motion and its scheduling.

Authority to Implement the MI Payment Practices

- 3.14 The Receiver must assess whether MI had the authority to implement the MI Payment Practices in the first place. MI's claim rests on the "normal payment practices" (i.e., the MI Payment Practices) that were implemented when Mizrahi controlled both MI and the Debtors. The Receiver understands that Mizrahi's management of the Debtors, including

¹ Based on paragraph 31 of MI's Notice of Motion, the Claimed Amounts do not appear to include any amounts for either January 2024 or February 2024, and MI claims to have been underpaid by approximately \$1 million per month.

whether Mizrahi had the authority to authorize the payments made to MI, were contested by Coco (who controls a secured lender to the Project and holds a 50% indirect interest in the Debtors and the Project) in dispute resolution proceedings that lasted many years.

- 3.15 The Receiver must investigate the long and complicated history of the dispute between Coco and Mizrahi in order to determine whether the MI Payment Practices were properly authorized by the Debtors and appropriate.

Contractual Basis for MI Payment Practices

- 3.16 The Receiver must assess what MI is properly entitled to based on its contracts. As set out in Section 5 of the First Report, the fees claimed by MI in the MI Payment Motion are unsupported by any of the written contracts between the parties. Those contracts required that MI receive payment based on the progress of the Project against an agreed-upon budget.
- 3.17 Based on the Receiver's review, MI did not produce a reliable Budget or Schedule, and the anticipated completion date of the Project is not yet confirmed. Accordingly, a complete analysis of MI's entitlement under the applicable contracts may show that MI has in fact been overpaid.

Commercial Reasonableness of MI Payment Practices

- 3.18 Evidence will be required as to the commercial reasonableness of the MI Payment Practices and market rates for similar services. As previewed above, if the Court accepts that the Receivership Order did not require that the Receiver continue the MI Payment Practices,

then it may determine that it is appropriate to fix a fee for MI's post-receivership work. The Court will likely require the assistance of experts to reach this determination.

Potential Set-Off Claims

3.19 MI's claim for post-receivership work is only one part of a broader relationship between MI and the Debtors. As set out in the First Report, the Receiver has been investigating various potential claims that the Debtors may have against MI. These claims may, if they are successfully advanced, reduce or eliminate any obligation to pay further funds to MI and may result in MI owing amounts to the Debtors. The set-off claims being assessed by the Receiver include, but are not limited to:

- (i) MI's potential obligation to refund approximately \$4 million in commissions. MI collected approximately \$4 million in commissions on sales to Unit Purchasers that defaulted on their purchase agreements by paying no deposit or failing to pay the full deposit required by their respective CSAs. The Receiver is assessing whether these CSAs should be terminated on that basis. If these CSAs are terminated, then MI must promptly repay the related commissions;
- (ii) outstanding arrears owing to Project suppliers. Since the date of its appointment, the Receiver has become aware of vendor invoices that were funded to MI via loan advances that have not been paid on to those vendors by MI. At this time, MI has advised the Receiver that it intends to pay these invoices, however, should any amounts not be paid by MI, those amounts could form a claim against MI; and
- (iii) any potential liability relating to substantial payments advanced by CERIECO (as discussed in Sections 3 and 12 of the First Report) that were paid to unknown third

parties and do not appear to have been invested in the Project. The Receiver is investigating this issue, including whether it gives rise to any liability on the part of MI.

Cross-Motion and Scheduling

3.20 Addressing the claims noted above by way of a cross-motion will enable the Court to address the set-off of any amounts potentially owing by the Receiver against any amounts potentially owing by MI, as opposed to dealing with two independent damages awards at separate times.

3.21 In order to properly prepare materials and respond to all issues, the Receiver will require sufficient time, likely several months, to assemble its factual and expert evidence (which will be followed by the exchange of written submissions by both parties). Given the issues raised in the MI Payment Motion (which are primarily monetary), and given that the Disclaimer Notice has now been issued to MI, it is the Receiver's position that the MI Payment Motion is not urgent and need not be heard on an expedited basis.

Proposed Schedule

3.22 In light of the foregoing, the Receiver has proposed the following schedule:

- (i) Receiver's responding material and cross-motion by May 31, 2024;
- (ii) MI reply and response to cross-motion by June 28, 2024;
- (iii) Cross-examinations on affidavits, and written questions posed to Receiver, by July 30, 2024;

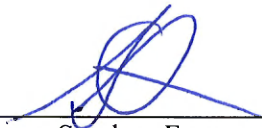
- (iv) Receiver to respond to written questions by August 16, 2024;
- (v) Factums to be exchanged, based on hearing date; and
- (vi) Hearing in September 2024.

3.23 The Receiver believes that this schedule proposal appropriately balances MI's desire for an expeditious resolution with the procedural fairness that the Receiver (and other Project stakeholders who may participate in the MI Payment Motion) require.

All of which is respectfully submitted,

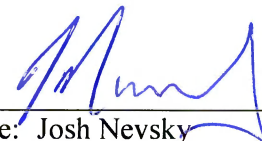
**Alvarez & Marsal Canada Inc., in its capacity as receiver and manager of
Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc.,
and Mizrahi Commercial (The One) GP Inc.**

Per:



Name: Stephen Ferguson
Title: Senior Vice-President

Per:



Name: Josh Nevsky
Title: Senior Vice-President

APPENDIX “C”

Holdback Schedule		
<i>CA\$000s</i>		
Holdback Party	Holdback Amount	Note
Modern Niagara Toronto Inc.	\$3,904	[1]
Otis Canada Inc.	2,620	
Hardwall Construction LTD.	1,831	
Ozz Electric Inc.	1,265	
Gamma Windows & Walls International Inc.	700	
Walters Inc.	364	
Clifford Restoration Limited	289	
UCC Group Inc.	282	
Cult Iron Works Ltd.	231	
United Drywall Ltd	206	[1]
Klaus Multiparking Inc.	152	
Tractel LTD.	130	
Riverside Group LTD.	126	
Bothwell-Accurate Co. Inc.	120	
Bass Curtainwalls Inc.	119	
Blockwall Masonry 18 Inc.	118	
Service Plus Aquatics, Inc.	91	
Irpinia Kitchens	56	
Bass Installation a Division of 1587855 Ontario Inc.	52	
Guardtek Systems Inc.	51	
On Floor Solutions	41	
Onyx Fire Protection Services Inc.	26	[2]
Automated Interiors Inc.	26	
Nortem Corp.	25	
GAGE Aluminum & Glass Ltd.	22	
Pereira Carpentry	21	
GNI Management Group Inc.	17	
Mar-Tec Woodworking Ltd.	16	[2]
Bike Rack Mfg. & Dist.	13	
CanAM Waste Products Inc.	10	
Seele Canada Inc.	9	
Uniqspace Solutions Ltd.	6	
Alenfrage Designer Paint Inc.	6	
Pop's Professional Caulking Ltd.	4	[1]
Vipe Construction Ltd.	3	
DA Steel Inc.	2	
Elstructure Inc.	2	
FJ Construction Ltd.	1	[2]
Total Amount of Holdback Outstanding	\$12,954	

Notes:

1. Per the confirmation received from the Holdback Party, the Holdback Amount per the Holdback Party's books and records do not fully agree to the Receiver's books and records. The Receiver is in the process of reconciling the differences, which are not significant, with the Holdback Party.
2. The Receiver has sent notices or otherwise attempted to communicate with the Holdback Party in order to confirm the Holdback Amount. However, no confirmation has been received as of the date of this Second Report. The Receiver is in the process of following up with the Holdback Party.

APPENDIX “D”

HOLDBACK RELEASE AGREEMENT

THIS AGREEMENT is dated for reference and effective _____, 2024.

AMONG:

Alvarez & Marsal Canada Inc., solely in its capacity as Court-appointed receiver and manager of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc., Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc. (collectively, the “Debtors”), and not in its personal or corporate capacity

(the “**Receiver**”)

- and -

[SUBCONTRACTOR]

(the “**Subcontractor**”)

WHEREAS:

- A. Mizrahi Development Group (The One) Inc. and Mizrahi Inc. (the “**Former Developer**”) entered into a CCDC 2 Stipulated Price Contract dated May 14, 2019, with respect to the construction of a mixed-use development project marketed as “The One”, located at 1 Bloor Street West, Toronto, Ontario (the “**Project**”). In connection with the construction of the Project, the Former Developer and Subcontractor entered into a subcontract agreement dated [date] in relation to [insert description of subcontract] (the “**Subcontract**”).
- B. The Subcontract provides for the retention of statutory holdback in the amount of 10% of the contract value (the “**Holdback**”) to be released in accordance with the *Construction Act* (Ontario) as it existed immediately prior to July 1, 2018 (the “**Construction Act**”).
- C. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated [June 6], 2024 (the “**Holdback Release Order**”), the Receiver was authorized to release the retained Holdback to the Subcontractor subject to the satisfaction (or waiver) of certain conditions as determined by the Receiver in its sole discretion.
- D. The Parties have agreed to the release of Holdback to the Subcontractor totalling \$● in order to settle all outstanding claims which Subcontractor may have in relation to the Subcontract or otherwise for work performed on the Project [for the period prior to **March 13, 2024 (the “Effective Date”)]**.¹

¹ NTD: Modify for Subcontractors who have completed all work so make settle all outstanding claims without reference to Effective Date throughout.

- E. The Subcontractor has entered into (or will, contemporaneously with entering into this Agreement, enter into) a new subcontract with the Receiver's construction manager (including any successor thereto, the "**Construction Manager**") in relation to its continuing work on the Project (the "**New Subcontract**").²

NOW THEREFORE in consideration of the mutual covenants and agreements of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. Subcontractor acknowledges and agrees that all of the construction and other work and related services to be performed by it under the Subcontract (the "**Subcontract Work**") was fully completed on or about [date] and that the Subcontract has been deemed to be certified complete as of the Effective Date pursuant to the Holdback Release Order, and accordingly all applicable lien periods in relation to the Subcontract Work under the Construction Act have expired; provided that nothing herein shall be construed so as to restrict or otherwise modify the Subcontractor's obligations under the New Subcontract or the Warranties.³
2. The Subcontractor agrees that the Debtors and the Receiver and their respective successors and assigns shall be entitled to: (i) the benefit of any and all warranties given by the Subcontractor in relationship to the Subcontract Work, whether pursuant to the Subcontract or otherwise (collectively, "**Warranties**"), including to enforce the Warranties and assert rights and claims under the Warranties directly; and (ii) assign the benefit of the Warranties to any purchaser of all or any part of the Project and/or to any lender with security over all or part of the Project or any successor or assignee of such lender's interest. The Subcontractor further agrees that: (i) to the extent the provisions of the *Ontario New Home Warranties Plan Act* (Ontario) ("**ONHWPA**") apply to the construction work and related services by the Former Developer and/or the Construction Manager (the "**Work**"), the Warranties will run for the same periods as the warranties that are provided by the ONHWPA as they apply to the Work and to the Subcontract Work (or any longer period as provided for by the terms of the Warranties); and (ii) for all other work, the Warranties period will be two years from the date of substantial performance (within the meaning of the Construction Act) of the Receiver's or any subsequent owner's contract with the Construction Manager in respect of the Project. In addition to the Warranties, the Subcontractor covenants and agrees that the Subcontract Work is in compliance with, and conforms to, the Subcontract and shall be free of defects and deficiencies in materials and workmanship and that the Receiver may assign the benefit of such covenant and agreement to any purchaser of all or part of the Project and/or to any lender with security over all or part of the Project or any successor or assignee of such lender's interest.
3. **[In conjunction with the Subcontractor entering into a new subcontract with the Construction Manager,]** the Receiver has agreed to release the Holdback in relation to

² NTD: Recital to be removed for those Subcontractors not entering into new subcontract with Construction Manager and conforming changes to be made throughout.

³ NTD: Subcontractors with completed work to provide Date of Last Supply (Form 7) and WSIB clearance certificate.

Subcontractor and its Subcontract in the amount set out in Recital D, subject to the terms and conditions of this Agreement.⁴ As a condition to the release of the Holdback hereunder:

- (a) the Subcontractor shall deliver to Knightsbridge Development Corporation (“KDC”), the Receiver’s project manager, true and complete copies of the Warranties and any operating, maintenance and training manuals relating to the Subcontract Work, and shall deliver any overstock materials to a location designated by the Receiver;
 - (b) the Subcontractor shall deliver to the Receiver, with a copy to KDC, a CCDC 9B ‘Statutory Declaration’ stating, amongst other things, that all accounts for labour, subcontracts, products, construction equipment, and other indebtedness which may have been incurred by the Subcontractor in the performance of the Subcontract Work and for which the Receiver and/or the Former Developer might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback by the Subcontractor, which amounts shall be listed and described therein and the Subcontractor covenants to forthwith pay all such amounts from the Holdback paid to it hereunder; and
 - (c) all of the conditions for payment under the Subcontract shall have been satisfied, and there shall not be any claims or liens against the Project by Subcontractor or any sub-subcontractor or supplier of Subcontractor under or in connection with the Subcontract, including, without limitation, any Lien Notice (as defined in the Lien Regularization Order of the Court dated March 7, 2024).
4. Subcontractor hereby agrees to fully indemnify and hold harmless the Receiver, the Debtors, the Former Developer and the lenders to the Project and each of their respective former, present and future successors, assigns, affiliates, lenders, advisors, lawyers, agents, shareholders, officers, directors, representatives, employees, associates and parents, from and against (i) any and all claims, liens, demands, losses, dues, debts, actions, damages, liabilities and expenses (including but not limited to legal expenses on a full indemnity basis) by or to any person, corporation or entity arising from or in connection with the release of the Holdback, and (ii) any lien, claim, action or Lien Notice made by any sub-subcontractor or supplier of Subcontractor (of any level), including, without limitation, any liens, claims or actions in respect of the subject matter of the release provided for in Section 5.
5. Subcontractor and its respective present and future successors, assigns, parents, subsidiaries and affiliated and associated corporations and other entities (collectively, the “**Subcontract Parties**”) hereby fully and forever release and acquit and discharge the Receiver, the Debtors, the Former Developer and the lenders to the Project and each of their respective former, present and future successors, assigns, affiliates, lenders, advisors, lawyers, agents, shareholders, officers, directors, representatives, employees, associates

⁴ NTD: Release of Holdback for Subcontractors not entering into new subcontract with Construction Manager will be 45 days after execution of this Agreement and Subcontractor will covenant to provide a copy of this Agreement and Statutory Declaration to its sub-sub contractors and suppliers.

and parents (collectively, the “**Released Parties**”), from any and all actions, causes of action, claims, demands, liabilities, debts, covenants, obligations, contracts, expenses, breach of trust allegations, liens, accounts and duties of whatsoever kind and nature related in any way related to the Subcontract or the Project [**for the period prior to the Effective Date**], including, without limitation, any claims in respect of holdback deficiencies.⁵

6. Subcontractor irrevocably confirms that payment of the Holdback as contemplated hereunder represents full payment for all Subcontract Work and any other work performed by the Subcontractor in connection with the Project [**prior to the Effective Date**] and that Subcontractor shall have no further claims in respect of the Subcontract Work or any other work performed in connection with Project [**prior to the Effective Date**] and, accordingly, Subcontractor shall not file or assert any lien, claim, action or Lien Notice in relation to the matters released hereunder. Subcontractor undertakes, covenants and agrees not to make any claim, participate in any proceeding or take any action against any other person or entity who would as a result of such claim, proceeding or action have a claim for contribution or indemnity against any of the Released Parties in relation to the matters released hereunder.
7. The Receiver is entering into this Agreement solely in its capacity as Receiver and not in its personal or corporate capacity. The Subcontractor agrees and acknowledges that it shall only have recourse to the assets, properties and undertakings of the Debtors that are subject to the receivership with respect to the obligations of the Receiver hereunder and that the obligations of the Receiver under this Agreement and any other agreement or instrument entered into by the Receiver in connection with this Agreement are entirely non-recourse to Alvarez & Marsal Canada Inc. and any of its affiliates and any of their respective shareholders, directors, officers or employees. For greater certainty, the Receiver shall have no personal liability under or in connection with this Agreement, the Subcontract or any related agreement, and it expressly disclaims any such liability.
8. Each of the Released Parties shall be a third-party beneficiary to the provisions of this Agreement expressed to be in their favour or in favour of the Receiver, entitled to take advantage of the benefit thereof and to enforce the obligations of the Subcontractor related thereto as if each of the Released Parties were a signatory to this Agreement. Upon request at any time from the Receiver, the Subcontractor will enter into an agreement directly with all or any of the Released Parties covenanting to provide the benefit of this Agreement to such Released Parties.
9. This Agreement is governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario, which will be deemed to be the proper law of this agreement. The parties agree that the Court shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and each hereby irrevocably attorns to the exclusive jurisdiction of the Court.

⁵ NTD: Square bracketed language to be included for Subcontractors entering into new subcontract with Construction Manager.

10. This Agreement may be executed and delivered in several counterparts, including by facsimile (or other similar electronic means, including via pdf), each of which when so executed and delivered shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first set out above.

Alvarez & Marsal Canada Inc., solely in its capacity as Court-appointed receiver and manager of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc., Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc., and not in its personal or corporate capacity

Per: _____

Name:

Title:

I have authority to bind the Receiver.

[SUBCONTRACTOR]

Per: _____

Name:

Title:

I have authority to bind the Corporation.

APPENDIX “E”



May 25, 2024

Alvarez & Marsal Canada Inc., in its capacity as
receiver and manager of all of the assets, undertakings
and properties of Mizrahi Development Group (The One) Inc.,
Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc.
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3501
Toronto ON M5J 2J1
Canada

Attention: Stephen Ferguson, Joshua Nevsky

Re: Designated Representation for Real Estate Services for the development project (the "**Project**")
located at 1 Bloor Street West, Toronto, Ontario (the "**Property**")

Dear Mr. Ferguson and Mr. Nevsky:

Jones Lang LaSalle Real Estate Services, Inc., an Ontario corporation ("**JLL Canada**"), is pleased to confirm the agreement under which the Listing Team (as defined below) has been exclusively engaged by Alvarez & Marsal Canada Inc., solely in its capacity as receiver and manager (the "**Receiver**") 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**") and not in its personal or corporate capacity, to provide the services described below in connection with the Property.

The Receiver agrees that:

- 1) an agency relationship will exist only with the Designated Agents (as defined below); and
- 2) information obtained by the Designated Agents through the Designated Agents' agency relationship with the Receiver will be restricted to the Designated Agents and will not be attributed to JLL Canada or to other licensees of JLL Canada who represent purchasers or other vendors.

I. TERM AND TERMINATION

The term of the Listing Team's engagement by Receiver shall begin as of the date hereof and shall end on the earlier of:

- (a) November 30, 2024; or
- (b) the date of the closing of a Transaction (defined below).

 INITIALS OF RECEIVER REPRESENTATIVE [] INITIALS OF LISTING TEAM REPRESENTATIVE

Upon termination of this designated representation agreement, which amends, restates, and supplements the designated representation agreement entered into between the parties on March 22, 2024, in its entirety (this "**Agreement**"), neither party will have any liability or continuing obligation to the other, except that: (i) any provision of this Agreement concerning rights or obligations of the parties with respect to representations, reimbursement, the return or delivery of documents and other property, and confidentiality

shall survive such termination; (ii) subject to Section VIII.11 of this Agreement, the Receiver shall remain liable for the Listing Team's reasonable costs and expenses incurred up to the date of termination of this Agreement; and (iii) the Listing Team and JLL Canada's right to payment of a Transaction Fee (as defined below) under this Agreement shall survive such termination.

II. SCOPE OF SERVICES

On the terms and subject to the conditions described in this Agreement, the Receiver hereby engages the Listing Team as its exclusive and sole agent to source and assist in implementing either a Third Party Transaction or a Senior Secured Creditor Transaction (each as defined below and either being a "**Transaction**"), as the same may be approved by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), and thereafter closed and implemented in accordance with the terms and conditions of any such Transaction. The following designated representatives of JLL Canada's Capital Markets Group, together with such other representatives as may be required by local law, shall provide services to Receiver hereunder: (i) Matt Picken, (ii) Bryce Gibson, (iii) Vienna Loo, (iv) Jared Cowley, and (v) Tyler Randa (each a "**Designated Agent**" and collectively, the "**Listing Team**"). JLL Canada acknowledges that the Receiver's objective is to identify the best available Transaction to maximize the value of the Property for the benefit of all Project stakeholders. To achieve that objective, the Listing Team shall perform the following services and responsibilities (collectively, the "**Services**"):

1. **Development of the Sale and Investment Solicitation Process (the "SISP")**

The Listing Team will assist the Receiver and its legal counsel in the development of a SISP, including the determination of key milestones, marketing strategy, various commercial (i.e., hotel and retail) strategies, and other key considerations, designed to source and secure either a Third Party Transaction or a Senior Secured Creditor Transaction in respect of the Project, which has two components: (a) a commercial component comprised of the underground parking space, the concourse and ground floor retail space, the space on level three (3) of the Project currently designed for a restaurant, and the spaces on levels five (5) and seven (7) through sixteen (16) of the Project currently designed for a hotel (the "**Commercial Component**"); and (b) a residential component comprised of the residential suites occupying levels seventeen (17) through eighty-four (84) of the Project, including a Wintergarden common amenity on level eighty-five (85) of the Project (the "**Residential Component**").

It is contemplated that the SISP will solicit interest in the opportunities to either (a) acquire or invest in the Project (or either of the Residential Component or the Commercial Component) pursuant to one or more sale or investment transactions (a "**Transaction Proposal**"); or (b) enter into an arrangement with the Senior Secured Creditors to complete the construction, development and realization of value from the Project on terms acceptable to each of the Receiver and the Senior Secured Creditors (a "**Development Proposal**").

2. **Preparation of Marketing Presentation**

The Listing Team will prepare a comprehensive marketing presentation (the "**Offering Memorandum**") which shall be subject to the approval of the Receiver. This Offering Memorandum will provide detailed information necessary for the analysis and evaluation of a potential Transaction. In addition to descriptive material, the Offering Memorandum will contain an explanation of the terms and conditions under which a potential Transaction may be pursued.

The Receiver has determined that the Offering Memorandum shall not list a purchase price for the Property, and that the Property shall be subject to bid or offer. The purchase price shall be

determined by the Receiver after receipt of acceptable offers or bids, in the Receiver's sole discretion.

3. Creation and Implementation of Marketing Plan

During the initial phase of the engagement, the Listing Team will identify qualified parties who may be interested in a potential Transaction. Such parties will be selected for their perceived interest in a potential Transaction and their financial capability to perform under the terms of the Offering Memorandum. Each such party will be required to sign a confidentiality agreement in a form approved by the Receiver (the "NDA"), following which they will be presented with a copy of the Offering Memorandum and provided access to an electronic data room containing information relating to the Property and a potential Transaction. Follow-up discussions and on-site tours of the Property will be conducted by the Listing Team, as needed.

4. Electronic Data Room

The Listing Team will create and maintain an electronic data room containing information relating to the Property and a potential Transaction, including, but not limited to, financial information and budgets, third party reports, leases, document summaries, physical property details, site plans and such other information as deemed appropriate by the Listing Team or the Receiver.

5. Contract Negotiations

The status of the marketing efforts, discussions, and terms and conditions of any and all offers or bids will be systematically communicated to and discussed with the Receiver. The Receiver shall refer all inquiries regarding a Transaction to the Listing Team, and the Listing Team will assist the Receiver in conducting all negotiations; provided, however, that in no event shall the Listing Team have the authority to make any commitments or representations, enter into any agreements or sign any documents on behalf of the Receiver. All final terms and conditions of a Transaction will be subject to approval by the Receiver in its sole discretion, and the Receiver shall have the sole and absolute discretion to accept or reject any offer or bid, or to withdraw the Property from the market.

6. Transaction Closing

The final phase of the Listing Team's involvement will be to assist the Receiver in the coordination of activities required to consummate a Transaction. This will include, among other things, assistance in the resolution of due diligence and business issues, and assistance in the satisfaction of closing requirements.

In addition to the Services contemplated herein, the Listing Team, as designated agents/representatives of Receiver, owe certain duties to Receiver, as outlined in the RECO Information Guide attached hereto as Schedule A. The Listing team must also fulfil all duties in accordance with the *Trust in Real Estate Services Act* (Ontario) and the rules, bylaws and code of ethics of the Real Estate Council of Ontario and any real estate board operating in the jurisdiction in which the Property is located and of which JLL Canada is a member. Notwithstanding the foregoing, the Receiver acknowledges that the Listing Team is not an expert in, and is not responsible for, any legal, regulatory, tax, accounting, engineering, environmental or other technical matters, all of which shall be solely the Receiver's responsibility; provided, however, that the Listing Team shall, based on its professional expertise, assist the Receiver in connection with such matters, including by, among other things, giving the Receiver recommendations as to experts to consult for such matters and coordinating the work of such experts with the other parties working on a potential Transaction, but in no event shall the Listing Team have responsibility for the work of such experts.

III. COOPERATION OF THE RECEIVER

Promptly after execution of this Agreement, the Receiver shall provide the Listing Team with the names of all parties, if any, with whom the Receiver has discussed a Transaction prior to the date hereof. The Receiver shall likewise inform JLL Canada and the Listing Team of the dates and nature of all communications by the Receiver with any prospective parties concerning a Transaction after the date hereof and shall refer all inquiries from such parties to the Listing Team. The Receiver shall also make available to the Listing Team such documents, materials and information regarding the Property which, in the reasonable professional judgment of the Listing Team, are necessary or appropriate for the proper marketing of a potential Transaction. In addition, the Receiver agrees to review the accuracy of the operating expenses of the Property, and all financial and other factual data and other information included in the Offering Memorandum or any other materials submitted to or prepared by the Listing Team regarding the Property; it being understood that the Receiver shall have no liability to JLL Canada in connection with same. The Receiver, the Listing Team and JLL Canada shall each have no liability with respect to the use of any data or information provided by other parties.

IV. COMPENSATION

As compensation for the Services to be performed by the Listing Team under this Agreement, the Listing Team shall be entitled to be paid a non-refundable transaction fee (the "**Transaction Fee**") equal to an amount determined in accordance with the following:

TRANSACTION FEE:

1. For any Third Party Transaction: Flat fee of \$1,900,000 + HST;
2. In the event of a Senior Secured Creditor Transaction without a Developer Investment: Base fee of \$550,000 + HST, plus an additional amount depending on the type of Transaction, as outlined below:

Transaction Type	Additional Amount
Development Proposal without a Developer Investment	\$100,000 + HST
Transaction Proposal for only the Commercial Component	\$200,000 + HST
Transaction Proposal for only the Residential Component	\$700,000 + HST

3. In the event of a Senior Secured Creditor Transaction with a Developer Investment: the Transaction Fee shall be calculated according to the following table + HST:

Developer Investment	Transaction Fee
Below \$100 million	\$800,000
Above \$100 million to and including \$200 million	\$875,000
Above \$200 million to and including \$300 million	\$950,000
Above \$300 million to and including \$400 million	\$1,025,000
Above \$400 million to and including \$500 million	\$1,100,000
Above \$500 million to and including \$600 million	\$1,175,000
Above \$600 million to and including \$700 million	\$1,250,000
Above \$700 million to and including \$800 million	\$1,325,000
Above \$800 million to and including \$900 million	\$1,400,000
Above \$900 million to and including \$1 billion	\$1,475,000
Above \$1 billion to and including \$1.1 billion	\$1,550,000
Above \$1.1 billion	\$1,900,000

And, in the event, the transaction also involves a sale of the Commercial Component, an incremental fee of \$200,000 + HST, subject to a maximum of \$1,900,000 + HST.

The Transaction Fee will become due and payable by the Receiver upon the closing date of a Transaction, whether or not through the efforts of the Listing Team, provided the Receiver has entered into a binding letter of intent or a definitive agreement for a Transaction during the term of this Agreement. Subject to the below deferral, the Receiver agrees to pay the Listing Team its Transaction Fee on the closing day of said Transaction, regardless of whether or not an invoice has been produced. Payment of the Transaction Fee noted above shall confirm that all contingencies relative to the Listing Team earning a commission have been satisfied. JLL Canada and the Listing Team acknowledge that no closing of any Transaction shall occur unless and until any such Transaction has been approved by the Court, all appeal periods or appeals in respect of any such Court approval have expired, and all conditions to closing of any such Transaction have been satisfied or waived by the applicable parties to a Transaction.

In a Transaction that includes a Developer Investment that is not paid or invested on the closing date of said Transaction, the portion of the Transaction Fee associated with such deferred Developer Investment shall also be deferred until the Developer Investment is actually paid or invested.

In addition, if the Receiver enters into a binding letter of intent or a definitive agreement for a Transaction within one (1) year following the termination of the Listing Team's engagement under this Agreement with one or more of the prospective parties who signed the NDA and such Transaction subsequently closes, the Receiver shall be obligated to pay the Listing Team the Transaction Fee determined in accordance with the terms of this Agreement upon the consummation of a Transaction. A complete list of such NDA parties shall be provided to the Receiver within fifteen (15) days following the effective date of the termination of this Agreement, together with details of the contacts between the Listing Team and the prospective parties. For the avoidance of doubt, this provision shall have no application following the closing of a Transaction hereunder and the payment of the Transaction Fee applicable thereto under the terms of this Agreement, such that no amounts of any kind will be due to JLL Canada or the Listing Team in respect of any transaction that may occur following the closing of a Transaction hereunder and the payment of the Transaction Fee applicable thereto under the terms of this Agreement.

For purposes of this Agreement, the term "**Third Party Transaction**" means any direct or indirect transaction that involves a transfer of the full ownership of the Property or all of the interests in any entity holding title to the Property to the third party (or its designee) that is coordinated by the Receiver, whether accomplished through a sale, merger, consolidation or otherwise; a combination of Transaction Proposals for the Commercial Component and the Residential Component of the Project; or any capital investment structured as a financing, joint venture or any combination thereof that, in each case, is acceptable to the Receiver and approved by the Court; and that in each case is not a Senior Secured Creditor Transaction.

For purposes of this Agreement, the term "**Senior Secured Creditor Transaction**" shall mean any transaction (which may include, for the avoidance of doubt, a transaction implemented pursuant to a Development Proposal or a Transaction Proposal for either of the Commercial Component or Residential Component of the Project), whether through a credit bid, plan of arrangement, plan of distribution, distribution order, or otherwise, and whether implemented pursuant to the current receivership proceedings or an alternative court process, through which the Senior Secured Creditors (as defined below) remain owners of the Property, or entitled to the proceeds of disposition thereof, in each case in accordance with the terms of the transaction.

For purposes of this Agreement, the term "**Developer Investment**" means cash consideration invested into the Project or paid directly to the Senior Secured Creditors, whether invested by way of debt or equity.

For purposes of this Agreement, the term "**Senior Secured Creditors**" means KEB Hana Bank as trustee of each of (i) IGIS Global Private Placement Real Estate Fund No. 301, (ii) IGIS Global Private Placement Real Estate Fund No. 434, or (iii) IGIS Global Private Placement Real Estate Fund No. 530, or any of such funds, or any designee duly appointed and controlled by any of such funds.

In the event that this Agreement is terminated for any reason (other than gross negligence or wilful misconduct on the part of JLL Canada) and no Transaction has occurred, then JLL Canada shall be entitled to a work fee of \$25,000 + HST per month up to the date of termination, to a maximum of \$200,000 + HST (the "**Work Fee**") payable upon termination; provided that, in the event that a Transaction Fee becomes payable to JLL Canada pursuant to this Agreement within one (1) year following the termination of this Agreement, the total amount of any such Work Fee shall be deducted from the amount of any Transaction Fee payable to JLL Canada under the terms of this Agreement.

V. FEES AND EXPENSES

The Listing Team will be responsible for all marketing expenses associated with producing the marketing materials. The Receiver will be responsible for expenses associated with its own tax, accounting and legal advice, as well as the costs associated with any third party reports that may be required, including but not limited to, any environmental and building condition reports.

VI. COURT APPROVAL OF AGREEMENT

This Agreement and the Receiver's obligations hereunder are subject to approval of the Court. The Receiver shall seek the Court's approval of this Agreement pursuant to a motion and form of approval order satisfactory to JLL Canada.

VII. JLL CANADA INDEMNITY

JLL Canada shall indemnify, defend (with legal counsel reasonably acceptable to the Receiver) and hold harmless the Receiver, each person or entity deemed to control or to be controlled by the Receiver, and their respective partners, shareholders, directors, officers and employees, against and from any and all

losses, liabilities, and damages (including without limitation reasonable legal fees) arising in connection with any third party action, claim, proceeding, or investigation relating to this engagement which may be imposed or incurred by reason of the gross negligence, willful misconduct, or fraud of the Listing Team (or any of its agents).

The foregoing indemnification obligation shall survive the termination of this Agreement.

VIII. GENERAL PROVISIONS

1. Notices. Any notice or other communication required or desired to be given to any party under this Agreement shall be in writing and shall be either: (a) delivered personally by hand; (b) sent by certified Canadian mail, return receipt requested; (c) sent by a nationally recognized overnight courier service; or (d) sent by email. All notices to either party shall be delivered to the following address provided either party may change such address by delivering notice to the other party in accordance with the provisions of this paragraph:

Notice to JLL Canada:

Jones Lang LaSalle Real Estate Services,
Inc.
Bay Adelaide East,
22 Adelaide Street West, Suite 2600,
Toronto, ON M5H 4E3
Attention: Matt Picken, EVP
Email: matt.picken@am.jll.com

with a copy to:

Jones Lang LaSalle Real Estate Services,
Inc.
Same Address as Above
Attention: Chief Counsel – Canada
Email: paul.greven@am.jll.com

Notice to the Receiver:

Alvarez & Marsal Canada Inc., in its
capacity as receiver and manager of all of
the assets, undertakings and properties of
Mizrahi Development Group (The One) Inc.,
Mizrahi Commercial (The One) LP, and
Mizrahi Commercial (The One) GP Inc.
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3501
Toronto ON M5J 2J1
Attention: Stephen Ferguson and Joshua
Nevsky
Email: sferguson@alvarezandmarsal.com
jnevsy@alvarezandmarsal.com

with a copy to:

Goodmans LLP
Bay Adelaide Centre - West Tower
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
Attention: Brendan O'Neill, Chris
Armstrong and Jennifer Linde
Email: boneill@goodmans.ca
carmsstrong@goodmans.ca
jlinde@goodmans.ca

All notices shall be deemed given upon receipt or upon the date such receipt is refused by the party receiving such notice.

2. Confidentiality. JLL Canada and the Listing Team agree that they are subject to the terms of the Non-Disclosure Agreement entered into between the Receiver and JLL Canada on January 19, 2024 (the “**JLL Canada NDA**”), which are hereby incorporated by reference. For the avoidance of doubt, the members of the Listing Team are “Representatives” of JLL Canada, as such term is defined in the JLL Canada NDA.

3. Announcements. The Listing Team will not issue any press releases or announcements regarding its engagement hereunder or a Transaction without the prior approval of the Receiver as to the contents thereof.
4. Taxes. As an independent contractor, JLL Canada shall be liable for all federal, provincial and income taxes payable in respect of all fees payable under this Agreement. JLL Canada agrees that no taxes will be deducted or withheld from any fees paid under this Agreement and that it is responsible for income tax declaration and payments thereof as well as for payment of Canada Pension Plan ("CPP") remittances, the collection and payment of HST and any other reporting or payments required by legislation or regulation in connection with or arising out of JLL Canada's provision of Services hereunder. Furthermore, JLL Canada is solely responsible for withholding and remitting for all its employees' income tax, employment insurance premiums, CPP contributions, provincial health insurance levies, workers' compensation premiums, and any other reporting or payments required by legislation or regulation related to the employment of any employee of JLL Canada.
5. Litigation Costs. In the event there is any litigation between the Receiver and the Listing Team/JLL Canada with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover its reasonable legal fees and disbursements in such litigation from the other party.
6. Brokers. The Listing Team shall not be required to deal with any other brokers or finders unless they are representing another party to a Transaction and have agreed to be paid by such other party, and neither the Receiver nor the Listing Team shall owe any obligations to such brokers or finders. Except as set forth in the immediately preceding sentence, each party represents and warrants to the other party that it has not and will not deal with any other brokers or finders who may be entitled to any compensation with respect to a Transaction.
7. Independent Contractor. This Agreement is intended to create an independent contractor relationship between JLL Canada/the Listing Team and the Receiver, and nothing herein shall be construed as creating an employer/employee or partnership relationship between the parties.
8. Financing. In an effort to maximize proceeds from a Transaction, the Receiver recognizes that the Listing Team may also be contacting lending institutions regarding their potential interest in financing the Property; in some cases, potential purchasers may request the Listing Team's assistance in placing debt on the Property. In such cases, the Listing Team will notify and obtain prior written consent from the Receiver before proceeding with any such requests. The Receiver will have the right to approve or decline such requests at its sole and absolute discretion.
9. Assignment; Successors. Neither party shall assign their rights or obligations under this Agreement, in whole or in part, or any payments due or to become due under this Agreement, without prior written consent of the other party (and any such attempted assignment or delegation shall be void). This Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and assigns of the parties to this Agreement.
10. Multiple Representation; Conflicts. The Receiver understands and acknowledges that the Listing Team may solicit offers for the Property from clients of JLL Canada. JLL Canada and the Listing Team are not aware of any relationship that would create a conflict of interest with the Receiver; however, JLL Canada's Commissioning & Building Analytics Group, a separate branch of JLL Canada, has a separate engagement on the Project pursuant to which it acts as commissioning agent with respect to the mechanical, electrical and building automation systems on the Project. Such engagement, including the professionals engaged in respect of same, shall have no involvement or association with the engagement contemplated herein. Out of an abundance of caution, JLL Canada has instituted an information barrier to ensure that the

confidentiality of information disclosed in connection with the engagement contemplated herein is protected. Nothing herein shall be construed as impacting the separate engagement of JLL Canada's Commissioning & Building Analytics Group with respect to commissioning services, which shall remain an entirely separate engagement governed by its own terms.

11. No Personal Liability of the Parties; Limitation of Liability. The Receiver is entering into this Agreement solely in its capacity as Receiver and not in its personal or corporate capacity. JLL Canada agrees and acknowledges that it shall only have recourse to the assets, properties and undertakings of the Debtors that are subject to the receivership with respect to the obligations of the Receiver hereunder and that the obligations of the Receiver under this Agreement and any other agreement or instrument entered into by the Receiver in connection with this Agreement are entirely non-recourse to Alvarez & Marsal Canada Inc. and any of its affiliates and any of their respective shareholders, directors, officers or employees. For greater certainty, the Receiver shall have no personal liability under or in connection with this Agreement, and it expressly disclaims any such liability. Notwithstanding anything else contained herein to the contrary, the Receiver shall look solely to the assets of JLL Canada for satisfaction of any liabilities or obligations relating to this engagement, and no officer, director, employee, partner, affiliate, shareholder or agent of JLL Canada shall be personally liable for any such liabilities or obligations. In addition, neither party shall be liable to the other for, and each party hereby waives any and all rights to claim against the other, any special, indirect, incidental, consequential, punitive or exemplary damages in connection with this Agreement, including, but not limited to, lost profits, even if such party has knowledge of the possibility of such damages, and excluding (i) third party claims for bodily injury or property damage, and (ii) claims based on the Listing Team or JLL Canada's gross negligence or willful misconduct. In no event shall the Listing Team or JLL Canada's cumulative liability to the Receiver exceed \$2,000,000.

12. Counterparts; Electronic Copies. This Agreement may be executed in any number of separate counterparts and by facsimile signatures, each of which shall together be deemed an original, but the several counterparts shall together constitute one and the same instrument. In addition, the parties agree that (i) an electronic signature shall be considered an original signature, and (ii) a copy of the Agreement shall be considered an original instrument, and each, together or separately, shall become binding and enforceable as if original and the parties may rely on the same to prove the authenticity of the Agreement.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles. The parties agree that the Court shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and hereby irrevocably attorn to the exclusive jurisdiction of the Court.

14. Waiver of Trial by Jury. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

15. Local License. The Receiver acknowledges and agrees that it has been advised by JLL Canada that it is only currently licensed and registered to carry out broker transactions (i.e. "trades in real estate") in the Provinces of British Columbia, Alberta, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland. Only if necessary in order to carry out certain Services contemplated under this Agreement, the Receiver acknowledges and agrees that JLL Canada may appoint a third party broker to act as the "co-broker" on a Transaction in order to be in compliance with any and all applicable laws of the local real estate broker authorities.

16. Privacy Consent. The Receiver hereby acknowledges that it has retained the Listing Team to provide the Services. As part of the Services, the Receiver hereby authorizes and expressly consents to the collection, use and disclosure by JLL Canada and the Listing Team, managing broker(s), associate broker(s) and representatives of JLL Canada, the provincial real estate board in which the Property is located, of personal information about the Receiver: (i) for all purposes consistent with the listing, marketing and sale of the Property, and (ii) for enforcing codes of professional conduct and ethics for members of the board.

17. Currency. All dollar amounts referred to in this Agreement are stated in Canadian dollars.

18. FINTRAC. The Receiver and JLL Canada agree to at all times: (i) comply with the legal requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and the requirements of the Financial Transactions and Reports Analysis Centre of Canada, and (ii) provide any and all reasonable assistance or information to the other party as soon as reasonably possible (but in no event no later than ten (10) business days following a request for such assistance or information) if necessary to for such party to be in compliance with the above-noted requirements.

19. Complete Agreement. This Agreement (including any schedules referred to herein and attached hereto) represents the entire agreement between the parties and supersedes any prior discussions, negotiations, representations, or agreements, written or oral, between the parties hereto or any of their respective affiliates respecting the subject matter hereof. No alterations, additions, or other changes to this Agreement shall be made or be binding unless made in writing and signed by both parties to this Agreement.

20. Survival. The provisions of Sections I, III, IV, and VIII (4 and 11) of this Agreement shall survive the expiration or termination of this Agreement.

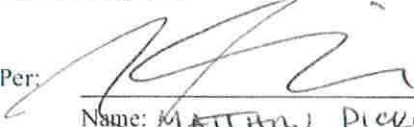
[Remainder of page intentionally left blank]

ALVAREZ & MARSAL CANADA INC.

Page 11

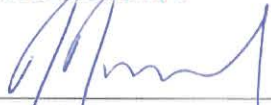
If the foregoing accurately reflects our Agreement, please execute this Agreement below and return it to the undersigned.

JONES LANG LASALLE REAL ESTATE
SERVICES, INC.

Per: 
Name: MATTHEW PICKEN
Title: MANAGING DIRECTOR

AGREED and ACCEPTED as of the date first written above.

ALVAREZ & MARSAL CANADA INC., SOLELY
IN ITS CAPACITY AS RECEIVER AND
MANAGER 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. AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY

Per: 
Name: Joshua Nevsky
Title: Senior Vice-President

SCHEDULE A
RECO INFORMATION GUIDE

See attached.

1399-0676-2508

APPENDIX “F”



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00707839-00CL

DATE: March 18, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: KEB HANA BANK v MIZRAHI COMMERCIAL (THE ONE) LP et al.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Jerome Morse Steven Weisz David Trafford	Mizrahi Inc.	jmorse@morseshannon.com sweisz@cozen.com dtrafford@morseshannon.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Mark Dunn, Kirby Cohen, Brendan O'Neill	Alvarez & Marsal Canada Inc. in its capacity as Receiver	mdunn@goodmans.ca kcohen@goodmans.ca boneill@goodmans.ca
David Bish David Levangie Nina Perfetto	Coco Parties	dbish@torys.com dlevangie@foglers.com nperfetto@foglers.com
Brendan Monahan	CERIECO Canada Corp	bmonahan@babinbessnerspry.com
Mark Sheeley	Counsel to the Senior Secured Lenders	msheeley@osler.com

ENDORSEMENT OF JUSTICE OSBORNE:

- [1] This case conference was requested to deal with the scheduling of a proposed motion by the Mizrahi Parties and the proposed cross-motion of the Receiver relating to the same issues.
- [2] Defined terms in this Endorsement have the meaning given to them in my last Endorsement issued in this proceeding, which Endorsement also describes the context for these two motions.
- [3] The Mizrahi Parties seek fees they say are owing to them, and which, they say, were paid in the ordinary course pre-filing. The Receiver takes the position that it has been unable to yet find any contractual basis for the payment of some of the fees, that during the pre-filing. They were paid to and from Mizrahi entities so did not represent arm's-length transactions, and there may also be claims to be asserted by way of setoff.
- [4] Having heard from all interested parties, I am satisfied that, and while the Commercial List will attempt to accommodate the parties and deal with matters on as expeditious a basis as is possible, these motions cannot and should not be separated and must be determined on the basis of a full record. Fairness to all parties demand nothing less. In my view the motions cannot be separated since there are issues about the entitlement of the Mizrahi Parties to the fees they claim, separate and apart from any claims of setoff, and there would inevitably be duplication and significant inefficiencies, apart from procedural and substantive unfairness if the matters did not proceed together.
- [5] Accordingly, the responding materials from the Receiver, together with its cross-motion materials, will be delivered by May 31, 2024. The Mizrahi Parties will deliver reply materials, if any, on their motion already served together with responding materials in respect of the cross-motion of the Receiver, by June 28, 2024.
- [6] Thereafter, and once all of the materials of been exchanged, and the parties have a much fuller appreciation of the claims by and against the various entities, a case conference may be scheduled before me through the Commercial List office to schedule remaining steps thereafter. As I indicated to the parties at this case conference, and as suggested by the Receiver and supported by the senior secured lenders and the Coco Parties, the expectation is that the parties will work toward a hearing (likely 1.5 – two days in length) to be scheduled in September, 2024 subject to the availability of the Court. That means that cross examinations, written questions and facta need to be all completed as soon as possible but in any event by mid-August.
- [7] The parties are free to adjust the above deadlines on the consent of all parties, and consistent with the overarching objective of having these motions heard likely in September.

Owen, J.

APPENDIX “G”

Jerome R. Morse
*Certified by the Law Society of Ontario
as a Specialist in Civil Litigation*
Direct Line: 416-941-5867
jrmorse@morseshannon.com

April 8, 2024

BY EMAIL

Mark Dunn, Brendan O'Neill
Christopher Armstrong, Jennifer Linde
Goodmans LLP
333 Bay Street, Suite 3400
Toronto ON M5H 2S7

Dear Counsel:

Re: Mizrahi Inc.
Our File No.: 50960

This responds to your Mr. Dunn's email dated Monday, April 1, 2024.

MI, as general contractor, is bound to comply with paragraph 10 of the Appointment Order that specifies MI is required to "... share information, with the Receiver in connection with all books and records,... and other documents in respect of the Debtors and or/the Property, solely in relation to the Project."

MI has done so.

MI has advised the Receiver that it has produced every bank record that reveals a receipt of a payment from the Project. Of course, the Receiver can verify the accuracy of such contention since it has the ability to ascertain what sums the Project has paid MI. If the Receiver has a record of a payment to MI that is not revealed in the banking records produced by MI, then no such discrepancy has been identified. If there are any such discrepancies, please advise so MI may ascertain if it is MI's error or an error on the part of the Project.

MI has also advised the Receiver that it has produced every bank record of MI's payment of "hard costs" and to subtrades of approved third party payments on the Project. These amounts owed by MI were approved by the Project so the Project can verify whether MI's bank records of these amounts paid for hard costs and subtrades correspond with the amounts approved by the Project. The Project (including Ms Coco) received reports of amounts paid on a monthly basis before the Receivership. MI has been recently

inundated by communications from these third parties advising MI that the Receiver sought and received from them proof of amounts paid to them referable to the Project. If the Receiver has a record of an MI payment to a third party not approved by the Project, please advise so we may ascertain if it is MI's error or an error on the part of the Project. Similarly if the Receiver contacted a third party who MI's records reveal was paid on the project who contends they did not receive the payment, please advise so we may ascertain if it's MI's error or the third party's error.

Scotiabank account #9113200222410 is the MI account that reveals the "hard costs" and subtrade payments of approved third party payments. Scotiabank account #911320091618 is MI's general account with a mix of transactions of other non-the One receipts and payments. MI has produced all records from this account that reveal what was received by MI from the project.

You state in paragraph 3 of your email: "The Bank statements are Records, within the meaning of the Receivership Order." This statement mischaracterizes the clear language of paragraph 10 of the Order. The bank account records that are "...solely in relation to the Project", as specified in paragraph 10 of the Receivership Order, must be and have been produced.

You contend in paragraph 3 of your email: "The fact that MI chose to comingle Project funds does not change that." This is a puzzling contention. If MI received money it was entitled to receive from the Project, which the Receiver can verify and presumably has done (with no discrepancies since none identified), MI could make use of what it was paid on the Project as it chooses, as would any of the third parties who received payment from MI on the Project. There is no authority for the Receiver to require third parties to produce banking records that reveal how they spent money owing and paid to them on the Project nor is there a need to do so. Why would MI be any different? It is MI's prerogative, as it would be for any third party, to spend money owing and received from the Project on dancing bears if that be the choice. Such a choice would not be the business of the Receiver nor would the records of such spending by MI or any third party be producible since "...not solely [or in fact in any way] in relation to the Project."

The Receiver overlooks the telling fact that there have been no liens on what, to date, has been a \$1B Project. Altus has approved the money the Bank has paid out to MI and MI has spent the money on the Project as approved or the Project would be inundated with liens. MI has no control over the release of funds payable to MI and it is only the bank who can authorize a payment to MI (no doubt on the recommendation of Altus).

I have addressed your email up to and including enumerated point 1. I will deal with the balance using your numbering:

2. All MI entries in all bank accounts that relate to the Project have been produced;

3. Previously produced;
4. Previously produced;
5. a. Previously produced;
 - b. Previously produced;
 - c. Previously produced;
 - d. Jenny Coco received monthly reports, as noted above, and signed the September 9, 2021, Credit Amending Agreement with KEB Hana with a revised project budget of \$1.539B (previous CCDC budgets were \$478M, then \$659M) and following September 9, 2021, Ms Coco was aware the budget was increased by the lender in August 2022 to \$1.668B and to \$2.004B by the lender in May 2023;
 - e. Previously produced; and
 - f. Previously produced.

MI has provided all historical documents that predate the use of Procore.

In a subsequent email you raised the issue of production of emails. MI has produced the drive contents of several employees and the balance is in progress. A litigation support entity has been hired and is undertaking the work associated with reviewing all the emails to identify for production to the Receiver all project-related emails.

The Receiver has not made any payment to MI on its February billings. A rationale for refusing to do so offered by the Receiver is a concern MI will not pay to third parties what MI is paid by the Receiver for those third parties. MI proposes that the Receiver pay the third parties and pay MI what the Receiver acknowledges is owed directly to MI. Another option is MI pays the third parties on the Receiver's undertaking MI will be reimbursed the full amounts MI pays to third parties with no attempt by the Receiver to reduce such amounts based upon a set off entitlement. Please advise.

Yours very truly,

J.R. Morse

Jerome R. Morse
JRM/spp

Jerome R. Morse
*Certified by the Law Society of Upper Canada
as a Specialist in Civil Litigation*
Direct Line: 416-941-5867
jrmorse@morseshannon.com

April 19, 2024

Delivered Via Email carmstrong@goodmans.ca, mdunn@goodmans.ca,
jlinde@goodmans.ca

Christopher Armstrong
Mark Dunn
Jennifer Linde
Goodmans LLP
333 Bay Street, Suite 3400
Toronto ON M5H 2S7

Dear Counsel:

Re: Mizrahi Inc.
Our File No. 50960

This responds to your email of April 16, 2024.

Approval of Payments to MI

While not explicitly raised in your email, we understand the Receiver has concerns about the approval of payments to MI and the amounts paid to MI for its general contracting services, which was addressed in our previous letter. In addition to what was set out previously relevant to the issue, be advised that following the agreement of the beneficial owners to accept the Mediator's Proposal, Ms. Coco, either directly, or through her agent, Ms. Maria Rico, had control over the release of Project funds, signed the vast majority of cheques and cheque requisitions, and approved invoices and Project costs. Ms. Coco also signed the construction draw requests up until approximately June 2022. She continued to have the obligation to sign Project cheques up until the time of the receivership. There were numerous occasions where Ms. Coco would refuse to release payment for Project expenses and her concerns were reviewed and either approved or rejected by KEB Hana, or the administrative agent.

Redaction of Records

Our client disagrees with the Receiver's interpretation of the Receivership Order with respect to MI's obligation to produce Project Records. Information on banking documents unrelated to the Project does not meet the definition of a Record within the meaning of the Order. The Receiver has no need to review banking information of MI unrelated to the Project. This is especially true in the circumstances of your admission that the Receiver

does not seek “to understand how MI used funds paid to it by the Debtors for its services”. If the Receiver has concerns about specific information that was redacted, please advise and we can work together to consider how to address those concerns. Under no circumstances (absent a court order) will MI agree to deliver unredacted bank statements that include a host of information unrelated to the Project. We note, as discussed further below, that in the past the Receiver was content to receive redacted bank statements on the understanding that it was not entitled to review banking information of MI unrelated to the Project. For example, please see the enclosed email from Kris Tanaka to Mark Kilfoyle at MI, dated December 28, 2023. All of the Receiver’s questions asked about the redacted bank statements were answered.

CERIECO

This issue was not raised in your previous email and the *bona fides* of raising it now will be an issue going forward. We are advised that the Receiver met with Mr. Mark Kilfoyle and Mr. Remy Del Bel in and around December 2023 and January 2024 and were provided with all of the documentation and a narrative about the inflows and outflows of the funds received by MI from CERIECO. The Receiver expressed it was satisfied with the complete explanation and reconciliation. We have attached the transmittals of those communications with the Receiver.

As was explained to the Receiver, CERIECO funds were directed to MI because when monies had been directed into the Project account, Ms. Coco, who had complete control over the accounting of the Project at that time, would refuse to sign cheques. You will see from a review of the Mediator’s Proposal and subsequent Project documents that Ms. Coco, or her agent, Ms. Maria Rico, had transparency and control over the Project accounts. They performed exacting reviews of the construction draw requests and any and all Project payments. Ms. Coco’s refusal to sign cheques for Project expenses threatened the Project and led to an arbitration between the beneficial owners, which resulted in the Mediator’s Proposal.

The CERIECO credit agreement provided that the funds it distributed could be paid directly to MI to avoid delay and disputes with the signing of cheques by Ms. Coco. This procedure was explained to KEB Hana, which agreed with it. The CERIECO Supplier Credit Agreement provides:

3.3 Direction Regarding Disbursement of Advances

The Credit Parties acknowledge that in order to be compliant with certain internal governance requirements, CERIECO is required to advance all Advances to Mizrahi Inc. as subcontractor, notwithstanding that all Credit Parties are primary obligors under this Agreement and that the customary practice in Ontario is to disburse Advance proceeds to the owner or to such other party the owner may direct. Accordingly, each Advance Request for an Advance incorporates an irrevocable direction to CERIECO to disburse proceeds under each Advance to that bank account designated by Mizrahi Inc.

If there are further questions arising from the documents and narrative with respect to CERIECO payments already provided to the Receiver by our client, please advise. In response to your email, the information and documentation provided establishes a complete explanation and reconciliation that all CERIECO funds were expended by MI on the Project as approved.

Payment of Hard Costs

We understand that the Receiver has already contacted suppliers to obtain their invoices and confirmation that they were paid for hard costs. The records produced to date by MI also confirm the payment of hard costs. Please identify any third parties that the Receiver has contacted that have not substantiated the payment of hard costs by MI for Project costs. Again, should there be specific information that is sought or concerns raised about specific costs, please advise and our client will address them.

Production of Further Project Documents

MI has provided all files in its possession that predate Procore. As per the Receiver's request, the balance of the emails will be provided in PST format. The litigation support firm that was engaged, Ricoh, estimates the filtration process will take 3-4 weeks from our last correspondence. In advance of the above work being completed, MI expects to begin delivering the balance of the Google drive contents of the employees on a rolling basis next week.

HST Reserve

You are correct that the Mediator's Proposal contemplated the establishment of a HST reserve fund. Ms. Coco's team had the responsibility to establish the HST reserve fund and did not do so. To the best of MI's knowledge, there is no HST reserve fund.

Our client's response to your email may be supplemented in due course as additional information is obtained, particularly as it relates to the Receiver's requests to obtain access to unredacted bank records of MI, which have only been redacted because they have no relation or relevance to the Project. Thus far there has not been a single instance where MI's response to the extensive disclosure sought has led to a substantive discrepancy. All redacted bank records of money MI received as approved must therefore correspond with the Receiver's records of money paid to MI. Similarly all sums paid to MI for third party and hard costs have been substantiated by MI with receipts for the sums paid to the third party or hard cost approved by the Project. If there are any discrepancies identified by the Receiver, none have been identified to MI to date. MI reiterates it will meet to discuss any discrepancies identified by the Receiver so it may be satisfied that MI has been paid no more than approved, and, in the case of third party costs and hard costs, such costs were incurred and paid by MI.

We pause to note that many of the issues raised by the Receiver are strikingly similar to the issues raised, multiple times, by Ms. Coco throughout the various arbitrations proceedings between parties, including baseless allegations of MI self-dealing. Ms.

Coco's attempts to obtain unfettered access to MI's records, especially those unrelated to the Project, were, unsurprisingly, unsuccessful as were her allegations of self-dealing.

By now the Receiver must recognize that Ms. Coco and KEB Hana had significant, if not complete, control and oversight over the use of Project funds and the payment of Project expenses. To date, no one has been able to identify a single substantive issue with the use of Project funds or the payment of Project expenses to or by MI. Construction draw requests were closely and, often, pedantically reviewed for accuracy and completeness. Ms. Coco sought a full audit of the Project as part of the arbitration proceeding that resulted in the Mediator's Proposal. In the Mediator's Proposal, Mr. Morrison found "nothing useful" was to be gained from a historical audit and that the previous audit undertaken by BDO disclosed no issues.

The Receiver's persistence in seeking irrelevant documentation in light of your comment that the Receiver is not looking to understand how MI used its own funds suggests this exercise is nothing but a fishing expedition designed to delay the return of MI's motion, while unnecessarily increasing the costs incurred by all parties to no one's benefit, most notably the Project. Our client is increasingly concerned that your client, the Receiver, is losing sight of its obligations to the Project.

We propose a meeting between counsel, the knowledgeable persons at MI and the Receiver to discuss how MI can satisfy the Receiver that all funds paid to MI were approved by some combination of Ms. Coco, the Senior Lender's consultant and the Senior Lender, and spent on the Project as approved.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT/vs

APPENDIX “H”

From: [Dunn, Mark](#)
To: [Jerome Morse](#)
Cc: [Steve Weisz](#); [Veronica Stasolla](#); [Sally Powell](#); [Armstrong, Christopher](#); [Linde, Jennifer](#)
Subject: RE: Mizrahi Inc.
Date: Tuesday, April 16, 2024 11:16:51 AM
Attachments: [image001.jpg](#)

Jerome,

We are in receipt of your correspondence dated April 8, 2024.

We do not agree with the interpretation of the Receivership Order or your assertions about what information has been provided.

With respect to the Receivership Order, nothing in the Receivership Order permits MI to redact Records that are provided to the Receiver. If a Record is within the scope of the Order, then it must be provided without alteration. The bank records that we have sought are, very plainly, within the scope of the Receivership Order. MI seems to have conceded that by producing a version of them. The only issue is whether MI is entitled to redact information. We believe that MI is not entitled to redact or alter the Records it must provide to the Receiver.

To the extent that MI has *bona fide* confidentiality concerns, we are prepared to agree that the Receiver will give MI notice before it files the documents requested in my April 1 letter with the Court, so that MI can seek a sealing order.

You appear to have misunderstood my reference to the co-mingling of funds. The Receiver is not seeking to understand how MI used funds paid to it by the Debtors for its services. The Receiver understands that significant amounts borrowed by the Debtors were paid into MI's accounts (rather than the Debtors' accounts), particularly funds borrowed from CERIECO. The Receiver is entitled to understand how these funds were used. The Receiver is also entitled to confirm that funds paid by the Debtors to MI for hard costs were, in fact, used to fund hard costs.

With respect to the numbered list beginning at the bottom of page two of your letter, you appear to have misidentified the subject entity from which the Receiver is requesting documents. We agree that the Project's Records held by MI were previously produced. The Receiver is not, however, requesting the Project's Records. Rather, the Receiver is now seeking MI's Records, which have not been previously provided. To the extent that MI's Records corresponding to the numbered list were previously produced, please advise when and how they are alleged to have been provided.

Your response with respect to the outstanding Project documents (including, but not limited to, e-mails) is, with respect, not sufficient at this juncture, more than four weeks after the Receiver requested the documents and MI confirmed they would be provided. I asked for specific information about when and how the documents would be provided. MI seems unwilling or unable to provide that information.

Finally, we note that the Mediator's Proposal dated November 26, 2019 (the "Mediator's Proposal") requires that the HST reserve of approximately \$1.2 million be transferred into a joint trust account or used to purchase a GIC. We understand that the HST reserve was not paid to CRA, and so we would appreciate being advised where the funds (which are property

of the Debtors) are currently held.

Based on the foregoing, it seems likely that a motion will be required to resolve these issues. We will be in touch to schedule that motion, and reserve our right to adjust the schedule for MI's payment motion to reflect the resulting delay.

Regards,

Mark

Mark Dunn

He/Him

Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Sally Powell <spowell@morseshannon.com>

Sent: Monday, April 8, 2024 7:10 PM

To: Dunn, Mark <mdunn@goodmans.ca>; boniell@goodmans.ca; Armstrong, Christopher <carmstrong@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>

Cc: Steve Weisz <SWeisz@cozen.com>; Jerome Morse <jmorse@morseshannon.com>; Veronica Stasolla <vstasolla@morseshannon.com>

Subject: Mizrahi Inc.

Please see the attached letter.

Sally Powell

Law Clerk

Direct Line: [416-941-5852](tel:416-941-5852)



133 Richmond St. West, Suite 501, Toronto, Ontario M5H 2L3
Tel: 416-863-1230 1-888-745-1230 Fax: 416-863-1241
www.morseshannon.com

PLEASE NOTE OUR NEW ADDRESS ABOVE!

APPENDIX “I”

May 2, 2024

Our File No.: 232285

Via Email (KeithBannon@glaholt.com)

Glaholt Bowles LLP
141 Adelaide St W, Suite 800
Toronto, Ontario M5H 3L5

Attention: Keith Bannon

Dear Mr. Bannon:

Re: CV-23-00707839-00CL - Lien Notice delivered to Alvarez & Marsal Canada Inc., in its capacity as receiver and manager of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc. et al. (the “Receiver”) – Demand for Particulars

We write with respect to the Form of Lien Notice to Receiver (the “**Claim**”) delivered on April 26, 2024 on behalf of Mizrahi Inc. (“**MI**”) pursuant to the Lien Regularization Order of Justice Osborne dated March 7, 2024 (the “**Order**”).

The Claim asserts that MI is owed \$11,041,387.76 (the “**Claimed Amount**”). It provides no other information with respect to the Claimed Amount, or the basis for MI’s entitlement to same.

Paragraph 22 of the Order authorizes the Receiver to demand particulars from a Lien Claimant, as defined in the Order, in connection with any Lien Claim, as defined in the Order, and requires that the Lien Claimant shall provide written particulars within ten days of delivery of the demand for particulars by the Receiver.

The Receiver cannot evaluate the Claim based on the information provided. Accordingly, the Receiver requests that MI, as a Lien Claimant pursuant to the Order, provide full particulars of the Claim, including, without limitation:

- complete details with respect to how the Claimed Amount was calculated;

- confirmation that the Claimed Amount includes the amount claimed by MI in its existing motion (the “**MI Payment Motion**”)¹ and full particulars of any amounts claimed in addition to the amounts that are the subject of the MI Payment Motion;
- whether any of the Claimed Amount seeks payment of statutory holdback; and
- full particulars with respect to the material facts alleged to establish MI’s entitlement to the Claimed Amount including, without limitation:
 - the contract (if any) that entitles MI to payment of the Claimed Amount;
 - what services and materials were alleged to have been provided by MI;
 - the date(s) that the services were allegedly provided by MI;
 - how the price for these services and materials was calculated, with reference;
 - when and how MI sought payment of the Claimed Amount before submitting the Claim; and
 - all other material facts relied on by MI.

As noted above, the Order requires that MI provide these particulars within ten days of delivery of this demand for particulars. We look forward to the prompt receipt of this information, so that the Receiver can evaluate the Claim and determine an appropriate procedure for resolving any disputes relating to the Claim. We note, in this regard, that since the Claim seems to overlap with the MI Payment Motion, it may be appropriate to consolidate this issue with the MI Payment Motion.

To avoid any doubt, the Receiver reserves all of its rights including (but not limited to) its rights under the *Construction Act* (formerly the *Construction Lien Act*), the Order and at law.

¹ Mr. Mizrahi stated that MI’s total claim was for approximately \$11 million during our discussion on April 29, 2024, but we would appreciate written confirmation of that.

Finally, we note that the Receiver has concerns with your firm's representation of MI in litigation against the Debtors. We understand that your firm has represented MI and/or the Debtors in litigation relating to the Project and has been paid directly by the Debtors, including after the Receiver was appointed. We would appreciate receiving copies of your firm's retainer letter(s) with MI and/or the Debtors with respect to all matters relating to the Project, together with information about what (if any) procedures exist to prevent the Debtors' confidential information from any prior retainers being used in connection with the Claim.

Yours truly,

Goodmans LLP



Mark Dunn
Partner
MD/es
[1399-9828-4812](tel:1399-9828-4812)

APPENDIX “J”



Barristers & Solicitors

Bay Adelaide Centre, West Tower
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

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Direct Line: +1 (416) 849-6895
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May 26, 2024

Via Email (keithbannon@glaholt.com)

Glaholt Bowles LLP
800-141 Adelaide St. W.
Toronto, ON M5H 3L5

Attention: Keith Bannon

Dear Mr. Bannon:

Re: Mizrahi Inc. ("MI") re: Lien Notice to Receiver

We write in response to your correspondence dated May 16, 2024, in which you provided further particulars to the Form of Lien Notice to Receiver, as requested by the Receiver on May 2, 2024, and revised the lien amount to \$10,845,564.30 (the "**Lien Claim**").

The Receiver has reviewed the calculations you provided in your May 16 correspondence, as well as the documentation and information in its possession related to the amounts claimed, in order to narrow the issues and reconcile the amount claimed to the information available to the Receiver.

Based on the Receiver's analysis of the Lien Claim, the **maximum amount** of the Lien Claim is **\$7,073,999.35**. We note, for greater certainty, that the Receiver denies that MI is entitled to any additional payment in satisfaction of the Lien Claim, or at all. The Receiver explicitly reserves all rights with respect to the validity and priority of the Lien Claim and otherwise under the Lien Regularization Order dated March 7, 2024.

That said, in an effort to narrow the issues, the Receiver has prepared the attached chart summarizing the Receiver's reconciliation of the Lien Claim to the information available to it. We believe that the following adjustments to the Lien Claim are appropriate, and the parties should agree to them:

- **Amounts already paid:** The Receiver has already paid **\$3,291,603.92** of the amount claimed in the Lien Claim. The Receiver may make subsequent payment for outstanding invoices and will inform MI of such payments if and when they occur. As such, the Receiver may further adjust this balance. These amounts are addressed in column D of the attached excel;
- **Invoice revisions or cancellations** (\$361,283.01) – This amount reflects invoices that were subsequently revised or cancelled by vendors;

- **Unapproved Project costs** (\$131,420.17) – This amount reflects costs that were not approved by the Receiver and were not appropriately charged to the Project;
- **Services rendered post March 13, 2024** (\$22,436.14) – These amounts relate to services provided *after* MI ceased being the Construction Manager for the Project. The underlying subcontractor invoices have been addressed by Skygrid; and
- **Additional Amounts:** The Receiver has identified \$14,816.86 as an additional amount to be included in the Lien Claim, reflecting an additional invoice and correction to the amount included in an MI invoice. These amounts are addressed in column F of the attached excel.

These amounts are summarized in the below table, and are set out more fully in the attached excel.

Note 1. Adjustments Reconciliation

<u>Original Lien Amount</u>		<u>10,865,925.74</u>
Less: Payments		(3,291,603.92)
Less: Other Adjustments		(515,139.33)
(i) Invoice Revisions or Cancellations	(361,283.02)	
(ii) Not Approved Project Costs	(131,420.17)	
(iii) Services Rendered Post March 13	(22,436.14)	
Add: Additional Amounts		<u>14,816.86</u>
Revised Total		7,073,999.35

Kindly confirm whether your client is prepared to adjust the Lien Claim to reflect all, or any, of the adjustments listed above. We would be pleased to discuss these issues with you, if that would help narrow the issues.

Yours truly,

Goodmans LLP



Mark Dunn

MD/es

cc: Brendan O'Neill, Christopher Armstrong, Jennifer Linde, Kirby Cohen, Goodmans LLP

1382-8919-3484

	A	B	C	D	E	F	G	H	I
1	Mizrahi Inc. Lien Reconciliation		DRAFT SUBJECT TO MATERIAL CHANGE						
2	SCAD		PRIVATE & CONFIDENTIAL						
3									
4	Description		Lien Amount	Receiver Paid	Disputed Amounts ¹	Additional Amounts	Revised Amount	Notes	
5									
6	C1499 - Crane Labour (Includes 5% CM Fee)		39,065.02	(29,591.32)	-	-	9,473.70	Amount paid May 3rd	
7	C1504 - Site Labour (Includes 5% CM Fee)		390,978.14	(65,286.43)	-	-	325,691.71	Amount paid May 3rd	
8	C1509 - Recoverable (Includes 5% CM Fee)		626,615.00	(585,220.17)	(47,423.00)	8,501.27	2,473.10	See Below Reconciliation	
9	C1508 - Hard Costs (Includes 5% CM Fee)		3,486,163.64	(2,183,915.18)	(354,716.33)	6,315.59	953,847.72	See Below Reconciliation	
10	C1506 - CM Fee (5%) on holdback		697,460.58	-	-	-	697,460.58		
11	C1507 - Livingston Invoices		126,466.37	(126,466.37)	-	-	-	Paid in Full + CM Fee	
12	Reconciliation Amount Agreed with the Receiver		20,361.40	(20,361.40)	-	-	-		
13	Motion Amounts as per Enclosure A		5,478,815.59	(280,763.05)	(113,000.00)	-	5,085,052.54		
14	TOTAL		10,865,925.74	(3,291,603.92)	(515,139.33)	14,816.86	7,073,999.35		
15									
16	Note 1. Disputed Amounts Reconciliation								
17	Original Lien Amount		10,865,925.74						
18	Less: Payments		(3,291,603.92)						
19	Less: Disputed Amounts (detail below)		(515,139.33)						
20	(i) Invoice Revisions or Cancellations		(361,283.02)						
21	(ii) Not Approved Project Costs		(131,420.17)						
22	(iii) Services Rendered Post March 13		(22,436.14)						
23	Add: Additional Amounts		14,816.86						
24	Revised Total		7,073,999.35						
25									
26	Recoverable Invoice		Invoiced	Paid	Disputed Amounts	Additional Amounts	Outstanding	Notes	
27	AlumaSafway Inc.		60,763.15	(60,763.15)	-	-	-		
28	Amherst Concrete Pumping Ltd.		27,958.00	(27,958.00)	-	-	-		
29	2 Bloor Inc.		45,036.12	(45,036.12)	-	-	-		
30	Canadian Springs		691.85	(655.25)	-	-	36.60	HST Variance	
31	City Disposal Group 2015 Inc.		19,433.18	(27,529.63)	-	8,096.45	-	Note: One additional invoice added	
32	Dell-Core Equipment Ltd.		654.38	(654.38)	-	-	-		
33	Dell-Core Edge Protection Ltd.		25,834.70	(25,834.70)	-	-	-		
34	Doka Canada Ltd.		68,531.04	(68,531.04)	-	-	-		
35	E.S. Fox Limited		156,263.27	(156,263.27)	-	-	-		
36	EY Design Inc.		54,361.64	(48,107.65)	(6,253.99)	-	-	Invoice revised by EY Designs to correct double counting of HST. CM Fee is outstanding on this invoice.	
37	EY Design Inc.		16,865.02	-	(16,865.02)	-	-	Ineligible Invoice - Not an approved project cost	
38	Federal Wireless Communications Inc.		220.35	(220.35)	-	-	-		
39	Herc Rentals Inc		2,289.95	(2,289.95)	-	-	-		
40	Imperial Parking Canada Corp.		108.58	(96.09)	-	-	12.49	HST Variance	
41	Jordahl Canada Inc		21,917.14	(19,430.24)	(2,486.90)	-	-	One Invoice Ineligible - Post March 13th	
42	Live Patrol Inc.		7,684.00	-	(7,684.00)	-	-	Invoice Ineligible - Post March 13th	
43	Morrow Equipment Company LLC		19,959.19	(19,959.19)	-	-	-		
44	My Construction Supply Corp.		5,845.67	-	(5,845.67)	-	-	Invoice Ineligible - Post March 13th	
45	Safety First Consulting Ltd.		33,207.48	(33,207.48)	-	-	-		
46	Scaf-Tech Inc.		4,264.76	(4,264.76)	-	-	-		
47	Stephenson's Rental Services Inc.		7,967.86	(7,967.86)	-	-	-		
48	Super Save Fence Rentals Inc.		71.98	(71.98)	-	-	-		
49	Super Save Toilet Rentals Inc.		5,351.18	-	(5,351.18)	-	-	Invoice Ineligible - Post March 13th	
50	The Fence People Limited		488.16	(488.16)	-	-	-		
51	Toshiba Tec Canada Business Solutions Inc.		619.87	(619.87)	-	-	-		
52	Tote Recycle		3,796.80	(3,796.80)	-	-	-		
53	Sheffield Moving and Storage		678.00	-	(678.00)	-	-	Ineligible Invoice - Not an approved project cost	
54	Rogers		568.03	(567.12)	-	-	0.91	HST Variance	
55	Fedex		138.92	(129.08)	-	-	9.84	HST Variance	
56	Xerox		734.50	(734.50)	-	-	-		
57	Toronto Hydro		27.10	(22.47)	-	-	4.63	HST Variance	
58	TPS		4,444.29	(4,444.29)	-	-	-		
59									
60	Subtotal		596,776.16	(559,643.38)	(45,164.76)	8,096.45	64.47		
61	CM Fee		29,838.81	(25,576.79)	(2,258.24)	404.82	2,408.60	CM Fee on EY Designs Invoice Outstanding	
62	Total		626,614.97	(585,220.17)	(47,423.00)	8,501.27	2,473.07		
63			(0.03)						
64									

	A	B	C	D	E	F	G	H	I
65		Hard Costs	Invoiced	Paid	Disputed Amounts	Additional Amounts	Outstanding		Notes
66		Hardwall Construction LTD.	954,972.74	(954,972.74)	-	-	-		
67		Innocon Partnership	111,438.54	(111,438.54)	-	-	-		
68		Myer Salit Limited	223,825.16	(223,825.16)	-	-	-		
69		Bothwell-Accurate Co. Inc.	16,644.79	(16,644.79)	-	-	-		
70		Gamma Windows & Walls International Inc.	696,089.41	-	-	6,014.85	702,104.26		Incorrect amount included on MI invoice.
71		Bass Curtainwalls Inc.	22,443.16	(22,443.16)	-	-	-		
72		Bass Installation a Division of 1587855 Ontario Inc.	528,714.82	(528,714.82)	-	-	-		
73		Bass Curtainwalls Inc.	193,512.32	-	(193,512.32)	-	-		Invoice cancelled by Bass after discussion regarding holdback
74		Yarl Metal Fabrications Inc.	3,535.77	(3,535.77)	-	-	-		
75		Earl Paddock Transportation Inc.	6,616.15	(6,616.15)	-	-	-		
76		Riverside Group LTD.	168,522.94	(168,522.94)	-	-	-		
77		Tractel LTD.	11,921.27	-	-	-	11,921.27		
78		Modern Niagara Toronto Inc.	13,305.35	(13,305.35)	-	-	-		
79		Ozz Electric Inc.	29,899.80	(29,899.80)	-	-	-		
80		Clifford Restoration Limited	338,713.62	-	(144,312.76)	-	194,400.86		Clifford has provided a revised invoice in the amount of \$194,400.86 including HST.
81									
82		Subtotal	3,320,155.84	(2,079,919.22)	(337,825.08)	6,014.85	908,426.39		
83		CM Fee	166,007.79	(103,995.96)	(16,891.25)	300.74	45,421.32		
84		Total	3,486,163.63	(2,183,915.18)	(354,716.33)	6,315.59	953,847.71		
85			(0.01)						

APPENDIX “K”

May 9, 2024

Our File No.: 232285

Via Email

Morse Shannon LLP
133 Richmond Street West
Suite 501
Toronto, ON M5H 2L3

Attention: Jerome Morse

Dear Mr. Morse:

Re: Mizrahi Inc. (“MI”)

We are writing to address issues raised in your correspondence dated May 3, 2024 and May 6, 2024. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Receiver’s First Report.

MI is obliged to provide unredacted bank statements

As you know, the Receiver has repeatedly requested copies of bank statements (the “**MI Account Statements**”) for MI’s bank account (the “**MI Account**”) so that the Receiver can understand how approximately \$200 million loaned to the Debtors was used. The MI Account Statements are Records within the meaning of the Receivership Order, and MI is obliged to produce them to the Receiver.

MI provided heavily redacted statements for the MI Account (the “**Redacted Statements**”) and repeatedly insisted that the Receiver was not entitled to any further information. In your letter dated May 3, 2024, MI conceded that the Receiver “is entitled to banking documentation that reveals any project payments” and that the Redacted Statements do not provide information about project payments. MI has offered to provide less redacted versions of the MI Account Statements, but “will only do so if the Receiver agrees that it will accept such records.”

The Receiver is not prepared to accept MI’s proposal, for several reasons:

- the MI Account Statements are “Records” within the meaning of the Receivership Order. Nothing in the Receivership Order allows MI (or anyone) to provide redacted copies of Records;

- MI has not articulated any legally cognizable explanation for the redactions. It would appear that MI simply does not want the MI Account scrutinized. This does not meet the high bar for redacting a relevant document;¹
- Even if some redactions were acceptable (and the Receiver does not agree that they are), the Receiver cannot agree to accept MI's proposed redactions – and seemingly forgo its ability to request unredacted records – without an opportunity to first review and analyze them; and
- The proposed redaction process will be time consuming, and the Receiver is seeking to move forward with its mandate expeditiously. Unredacted statements can be provided immediately.

Based on your correspondence, it seems clear that a motion will be required to address this issue.

Electronic Project Records

As you know, MI has an obligation to transfer all Project documents in its possession including, but not limited to, e-mails relating to the Project to the Receiver (the “**Project Documents**”). In your letter dated April 16, 2024, you advised that the Project Documents would be provided no later than May 8, 2024 (within “three or four weeks” of April 8, 2024). That deadline has now passed, and the Receiver has not received the Project Documents.

In light of the foregoing, we have been instructed to move for an order compelling production of the MI Account Statements and the Project Documents.

CM Fee on Holdback

MI has demanded payment of a 5% construction management fee on holdback amounts owed to contractors that worked (or are working) on the Project.

Without waiving any rights or admitting any fact for the purpose of the MI Payment Motion (as defined in the Supplemental Report to the First Report), the Receiver acknowledges that MI has not been paid a construction management fee on the holdback amounts (a “**Holdback CM Fee**”).

The Receiver does not, in any event, agree, that any Holdback CM Fee would be due now. The earliest any Holdback CM Fee could be due is if and when the underlying holdback amounts are released to contractors. The Receiver is considering when and how the holdback amounts should be released, and it expects to seek direction from the Court on this issue.

We note, to avoid any doubt, that the Receiver reserves all of its rights in respect of any Holdback CM Fee, including its right to set off any debts owed by MI to the Debtors against any Holdback CM Fee. Further, it has not determined whether any Holdback CM Fee is properly payable (in whole or in part) in the circumstances of the receivership.

¹ See, for example, *Beiko v Stone*, 2019 ONSC 1703.

MI Payment Motion Schedule

As you know, the current schedule for the MI Payment Motion contemplates delivery of the Receiver's motion record by May 31, 2024. We believe that the schedule will need to be adjusted to:

- allow the Receiver time to receive and review the MI Account Statements, following the determination of the motion; and
- allow the Receiver to consider, and respond to, the Lien Notice to Receiver (the "**Lien Notice**") delivered by MI on April 26, 2024, after MI particularizes its claim in response to the Receiver's demand for particulars dated May 2, 2024. Since the Lien Notice appears to relate to the same or similar issues to those raised in the MI Payment Motion, the two issues should likely be heard together. However, the Receiver cannot assess substantive or procedural issues relating to the Lien Notice until MI provides particulars of the claim advanced in the Lien Notice.

We understand that the MI Payment Motion has not yet been scheduled, and we believe that it is appropriate to advise the Court of these issues before hearing dates are fixed.

Conclusion

In light of the foregoing, the Receiver intends to contact the Court to canvass Justice Osborne's availability for a case conference to:

- Schedule the Receiver's motion for production of the MI Account Statements;
- Address any procedural issues relating to the Lien Notice; and
- Adjust the schedule for the MI Payment Motion.

I look forward to hearing from you.

Yours truly,

Goodmans LLP



Mark Dunn
Partner
MD/es

cc: Christopher Armstrong, Brendan O'Neill, Kirby Cohen and Jennifer Linde, Goodmans LLP
Stephen Ferguson, Joshua Nevsky, Melanie MacKenzie, Fiona Mak, Andrew Sterling and Ethan Krieger, Alvarez & Marsal Canada Inc.

1406-1517-5948

APPENDIX “L”

Mizrahi Development Group (The One) Inc et al.

Monthly Cash Flow Forecast for the Period May 1, 2024 to October 31, 2024

Unaudited, CA\$000s

Cash Flow Month End	Notes	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	6-Month Total
Receipts	1	\$ 1,730	\$ 1,724	\$ 1,074	\$ 1,930	\$ 2,072	\$ 2,453	\$ 10,982
<u>Disbursements</u>								
Construction Costs	2	\$ (14,508)	\$ (15,843)	\$ (19,156)	\$ (20,839)	\$ (21,140)	\$ (21,140)	\$ (112,626)
Design Related Costs	3	(749)	(749)	(944)	(944)	(944)	(749)	(5,079)
General, Administrative & Marketing	4	(529)	(3,850)	(739)	1,820	(490)	(739)	(4,527)
Land & Development Costs	5	(326)	(2,186)	(673)	(673)	(673)	(326)	(4,857)
Restructuring Professional Fees	6	(1,988)	(1,820)	(1,783)	(2,184)	(1,601)	(1,601)	(10,978)
Total Disbursements		\$ (18,100)	\$ (24,447)	\$ (23,296)	\$ (22,820)	\$ (24,849)	\$ (24,555)	\$ (138,067)
Net Cash Flow		\$ (16,370)	\$ (22,723)	\$ (22,223)	\$ (20,891)	\$ (22,777)	\$ (22,102)	\$ (127,085)
<u>Cash Balance</u>								
Opening Cash		\$ 79,171	\$ 62,801	\$ 70,077	\$ 70,355	\$ 71,964	\$ 71,687	\$ 79,171
Net Cash Flow		(16,370)	(22,723)	(22,223)	(20,891)	(22,777)	(22,102)	(127,085)
Advances		-	30,000	22,500	22,500	22,500	22,500	120,000
Ending Cash		\$ 62,801	\$ 70,077	\$ 70,355	\$ 71,964	\$ 71,687	\$ 72,085	\$ 72,085
<u>Receivership Facility</u>								
Opening Facility Capacity		\$ 159,867	\$ 158,548	\$ 127,014	\$ 102,724	\$ 78,227	\$ 53,593	\$ 159,867
Draw		-	(30,000)	(22,500)	(22,500)	(22,500)	(22,500)	(120,000)
Accrued Interest (Paid in Kind)		(1,319)	(1,534)	(1,790)	(1,997)	(2,134)	(2,415)	(11,189)
Ending Capacity		\$ 158,548	\$ 127,014	\$ 102,724	\$ 78,227	\$ 53,593	\$ 28,679	\$ 28,679
<i>Memo: Total Liquidity</i>		\$ 221,349	\$ 197,091	\$ 173,078	\$ 150,191	\$ 125,281	\$ 100,764	

Mizrahi Development Group (The One) Inc et al.
Monthly Cash Flow Forecast for the Period May 1, 2024 to October 31, 2024
Notes and Summary of Assumptions

Disclaimer

*In preparing this cash flow forecast (the “**Forecast**”), the Receiver has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.*

The Forecast is presented in thousands of Canadian dollars.

Notes

(1) Receipts

Receipts primarily include input tax credit returns. No receipts from the sale of condominium units or related deposits have been included during the forecast period.

(2) Construction Costs

Construction costs, which include hard costs, construction management fees, and project management fees, are based on estimates from the Receiver's consultants, and may be subject to change. Consistent with past practice, costs are forecast to be paid approximately one month following the month in which they were incurred.

(3) Design Related Costs

Design related costs, which include the fees of architects, consultants, and engineers, are based on estimates and historical trend, with input from the Receiver's consultants, and may be subject to change. The Forecast also includes certain additional costs related to the unit reconfiguration. Consistent with past practice, costs are forecast to be paid approximately one month following the month in which they were incurred.

(4) General, Administrative, & Marketing

General, administrative, and marketing costs, which include project level legal fees, audit fees, advertising costs and other costs, are based on estimates with input from the Receiver's consultants, and may be subject to change.

(5) Land & Development Costs

Land and development costs, which includes estimates for realty tax, land related legal fees, building permits, and builders insurance premiums, are based on estimates with input from the Receiver's consultants, and may be subject to change.

(6) Restructuring Professional Fees

Includes the fees of the Receiver, the Receiver's counsel, and the RFCA Lender's counsel.

**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

**SECOND REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA INC.
MAY 28, 2024**

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