

**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**

**NOTICE OF OBJECTION**

June 3, 2024

**TORYS LLP**  
79 Wellington Street West, Unit 3300  
Toronto, Ontario, M5K 1N2  
Tel. (416) 865-0040

David Bish  
LSO#41629A  
E-mail: dbish@torys.com

**FOGLER RUBINOFF LLP**  
77 King Street West, Suite 3000, P.O. Box 95  
Toronto, Ontario, M5K 1G8  
Tel. (416) 864-9700

Nina Perfetto  
LSO#27452N

E-mail: nperfetto@foglers.com

David Levangie  
LSO#57180I  
Email: dlevangie@foglers.com

Counsel to Coco International Inc. and  
12823543 Canada Ltd. (the “**Coco Parties**”)

## NOTICE OF OBJECTION

### A. Overview

1. The Coco Parties have submitted from the outset of these proceedings that the best interests of all stakeholders were served by the timely launch and conclusion of a sale of the subject condominium project known as The One (the “**Project**”). Realizing on a partially completed distressed real estate development is not complicated and has been done countless times.
2. The Coco Parties warned at the outset of these proceedings of prolonged delay and the potential impact that would have on creditors’ potential recoveries. These proceedings have been ongoing since October 18, 2024 – almost 8 months. In comparable distressed real estate development project in Canada, the development of a SISP occurs long before this point.
  - For example: over \$1 billion of Toronto condominium projects were realized upon in the recent receivership proceedings of Cresford Group and the SISP in respect of those projects was developed and brought for Court approval within approximately two months of the commencement of the proceedings. It is worth noting that those proceedings presented a comparable case to The One, as there were serious allegations against the project developer / principal causing the principal secured lender to seek the appointment of a receiver and to fund the continued construction of the projects while they were sold (and with the lender credit bidding to buy one of the projects). See ([33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership \(Cresford Group\) | PwC Canada](#) and [The Clover on Yonge Inc., The Clover on Yonge Limited Partnership, 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership \(Cresford Group\) | PwC Canada](#))
3. The Receiver has at long last come forward with a motion to approve a sale and investment solicitation process (the “**SISP**”). The delay has not been caused by the Receiver, but rather by the Project’s senior secured lenders (the “**Senior Secured Lenders**”). The Senior Secured Lenders have made clear from the outset that they wish to fund the Project for the next 3 ½ years rather than see it sold to another party. As the apparent first-ranking secured creditor and provider of funding to the Receiver, the Senior Secured Lenders have dictated the pace and focus of the proceedings.
4. The Coco Parties do not object to a sales process – they have consistently said that should occur. However, the Cocos object to the SISP as it has been designed; particularly, the requirement that no bidder may proceed unless it agrees to pay a minimum of \$1.2 billion to acquire the Project. It is a certainty, as discussed below, that this bid floor will result in no qualified bids and will deter purchasers from engaging in the SISP. The SISP with this bid floor has been intentionally designed to fail – that is, to produce no bids – so as to then justify permitting the Senior Secured Lenders to finance construction of the Project for the next 3 ½ years. The Coco Parties further object to the decision not to disclose to stakeholders and to the Court material information pertaining to the SISP.
5. The Coco Parties and the Receiver have a fundamental conceptual disagreement. The Receiver – well aware that the SISP as designed with this bid floor will produce no bids – believes that

it is nonetheless a justified course of action because: (i) it believes that the Senior Secured Lenders are the fulcrum creditors with the only economic interest at stake; and (ii) it accepts, as a result, that the Senior Secured Lenders are free to impose a bid floor irrespective of the chilling effect it is certain to have. The Coco Parties do not question and are not impugning the competence or integrity of the Receiver; rather, they disagree that the interests of the Senior Secured Lenders entitle them to dictate a commercially unreasonable path. The Coco Parties reject the “it’s their money, they can do as they wish” approach that underlies the SISP and the Receiver’s comfort with the SISP.

6. The Coco Parties requested additional information from the Receiver in connection with this motion. The information request and response from the Receiver are attached hereto as Schedule “A”.
7. Position of the Coco Parties. The Coco Parties submit that the Court should do one of two things. First, if the Court is satisfied that the position of the Senior Secured Lenders entitles it to do as it wishes, then the Court should dispense with the pretense of a SISP that is designed to produce no bids and, in doing so, set up the Senior Secured Lenders’ funding plans. If that is the only viable path forward, the Receiver should instead bring a motion to approve the Senior Secured Lenders’ plan to finance construction for the next 3 ½ years and dispense with the pretense of a market check. Second, and in the alternative, if the Court believes that a SISP is an appropriate course to pursue, the Court should be satisfied that the SISP is structured to maximize the prospects of receiving bids rather than serve only to confirm that there are no bids on the terms dictated by the Senior Secured Lenders.

#### B. SISP is Designed to Fail

8. The SISP is designed to fail. It is a certainty that no qualified bids will be received. This is achieved principally by the SISP’s dictating that no bidder is permitted to bid less than \$1.2 billion. No one will bid that amount – that is a certainty given the simple economics at play.
9. The Receiver has done extensive work to confirm the expected costs to complete construction of the Project. If a purchaser must pay \$1.2 billion or more to buy the Project and must also invest a further, say, \$700 million for example, to complete construction, it will have invested \$1.9 billion into the Project. No purchaser will do this unless the Project will yield revenues of at least that amount. It is a certainty under any model or forecast that the Project revenues will not match this amount. It is therefore a certainty that no one will bid \$1.2 billion or more. The Receiver knows this and has been candid about that fact in its discussions with the Coco Parties to date. The Senior Secured Lenders know this (and have all the same revenue and expenditure data available to them that makes clear that no bidder can meet the bid floor).
10. The Receiver has not provided the Court with the revenue and expenditure data that would conclusively show that no bidder will pay \$1.2 billion for the Project. The Coco Parties believe the Court should have this information and requested it from the Receiver. The Receiver delayed providing these figures, doing so only on June 2, 2024, after requiring the Coco Parties to accept strenuous confidentiality measures and barring the Coco Parties from providing this information to the Court without first bringing a motion for a sealing order (there being no time to now prepare a motion for sealing ahead of the June 6 hearing). If the Court had these

figures, they would conclusively demonstrate that there is no reasonable prospect of anyone paying \$1.2 billion for the Project.

11. The Broker retained by the Receiver to conduct the SISP has agreed to a fee structure that reflects the Broker's view of the value of the Project. This is set out in the engagement letter of May 25, 2024, found at Tab 2(E) of the Receiver's Motion Record. The Broker identifies a range of twelve possible bid outcomes and the corresponding fees it will earn in each case. That range is between \$800 million and \$1.1 billion. The Broker is so confident that it can obtain bids of \$800 million or more that it is prepared to not be paid if it cannot do so. At the other end of the spectrum, the "home run" in which the Broker has produced the most extraordinary result and is therefore entitled to the highest fee is a deal for \$1.1 billion. The Broker – and the Receiver, the Senior Secured Lenders, and the Coco Parties – know that the Project simply won't generate bids at a floor of \$1.2 billion.
12. The Receiver did not come up with the \$1.2 billion bid floor – it has been unilaterally dictated by the Senior Secured Lenders. The Senior Secured Lenders picked the bid floor precisely because it ensures no bids and safeguards their plans to control the Project over the next 3 ½ years. So far as the Coco Parties understand, the Receiver does not agree that that is a reasonable floor and it is aware that this will preclude any qualified bids in the SISP. But the Receiver accepts the proposition that the Senior Secured Lenders are entitled to dictate this number irrespective of its impact on the outcome of the SISP because they have the fulcrum economic interest. The Receiver does not believe it has any basis to refuse the Senior Secured Lenders' demand for a bid floor of \$1.2 billion, irrespective of the Receiver's views as to the effect this may have on the outcome of the SISP. The Coco Parties believe the Receiver ought to have disclosed to stakeholders and to the Court that the SISP is expected to produce no bids with this bid floor in place, as well as explaining the Receiver's comfort in supporting the bid floor demanded by the Senior Secured Lenders.
13. This case is fundamentally different than any other SISP. If the Senior Secured Lenders were credit bidding and acquiring the Project for \$1.2 billion, the Coco Parties would have no objection to the SISP or the credit bid. It is well accepted that a secured creditor that does not wish to see its collateral sold in receivership for too low a recovery may choose instead to establish a floor price at which it will buy the collateral. The option in realizing on the collateral is to own the collateral rather than see it sold for an amount that will result in a recovery that is not acceptable to the secured creditor. It is "put up or shut up" – a secured creditor may own the collateral to prevent its being sold for too little. The fundamental choice is between owning the collateral and receiving the sale proceeds. There is no third option available to secured creditors where they may simply refuse to permit the collateral to be sold.
14. What is unprecedented in this case is that the Senior Secured Creditors are not credit bidding. They are imposing a \$1.2 billion bid floor that precludes anyone else from buying the Project but they also will not buy the Project – they're simply blocking the sale of the Project. This is the crux of the Coco Parties disagreement with the Receiver regarding the SISP: the Receiver believes the Senior Secured Lenders are entitled to this third option (i.e., blocking a sale of the collateral to other even though they are unwilling to purchase the collateral themselves). The Coco Parties do not agree. Having (albeit reluctantly) sought the appointment by this Court of

a receiver, the Senior Secured Lenders are now obstructing one of the principal objectives of a receivership remedy: the realization upon the collateral over which the receiver is appointed.

15. The Receiver notes in its First Report dated February 26, 2024 (e.g., s. 5.27, and s. 11 and following) that it has been actively developing a SISP since late 2023. A SISP actively being formulated does not take that long to complete. That it has taken the Receiver more than 6 months to draft a SISP is not the fault of the Receiver – it has been delayed by the Senior Secured Lenders, including because of a significant change in its strategy.
16. At the time of the Receiver’s First Report and as set out in the First Report, the Receiver believed that the Senior Secured Lenders would, in fact, be credit bidding and that a SISP would proceed in short order. The Receiver confirmed the Senior Secured Lenders’ intentions at s. 11.1 of the First Report (“The Receiver understands that the Senior Secured Lenders intend to participate in the SISP”). Again, the Coco Parties did not object to a credit bid by the Senior Secured Lenders and had numerous discussions with the Receiver to understand whether the Senior Secured Lenders would credit bid all or less than all of their debt.
17. At the March 7, 2024, court hearing to which the First Report related, the Receiver’s counsel – confident that a Senior Secured Lenders’ credit bid was forthcoming and a SISP launching in March 2024 – argued strenuously and elegantly in favour of a SISP and stressed repeatedly that “the Project requires an owner”, including because of the important decisions that an owner needs to make and that should not be made by a Receiver. This included, in the submissions of the Receiver’s counsel, decisions about reconfiguration of the building – the very decision the Receiver now seeks to make. Counsel to the Coco Parties supported and echoed the Receiver’s submissions in court on March 7, 2024 – the Project does require an owner and these decisions are best made by an owner and not by a receiver.
18. Now, the Receiver: (i) no longer believes the Project urgently requires an owner; (ii) is prepared to make the very decisions it previously submitted ought not to be made by the Receiver and should only be made by an owner; and (iii) attests in the Second Report that the Senior Secured Lenders will not be participating in the SISP.
19. Incredibly, only after the March 2024 court attendance did the Senior Secured Lenders come to understand that they would be subject to a foreign ownership tax upon their acquisition of the Project. The Coco Parties understand this could be as much as \$300 million in tax payable. For this reason, the Senior Secured Lenders have abandoned their plans to credit bid and openly acquire the Project. This belated realization has led to further delay, a reversal in tactics, and a reworking of the SISP. The months of delay that has since ensued is due to the Senior Secured Lenders having to pivot and the Receiver’s waiting patiently for the Senior Secured Lenders to figure out some means to, in effect, own the Project without owning the Project (i.e., obtain all of the benefits of ownership and control, without the drawbacks arising from ownership, including the foreign ownership tax consequences).
20. The anticipated credit bid from the Senior Secured Lenders is reflected in the executed engagement letter with the Broker dated March 22, 2024. This engagement letter should have been disclosed to stakeholders and to the Court. A copy is attached hereto at Schedule “A” as part of the additional information disclosed by the Receiver in response to questions from the

Coco Parties. The second May 25, 2024, engagement letter with the Broker was made necessary because of the Senior Secured Lenders' unwillingness to credit bid and the resulting changes to intended transaction and Broker fee structure that resulted (as is apparent from contrasting the two engagement letters, particular the fee sections).

21. The Receiver, mindful of the Coco Parties' prospective objections, provided a draft of the SISP to counsel for the Coco Parties on May 16, 2024. The parties – including counsel for the Senior Secured Lenders – met to discuss the SISP on May 23, 2024. The Coco Parties were concerned with the numerous features of the SISP that discourage bidding. Following that meeting, counsel to the Receiver asked the Coco Parties to set out their objections to the SISP in writing, and they did so by email of that same day. The Receiver requested permission to share these objections with the Senior Secured Lenders, which the Coco Parties consented to. The list of ways in which the SISP (as drafted at that time) would discourage bidding consisted of the following (when considered collectively and not individually in isolation):

- No bid or combination of bids that are less than \$1.2 billion in the aggregate are permitted. The potential revenues and projected costs ensure no such bid(s) will be received.
- The Receiver has the unfettered ability to change the rules on bidders at any time simply because the Receiver believes it's beneficial to do so (s. 7).
- The Receiver can change any milestones at any time simply because it believes it is appropriate (s. 5).
- The Receiver can eliminate from the process any bidder at any time even if it has put forward a qualifying bid (s. 11).
- It's unusual to require bidders' legal and financial advisors to sign NDAs in addition to the bidders themselves (s. 13).
- The Receiver can withhold any information it wants from bidders even though they've signed NDAs (s. 14).
- It's aggressive that a phase 1 bid must be a "Qualified LOI" and yet even if it is, is still subject to a subjective review by the Receiver and lender to guess at whether it will become a phase 2 "Qualified Bid". The Receiver could in theory refuse to permit a bid to continue to phase 2 even though it is a "Qualified LOI" simply because it doubts that the bid will be a "Qualified Bid" at the end of Phase 2. (s. 20(b) and s. 23).
- It is unusual that the amount of the deposit is not specified in the SISP and that the receiver gets to make up any required deposit amount later (see s. 27(1)).
- Section 32 gives the lender an absolute veto over a development bid.
- Section 33 shouldn't require consultation with the lender – if a qualified bid is received, the Receiver alone should negotiate and finalize it.

- Section 34 gives the Receiver too much power to just call off Phase 2 at any time simply because it is not optimistic (i.e., if a qualified offer was received in phase 1 that warranted going to phase 2, the Receiver should have to let it play out and can't pull the plug at any point simply because it isn't optimistic).
  - There is a false pretense throughout in pretending the lender isn't a bidder and giving it extensive control and influence over the process as though it is merely a passive creditor that stands only to receive the proceeds of sale. The lender's stated objective is to be the successful bidder (albeit in disguised form because the tax obligation of a foreign buyer has now required that it find a way to do indirectly what it cannot do directly).
22. The Receiver – with the benefit of the Coco Parties' concerns in writing as set out above – then finalized its Second Report and the SISP, which was served as part of its Motion Record on May 28, 2024.
23. The Receiver repeats frequently in its Second Report that the Senior Secured Lenders intend to fund the Project for the next 3 ½ years. It is made abundantly clear to any prospective purchaser that it will not be permitted to proceed without the Senior Secured Lenders. As noted in s. 6.8(ii), the only option permitted to interested parties under the SISP is to “enter into an arrangement with the Senior Secured Lenders.” The Broker's engagement letter similarly reflects this. The only transaction that will be entertained in the SISP is one in which the Senior Secured Lenders “own without owning” the Project. As noted throughout the Receiver's Second Report, the only transactions that the SISP permits are an impossible purchase bid that exceeds \$1.2 billion or a “Senior Secured Creditor Transaction”. By definition, there is no path forward other permitting the Senior Secured Lenders to finance construction for the next 3 ½ years through a controlled process (that is, the only possible path forward to for the Senior Secured Lenders to “own without owning” the Project).
24. The Senior Secured Lenders do not require a SISP to advance their transaction. The Receiver notes in the Second Report that the Senior Secured Lenders have already commenced its own discussions with prospective partners / developers. Those parties require a data room, of course, and the Receiver rather surprisingly confirms that it has already commenced providing highly confidential information to the Senior Secured Lenders to facilitate their soliciting a partner / developer (Second Report, s. 6.20). The same parties the Senior Secured Lenders have already approached and engaged with are the same parties that should be engaged in the SISP. It appears that the Receiver is not participating in all or perhaps any of the Senior Secured Lenders' shadow SISP discussions (the Receiver's responses to the questions put to it on this point are vague – see Schedule “A” attached hereto). This makes a mockery of the SISP process but is consistent with the expectation of all parties that the SISP will not produce any qualifying bids in excess of the \$1.2 billion bid floor and that the only path that will be entertained is a Senior Secured Creditor Transaction. The Senior Secured Lenders are actively pursuing the only path that they will permit (and have already demonstrated that they don't need – or respect – a SISP; that is mere optics to deliver the *fait accompli* that has been structured these past many months).



25. Proceeding with a SISP that is designed to fail comes at enormous cost. In response to the Coco Parties' written questions, the Receiver has confirmed (see Schedule "A" attached) that the SISP will result in a direct cost to stakeholders of \$100 million or more that is unrelated to continued construction of the Project. This consists of: (i) approximately \$10 million in additional interest on the receivership borrowings; (ii) approximately \$80 million in additional interest and fees on the pre-receivership borrowings; and (iii) over \$10 million in professional costs to conduct the SISP. This information should have been provided to stakeholders and to the Court.
26. At the outset of the proceedings, the Coco Parties argued for timely action in these proceedings because of the enormous prejudice to all creditors with the passage of time. Further months spent pursuing a SISP that is certain to produce no bids will have little benefit but enormous cost. For example:
- At the time the Senior Secured Lenders applied to commence this receivership, they reported in their application materials being owed approximately \$1.235 billion as of September 29, 2023 (inclusive of principal, interest, and costs).
  - The Receiver now reports that as of May 31, 2024, the Senior Secured Lenders are owed over \$1.513 billion – a \$278 million increase and only \$144.1 million of that being advances under the receiver's borrowings (and only some of that going into construction rather than professional costs and other amounts).
  - At the conclusion of the SISP in October 2024, the Receiver indicates the Senior Secured Lenders will be owed over \$1.722 billion – almost \$500 million more than was owed at the outset of the proceedings. See Schedule "A" attached.

### C. Proper Path Forward

27. The Receiver and the Senior Secured Lenders' – knowing with conviction that the SISP will not generate a bid in excess of \$1.2 billion – have engaged in extensive planning for the second part of this exercise (i.e., creating a legal and operational structure in which to operate / construct for the next 3 ½ years). Unquestionably, those plans will be tweaked and refined as the Senior Secured Lenders advance their "Senior Secured Creditor Transaction", including as the Senior Secured Lenders seek a developer to partner with. But the Receiver acknowledges in the Second Report that considerable thought has been given to the SISP producing no bids and the commitment of the Senior Secured Lenders to their preferred path if (and when) that occurs. There is sufficient certainty and planning to date that warrants full disclosure by the Receiver as to what is truly intended and planned after the SISP fails. The stakeholders and the Court, in considering whether to support a SISP certain to produce no qualified bids, should have been provided with greater disclosure and transparency as to what invariably comes next and what is truly going on. Instead, all are left waiting for the other shoe to drop after the SISP fails.
28. It makes no sense to see over \$100 million in additional cost unrelated to construction of the Project between now and October 31, 2024, simply to conduct a process designed to produce

no bids, and all the while permitting another 5 months for the Senior Secured Lenders to advance without transparency their “Senior Secured Creditor Transaction”.

29. If the SISP will not be changed (in particular, the elimination of the \$1.2 billion bid floor), then the SISP serves no purpose but to give the Senior Secured Lenders a stranglehold over the Project on the pretense of having ruled out all other options once the SISP fails. The SISP as designed already rules out all other options – it serves no purpose as drafted. If the Receiver is comfortable that the Senior Secured Lenders should be permitted to advance their “own without owing” strategy because they are the fulcrum creditor and there are no other options, it should be forthright about this and bring forward a motion to approve that path as the only available path and dispense with a sham SISP.
30. Alternatively, a SISP should only be pursued – at the staggering cost that it entails – if it is truly a *bona fide* market test. This means:
- The stakeholders and the Court should know what options are available in the \$800 million - \$1.1 billion range that the Broker has indicated is realistic and that aligns with the Receiver’s own views of value.
  - The special treatment afforded the Senior Secured Lenders under the guise of not being a bidder should be eliminated. The Senior Secured Lenders should be required to submit its bid (i.e., its “Senior Secured Creditor Transaction”) concurrently with other bidders and subject to the same rules (e.g., every other bidder has to specify how its bid will treat stakeholders, including purchasers of condominium units – the Senior Secured Lenders should likewise make clear how its transaction will treat stakeholders). They should satisfy the same requirements for a qualified bid that all other bidders are subject to. And they should not be permitted to see other bids or conduct discussions with other bidders or otherwise control a process in which they are clearly participating.
  - The Receiver should be seeking to create competitive tension in the process that causes the Senior Secured Lenders to put forward its best bid. The SISP as drafted is designed to fail and when it does the Senior Secured Lenders can dictate terms without the Receiver having any leverage to negotiate better terms (including the interest and fees to be charged on the next 3 ½ years of borrowings under the Senior Secured Lenders’ planned path).
31. There should be transparency, fairness, and integrity of process in the structuring and conduct of the SISP. These are essential and valuable attributes in every receivership proceeding and they should not be impaired or ignored simply because one creditor is viewed as being the sole creditor with an “in the money” economic interest. A fulcrum secured creditor is nonetheless not entitled to dictate to a receiver the advancement of its self-interests and disregard for all other stakeholders. Even where other creditors rank subordinate to a fulcrum creditor, there interests and reasonable expectations are still deserving of consideration by a receiver and by the Court. That the Coco Parties may be “out of the money” does not disentitle them from seeking transparency, fairness, and integrity of process.

## SCHEDULE "A"

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**Sent:** Friday, May 31, 2024 5:28 PM

**To:** Bish, David <dbish@torys.com>

**Cc:** Perfetto, Nina <nperfetto@foglers.com>; Levangie, David W. <dlevangie@foglers.com>; O'Neill, Brendan <boneill@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; Dunn, Mark <mdunn@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>

**Subject:** RE: The One - Receiver's Second Report dated May 28, 2024 / Motion for SISP: Questions for Receiver

David,

Thank you for your written questions to the Receiver. The Receiver's written responses are enclosed. To the extent you would like to discuss any of the responses further, please let us know and we can convene a call anytime. Please note the following regarding the Receiver's responses:

1. In certain instances we have noted that further responses/information can be provided upon you and your client confirming that the information will be held subject to the Stakeholder NDA and the terms thereof (including with respect to any disclosure in court or court materials). Should you wish to receive any such information subject to your client's Stakeholder NDA, please so confirm in writing by response to this email, and with reference to the information you would like to receive in that manner.
2. All responses provided in this document are entirely without prejudice to the Receiver's position with respect to the relevance of the questions to the relief sought by the Receiver on its motion returnable June 6, 2024 and otherwise. The answers are also without prejudice to the Receiver's position with respect to the appropriateness and proportionality of any of the questions posed.
3. The Receiver's answers are provided based on the information currently known to it. The Receiver reserves the right, but is under no obligation, to correct or supplement its answers.
4. With respect to the objection deadline of COB on Monday, June 3<sup>rd</sup> that deadline has been established so that all parties in interest – including especially the Court – can be made aware of any objections in advance of the hearing, and given time to consider same. As such, we expect full compliance with the objection deadline by you and your client. We especially expect compliance from you and your client given the considerable time and respect we have given to you and your client in advance of the motion, including by sending you the proposed SISP on May 16<sup>th</sup> (three weeks in advance of the return date for the SISP motion), attending together with A&M and Osler in an in person meeting with you and your co-counsel on May 23<sup>rd</sup>, dialoguing with you both before and since such meeting, and now timely responding to various questions posed, etc.). Thank you.

Lastly, can you confirm for us exactly which Coco entities you and Foglers are representing and in what capacities – thank you.

Best regards,

Brendan O'Neill

☎ Office Tel: 416.849.6017  
☎ MOBILE Tel: 416-301-8745  
✉ E-mail: [boneill@goodmans.ca](mailto:boneill@goodmans.ca)  
🌐 Web: [http://www.goodmans.ca/People/Brendan\\_O\\_Neill](http://www.goodmans.ca/People/Brendan_O_Neill)

**Goodmans LLP**

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

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**From:** Bish, David <[dbish@torys.com](mailto:dbish@torys.com)>  
**Sent:** Thursday, May 30, 2024 4:26 PM  
**To:** O'Neill, Brendan <[boneill@goodmans.ca](mailto:boneill@goodmans.ca)>; Armstrong, Christopher <[carmstrong@goodmans.ca](mailto:carmstrong@goodmans.ca)>  
**Cc:** Nina Perfetto - Fogler, Rubinoff LLP (<[nperfetto@foglers.com](mailto:nperfetto@foglers.com)> <[nperfetto@foglers.com](mailto:nperfetto@foglers.com)>); Levangie, David W. <[dlevangie@foglers.com](mailto:dlevangie@foglers.com)>; Linde, Jennifer <[jlinde@goodmans.ca](mailto:jlinde@goodmans.ca)>  
**Subject:** The One - Receiver's Second Report dated May 28, 2024 / Motion for SISP: Questions for Receiver

Hi Brendan / Chris,

We are in receipt of a copy of the Receiver's Second Report dated May 28, 2024, and Motion Record pertaining the June 6, 2024, court hearing in respect of the receivership proceedings of The One. Our clients have a number of questions arising from the Second Report and the relief being sought by the Receiver. As is customary in receivership matters, we do not propose to examine the Receiver in person and are instead submitting the questions below in writing for the Receiver to address. Would you kindly provide these responses as quickly as possible, and in any event sufficiently ahead of the self-declared objection deadline set out Jennifer Linde's email to the service list of May 28, 2024. The Receiver's answers will be of central importance in our obtaining client instructions ahead of the hearing.

Questions for Receiver
<ul style="list-style-type: none"><li>• Total loan amount (principal / interest / costs) and breakdown of same as of May 31, 2024</li><li>• Total funds actually received by the borrower and used for construction, inclusive of soft and hard costs, separately broken out</li><li>• Total interest / fees / costs on existing pre-receivership debt to May 31, 2024</li><li>• Total interest / fees / costs on receivership borrowings from the RFCA lender to May 31, 2024</li><li>• Total professional costs during receivership broken down by professional services firm</li><li>• Forecast costs to run SISP process, including professional costs and broker costs segregated by professional service firm</li><li>• Projected total debt (principal / interest / fees / costs) owing to the lender / RFCA lender as of October 31, 2024 (i.e., proposed end of SISP process)</li></ul>

- Projected value of project revenue on receiver's target completion date (second half of 2027) ("**Completion Date**") (with current configuration and proposed reconfiguration of residential units)
- Projected value of commercial component on Completion Date
- Projected value of residential component on Completion Date
- Projected total project value/revenue on Completion Date
- Dollar value and aggregate square foot price achieved for residential sales to date
- Dollar value and aggregate square foot price for non-Qualifying Sales Agreements
- Dollar value and aggregate square foot price for condominium sale agreements ("**CSA**") in default (for deposits or otherwise)
- Dollar value and aggregate square foot price achieved for Qualifying Sales Agreements not in default for residential sales
- Dollar value and aggregate square foot price achieved for units for which the CSAs have been terminated
- Projected aggregate square foot price for unsold residential units
- Projected remaining cost to project completion
- Projected total project cost to projection completion inclusive of interest and fees separately broken out
- Explanation for how the \$1.2 billion bid floor was established. Did the receiver propose a floor and establish the quantum and, if not, why did the receiver agree to it?
- Is the receiver optimistic (as a result of its consultation with the broker or otherwise) that one or more bids exceeding the bid floor are expected in the SISP?
- Confirmation that the receiver is confident based on its experience and expertise and the advice it has received from its advisors (including broker) that the SISP as formulated will produce qualified bids OR, alternatively, confirmation that the receiver does not expect to receive bids given the SISP as formulated
- Details of the lender's role in the development of the SISP process, including the date those discussions first commenced.
- At the last court attendance, the receiver argued strongly that it should not make decisions such as reconfiguring the building layout and that such decisions should only be made by an owner of the Project. Why has the receiver reversed its position and now asked the court for an order authorizing the very decision-making the receiver argued it shouldn't be engaged in?
- Please provide a copy of the JLL engagement letter dated March 22, 2022
- Please provide an update on the status of the severance of the commercial component
- Please provide an update on the status of the leases on the commercial component

- On what basis did the receiver purport to authorize the RFCA lender to commence discussions with developers ahead of and outside the SISP and to disseminate confidential information to the RFCA Lender and the developers to whom it is speaking?
- How many developer parties has the RFCA Lender spoken to, and who are they? What discussions have taken place, and has the receiver been involved in all of those discussions?
- Are any or all of those developer parties already approached by the RFCA Lender persons that the receiver also intends to approach in the SISP?
- If the receiver is not optimistic that the SISP will attract a successful bid in excess of the bid floor, has the receiver commenced discussions with the RFCA Lender about next steps (whether definitive or contingent)? If so, provide details.
- Please provide a copy of the “Initial Business Plan” deliverable by the Receiver to the RFCA Lender on or before April 18, 2024, as referenced in the First Report of the Receiver.

We reserve the right to ask additional and follow-up questions that may arise

Given that the Receiver’s motion and Report are public, we do not believe any of the responses to the questions above are or should be confidential and kept out of the public record. However, we remind you that our clients have signed an NDA at the Receiver’s insistence, as did counsel, such that there is no basis to withhold even confidential information. Should you view any of the answers provided as being confidential and not to be included in any unredacted court materials that we might file or submissions that we might make in open court (a “Confidentiality Assertion”), please clearly highlight such information and the basis for your Confidentiality Assertion. If need be, we can address with the Court how best to provide any such confidential information to the Court, though I’m hopeful that will be unnecessary.

With respect to the self-declared objection deadline set out in Ms. Linde’s email of May 28, 2024, we confirm that we met in person with the Receiver and its counsel and the secured lenders’ counsel on Thursday, May 23, 2024, to discuss the SISP and related matters. At that meeting you requested that we provide you with the Cocos’ objections to the SISP in writing (and to do so notwithstanding that we did not have the benefit of a Motion Record or the Receiver’s Report at that time). By email dated May 23, 2024, I set out those concerns in writing as you requested. You requested our consent to sharing these concerns with the secured lenders’ counsel, which consent we also provided in writing on May 23, 2024. Accordingly, we confirm that the Receiver and the secured lenders have had the benefit of the Cocos’ concerns since May 23, 2024, and the Receiver has had a unique opportunity to consider and tailor the drafting of its subsequent Report to address (or not address) the concerns raised by our client. The notion of a self-declared objection deadline is therefore particularly artificial in the case of our client. Irrespective of the self-declared objection deadline and our clients’ response to same, the Receiver and the secured lenders will not be caught offguard at this hearing by the concerns of the Cocos.

Regards.

David Bish

P. 416.865.7353 | F. 416.865.7380 | 1.800.505.8679  
79 Wellington St. W., 30th Floor, Box 270, TD South Tower  
Toronto, Ontario M5K 1N2 Canada | [www.torlys.com](http://www.torlys.com)



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### **Responses to Questions for Receiver**

These are the Receiver's responses to the questions posed on May 30, 2024 by counsel to the Coco parties with respect to the Receiver's Second Report dated May 28, 2024 (the "**Second Report**"). Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Second Report.

All responses provided in this document are entirely without prejudice to the Receiver's position with respect to the relevance of the questions to the relief sought by the Receiver on its motion returnable June 6, 2024 and otherwise. The answers are also without prejudice to the Receiver's position with respect to the appropriateness and proportionality of any of the questions posed.

The Receiver's answers are provided based on the information currently known to it. The Receiver reserves the right, but is under no obligation, to correct or supplement its answers.

<b>No.</b>	<b>Question</b>	<b>Response</b>
1.	Total loan amount (principal / interest / costs) and breakdown of same as of May 31, 2024	The Receiver has provided these amounts as of March 31, 2024 in the Second Report at § 6.16. Attached at Schedule A hereto is an updated chart as of May 31, 2024. These calculations have not been confirmed by the Senior Secured Lenders or the RFCA Lender.
2.	Total funds actually received by the borrower and used for construction, inclusive of soft and hard costs, separately broken out	Please see Schedule A for funds disbursed to the borrower by the Senior Secured Lenders and the RFCA Lender. The Receiver is presently unable to confirm the exact amount used for construction, inclusive of soft and hard costs based on the information currently available to it. The Receiver expects to serve a motion seeking to compel the production of additional information required from MI to assess this matter.
3.	Total interest / fees / costs on existing pre-receivership debt to May 31, 2024	See response to Question 1 above.
4.	Total interest / fees / costs on receivership borrowings from the RFCA lender to May 31, 2024	See response to Question 1 above.
5.	Total professional costs during receivership broken down by professional services firm	The total professional fees incurred to date are set out at § 10.1 of the Second Report. A breakdown of this amount by firm is not relevant to the Receiver's



No.	Question	Response
		motion. Further information in respect of the Receiver's fees and expenses will be provided in connection with a motion by the Receiver seeking approval of its fees and expenses.
6.	Forecast costs to run SISP process, including professional costs and broker costs segregated by professional service firm	See Updated Cash Flow Forecast appended to Second Report as Appendix "L" and the Broker Agreement attached as Appendix "E".
7.	Projected total debt (principal / interest / fees / costs) owing to the lender / RFCA lender as of October 31, 2024 (i.e., proposed end of SISP process)	The Receiver has calculated this amount based on the information available to it – see attached Schedule A. These calculations have not been confirmed by the Senior Secured Lenders or the RFCA Lender.
8.	Projected value of project revenue on receiver's target completion date (second half of 2027) (" <b>Completion Date</b> ") (with current configuration and proposed reconfiguration of residential units)	<p>The projected value of Project revenue depends on a number of factors that cannot be known with certainty at this time, including:</p> <ul style="list-style-type: none"> <li>• the outcome of the SISP, and how that affects the direction of the Project;</li> <li>• when the Project is completed;</li> <li>• market conditions affecting the condominium, retail and hotel industries when the Project is completed;</li> <li>• interest rates while the Project is being constructed, marketed and completed;</li> <li>• government and regulatory actions that affect the market for condominium, retail and hotel industries;</li> <li>• any changes to the Project design and construction plan between now and completion;</li> <li>• decisions that may be made by the Project's developer concerning (among other things) how the Project is marketed;</li> <li>• the decisions and assumptions made by the ultimate owner and operator of the hotel component; and</li> <li>• the identity of the tenants, including the anchor tenants, of the retail component of the Project.</li> </ul>

No.	Question	Response
		<p>In light of the number and nature of the assumptions required to project the Project's revenue, the Receiver is not in a position to provide a definitive opinion with respect to the projected value of Project revenue in 2027.</p> <p>The Receiver also notes that revenue projections, and any related analyses, are confidential commercial information and any disclosure to the public or to potential bidders could significantly impair the integrity of the SISP, and even if available on any basis, projected or otherwise, the Receiver and the Broker would not disclose any such projections on a public basis in advance of running the SISP.</p>
9.	Projected value of commercial component on Completion Date	See response to Question 8 above.
10.	Projected value of residential component on Completion Date	See response to Question 8 above.
11.	Projected total project value/revenue on Completion Date	See response to Question 8 above.
12.	Dollar value and aggregate square foot price achieved for residential sales to date	This is confidential commercial information, and disclosure to the public could have a significant adverse impact on the SISP; that said, the Receiver will provide the latest information it has in this regard to stakeholders who have signed the Stakeholder NDA (as defined in the First Report), on receipt of advance written confirmation from any such stakeholders that they will accept and maintain such information subject to the Stakeholder NDA, including as relates to any proposed filing with the Court.
13.	Dollar value and aggregate square foot price for non-Qualifying Sales Agreements	This is confidential commercial information, and disclosure to the public could have a significant adverse impact on the SISP; that said, the Receiver will provide the latest information it has in this regard to stakeholders who have signed the Stakeholder NDA (as defined in the First Report), on receipt of advance written confirmation from any such stakeholders that they will accept and maintain such

No.	Question	Response
		information subject to the Stakeholder NDA, including as relates to any proposed filing with the Court.
14.	Dollar value and aggregate square foot price for condominium sale agreements (“CSA”) in default (for deposits or otherwise)	This is confidential commercial information, and disclosure to the public could have a significant adverse impact on the SISP; that said, the Receiver will provide the latest information it has in this regard to stakeholders who have signed the Stakeholder NDA (as defined in the First Report), on receipt of advance written confirmation from any such stakeholders that they will accept and maintain such information subject to the Stakeholder NDA, including as relates to any proposed filing with the Court.
15.	Dollar value and aggregate square foot price achieved for Qualifying Sales Agreements not in default for residential sales	This is confidential commercial information, and disclosure to the public could have a significant adverse impact on the SISP; that said, the Receiver will provide the latest information it has in this regard to stakeholders who have signed the Stakeholder NDA (as defined in the First Report), on receipt of advance written confirmation from any such stakeholders that they will accept and maintain such information subject to the Stakeholder NDA, including as relates to any proposed filing with the Court.
16.	Dollar value and aggregate square foot price achieved for units for which the CSAs have been terminated	This is confidential commercial information, and disclosure to the public could have a significant adverse impact on the SISP; that said, the Receiver will provide the latest information it has in this regard to stakeholders who have signed the Stakeholder NDA (as defined in the First Report), on receipt of advance written confirmation from any such stakeholders that they will accept and maintain such information subject to the Stakeholder NDA, including as relates to any proposed filing with the Court.
17.	Projected aggregate square foot price for unsold residential units	This is confidential commercial information, and disclosure to the public could have a significant adverse impact on the SISP; that said, the Receiver will provide the latest information it has in this regard to stakeholders who have signed the Stakeholder NDA (as defined in the First Report), on receipt of advance written confirmation from any such stakeholders that they will accept and maintain such information subject to the Stakeholder NDA, including as relates to any proposed filing with the Court.

No.	Question	Response
18.	Projected remaining cost to project completion	This is confidential commercial information, and disclosure to the public or prospective purchasers could have a significant adverse impact on the SISP; that said, the Receiver will provide the latest information it has in this regard to stakeholders who have signed the Stakeholder NDA, on receipt of advance written confirmation from any such stakeholders that they will accept and maintain such information subject to the Stakeholder NDA, including as relates to any proposed filing with the Court.
19.	Projected total project cost to projection completion inclusive of interest and fees separately broken out	This is confidential commercial information, and disclosure to the public or prospective purchasers could have a significant adverse impact on the SISP; that said, the Receiver will provide the latest information it has in this regard to stakeholders who have signed the Stakeholder NDA, on receipt of advance written confirmation from any such stakeholders that they will accept and maintain such information subject to the Stakeholder NDA, including as relates to any proposed filing with the Court.
20.	Explanation for how the \$1.2 billion bid floor was established. Did the receiver propose a floor and establish the quantum and, if not, why did the receiver agree to it?	See Second Report at § 6.15 – 6.21.
21.	Is the receiver optimistic (as a result of its consultation with the broker or otherwise) that one or more bids exceeding the bid floor are expected in the SISP?	The Receiver is confident that the SISP has been designed to attract as many forms of potential transactions as could be available in the circumstances to maximize value and achieve Project completion, recognizing that any and all such transactions must be acceptable to the Receiver, the Senior Secured Lenders and the RFCA Lender (or satisfy the secured debt owing to them in full). The Receiver does not know what the result of the SISP will be.
22.	Confirmation that the receiver is confident based on its experience and expertise and the advice it has received from its advisors (including broker) that the SISP as formulated will produce qualified bids OR, alternatively, confirmation that the receiver	See response to Question 21 above.

No.	Question	Response
	does not expect to receive bids given the SISP as formulated	
23.	Details of the lender's role in the development of the SISP process, including the date those discussions first commenced.	The Receiver has been clear throughout the receivership proceedings that the next phase of the proceedings (once the transition to the new Construction Manager had been completed and certain other matters were resolved) would be a SISP (including because a SISP is contemplated by the RFCA that was approved by the Court at the commencement of the proceedings). The Receiver has been discussing the SISP with the Senior Secured Lenders and the RFCA Lender, as well as the Coco parties and their counsel, throughout the receivership proceedings; and, for clarity, the form of the SISP was developed by the Receiver (and its counsel), and then discussed with the Senior Secured Lenders and the RFCA Lender.
24.	At the last court attendance, the receiver argued strongly that it should not make decisions such as reconfiguring the building layout and that such decisions should only be made by an owner of the Project. Why has the receiver reversed its position and now asked the court for an order authorizing the very decision-making the receiver argued it shouldn't be engaged in?	<p>The Receiver maintains that it is of the utmost importance to determine the owner of the Project, and the manner through which the Project will be completed, in real time so that construction can continue and bring the Project to completion as efficiently as possible.</p> <p>The Receiver did not discuss reconfiguration at the last hearing, and has not reversed any position. The decision on reconfiguration needed to be made earlier for the reasons discussed at § 7.11 of the Second Report (the first level impacted by the Reconfiguration Plan is level 62; concrete pouring for level 62 is scheduled to begin at the end of June 2024).</p>
25.	Please provide a copy of the JLL engagement letter dated March 22, 2022	See enclosed.
26.	Please provide an update on the status of the severance of the commercial component	See Second Report at §12.1(xx); the Severance has been completed.
27.	Please provide an update on the status of the leases on the commercial component	There has been no change to the status of the leases on the commercial component since the commencement of the receivership proceedings.

No.	Question	Response
28.	<p>On what basis did the receiver purport to authorize the RFCA lender to commence discussions with developers ahead of and outside the SISP and to disseminate confidential information to the RFCA Lender and the developers to whom it is speaking?</p>	<p>The Receiver did not authorize the RFCA Lender to enter into discussions with developers; the RFCA Lender is entitled to enter into discussions with developers (and other third parties) without the Receiver's authorization.</p> <p>The RFCA Lender is the only party that has stepped forward to date to provide construction funding, and it is entitled to speak to parties who may potentially assist it with Project completion.</p> <p>The Receiver confirmed that any discussions with developers to date were conducted pursuant to definitive confidentiality agreements entered into between any such developers and the RFCA Lender, and has agreed to the disclosure of limited confidential information consistent with the terms of the RFCA.</p> <p>Any and all developers will be given an opportunity to participate in the SISP, and will be required to participate in the SISP; any and all potential developer transactions are subject to the SISP, and to Court approval following the SISP.</p>
29.	<p>How many developer parties has the RFCA Lender spoken to, and who are they? What discussions have taken place, and has the receiver been involved in all of those discussions?</p>	<p>The identity of the developers (and the content of any discussions with them) is commercially sensitive information that will not be disclosed. In any event, the Receiver and the Broker will oversee any and all potential developer discussions that may occur under the SISP; as stated, all potential developers and developer discussions and transactions are subject to the SISP, and to Court approval following the SISP.</p>
30.	<p>Are any or all of those developer parties already approached by the RFCA Lender persons that the receiver also intends to approach in the SISP?</p>	<p>Any and all developers approached by the RFCA Lender to date, and any and all other potential developers identified by the Broker, will be included in and made subject to the SISP.</p>
31.	<p>If the receiver is not optimistic that the SISP will attract a successful bid in excess of the bid floor, has the receiver commenced</p>	<p>See response to Question 21. In the event that the SISP does not produce a successful bid, the Receiver has discussed potential next steps with the RFCA Lender – see Second Report at § 6.19.</p>

No.	Question	Response
	discussions with the RFCA Lender about next steps (whether definitive or contingent)? If so, provide details.	
32.	Please provide a copy of the “Initial Business Plan” deliverable by the Receiver to the RFCA Lender on or before April 18, 2024, as referenced in the First Report of the Receiver.	The “Initial Business Plan” milestone under the RFCA has been extended to May 31, 2024 and will be further extended to July 31, 2024; as such, the “Initial Business Plan” has not yet been provided, and is in any event, dependent on the results of the SISP.

## SCHEDULE A

<b>Illustrative Senior Secured Lender Claims</b>	<b><i>(in \$millions)</i></b>
Estimated as at May 31, 2024	
Advances under the RFCA	\$144.1
Estimated accrued interest and fees under the RFCA	\$12.3
Advances under the Credit Agreement (pre-receivership)	\$731.3
Pre-funded interest under the Credit Agreement (pre-receivership)	\$193.4
Estimated accrued interest, applicable margin, and other fees and costs related to the Credit Agreement	\$432.2
<b>Estimated Senior Secured Lender Claims</b>	<b>\$1,513.3</b>

<b>Illustrative Senior Secure Lender Claims</b>	<b><i>(in \$millions)</i></b>
Estimated as at October 31, 2024	
Estimated advances under the RFCA	\$264.1
Estimated accrued interest and fees under the RFCA	\$22.2
Advances under the Credit Agreement (pre-receivership)	\$731.3
Pre-funded interest under the Credit Agreement (pre-receivership)	\$193.4
Estimated accrued interest, applicable margin, and other fees and costs related to the Credit Agreement	\$511.3
<b>Estimated Senior Secured Lender Claims</b>	<b>\$1,722.3</b>



March 22, 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  
REPRESENTATIVE



INITIALS OF LISTING TEAM

Upon termination of this designated representation agreement (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.

### 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. Flat fee of \$1,900,000 + HST for any Transaction involving a Third Party; or
2. Flat fee of \$550,000 + HST in the event of a Transaction that is a Senior Secured Creditor Transaction.

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. 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 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 with respect to the ownership of the Property or of the interests in any entity holding title to the Property that is coordinated by the Receiver, whether accomplished through a sale, merger, consolidation or otherwise; any direct or indirect transaction with respect to a partial ownership interest in the Property; 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, 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) become the direct or indirect exclusive owner of the Property or entitled to the proceeds of disposition thereof.

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:

Notice to the Receiver:

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](mailto: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](mailto:paul.greven@am.jll.com)

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](mailto:sferguson@alvarezandmarsal.com)  
[jnevsky@alvarezandmarsal.com](mailto:jnevsky@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](mailto:boneill@goodmans.ca)  
[carmsstrong@goodmans.ca](mailto:carmsstrong@goodmans.ca)  
[jlinde@goodmans.ca](mailto: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.



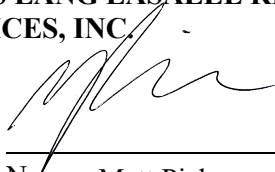
19. Complete Agreement. This Agreement (including any schedules referred to herein and attached hereto) represents the entire agreement between the parties and supersedes any prior discussions, negotiations, representations, or agreements, written or oral, between the parties hereto or any of their respective 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.

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:



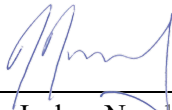
Name: Matt Picken

Title: Managing Director, JLL Canada Capital Markets

**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.*

# Working with a real estate agent: Things you need to know

## RECO INFORMATION GUIDE



Real Estate  
Council of Ontario

**The guide is produced by the Real Estate Council of Ontario (RECO)**

RECO regulates real estate agents and brokerages, educates consumers, and promotes a safe and informed real estate marketplace. RECO administers and enforces the *Trust in Real Estate Services Act, 2002*. Find out more on the RECO website ([www.reco.on.ca](http://www.reco.on.ca)).

# About this guide

## You have received this guide from a real estate agent because:

- you are considering receiving services from the real estate agent, or
- the agent is representing a client in the transaction, and you might receive assistance from the agent.

Real estate agents in Ontario are required to walk you through this guide before providing services or assistance to you.

## In this guide:

- *brokerage* means a real estate brokerage
- *real estate agent* and *agent* mean a real estate salesperson or broker
- *you* and *client* mean a buyer or seller
- *buyer* and *seller* can also mean *lessee* and *lessor* respectively

**Please read the guide carefully and talk to the agent if you have questions.**

## What's inside

### Working with a real estate agent — page 2

This section describes the benefits of working with a real estate agent, what you can expect, and the responsibilities of clients.

### Know the risks of representing yourself — page 4

This section explains the risks if you choose not to work with a real estate agent and the risks of receiving assistance from a real estate agent who is working for the person on the other side of the transaction.

### Signing a contract with a real estate brokerage — page 6

When you work with a real estate agent, you sign a contract with the brokerage the agent works for. These contracts are called *representation agreements*. This section highlights what you should look for before you sign.

### Understanding multiple representation — page 9

Multiple representation means the brokerage, or the agent represents more than one client in the same transaction. This section explains how multiple representation works, the risks, and what to expect if you agree.

### How to make a complaint — page 11

Ontario brokerages and real estate agents are accountable for their conduct. This section tells you how to raise a concern with the brokerage and with RECO.

**Legal disclaimer:** The content of the *RECO Information Guide* is intended to help buyers and sellers make informed decisions. This guide is not intended to act as a substitute for legal advice or as a replacement for the *Trust in Real Estate Services Act, 2002*. Readers are encouraged to retain qualified and independent legal counsel to answer any legal questions or address any legal issues. Where there is any discrepancy, the legislation will take precedence.

# Working with a real estate agent

Agents in Ontario must be registered, which requires completing the necessary education, and carrying consumer deposit insurance and professional liability insurance.

Real estate agents provide valuable information, advice, and guidance to buyers and sellers as they navigate the complexities of real estate transactions.

## **If you are a seller, an agent can:**

- Advise you on market conditions and the best strategy to attract buyers and get the best price for your home
- Market or advertise your home, including arranging photographs, videos and virtual tours
- Provide referrals to other professionals you'll need, like a lawyer or home staging company
- Arrange and attend home inspections and appraisals
- Arrange showings for interested buyers
- Advise you on how to handle competing offers, sharing the content of competing offers, and other aspects of the transaction
- Vet offers and potential buyers to ensure they can afford to buy your property
- Negotiate with buyers to achieve the best results, price, and terms, for you
- Guide you through paperwork and closing the transaction successfully

## **If you are a buyer, an agent can:**

- Assist you with getting pre-approvals for financing so you know how much you can afford
- Make you aware of any tax exemptions you might be eligible for
- Gather and share information about neighbourhoods and homes that meet your requirements, and arrange to show you homes you'd like to see
- Make inquiries about zoning, permitted property use, or other aspects of the home
- Advise you on the best approach in competing offer situations and how to protect your offer information
- Negotiate with sellers to achieve the best results, price, and terms, for you
- Guide you through paperwork and closing the transaction successfully
- Provide referrals to other professionals you'll need (for example, home inspectors, lawyers, or contractors)

## You will also benefit from the duties the brokerage and agent owe to you as a client

- **Undivided loyalty**

Your best interests are promoted and protected by the brokerage or agent representing you. As a client, your interests take priority over the interests of the brokerage, its agents, and any other party.

- **Disclosure**

They must tell you everything they know about the transaction or your client relationship that could have an impact on any decisions you make.

- **Confidentiality**

Your confidential information cannot be shared with anyone outside of the brokerage without your written consent, except where required by law, even after your client relationship ends. This includes, for example, your motivation for buying or selling, and the amount you would be willing to pay or accept.

- **Avoid conflicts of interest**

They must avoid any situation that would affect their duty to act in your best interests. If a conflict arises, they must disclose it to you and cannot provide any additional services to you unless you agree in writing to continue receiving services.

## You have responsibilities as a client

You need to:

- be clear about what you want and don't want and make sure you share all information that might be relevant (for example, you might want zoning that permits your intended use, maybe a home office or another specific use, or you might *not* want a property where there has been a violent crime);
- respond to your agent's questions quickly;
- understand the terms of your agreement with the brokerage; and,
- pay the fees you have agreed on ([see page 7](#)), even if an agreement to buy or sell later falls through because of your default or neglect.

# Know the risks of representing yourself

If you are involved in a real estate transaction and are *not* a client of a real estate brokerage, you are considered a *self-represented party*. This means that you have chosen to represent yourself, which has different rights and responsibilities. Very few buyers or sellers make this choice.

**There are significant risks** to representing yourself in a real estate transaction if you do not have the knowledge and expertise required to navigate the transaction on your own. You will be dealing with a seller or buyer who is benefitting from the services, opinions, and advice of an experienced real estate agent.

RECO recommends that you seek independent professional advice before you proceed as a self-represented party.

If you choose not to work with a real estate agent, it will be your responsibility to look after your own best interests and protect yourself. This may include things like:

- making inquiries about zoning, permitted property use, or any other aspect of the property;
- determining what you believe to be the value of the property you are buying or selling;
- determining how much you are willing to offer or accept;
- navigating competing offer situations;
- deciding what terms you want to include in an offer or agreement of purchase and sale; and,
- preparing all documents.

## The real estate agent is working for another party in the transaction

It's important to be aware that the agent has a legal obligation to act in the best interests of the person on the other side of the transaction. If you are a buyer or even just inquiring about the property, for example, and the agent is working for the seller — the agent has a duty to do what's best for their seller client.

Be aware that the agent is obligated to share anything you tell them with their client, which might not be in your best interests to tell them, including:

- your motivation for buying or selling the property;
- the minimum or maximum price you are willing to offer or accept; and,
- your preferred terms or conditions for an agreement of purchase and sale.

### The agent cannot:

- provide you with any services, opinions, or advice;
- do anything that would encourage you to rely on their knowledge, skill, or judgement; or,
- encourage you to represent yourself or discourage you from working with another real estate agent or brokerage.

### Any assistance the agent offers you:

- is a service to their client, not you;
- is in the best interests of their client, not you; and,
- is to help their client sell or buy a property.

The agent must give you RECO's *Information and Disclosure to Self-represented Party* form and walk you through it before they can provide you any assistance. You will be asked to confirm you received it and understand what it means to be a self-represented party.

## You have the right to change your mind

If you're concerned about completing a transaction on your own, or you need advice from a real estate agent, you can choose to become a client of a real estate brokerage at any point during the transaction (see *Signing a contract with a real estate brokerage* on [page 6](#)).



# Signing a contract with a real estate brokerage

When you become a client, you sign a *representation agreement* with the brokerage — a contract between you and the brokerage for real estate services and representation. If you don't want to sign an agreement, you should not expect the real estate agent to provide you with any services, like showing you homes.

Representation agreements can be called buyer representation agreements, or seller representation or listing agreements. Your agreement must be put in writing and presented to you as soon as possible.

Protect yourself by reviewing the agreement in detail. This will help to avoid any misunderstandings between you and your real estate agent.

## What to look for in a representation agreement

Your representation agreement should describe the duties owed to you, the services you will receive, your rights and responsibilities, what you will pay, and specific terms of the agreement, including how long the agreement will last and whether you can cancel it.

Here are some key things to look for.

### Name of your designated representative

If the contract is a designated representation agreement, the name of your designated representative will be included. More than one real estate agent working at the brokerage can be identified as your designated representative.

### Scope

Your agreement should specify the scope of the engagement. If you are a seller, this means the agreement will identify the specific property.

There are two kinds of representation agreements in Ontario:

### Brokerage representation:

**The brokerage and all its agents represent you** and must promote and protect your best interests, but one of the brokerage's real estate agents may be your primary contact. They may provide referrals to other professionals you'll need (for example, home inspectors, lawyers, contractors).

### Designated representation:

**One (or more) of the brokerage's real estate agents is your *designated representative*.**

The agent(s) represent(s) you and must promote and protect your best interests.

The brokerage and its other agents are required to treat you impartially and objectively.

An important aspect of designated representation is that it reduces the likelihood of multiple representation. You can read more about this in *Understanding multiple representation* on [page 9](#).

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*Designated representation was introduced in Ontario on December 1, 2023. Ask the real estate agent what type of representation the brokerage offers.*

If you are a buyer, you should consider the scope of the agreement carefully. Your agreement might identify a specific property, a geographic area you are searching in, a type of property you are looking for, or other specific requirements. For example, if you are looking for both a house in a particular city, and a cottage property near a lake, and want to work with different real estate agents with local and property type expertise for each property, the scope should be clear in each of the agreements to avoid disputes about who you might have to pay if you buy a property.

## Services

The agreement must clearly set out the services you will receive. **There is no standard set of services** — brokerages offer a variety of service options. You choose the services you want that best meet your needs.

You might enter into an agreement with a brokerage for a specific purpose like, for example, having an agent prepare an offer on a property you want to buy, or viewing a specific property. Some sellers enter into an agreement solely for the purpose of having their property advertised on a local listing service.

Ask the real estate agent about the available services or combination of services that may be right for you and your situation. If there are specific services you need or expect to receive, make sure they are included in the agreement or as a schedule to the agreement. Don't assume a particular service will be provided if it's not included in the agreement.

## Payment amount and terms

You and the brokerage decide the amount you will pay for services. The amount is not fixed or approved by RECO, any government authority, or any real estate association or real estate board.

You can agree to pay a fixed dollar amount, a percentage of the sale price, or a combination of both. The representation agreement cannot specify an amount based on the difference between a property's listing price and what it sells for.

Agreements must also identify circumstances in which the amounts agreed to might change and how they will change in each circumstance.

### If you are a seller:

Your agreement needs to clearly indicate:

- the amount you agree to pay your brokerage (or how it will be calculated) for the services and representation you receive;
- the amount (or how it will be calculated) you agree to pay, if any, to compensate the buyer for their brokerage fees; and,
- how the amounts you agree to pay might change if you consent to multiple representation ([see page 9](#)).

### If you are a buyer:

Your agreement needs to clearly indicate:

- the amount you agree to pay your brokerage (or how it will be calculated) for the services and representation you receive;
- how the amount you agree to pay will change if the seller agrees to cover some or all of your brokerage fees; and,
- how the amount you agree to pay might change if you consent to multiple representation ([see page 9](#)).

**Important note for buyers:** *A seller might not offer any amount to cover the fees you owe to your brokerage under your agreement. This could affect the amount you are able to offer for a property. Depending on your financial circumstances, you may not be able to afford to buy a property when the seller does not agree to pay your brokerage fees.*

## Termination provisions

The agreement should list all circumstances when the agreement can be terminated. Review when the brokerage can terminate the agreement, and make sure you are aware of any penalties or costs that might apply in each case.

Two important circumstances to be aware of:

- **Multiple representation:** You do not have to agree to multiple representation, and your agreement should be clear about what happens in that situation. For example, the agreement could terminate completely, or you might be referred to another brokerage or designated representative for the specific transaction but otherwise remain under the agreement with the brokerage.
- **Changing your designated representative:** If you have entered a designated representation agreement, the brokerage cannot appoint a different designated representative unless you agree. The brokerage may ask to appoint someone else if, for example, your designated representative stops working with the brokerage, or is otherwise not available to provide the services and representation outlined in the agreement.

## Expiry date

The agreement's expiry date must appear prominently on the first page. There is no set time or standard term for a representation agreement: it can be in place for a day, a few weeks, or months. Consider how long you want the agreement to remain in place, and make sure you know when your agreement will expire. Keep in mind that a holdover clause could mean you owe money even after the expiry of the agreement.

## Holdover clause

Most representation agreements include what is often called a *holdover clause*. The clause may require you to pay the brokerage fees for a purchase or sale even when the transaction happens *after* your representation agreement expires. The clause will specify the time the holdover clause is in effect from the date the agreement expires.

A holdover clause is designed to protect the brokerage, and there is no minimum or set time for a holdover period. If your agreement includes a holdover clause, make sure you agree to the length of the holdover period before you sign it.

For example, let's say you are a seller, and your agreement includes a 30-day holdover clause. This means that even if your agreement has expired, under certain conditions, you might be obligated to pay the brokerage commission if you sell your home during the 30-day holdover period.

Similarly, assume you enter into a buyer agreement that includes a 30-day holdover clause and the agent shows you a home before the expiry of the contract. If you buy the home after the expiry of the agreement, but during the holdover period, you might be obligated to pay the brokerage commission.

# Understanding multiple representation

Multiple representation means a designated representative or brokerage represents more than one client, with competing interests, in the same transaction. This can happen in different ways, depending on the type of representation agreement you and the other clients have with the brokerage:

## Brokerage representation:

Multiple representation exists when the brokerage represents both the buyer and seller in the same transaction, or two or more competing buyers interested in the same property — even when the clients are working with different real estate agents.

## Designated representation:

Multiple representation exists when the same real estate agent is the designated representative for both the buyer and the seller in the same transaction, or for two or more competing buyers interested in the same property.

**Multiple representation is not permitted unless each of the clients involved agrees.** You should seek independent professional advice (for example, from your real estate lawyer) before proceeding.

The brokerage or your designated representative has a duty to promote and protect your best interests and avoid conflicts of interest. If your brokerage or designated representative enters into an agreement with another client who has an interest in the same property as you, this places both clients in multiple representation. Multiple representation introduces risks you and the other client should consider.

**It's important to understand the risks.** If you agree to multiple representation, the brokerage or designated representative:

- Must treat each of the clients involved in an objective and impartial manner;
- Cannot maintain undivided loyalty to you or promote and protect your interests over the interests of the other client; and,
- Cannot offer advice to you about such things as the price you should offer or accept or terms that should be included in an agreement of purchase and sale.

## What to expect before you agree to multiple representation

The brokerage is required to provide you with a written disclosure that explains:

- how the brokerage's duties or the designated representative's duties to you will change;
- the differences in the services you will receive; and,
- any change to how much you pay the brokerage.

Until this information is disclosed in writing to all clients in the transaction, and they all agree in writing, the brokerage or designated representative cannot take any further steps on behalf of any of the clients.

Confidential information you provided to the brokerage or the designated representative when you were represented cannot be shared without your written consent.

## You can refuse multiple representation

If you don't agree, the brokerage or your designated representative is not allowed to proceed.

Ask the brokerage or real estate agent about alternatives to multiple representation. For example, if you are a buyer, the brokerage could refer you to another brokerage or another designated representative to help you make an offer on the property.

Agreeing to multiple representation significantly reduces what the brokerage and its agents can do for you, which could have consequences and costs.

## A note about content of other offers

You may have seen articles in the media about *open bidding*, or an *open offer process*.

Buyers in Ontario who have made an offer on a property are entitled to know the *number* of competing offers. Sellers choose how much other information, if any, they want to share about the offers they receive.

### If you are a seller:

- You decide how much information you want to share about the competing offers.
- Your agent will advise you based on the characteristics of your property, market conditions, the content of the offers you receive and other things.
- You need to provide clear written direction to your agent before the content of any offers can be shared. Personal or identifying information contained in offers cannot be shared.

### If you are a buyer:

- You decide whether you want to participate in a process where the content of your offer might be shared with other buyers.
- Your agent can tell you the steps to take to avoid having the content of your offer shared with other buyers.
- Be aware that the seller can make the decision to share the content of offers at any time. You may not know in advance.

# How to make a complaint

Brokerage firms and real estate agents working in Ontario must be registered with RECO. Ontario brokerages and real estate agents are accountable for their conduct. If you have a concern:

## First, contact your brokerage

In many cases, your brokerage will be able to mediate or resolve your complaint about a real estate agent or the services provided under your representation agreement. Search for the brokerage in RECO's [Public Register](#) to find the name of the broker of record (the person responsible for ensuring the brokerage complies with the law) and their contact information. Note that the brokerage cannot ask you to sign an agreement that requires you to withdraw a complaint to RECO or prevents you from making one.

## Contact RECO

To file a complaint with RECO about a brokerage or real estate agent, visit the [complaints section](#) of the RECO website. The website explains the complaints process, possible outcomes, and how to file your complaint. RECO will review the issue, determine if it has the authority to deal with it, and what next steps, if any, it will take.

Real Estate Council of Ontario  
3300 Bloor Street West  
Suite 1400, West Tower  
Toronto, ON Canada M8X 2X2

Phone: 416-207-4800  
Toll Free: 1-800-245-6910  
Consumer inquiries: [information@reco.on.ca](mailto:information@reco.on.ca)  
[www.reco.on.ca](http://www.reco.on.ca)

## Where to get more information

For more information about buying and selling property in Ontario: [RECO's website](#).  
For the legislation that governs brokerages and real estate agents trading in real estate in Ontario: [Trust in Real Estate Services Act, 2002](#).

# Acknowledgement

Matt Picken

Real estate agent name

Jones Lang LaSalle Real Estate Services, Inc.

Brokerage name

Mar 25, 2024

Date guide was provided



Signature of real estate agent

I acknowledge the real estate agent named above provided the *RECO Information Guide* to me and explained the content.

Buyer/seller name

Buyer/seller name

Signature of buyer/seller

Signature of buyer/seller

Date

Date

**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**

**SERVICE LIST (As at May 28, 2024)**

<b>OSLER, HOSKIN &amp; HARCOURT LLP</b> 100 King Street West, 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8 <b>Michael De Lellis</b> Direct: 416.862.5997 E-mail: <a href="mailto:mdelellis@osler.com">mdelellis@osler.com</a> <b>Jeremy Dacks</b> Direct: 416.862.4923 E-mail: <a href="mailto:jdacks@osler.com">jdacks@osler.com</a> <b>Shawn Irving</b> Direct: 416.862.4733 E-mail: <a href="mailto:sirving@osler.com">sirving@osler.com</a> <b>Mark Sheeley</b> Direct: 416.862.6791 E-mail: <a href="mailto:msheeley@osler.com">msheeley@osler.com</a> <i>Counsel to the Applicant, 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</i>	<b>DENTONS CANADA LLP</b> 99 Bank Street, Suite 1420 Ottawa, ON K1P 1H4 <b>Kenneth D. Kraft</b> Direct: 416.863.4374 E-mail: <a href="mailto:kenneth.kraft@dentons.com">kenneth.kraft@dentons.com</a> <b>Phil M. Rimer</b> Direct: 613.783.9634 E-mail: <a href="mailto:philip.rimer@dentons.com">philip.rimer@dentons.com</a> <i>Counsel to the Respondents, Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc.</i>
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<p><b>GOODMANS LLP</b>  Bay Adelaide Centre – West Tower  333 Bay Street, Suite 3400  Toronto, ON M5H 2S7  <b>Brendan O’Neill</b>  Direct: 416.849.6017  E-mail: <a href="mailto:boneill@goodmans.ca">boneill@goodmans.ca</a>  <b>Christopher Armstrong</b>  Direct: 416.849.6013  E-mail: <a href="mailto:carmstrong@goodmans.ca">carmstrong@goodmans.ca</a>  <b>Jennifer Linde</b>  Direct: 416.849.6922  E-mail: <a href="mailto:jlinde@goodmans.ca">jlinde@goodmans.ca</a></p>	<p><b>ALVAREZ &amp; MARSAL CANADA INC.</b>  Royal Bank Plaza, South Tower  200 Bay Street, Suite 2900  P.O. Box 22  Toronto, ON M5J 2J1  <b>Stephen Ferguson</b>  Direct: 416.847.5162  E-mail: <a href="mailto:sferguson@alvarezandmarsal.com">sferguson@alvarezandmarsal.com</a>  <b>Josh Nevsky</b>  Direct: 416.847.5161  E-mail: <a href="mailto:jnevsky@alvarezandmarsal.com">jnevsky@alvarezandmarsal.com</a>  <b>Melanie MacKenzie</b>  Direct: 416.847.5158  E-mail: <a href="mailto:mmackenzie@alvarezandmarsal.com">mmackenzie@alvarezandmarsal.com</a>  Receiver</p>
<p><b>BORDEN LADNER GERVAIS LLP (BLG)</b>  Bay Adelaide Centre, East Tower  22 Adelaide Street West, Suite 3400  Toronto, ON, Canada M5H 4E3  <b>Roger Jaipargas</b>  Direct: 416.367.6266  E-mail: <a href="mailto:RJaipargas@blg.com">RJaipargas@blg.com</a>  Counsel to Mizrahi Inc., Sam M Inc., and Sam Mizrahi</p>	<p><b>MORSE SHANNON LLP</b>  133 Richmond Street West,  Suite 501 Toronto, ON M5H 2L3  <b>Jerome R. Morse</b>  Direct: 416.941.5867  E-mail: <a href="mailto:jmorse@morseshannon.com">jmorse@morseshannon.com</a>  <b>David Trafford</b>  Direct: 416-941-5850  E-mail: <a href="mailto:dtrafford@morseshannon.com">dtrafford@morseshannon.com</a>  Counsel to Mizrahi Inc., Sam M Inc., and Sam Mizrahi</p>
<p><b>MCCARTER GRESPAN LAWYERS</b>  539 Riverbend Drive,  Kitchener, ON N2K 3S3  <b>Avril Lavallee</b>  Direct: 519.571.8800 Ext. 135  E-mail: <a href="mailto:alavallee@mgbwlaw.com">alavallee@mgbwlaw.com</a>  Counsel to Mizrahi Inc., Sam M Inc., and Sam Mizrahi</p>	
	<p><b>BABIN BESSNER SPRY LLP</b>  185 Frederick St., Suite 101  Toronto, ON M5A 4L4  <b>Edward J. Babin</b>  Direct: 416.637.3294  E-mail: <a href="mailto:ebabin@babinbessnerspry.com">ebabin@babinbessnerspry.com</a>  <b>Cynthia L. Spry</b>  Direct: 416.637.3295  E-mail: <a href="mailto:cspry@babinbessnerspry.com">cspry@babinbessnerspry.com</a></p>

	<p><b>Michael Bookman</b> Direct: 647.725.2604 E-mail: <a href="mailto:mbookman@babinbessnerspry.com">mbookman@babinbessnerspry.com</a></p> <p><b>Brendan Monahan</b> Direct: 416.637.3296 E-mail: <a href="mailto:bmonahan@babinbessnerspry.com">bmonahan@babinbessnerspry.com</a> <i>Counsel to CERIECO Canada Corp.</i></p>
<p><b>HARRIS SHEAFFER LLP</b> 4100 Yonge Street, Suite 610 Toronto, ON M2P 2B5 <b>Michael J. Baum</b> Direct: 416.250.2892 E-mail: <a href="mailto:mbaum@harris-sheaffer.com">mbaum@harris-sheaffer.com</a> <i>Deposit Trustee</i></p>	<p><b>AVIVA INSURANCE COMPANY OF CANADA</b> c/o Westmount Guarantee Services Inc. 600 Cochrane Drive, Suite 205 Markham, ON L3R 5K3 <b>Brian Argue</b> Direct: 647.499.8249 X 203 E-mail: <a href="mailto:brian@westmountguarantee.com">brian@westmountguarantee.com</a></p> <p><b>Marlon Brown</b> Direct: 647.499.8249 X 205 E-mail: <a href="mailto:marlon@westmountguarantee.com">marlon@westmountguarantee.com</a></p>
<p><b>CHAITONS LLP</b> 5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9 <b>Harvey Chaiton</b> Direct: 416.218.1129 E-mail: <a href="mailto:harvey@chaitons.com">harvey@chaitons.com</a> <i>Counsel to Aviva Insurance Company of Canada</i></p>	<p><b>SINGLETON URQUHART REYNOLDS VOGEL LLP</b> 150 King St. West, Suite 2512 Toronto, ON M5H 1J9 <b>Bruce Reynolds</b> Direct: 416.585.8601 E-mail: <a href="mailto:breynolds@singleton.com">breynolds@singleton.com</a> <i>Counsel to Aviva Insurance Company of Canada</i></p>
<p><b>FASKEN MARTINEAU DUMOULIN LLP</b> Bay Adelaide Centre, 333 Bay St. #2400 Toronto, ON M5H 2T6 <b>Stuart Brotman</b> Direct: 416.865.5419 E-mail: <a href="mailto:sbrotman@fasken.com">sbrotman@fasken.com</a></p> <p><b>Daniel Richer</b> Direct: 416.865.4445 E-mail: <a href="mailto:dricher@fasken.com">dricher@fasken.com</a> <i>Counsel to NongHyup Bank, in its capacity as trustee of Hana Private Real Estate Investment Trust No. 137</i></p>	<p><b>HANA ALTERNATIVE ASSET MANAGEMENT CO., LTD.</b> 21F, 66 Eulji-ro Jung-gu, Seoul 04538, Republic of Korea <b>Cecilia Lee</b> Manager, Alternative Investment Division E-mail: <a href="mailto:chmlee@hanafn.com">chmlee@hanafn.com</a></p>
<p><b>MIZRAHI INC.</b> 189 Forest Hill Road Toronto, ON M5P 2N3 <b>Sam Mizrahi</b> E-mail: <a href="mailto:sam@mizrahidevelopments.ca">sam@mizrahidevelopments.ca</a></p>	<p><b>SAM MIZRAHI</b> 189 Forest Hill Road Toronto, ON M5P 2N3 <b>Sam Mizrahi</b> E-mail: <a href="mailto:sam@mizrahidevelopments.ca">sam@mizrahidevelopments.ca</a></p>

<b>JENNY COCO</b> 271 Spadina Road, 5th Floor Toronto, ON M5R 2V3 <b>Jenny Coco</b> E-mail: <a href="mailto:jcoco@cocogroup.com">jcoco@cocogroup.com</a>	<b>SAM M INC.</b> 189 Forest Hill Road Toronto, ON M5P 2N3 <b>Sam Mizrahi</b> E-mail: <a href="mailto:sam@mizrahidevelopments.ca">sam@mizrahidevelopments.ca</a>
<b>DLA PIPER (CANADA) LLP</b> 1 First Canadian Place, Suite 6000 100 King Street West Toronto, ON M5X 1E2 <b>Edmond F .B. Lamek</b> Direct: 416.365.4444 Email: <a href="mailto:edmond.lamek@dlapiper.com">edmond.lamek@dlapiper.com</a> <b>Danny M. Nunes</b> Direct: 416.365.3421 Email: <a href="mailto:danny.nunes@dlapiper.com">danny.nunes@dlapiper.com</a> <i>Counsel to Hyatt Hotels of Canada Inc.</i>	<b>HYATT HOTELS OF CANADA, INC.</b> 150 North Riverside Plaza Chicago, IL 60606 <b>Mark Sweeney</b> Direct: 312.780.2928 Email: <a href="mailto:mark.sweeney@hyatt.com">mark.sweeney@hyatt.com</a>
<b>SPEIGEL NICHOLS FOX LLP</b> 1 Robert Speck Parkway, Suite 200 Mississauga, Ontario L4Z 3M3 <b>Allison J. Speigel</b> Direct: 905.366.9700 Ext. 280 E-mail: <a href="mailto:allison@ontlaw.com">allison@ontlaw.com</a> <i>Counsel to Mappro Realty Inc.</i>	<b>NORTON ROSE FULBRIGHT CANADA LLP</b> 222 Bay Street, Suite 3000, P.O. Box 53 Toronto, ON M5K 1E7 <b>Evan Cobb</b> Direct: 416.216.1929 E-mail: <a href="mailto:evan.cobb@nortonrosefulbright.com">evan.cobb@nortonrosefulbright.com</a> <i>Counsel to Read Jones Christoffersen Ltd.</i>
<b>TORYS LLP</b> 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 <b>Adam Slavens</b> Direct: 416.865.7333 E-mail: <a href="mailto:aslavens@torys.com">aslavens@torys.com</a> <i>Counsel to Tarion Warranty Corporation</i>	<b>MILLER THOMSON LLP</b> Vaughan Metropolitan Centre 100 New Park Place, Suite 700 Vaughan, ON L4K 0H9 <b>Enzo Di Iorio</b> Direct: 905.532.6613 <a href="mailto:ediiorio@millerthomson.com">ediiorio@millerthomson.com</a> <b>Paul Guaragna</b> Direct: 905.532.6679 <a href="mailto:pguaragna@millerthomson.com">pguaragna@millerthomson.com</a> <i>Counsel to Innocon by its general partners Innocon Inc., Heidelberg Materials Canada Limited/Materiaux Heidelberg Canada Limitee, Lehigh Hanson Materials Limited, Lafarge Canada Inc. and Allmix Concrete Inc.</i>
<b>GARDINER ROBERTS LLP</b> Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3600 Toronto, ON M5H 4E3 <b>S. Michael Citak</b> Direct: 416.865.6706	<b>COZEN O'CONNOR LLP</b> Bay Adelaide Centre - North Tower 40 Temperance Street, Suite 2700 Toronto, Ontario M5H 0B4 <b>Steven Weisz</b> Direct: 647.295.2616

E-mail: <a href="mailto:mcitak@grllp.com">mcitak@grllp.com</a> <i>Counsel to PSR Brokerage Ltd.</i>	E-mail: <a href="mailto:sweisz@cozen.com">sweisz@cozen.com</a> <b>Heidi Esslinger</b> Direct: 236.317.6885 E-mail: <a href="mailto:hesslinger@cozen.com">hesslinger@cozen.com</a> <i>Counsel to Mizrahi Inc.</i>
<b>CANADA REVENUE AGENCY</b> 1 Front Street West Toronto, ON M5J 2X6 <b>General E-mail Inbox</b> E-mail: <a href="mailto:agc-pgc.toronto-taxfiscal@justice.gc.ca">agc-pgc.toronto-taxfiscal@justice.gc.ca</a>	<b>DEPARTMENT OF JUSTICE (CANADA)</b> Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 <b>General E-mail Inbox</b> E-mail: <a href="mailto:agc-pgc.toronto-taxfiscal@justice.gc.ca">agc-pgc.toronto-taxfiscal@justice.gc.ca</a>
<b>MINISTRY OF FINANCE (ONTARIO)</b> Insolvency Unit, Legal Services Branch 11-777 Bay Street Toronto, ON, M5G 2C8 <b>General E-mail Inbox</b> E-mail: <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a>	<b>CITY SOLICITOR'S OFFICE</b> City of Toronto Station 1260, 26th Floor Metro Hall, 55 John Street Toronto, ON M5V 3C6 <b>Christopher J. Henderson</b> Direct: 416.397.7106 E-mail: <a href="mailto:Christopher.Henderson@toronto.ca">Christopher.Henderson@toronto.ca</a> <b>Georgia Tanner</b> Direct: 416-392-8364 E-mail: <a href="mailto:Georgia.Tanner@toronto.ca">Georgia.Tanner@toronto.ca</a>
<b>HOME CONSTRUCTION REGULATORY AUTHORITY</b> 40 Sheppard Ave. W, Suite 400 Toronto, ON M2N 6K9 <b>Wendy Moir</b> E-mail: <a href="mailto:wendy.moir@hcraontario.ca">wendy.moir@hcraontario.ca</a> <b>Marc Spector</b> E-mail: <a href="mailto:marc.spector@hcraontario.ca">marc.spector@hcraontario.ca</a> <b>James Ryu</b> E-mail: <a href="mailto:james.ryu@hcraontario.ca">james.ryu@hcraontario.ca</a> <b>General E-mail Inbox</b> E-mail: <a href="mailto:info@hcraontario.ca">info@hcraontario.ca</a>	

KEB HANA BANK  
Applicant

-and- MIZRAHI COMMERCIAL (THE ONE) LP et al  
Respondents

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

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SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF OBJECTION**

**TORYS LLP**

79 Wellington Street West, Unit 3300  
Toronto, Ontario, M5K 1N2  
Tel. (416) 865-0040

David Bish  
LSO#41629A  
E-mail: [dbish@torys.com](mailto:dbish@torys.com)

**FOGLER RUBINOFF LLP**

77 King Street West, Suite 3000, P.O. Box 95  
Toronto, Ontario, M5K 1G8  
Tel. (416) 864-9700

Nina Perfetto  
LSO# 27452N  
E-mail: [nperfetto@foglers.com](mailto:nperfetto@foglers.com)

David Levangie  
LSO# 57180I  
Email: [dlevangie@foglers.com](mailto:dlevangie@foglers.com)

Counsel to Coco International Inc. and  
12823543 Canada Ltd. (the “Coco Parties”)