

APPENDIX "1"
RECEIVERSHIP ORDER DATED OCTOBER 18, 2023



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

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

THE HONOURABLE MR.)

JUSTICE OSBORNE)

WEDNESDAY, THE 18TH

DAY OF OCTOBER, 2023

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

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by KEB Hana Bank as trustee of (i) IGIS Global Private Placement Real Estate Fund No. 301 and (ii) IGIS Global Private Placement Real Estate Fund No. 434 (the “**Applicant**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario and legally described on Schedule “A” hereto (the “**Project**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Joo Sung Yoon (the “**Yoon Affidavit**”) sworn October 17, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the Receiver, counsel for Sam Mizrahi, Mizrahi Inc. and Sam M Inc. (collectively, the “**Mizrahi Group**”), and counsel for Coco International Inc. and 12823543 Canada Ltd., no one else appearing although duly served as appears from the affidavit of service of Sierra Farr, sworn October 17, 2023, and on reading the consent of A&M to act as the Receiver,

SERVICE AND REFERENCES

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that, in this Order, references to the Debtors shall include references to all Debtors, or any of them, unless otherwise specified.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, A&M is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including, without limitation, in connection with the Project and the Project itself, including all proceeds thereof (the “**Property**”). For the avoidance of doubt, the Property includes the lands legally described on Schedule “A” hereto and the buildings located thereon.

RECEIVER’S POWERS

4. **THIS COURT ORDERS** that, subject to the terms of the Receivership Funding Credit Agreement (as defined herein), including, without limitation, the Cash Flow Projections (as defined in the Receivership Funding Credit Agreement), the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or in respect of the Property, including without limitation, the Debtors' bank accounts wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to (i) enter into any agreements, including any agreements for the purchase and sale of condominium units which shall be subject to Court approval, (ii) incur any obligations in the ordinary course of business, (iii) cease to carry on all or any part of the business, or (iv) cease to perform, terminate or disclaim any contracts of the Debtors, or in respect of the Property, subject to paragraph 5 of this Order;
- (d) make, directly or indirectly, payments owing by the Debtors, or any of them, or owing by Mizrahi Inc. solely in its capacity as developer or general contractor of the Project (in such capacity, the "**Developer**"), to suppliers, contractors, subcontractors and other creditors, in respect of amounts owing prior to or after the date of this Order, who the Receiver considers to be critical to the business of the Debtors or the Project;
- (e) to engage construction managers, project managers, contractors, subcontractors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and any other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and, with the consent of the Applicant, to exercise all remedies of the Debtors in collecting such monies and accounts, including, without limitation, to enforce any security held by the Debtors;
- (h) to settle, extend or compromise any indebtedness owing to the Debtors, provided that the Receiver shall obtain the prior consent of the Applicant prior to settling, extending or compromising any indebtedness owing to the Debtors in excess of \$100,000;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings, provided that the Receiver shall obtain the prior consent of the Applicant prior to settling or compromising any proceeding where the amount claimed is in excess of \$100,000. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) in consultation with the Applicant, to market, whether directly or indirectly, any or all of the Property, including, without limitation, condominium units and leased premises in the Project, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

- (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$2,000,000, and provided further that no condominium unit in the Project shall be sold pursuant to this clause (i); and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause, or in respect of any transaction in respect of condominium units in the Project;

and in each such case notice under subsection 63(4) of the *Ontario Personal Property Security Act*, or section 31 of the *Ontario Mortgages Act*, as the case may be, shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and/or the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable, and to conduct any investigations associated with the Debtors' business or the Property as the Receiver deems appropriate;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions and any renewals thereof, and make any filings, in each case as may be required by any governmental authority for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) with the consent of the Applicant, to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the

generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

- (r) to exercise any shareholder, partnership, joint venture, contractual, statutory or other rights which the Debtors may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

5. **THIS COURT ORDERS** that the Receiver shall be at liberty to cease to perform, terminate or disclaim either the Commercial Development Management Agreement (the “**Construction Management Agreement**”) made as of the 25th day of July, 2014 between Mizrahi Commercial (The One) LP as owner and Mizrahi Inc. as manager in respect of the development and construction services provided to the Project, or the CCDC2 Stipulated Price Contract 2008 made on the 14th day of May, 2019, as amended on the 27th day of September, 2019 (such contract, as so amended, the “**GC Agreement**”) between Mizrahi Development Group (The One) Inc. as owner and Mizrahi Inc. as contractor, in respect of the general contractor services provided to the Project, subject to providing at least 15 days’ notice to counsel to the Mizrahi Group.

6. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay the amount of \$783,305.03, in respect of the amounts owing to Mizrahi Inc. pursuant to the Construction Management Agreement and/or the GC Agreement for services performed on or prior to August 31, 2023, and the Receiver is further authorized to pay all fees owing under the Construction Management Agreement and the GC Agreement that are properly incurred on or after September 1, 2023, pursuant to the terms of such agreements; provided however that, for the avoidance of doubt, in making any payments pursuant to this paragraph 6, the Receiver is not affirming either the Construction Management Contract or the GC Agreement, and the Receiver

shall have no personal liability for any payments or other obligations under either the Construction Management Contract or the GC Agreement.

6A. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay the amount of \$88,218.16, in respect of the amounts owing to 12823543 Canada Ltd. for accounting services performed on or prior to August 31, 2023.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

7. **THIS COURT ORDERS** that (i) the Debtors; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, direct and indirect shareholders or other equity holders, limited partners, general partners and all other persons acting on their instructions or behalf; (iii) all construction managers, project managers, contractors, subcontractors and service providers directly or indirectly involved in the Project, and all other persons acting on their instructions or behalf; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

8. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, agreements, orders, corporate and accounting records, insurance policies, permits, licenses and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtors or the Property, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof (in each case within the timeframe specified by the Receiver in writing or such other timeframe as may be agreed to between the Receiver and such Person) and grant to the Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may

not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer, in the cloud, or in or on other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers or other account credentials that may be required to gain access to the information.

10. **THIS COURT ORDERS** that all Persons, including, without limitation, the Debtors, Mizrahi Inc., Sam M Inc., 12823543 Canada Ltd., Sam Mizrahi, Jenny Coco, and all construction managers, general contractors, contractors and subcontractors to the Project shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, subcontracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors and/or the Property, solely in relation to the Project. In addition to the foregoing general cooperation and information sharing requirements, all constructions managers, general contractors, contractors, and subcontractors shall, as applicable, be required to do the following things: (a) in respect of any and all such contracts, subcontracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty days' notice of any renewal date, termination date, election date or similar date in respect

thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required.

11. **THIS COURT ORDERS** that, upon termination, disclaimer, expiry or cessation of any contract or agreement between the Debtors and/or or the Receiver and any other Person, such Person shall deliver to the Receiver any Records necessary or desirable for the operation of the Debtors' business or the Project.

12. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

13. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver or the Receiver's counsel except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

14. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property, or the Developer for matters arising after the date of this Order, shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, or against the Developer for matters arising after the date of this Order, including, without limitation, licenses and permits required for the Project regardless of who is the legal holder of any such licenses and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

16. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of the Debtors, the Developer, or in respect of the Project, or held by the Debtors or the Developer, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors, or the Developer or contractual, statutory or regulatory mandates for the supply of goods and/or services to the Debtors, or the Developer and/or the Project, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll and benefit services, warranty services, sub-contracts, trade suppliers, equipment vendors and rental companies, insurance, transportation services, utility, customers, clearing, warehouse and logistics services or other services to the Debtors, or the Developer and/or the Project are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may

be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver or the Developer, as determined by the Receiver, in accordance with normal payment practices of the Debtors or the Developer, as applicable, or, with respect to the Debtors or the Developer, such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

18. **THIS COURT ORDERS** that any Person who has provided any kind of letter of credit, guarantee, surety or bond (collectively, "**Financial Assurance**") to or for the benefit of the Debtors, including where such Financial Assurance has been provided to the Developer, on or before the date of this Order shall be required to continue honouring such Financial Assurance in accordance with its terms, notwithstanding any default of cross-default arising as a result of this Order, the financial circumstances of the Debtors or otherwise. For greater certainty, the guarantees of the Guarantors referred to in paragraph 65 of the Yoon Affidavit shall not be affected by this paragraph and such guarantees are not included in the definition of Financial Assurance.

RECEIVER TO HOLD FUNDS

19. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new bank accounts to be opened by the Receiver or on the instructions of the Receiver into a lawyer's trust account held in trust in accordance with purchase and sale agreements for condominium units in the Project (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

20. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the respective Debtor until such time as the Receiver, on the applicable Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

21. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property including, without limitation, condominium units and leased premises in the Project (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

22. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation,

enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

23. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation (including, without limitation, any personal liability or obligation under or in connection with (i) the Receivership Funding Credit Agreement; (ii) the performance, actions, errors, omissions or negligence by or of any construction manager, project manager, developer, contractor, subcontractor or other service provider directly or indirectly involved in the Project, and all other persons acting on their instructions or behalf, or (iii) as a result of its appointment or the carrying out of the provisions of this Order), save and except for liability arising from any gross negligence or wilful misconduct on its part, as determined pursuant to a final order of this Court that is not subject to appeal or other review and all rights to seek any such appeal or other review shall have expired, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER’S ACCOUNTS

24. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, whether incurred prior to, on or subsequent to the date of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings,

and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and provided further that the Receiver's Charge shall be subordinate to the security interest of Aviva Insurance Company of Canada ("**Aviva**") in the Condo Deposits in the Condo Deposit Account (each as defined in the Yoon Affidavit).

25. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

26. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

27. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow, by way of the Receivership Funding Credit Agreement dated as of October 18, 2023 among the Receiver, IGIS Asset Management Co., Ltd. and KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the "**Lender**") (with such minor amendments that are not inconsistent with this Order, as the Lender and the Receiver may agree to, the "**Receivership Funding Credit Agreement**"), such monies from time to time as it may consider necessary or desirable, provided that draws made under the Receivership Funding Credit Agreement do not exceed \$315,000,000 (or such further amount as this Court may authorize), on the terms contained in the Receivership Funding Credit Agreement, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including as required in order to finance ongoing construction and development costs in connection with the Project and costs associated with the Receivership, including professional fees. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed pursuant to the Receivership

Funding Credit Agreement, together with interest, fees and charges thereon, as set forth in the Receivership Funding Credit Agreement, and all other amounts the Debtors are responsible for pursuant to the Receivership Funding Credit Agreement, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and provided further that the Receiver's Borrowings Charge shall be subordinate to the security interest of Aviva in the Condo Deposits in the Condo Deposit Account.

28. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) upon the occurrence of an event of default under the Receivership Funding Credit Agreement or the Receiver's Borrowings Charge, the Lender may immediately cease making advances to the Receiver, make demand, accelerate payment and give other notices; and
- (b) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy of the Debtors or the Property.

29. **THIS COURT ORDERS** that the Receiver's Borrowings Charge shall not be enforced without leave of this Court.

30. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") as evidence for any amount borrowed by it pursuant to the Receivership Funding Credit Agreement and this Order.

31. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to the Receivership Funding Credit Agreement and this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

32. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.alvarezandmarsal.com/theone>.

33. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

34. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

35. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any or all of the Debtors.

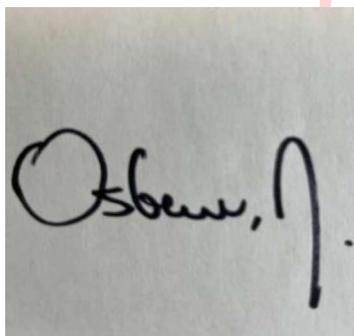
36. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.

All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

37. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

38. **THIS COURT ORDERS** that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Receivership Funding Credit Agreement, the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

39. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



2023.10.
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SCHEDULE "A"

LEGAL DESCRIPTION OF THE PROJECT

PIN 21109-0244 (LT)

FIRSTLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; SECONDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; THIRDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN AT5101384; FOURTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 163R658; SUBJECT TO AN EASEMENT AS IN AT5101384; FIFTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN AT5101384; SIXTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770; SUBJECT TO AN EASEMENT AS IN AT5101384; SEVENTHLY: FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT PT PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, SAVE AND EXCEPT PART 2 ON PLAN 66R-32221; SUBJECT TO AN EASEMENT AS IN AT5101384; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 AND 8 ON PLAN 66R-32221 AS IN AT6077647; SUBJECT TO AN EASEMENT OVER PARTS 4, 5 AND 6 ON PLAN 66R-32221 AS IN AT6077654; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT OVER PART 3 ON PLAN 66R-32221 IN FAVOUR OF PART OF PARK LOT 9, CONCESSION 1 FROM THE BAY (YORK) DESIGNATED AS PART 2 ON PLAN 66R-32221 AS IN AT6077634; SUBJECT TO AN EASEMENT AS IN AT6227322; CITY OF TORONTO

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc., in its capacity as the receiver and manager (the "**Receiver**") 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. (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario (the "**Project**"), including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 20 (the "**Order**") made in an action having Court file number -CL- _____, has received as such Receiver from KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable in accordance with the terms of the Receivership Funding Credit Agreement (as defined in the Order) with interest thereon calculated in accordance with the terms of the Receivership Funding Credit Agreement.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20_.

ALVAREZ & MARSAL CANADA INC.,
solely in its capacity as Receiver of the Property,
and not in its personal capacity

Per: _____

Name:

Title:

**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

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

Respondents

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

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

PROCEEDING COMMENCED AT: TORONTO

ORDER

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Email: msheelley@osler.com

Lawyers for the Applicant

APPENDIX “2”
LETTER TO GOODMAN FROM MI DATED JUNE 14, 2024

Seaby, Emily

From: David Trafford <DTrafford@morseshannon.com>
Sent: Friday, June 14, 2024 12:40 PM
To: Dunn, Mark; Linde, Jennifer; Armstrong, Christopher; O'Neill, Brendan
Cc: Jerome Morse; Steve Weisz; Veronica Stasolla
Subject: Mizrahi Inc
Attachments: 2024-06-14 Letter to Goodmans.pdf; Unpaid General Conditions Costs to 06-14-2024.xlsx; 1709BB03-The_One-2024-03-06.pdf

Good afternoon,
Please find attached our letter of today's date.

David Trafford

Partner

Direct Line: 416-941-5850



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

www.morseshannon.com

PLEASE NOTE OUR NEW ADDRESS ABOVE!

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

June 14, 2024

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

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

Dear Counsel:

**Re: Mizrahi Inc.
Our File No. 50960**

We write to address a number of outstanding issues with the aim of narrowing the current disputes between Mizrahi Inc ("MI") and the receiver.

Increase in the Reserve for the Payment Motion

Enclosed is our client's further revised spreadsheet setting out MI's current claim for payment against the Project for post-receivership work, including amounts we understand are outstanding third party costs. MI has adopted many of the changes the receiver made to the spreadsheet last circulated. Although MI does not agree with many of these changes, it is prepared to agree to them as the discrepancies are modest. MI maintains a claim for interest on the outstanding amounts owed and claimed in the Payment Motion. As previously requested, we ask the receiver to provide its position on why MI's claim would not attract interest.

Our client is concerned about its exposure arising from the non-payment of third party costs. We understand the receiver intends to work with these service providers in an attempt to come to a resolution of these outstanding claims. Please advise if the receiver is prepared to advise us of the nature of the dispute with these suppliers so we may consider a way to protect MI from a claim by these suppliers for non-payment. If the receiver is negotiating with these suppliers for a reduction in their claim or otherwise, please advise if there is an intention to obtain releases, in which case, we ask that MI be included in the release. In addition, please advise if the receiver will undertake to advise MI of any settlement with these suppliers and to advise of the quantum of any amounts

paid to them, which, as previously discussed, is relevant to MI's claim to a 5% construction management fee at issue in the Payment Motion.

If the receiver is prepared to undertake to either pay the outstanding third party costs or otherwise hold MI harmless from any claims by these suppliers for payment against MI, then MI is prepared to agree to an increase in the reserve to address the claim for the Payment Motion from \$6 million to \$7 million. Otherwise MI will seek an increase in the reserve to \$11 million to protect it from non-payment for the entire amount, including third party costs.

The Status of Construction

During the case conference on June 12, we understood you to advise the court that since MI was replaced, the project has added 5 tower floors for a total of 60 floors. Our clients, Mr. Mizrahi and MI, are trying to understand the status of the construction. Respectfully, the receiver's information about this has been inconsistent. Justice Osborne's endorsement from the June 6 motion indicates that as of that time the "concrete tower slabs have been poured up to level 56". The enclosed report establishes that the tower slab for the 55th floor was poured by Hardwall Construction on March 6, while MI was general contractor. We have been advised that the 59th floor was poured this week. At the time of the motion it would appear our notes were correct and the rate of progress of the tower was to no higher than the 58th floor, consistent with Mr. Trafford's notes. Please provide the receiver's position on this apparent inconsistency.

Claims of the Receiver Against MI

During the case conference on June 12, you indicated the receiver's review of the Project Documents as compiled by Ricoh was relevant to the set-off claims your client intends to advance as part of MI's Payment Motion. Other than the issue of the repayment of commissions the receiver claims are owed by MI, please advise what other claims the receiver is investigating so that we may review the voluminous production and be in a position to respond to any such claims without delay. If there is documentation the receiver has reviewed that it will rely upon for such claims, please confirm the receiver will provide that documentation now. We propose that the receiver give us an indication of what these potential claims may be. Since the receiver has advised of the commission claim, there should be no good reason to withhold the identification of any other claims. The receiver would not be required to advance these claims. If the receiver, as contended, wants the Payment Motion to proceed expeditiously and with a hearing on the merits in September, we see no reason why MI cannot be provided with notice of the potential set-off claims the receiver is investigating, and for which the Project Documents as compiled by Ricoh could be relevant, as well as documents in its possession to be relied upon for such claims. MI maintains its position that the receiver was obligated to deliver a responding motion record to the Payment Motion on May 31, based on the information it

had at that time. Nonetheless, if the receiver is unwilling to provide us with this information now as well as the documents relied upon for the commission claim, we will seek a further conference with Justice Osborne.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT

cc: Steve Weisz
David Trafford

Schedule A

Invoice	Amount	Invoice Number
Equipment Cost	12,482.26	C1425
Recoverable Cost	1,145,240.17	C1428
Construction Staff Cost	439,795.34	C1424
Crane Labour	65,865.59	C1422
Site Labour	511,117.80	C1423
Sales Gallery Management	27,345.99	C1426
Sales Gallery Management	27,345.99	C1427
Sales Gallery Management	27,345.99	C1421
Total	\$2,256,539.13	

SCHEDULE A

Invoice from Mizrahi Inc.	Amount	Invoice
Equipment Cost	12,482.26	C1441
Recoverable Cost	1,444,933.27	C1445, C1447
Construction Staff Cost	439,795.34	C1442
Crane Labour	97,969.31	C1349
Site Labour	664,246.60	C1440
Sales Gallery	28,713.29	C1443
Total	\$2,688,140.07	

|

SCHEDULE A

Invoice	Invoice Amount	Invoice
Amherst Concrete Pumping Ltd.	131,558.30	202476
E.S. Fox Limited	207,112.13	B0320086
Morrow Equipment Company LLC	271,471.20	C00013018, R18101336
Procore Technologies Canada Inc	142,144.00	INV00195191
Amherst Crane Rentals Ltd	67,370.61	726617, 726615, 726618, 726616, 726883, 726899, 726885, 726884
ASG Security Group LTD.	237,784.39	14-12053, 14-12054, 14-12055, 14-12056R, 14-12057, 14- 12058, 14-12059, 14-12074, 14- 12075R, 14-12076, 14-12077, 14-12078, 14-12080, 14-12079, 14-11934, 14-11930, 14-11931, 14-11932, 14-11933, 14-11935, 14-11936
Clonard Group Inc.	345,193.11	24011616
Total	\$1,402,633.74	

SCHEDULE B

Invoice	Invoice Amount	Invoice
Equipment Cost	13,806.22	C1456
Recoverable Cost	348,548.26	C1462
Recoverable Cost (Livingston)	99,835.88	C1468
Construction Staff Cost	439,795.34	C1457
CM Fee on Crane & Site Labour	18,479.25	n/a
Total	\$920,464.95	

SCHEDULE A

Vendor	Invoice Amount	Invoice
Equipment Cost	13,449.31	C1479
Recoverable Cost	1,252,340.15	C1477
Less: Morrow Equipment Company LLC	(333,443.79)	C00013107, R18101337, R18101338
Less: AlumaSafway Inc.	(211,520.18)	PC#25, PC#28- 20252A
Less: E.S. Fox Limited	(76,947.33)	B0321090
Less: Amherst Concrete Pumping Ltd.	(74,410.14)	200078, 203011
Less: Doka Canada Ltd.	(68,531.04)	D442000604
Construction Staff Cost	439,357.63	C1478
Crane Labour	71,650.49	C1470
Less: Amherst Crane Rentals Ltd.	(71,650.49)	727016, 727017, 727086, 727087, 727209, 727210, 727287, 727288
Site Labour	501,542.89	C1476
Less: Clonard Group Inc.	(353,834.08)	24021331
Less: ASG Security Group Ltd.	(147,708.81)	14-12206, 14-12207, 14-12208, 14-12209, 14-12210, 14-12211, 14-12138, 14-12139, 14-12140, 14-12141, 14-12142, 14-12143, 14-12144
CM Fee on Crane and Site Invoices	28,659.67	5% of Site and Crane amounts
CM Fee on Gamma (subsequent approval)	16,841.81	C1481
Total	\$985,796.09	

Hard Costs Paid by Receiver	Invoice Amount	Invoice	Note
Livingston International Inc.	78,039.31	419-248784, 419-313124, 419-357562, 419-377347, 302000929501, 305-619996	
Guardtek Systems Inc.	101,700.00		24856
Livingston International Inc.	36,776.08	419-357690, 419 477041	
Hardwall Construction LTD.	954,972.74		J007711
Innocon Partnership	111,438.54	719159539, 719126911, 719126912, 718987473, 718715308, 719129074, 719 102485	
Myer Salt Limited	223,825.16		10324U1346-IN
Bothwell-Accurate Co. Inc.	16,644.79		19A008531
Gamma Windows & Walls International Inc.			1808-58, 1808-58
Bass Curtainwalls Inc.	22,443.16		3318
Bass Installation A Division of 1587855	528,714.82		3895
Bass Curtainwalls Inc.			3319, 3896
Yarl Metal Fabrications Inc.	3,535.77		64249
Earl Paddock Transportation Inc.	6,616.15	300309C, 301481C, W700258, W700259	
Riverside Group LTD.	168,522.94		8602, 8603
Tractel LTD.			8L45-Mar2024
Modern Niagara Toronto Inc.	13,305.35		INTO0080287
Ozz Electric Inc.	29,899.80		J027587
Clifford Restoration Limited			013764
Detail International Co. Limited	25,896.81		DTE-3098-08A
Klaus Multiparking Inc.			1Bloor-STG17HB
Total	\$2,322,331.42		
CM Fee on Above	116,116.57		

March Recoverable Costs	Invoice Amount	Invoice	Note
Paid by Receiver			
AlumaSafeway Inc.	60,763.15	PC#27-03.12.2024, PC#30 03.12.24	
Amherst Concrete Pumping Ltd	27,958.00		203728
2 Bloor Inc.	45,036.12		May Rent
Canadian Springs Div. of Aquaterra	655.25	21019182 031524	
City Disposal Group 2015 Inc.	27,529.63		3505, 3521
Dell-Core Equipment Ltd	654.38	D019286, D019287	Invoice #3521 added
Dell-Core Edge Protection Ltd	25,834.70	Q025154, Q024897, Q024896	
Doka Canada Ltd	68,531.04		D44200005
E.S. Fox Limited	156,263.27		B0323598
EY Design Inc.			1144
EY Design Inc.	220.35		1146
Federal Wireless Communications Inc	220.35		1030737
Herc Rentals Inc	2,289.95	63897-0001, 58522-0023	
Imperial Parking Canada Corp	96.09	Account # 438904	
Jordahl Canada Inc	19,430.24	307905, 307611, 307610, 308095, 307910, 307890, 307958	Invoice 307958 for \$2,486.90 removed. Services rendered on March 13, 2024
Live Patrol Inc.			22936
Morrow Equipment Company LLC	19,959.19		C00013225
My Construction Supply Corp			INV179630
Safety First Consulting Ltd	33,207.48		38985, 38986, 2302
Scaf-Tech Inc.	4,264.76	2024-201, 2024-168, 2024-169, 2024-147	
Stephenson's Rental Services Inc.	7,967.86	1081100669-0002, 1081093044-0023, 1081094938, 0019, 1081096068-0018, 1081096400-0018, 1081097291-0017, 1081099162-0014, 1081099305, 0014, 1081100672-0012, 1081100802-0013, 1081102894-0010, 1081103283-0010, 1081106521, 0004, 1081107075-0003, 1081107036-0002, #1278041, #1282978	
Super Save Fence Rentals Inc	71.98		1456914
Super Save Toilet Rentals Inc			FP78664, FP78663, FP78665
The Fence People Limited	488.16		AR4846217
Toshiba Tec Canada Business Solutions Inc	619.87		#255, #256, #257, #258
Tote Recycle	3,796.80		n/a
Sheffield Moving and Storage			n/a
Paid / To be Paid by Mizrahi Inc			
Rosers	567.12		n/a
Fedex	129.08		n/a
Xerox	734.50		n/a
Toronto Hydr	22.47		n/a
Toronto Police Services	4,444.29		n/a
Total	\$511,535.73		

March Mizrahi Inc Amounts	Amount	Invoice
HST	264,982.46	C1505
HST	3,366.59	C1516
CM Fee	116,116.57	C1508 & C1516 per above Hard Cost Listing
CM Fee	40,248.28	CM Fee on C1505 from SUSD payments
Recoverable Cost Paid by Mizrahi Inc.	5,897.46	C1509
CM Fee on Approved Recoverables	25,576.79	C1509
Crane Labour	28,182.21	C1499
Less: Amherst Crane Rentals Ltd	(28,182.21)	728115, 728156, 728157, 728114
CM Fee on Crane Labour	1,409.11	C1499
Site Labour	62,177.55	C1504
Less: ASG Security Group LTD.	(62,177.55)	14-12384R, 14-12383R, 14-12390, 14-12389, 14-12385, 14-12386, 14-12387, 14-12388
CM Fee on Site Labour	3,108.88	C1504
Total	\$460,706.14	

February Mizrahi Inc Amounts	Amount	Invoice
Haimul Guangzhou	(7,889.75)	C1497
HST	133,874.71	C1486
CM Fee	13,029.35	C1486 (5% of Delta between CAD total with HST and nominal \$US total)
CM Fee	314,294.15	5% of amounts funded on C1497 (See Schedule)
CM Fee	183,465.88	5% on Modern Niagara - INTO0075937
Equipment Cost	7,654.66	INTO0072252, INTO0075901
Recoverable Cost	1,774,198.22	C1491
Less: Direct Payment by Receiver	(1,727,177.20)	Variour
CM Fee on Recoverable Invoice	88,709.90	C1495
Construction Staff Cost	172,884.36	C1490
Crane Labour	82,086.03	C1493
Less: Amherst Crane Rentals Ltd	(82,086.03)	727422, 727423, 727612, 727613, 727748, 727800, 727945, 727946
Site Labour	788,495.37	C1492
Less: Clonard Group Inc.	(597,209.24)	24032130
Less: ASG Security Group LTD.	(171,286.13)	14-12280, 14-12281, 14-12282, 14-12283, 14-12284, 14-12285, 14-12327, 14-12328, 14-12329, 14-12330, 14-12331, 14-12332, 14-12333
CM Fee on Crane and Staffing	42,529.07	5% of amounts paid related to C1493, C1492
Subtotal	\$995,173.15	

Less: Direct Payment by Receiver:	Amount	Invoice
Cropac Equipment Inc.	(19,196.54)	\$12733
Morrow Equipment Company LLC	(580,464.74)	R18101329, C00012840, C00012852, P18101336, R18101330, C00012898, C00012899, C00012931, R18101331, R18101332, Less MI Payment 02.29.24
ASG Security Group LTD.	(81,656.21)	14-11150, 14-11292, 14-11452, 14-11455, 14-11456, 14-11457, 14-11547, 14-11553, 14-11566
Scaf-Tech Inc.	(49,582.14)	2023-379, 2023-392, 2023-397, 2023-409, 2023-460, 2023-462, 2023-477, 2023-506, 2023-507
Hardwall Construction LTD	(27,159.56)	J007415, J007388, J007330
Safety First Consulting Ltd.	(69,356.30)	36909, 36491, 16911T
Proline Hardware Ltd.	(14,588.70)	112243, 112258, 112251, 112274, 112296, 112348, 112361, 112397, 112413, 112478
Herc Rentals Inc	(19,313.81)	119000534-0029, 119000534-0024, 58032-0019, 59711-0011, 58522-0015
DDJ Developments Inc	(24,805.12)	Invoice #46
1735178 Ontario Inc. (a.k.a. J Murva Consulting Ltd.)	(73,803.13)	2024-002, 2024-005, 2024-011
EY Design Inc.	(15,085.50)	1147
Total	\$20,361.40	

Description	Lien Amount	Receiver Paid	Disputed Amounts*	Additional Amounts Revised	Amount	Notes
C1499 - Crane Labour (Includes 5% CM Fee)	39,065.02	(29,591.32)	-	-	9,473.70	Amount paid May 3rd
C1504 - Site Labour (Includes 5% CM Fee)	390,978.14	(65,286.43)	-	-	325,691.71	Amount paid May 3rd
C1509 - Recoverable (Includes 5% CM Fee)	626,615.00	(585,220.17)	(47,423.00)	8,501.27	2,473.10	See Below Reconciliation
C1508 - Hard Costs (Includes 5% CM Fee)	3,486,163.64	(2,183,915.18)	(354,716.33)	6,315.59	953,847.72	See Below Reconciliation
C1506 - CM Fee (5%) on holdback	697,460.58	-	-	-	697,460.58	
C1507 - Livingston Invoices	126,466.37	(126,466.37)	-	-	-	Paid in Full + CM Fee
Reconciliation Amount Agreed with the Receiver	20,361.40	(20,361.40)	-	-	-	
Motion Amounts as per Enclosure A	5,478,815.59	(280,763.05)	(113,000.00)	-	5,085,052.54	
TOTAL	10,865,925.74	(3,291,603.92)	(515,139.33)	14,816.86	7,073,999.35	

Note 1. Disputed Amounts Reconciliation

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

Recoverable Invoice	Invoiced	Paid	Disputed Amounts	Additional Amounts	Outstanding	Notes
AlumaSafway Inc.	60,783.15	(60,783.15)	-	-	-	
Amherst Concrete Pumping Ltd.	27,958.00	(27,958.00)	-	-	-	
2 Bloor Inc.	45,036.12	(45,036.12)	-	-	-	
Canadian Springs	691.85	(655.25)	-	-	36.60	HST Variance
City Disposal Group 2015 Inc.	19,433.18	(27,529.63)	-	8,096.45	-	Note: One additional invoice added
Dell-Core Equipment Ltd.	654.38	(654.38)	-	-	-	
Dell-Core Edge Protection Ltd.	25,834.70	(25,834.70)	-	-	-	
Doka Canada Ltd.	68,531.04	(68,531.04)	-	-	-	
E.S. Fox Limited	156,263.27	(156,263.27)	-	-	-	
EY Design Inc.	54,361.64	(48,107.65)	(6,253.99)	-	-	Invoice revised by EY Designs to correct double counting of HST. CM Fee is outstanding on this invoice.
EY Design Inc.	16,865.02	-	(16,865.02)	-	-	Ineligible Invoice - Not an approved project cost
Federal Wireless Communications Inc.	220.35	(220.35)	-	-	-	
Herc Rentals Inc.	2,289.95	(2,289.95)	-	-	-	
Imperial Parking Canada Corp.	108.58	(96.09)	-	-	12.49	HST Variance
Jordahl Canada Inc.	21,917.14	(19,430.24)	(2,486.90)	-	-	One Invoice Ineligible - Post March 13th
Live Patrol Inc.	7,684.00	-	(7,684.00)	-	-	Invoice Ineligible - Post March 13th
Morrow Equipment Company LLC	19,959.19	(19,959.19)	-	-	-	
My Construction Supply Corp.	5,845.67	-	(5,845.67)	-	-	Invoice Ineligible - Post March 13th
Safety First Consulting Ltd.	33,207.48	(33,207.48)	-	-	-	
Scaf-Tech Inc.	4,264.76	(4,264.76)	-	-	-	
Stephenson's Rental Services Inc.	7,967.86	(7,967.86)	-	-	-	
Super Save Fence Rentals Inc.	71.98	(71.98)	-	-	-	
Super Save Toilet Rentals Inc.	5,351.18	-	(5,351.18)	-	-	Invoice Ineligible - Post March 13th
The Fence People Limited	488.16	(488.16)	-	-	-	
Toshiba Tec Canada Business Solutions Inc.	619.87	(619.87)	-	-	-	
Tote Recycle	3,796.80	(3,796.80)	-	-	-	
Sheffield Moving and Storage	678.00	-	(678.00)	-	-	Ineligible Invoice - Not an approved project cost
Rogers	568.03	(567.12)	-	-	0.91	HST Variance
Fedex	138.92	(129.08)	-	-	9.84	HST Variance
Xerox	734.50	(734.50)	-	-	-	
Toronto Hydro	27.10	(22.47)	-	-	4.63	HST Variance
TPS	4,444.29	(4,444.29)	-	-	-	
Subtotal	596,776.16	(559,643.38)	(45,164.76)	8,096.45	64.47	
CM Fee	29,838.81	(25,576.79)	(2,258.24)	404.82	2,408.60	CM Fee on EY Designs Invoice Outstanding
Total	626,614.97	(585,220.17)	(47,423.00)	8,501.27	2,473.07	
	(0.03)					

	596776.16	559643.38
	596776.16	528120.496
	29838.81	26406.0248
		495259.628
		24762.9814
		559643.38
	0.05	



Mizrahi Inc.
 125 Hazelton Avenue
 Toronto, Ontario M5R 2E4
 P: (416) 922-4200
 F: 1-866-300-0219

Project: 1709BB03 - The One
 2 Bloor Street West
 Toronto, Ontario M4W3E2
 P: 416-922-4200

Daily Log: Wednesday 3/6/2024



Daily Log Completed & Distributed

The Daily Log was completed and distributed by Adele DiGirolomo on Wed, Mar 6, 2024 at 05:38 PM EST.

WEATHER REPORT

Temperature			Precipitation Since			Humidity				Windspeed		
Low	High	Avg	Midnight	2 Days Ago	3 Days Ago	Low	Avg	High	Dew	Avg	Max	Gust
6°C	8°C	7°C	0.00 cm	0.00 cm	0.00 cm	80%	89%	94%	5°C	3.4 kmh	8 kmh	17 kmh

DAILY SNAPSHOT

06:00 AM	09:00 AM	12:00 PM	03:00 PM	06:00 PM	09:00 PM
Cloudy 6°C	Cloudy 6°C	Cloudy 6°C	Cloudy 7°C	Cloudy 6°C	Cloudy 5°C

OBSERVED WEATHER CONDITIONS

No.	Time Observed	Weather Delay	Sky	Temp	Average	Precipitation	Wind	Ground/Sea
1	01:50:00 PM	No						

PHOTOS



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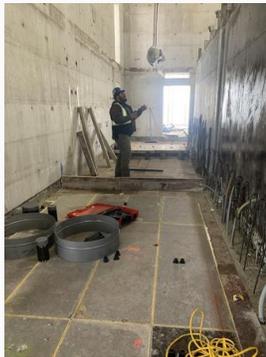
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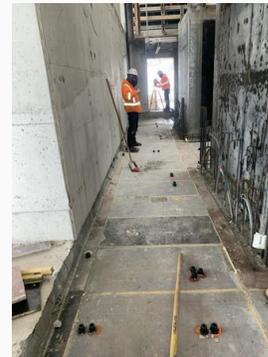
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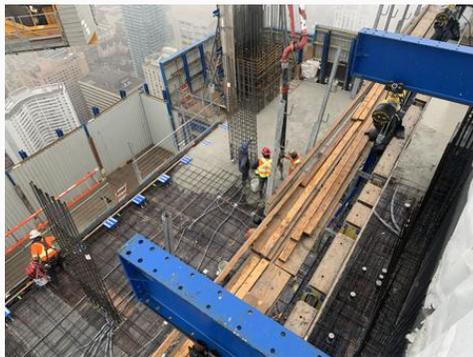
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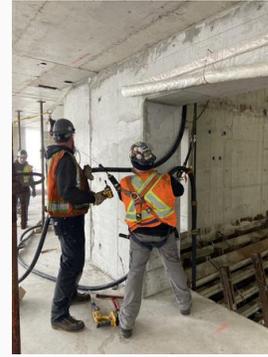
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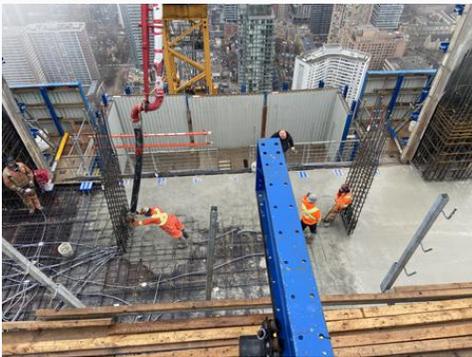
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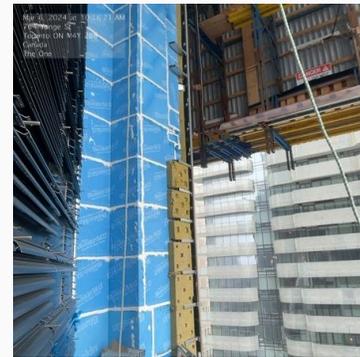
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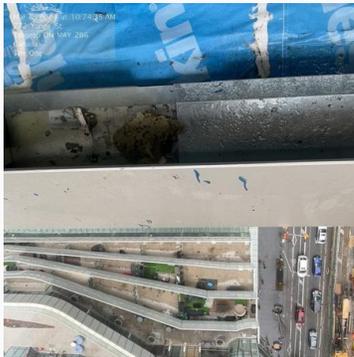
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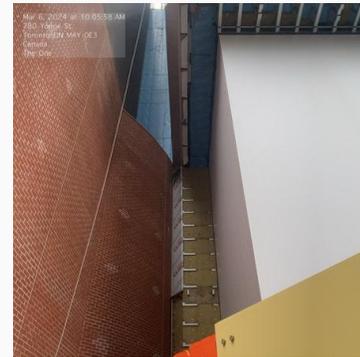
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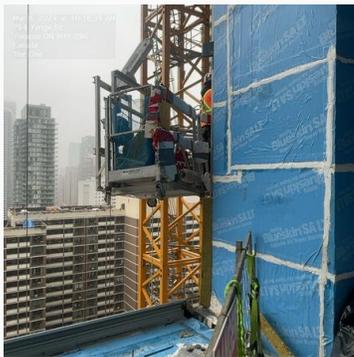
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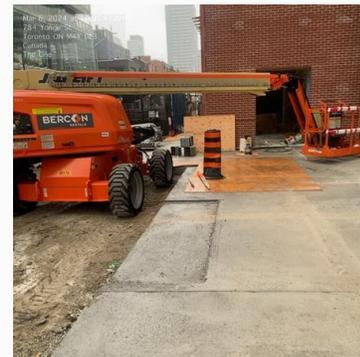
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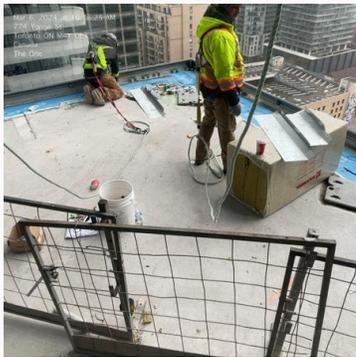
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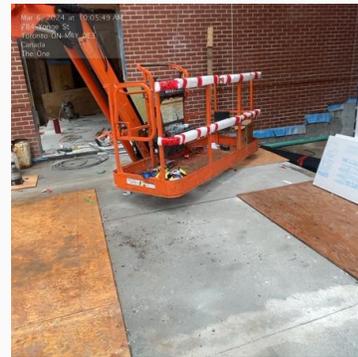
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[TC_04017.JPG](#)



[TC_04019.JPG](#)



[TC_04014.JPG](#)

MANPOWER LOG

212 Workers | 1,908.0 Man Hours

No.	Contact/Company	Cost Code	Workers	# Hours	Man Hours	Location
1	Mizrahi inc. Design-Build		17	9.0	153.0	
	Comments: Site Supervisors x PM's x Logistics Created By: Adele DiGirolomo					
2	Mizrahi inc. Design-Build		10	9.0	90.0	
	Comments: Traffic Control + Security: On a daily basis Traffic control assists with deliveries, both scheduled and unscheduled. As well, they provide traffic control for the immediate vicinity. Note: The hours only reflect up to 3:00pm. Created By: Adele DiGirolomo					
3	Safety First Consulting Professional Corporation		1	9.0	9.0	
	Comments: Created By: Adele DiGirolomo					
4	Mizrahi inc. Design-Build		2	9.0	18.0	
	Comments: Crane Operator(s) Created By: Adele DiGirolomo					
5	Mizrahi inc. Design-Build		18	9.0	162.0	
	Comments: General Labourers: Today the team performed their standard duties of running the hoists, assisting with deliveries, operating Bobcat and forklift. Cleaning and maintaining washrooms and Covid spraying. Site clean up, garbage removal and any other tasks requested by their Supervisor. Created By: Adele DiGirolomo					
6	Mizrahi inc. Design-Build		4	9.0	36.0	
	Comments: Hoist Operators					

No.	Contact/Company	Cost Code	Workers	# Hours	Man Hours	Location
Created By: Adele DiGirolomo						
7	Hardwall Construction		55	9.0	495.0	
Comments: Today Hardwall poured Level 55 Tower slab, finished decking and started rebar for Level 48 Lobby slab. They jumped the ACS corner screens and received 2 deliveries from Salit.						
Created By: Adele DiGirolomo						
8	Gamma Windows & Walls International Inc.		11	9.0	99.0	
Comments: Team focused on West core Portal caulking misc metal and V Wall, Level 17 Blueskin all elevations, Level 3 Southeast curtainwall repair alignment and wind load anchor install.						
Created By: Adele DiGirolomo						
9	ES Fox Constructors Ltd		6	9.0	54.0	
Comments: Team continued working on South RCS Monorail installation and consolidation of materials to Level 27.						
Created By: Adele DiGirolomo						
10	Otis Ltd.		15	9.0	135.0	
Comments: Team working on HR / LR / GL1-2 shafts.						
Created By: Adele DiGirolomo						
11	Modern Niagara		19	9.0	171.0	
Comments: Teams continuing work on Level 5 roof drains, Level 17 sanitary risers, Levels 26 & 27 stovetop ring, Temp gas, Level 36 layout hangers, Level 18 Mechanical Room, gas risers, housekeeping and material handling.						
Created By: Adele DiGirolomo						
12	OZZ Electric Inc.		8	9.0	72.0	
Comments: Team continued laying conduit on slab, Levels 5, 6 & 18 electrical rooms. Running wiring from Level 6 to 16 and general housekeeping.						
Created By: Adele DiGirolomo						
13	Amherst Group		3	9.0	27.0	
Comments: On site assisting with today's pour.						
Created By: Adele DiGirolomo						
14	LMB Mechanical		2	9.0	18.0	
Comments: Team continued working on sleeving walls and slab as required, coordination with Modern Niagara and material handling.						
Created By: Adele DiGirolomo						
15	Bass Installation		20	9.0	180.0	
Comments: Team continued working on Tower Levels 19-36, install floor anchors install Blue Skin level 17.5 Mega Columns , Mega Column blueskin , Install Mega column clips , Mega column panels install starter sill , Floor anchors install and Handrail brackets level 17 layout .						
Created By: Adele DiGirolomo						
16	United Drywall Limited		3	9.0	27.0	
Comments: Moved material on L17 / Loaded material to hotel floors / Housekeeping at various locations.						
Created By: Adele DiGirolomo						
17	Mizrahi inc. Design-Build		1	9.0	9.0	
Comments: Off duty Police assisting with traffic control at Gates 3 and 4.						
Created By: Adele DiGirolomo						
18	Riverside Group		4	9.0	36.0	
Comments: Team continued installing interior column panels on Level 5.						
Created By: Adele DiGirolomo						
19	Onyx Sprinklers		2	9.0	18.0	
Comments: Team continued working on temporary risers, sleeving and elevator shafts.						

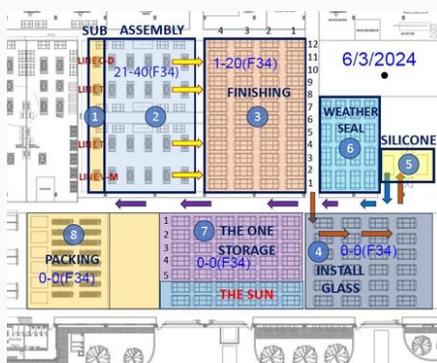
No.	Contact/Company	Cost Code	Workers	# Hours	Man Hours	Location
Created By: Adele DiGirolomo						
20	Walters Inc.		4	9.0	36.0	
Comments: Team on site installing shoes on Level 49. Created By: Adele DiGirolomo						
21	Western Mechanical Electrical Millwright Services Ltd		4	9.0	36.0	
Comments: Team working on jumping the ACS power. Created By: Adele DiGirolomo						
22	Klaus Multiparking Inc.		3	9.0	27.0	
Comments: Powerwashing the trafficking topping on P2 and P3 Created By: Adele DiGirolomo						
			212	1,908.0		

NOTES LOG

No.	Created By	Issue?	Location	Comments
1	Adele DiGirolomo	No	One Bloor	Please note the hours stated are up to 3:00pm and do not reflect any worked overtime hours.
2	Adele DiGirolomo	No		BM Window Factory in Vietnam: Assembly F34 21 - 40 

Notes Log's Attachments:

2.



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DELIVERY LOG

No.	Time	Delivery From	Tracking Number	Contents
1	07:00 AM	City Disposal		14 yard bin exchange
Comments: Created By: Adele DiGirolomo				
2	06:10 AM	Hardwall Construction		Misc materials
Comments: Created By: Adele DiGirolomo				
3	06:15 AM	Modern Niagara		Pipe
Comments: Created By: Adele DiGirolomo				
4	06:15 AM	Modern Niagara		Misc materials
Comments: Created By: Adele DiGirolomo				

DELIVERY LOG

No.	Time	Delivery From	Tracking Number	Contents
5	07:00 AM	GC - Scafoam		Misc materials
	Comments:	Created By: Adele DiGirolomo		
6	07:00 AM	Walters Inc.		Misc materials
	Comments:	Created By: Adele DiGirolomo		
7	07:25 AM	Gamma Windows & Walls International Inc.		Equipment drop off
	Comments:	Created By: Adele DiGirolomo		
8	08:05 AM	Otis Ltd.		Misc materials
	Comments:	Created By: Adele DiGirolomo		
9	09:20 AM	MY Construction Supply		Chairs
	Comments:	Created By: Adele DiGirolomo		
10	09:40 AM	Salit Steel		Rebar etc
	Comments:	Created By: Adele DiGirolomo		
11	10:00 AM	Modern Niagara		Misc materials
	Comments:	Created By: Adele DiGirolomo		
12	11:10 AM	Salit Steel		Rebar etc
	Comments:	Created By: Adele DiGirolomo		
13	11:30 AM	Bass Installation		Misc materials
	Comments:	Created By: Adele DiGirolomo		
14	11:35 AM	Modern Niagara		Misc materials
	Comments:	Created By: Adele DiGirolomo		
15	12:00 PM	Jordahl		Misc materials
	Comments:	Created By: Adele DiGirolomo		
16	12:35 PM	Modern Niagara		Diversified Ventures delivery
	Comments:	Created By: Adele DiGirolomo		
17	08:25 AM	Innocon		16 Concrete Trucks and 1 Grout Truck
	Comments:	138m3 of 75mpa and 1m3 of 35mpa Created By: Adele DiGirolomo		

By _____

Date _____

Copies To _____

APPENDIX “3”
RECEIVER’S EMAIL DATED NOVEMBER 26, 2023

From: [Ferguson, Stephen](#)
To: [Sam Mizrahi](#)
Cc: [Nevsky, Joshua](#); [Sterling, Andrew](#)
Subject: MI Cost Review
Date: Sunday, November 26, 2023 11:12:00 PM
Attachments: [image001.png](#)

Hi Sam,

Further to our meeting last Monday and the subsequent discussions / information sharing between Mark, Remy and Andrew, we write to provide you with an update of our ongoing review of the information you have provided and of the underlying project contracts between Mizrahi Inc. (“MI”) and the entities to which we are the Receiver of, being Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (collectively, the “Debtors”), in respect of ongoing construction services for One Bloor West (the “Project”).

As we indicated during our meeting, based on our review of the Project contracts and related documentation, the Receiver sees no basis for paying for both the 5% Construction Management Fee (“CM Fee”) and a profit margin on out-of-pocket direct and indirect labour costs (the “Labour Costs”), despite historical practice prior to the commencement of the Receivership.

During our meeting you provided us with MI’s calculation of revenue and costs attributed to the Project for the 12-month period ending October 31, 2023 (the “MI Calculation”). The MI Calculation (reproduced in the chart below) indicates a net cash flow directly related to the Project of \$2.6 million, while including a \$1 million placeholder for payment to yourself and \$3.2 million of legal fees (which based on our review of the supporting journal entries primarily related to shareholder litigation between yourself and the Coco parties and receivership matters related to another MI project).

Through our review we noted several potential adjustments to the MI Calculation, including but not limited to:

1. Revenue – the MI Calculation did not include the recoverable expenses, which we have included as a flow through revenue and expense.
2. Revenue – the MI Calculation included only revenue from the Labour Costs but did not include approximately \$6.9 million in CM Fees paid by the Debtors to MI.
3. Hourly Labour – the Labour Costs included in the MI Calculation include a provision for HST, which is fully recoverable by MI and accordingly should not be recognized as an expense.

Based on those these adjustments alone (and as set out in the calculation below) the net cash flow earned by MI from the Project over the past 12 months is in excess of \$9.5 million, while also still accounting for substantial legal costs unrelated to the direct construction of the Project.

Item	Note	Cost	Per Mizrahi		A&M Proforma	
			Allocation (%)	P&L	Change	Proforma P&L
<u>Revenue</u>						
Staffing & Labour		\$20,782,721	100%	\$20,782,721	-	\$20,782,721
Recoverable & Equipment	[1]	-	n/a	-	11,675,893	11,675,893
CM Fee	[2]	-	n/a	-	6,142,477	6,142,477
Total Revenue		20,782,721	100%	20,782,721	17,818,369	38,601,090
<u>Recoverable Costs:</u>						
Hourly Labour Agency Costs	[3]	(6,809,791)	100%	(6,809,791)	\$783,427	(\$6,026,364)
Recoverable & Equipment	[1]	-	n/a	-	(\$11,675,893)	(\$11,675,893)
<u>Direct Labour:</u>						
Construction Team Salaries		(2,850,108)	100%	(2,850,108)	-	(\$2,850,108)
Construction Team Contractors		(1,475,000)	100%	(1,475,000)	-	(\$1,475,000)
Burden on Salaries		(570,022)	100%	(570,022)	-	(\$570,022)
Recruiting Fees		(107,700)	100%	(107,700)	-	(\$107,700)
Gross Margin		\$8,970,100		\$8,970,100	\$6,925,904	\$15,896,003
<u>Indirect Labour:</u>						
Sam Mizrahi		(1,000,000)	100%	(1,000,000)	-	(\$1,000,000)
Indirect Staff Costs		(2,136,826)	60%	(1,282,096)	-	(\$1,282,096)
Burden on Salaries		(427,365)	60%	(256,419)	-	(\$256,419)
<u>SG&A:</u>						
Legal Costs		(3,183,168)	100%	(3,183,168)	-	(\$3,183,168)
Rent & Office Overhead		(472,587)	60%	(283,552)	-	(\$283,552)
Bank & Payroll Fees		(13,214)	60%	(7,928)	-	(\$7,928)
Liability Insurance		(32,400)	60%	(19,440)	-	(\$19,440)
Entertainment		(42,839)	60%	(25,703)	-	(\$25,703)
Advertising & Donations		(305,627)	60%	(183,376)	-	(\$183,376)
Travel		(170,064)	60%	(102,038)	-	(\$102,038)
Net Cash Flow				\$2,626,379	\$6,925,904	\$9,552,283
		<i>% of Revenue</i>		<i>12.6%</i>		<i>24.7%</i>

In addition, based on review by the Receiver, certain costs incurred by MI and included in the MI Calculation do not directly relate to the Project. Such costs include, but are not limited to:

1. Indirect staff costs at 60% for certain MI staff that we have not met or had any interaction with, in connection with the Project;
2. Legal costs (noted above) which appear to be primarily related to shareholder disputes and ongoing receivership of another MI property;
3. Advertising costs in respect of a donations made (with no direct Project connection); and
4. Travel costs appearing to be related to jet rental.

Therefore, similar to the amount that was not paid by the Receiver relating to the September invoices, the Receiver believes there is no basis for reimbursing MI for the incremental profit margin on Labour Costs and at the same time paying a 5% CM Fee on the sum of (i) Labour Costs, (ii) reimbursable expenses and (iii) hard costs paid by MI.

The Receiver would also like to advise you that based on a review of the costs noted above, and following discussion with our counsel, on a go-forward basis the Receiver is required to take a 10% holdback on all payments made to MI.

Based on the information that has been provided to us to date, the Receiver completed a 'proforma' monthly estimate (adjusting for the CM Fee, and the above non-recurring and/or non-Project related expenses) which shows that MI should be generating positive cash flow on a go-forward basis relating to the Project, even after accounting for the holdback.

As we have indicated, the Receiver is prepared to work with MI in respect of its liquidity pertaining to its services performed for, and payments received from, the Project. If there are particular issues you are concerned with, we are happy to discuss further, and as previously suggested on a number of occasions, we would be pleased to review any additional information that you can provide regarding the issues noted above, or regarding specific costs that need to be paid by MI that are causing any cash flow issues.

As a reminder, the Receiver continues to consider the Debtors' rights and obligations under the Construction Management Agreement and the GC Agreement (each as defined in the Order (Appointing Receiver) dated October 18, 2023 (the "Receivership Order") and any related or other contracts with MI (collectively, including the Construction Management Agreement and the GC Agreement, the "Contracts"). The Receiver has not affirmed any Contracts and will not affirm any Contracts except by signed written communication to MI. For greater certainty, in making any payment to MI, the Receiver is not affirming any Contracts. In addition, the Receiver shall have no, and hereby disclaims any, personal liability under any of the Contracts.

Happy discuss further.

Steve

Stephen Ferguson CPA, CA, CIRP, LIT

Managing Director

Alvarez & Marsal Canada ULC

200 Bay Street, Suite 2900

Royal Bank South Tower

Toronto ON M5J 2J1

Phone: 416 847 5162

Cell: 416 845 6191

sferguson@alvarezandmarsal.com

Alvarez & Marsal employs CPAs but is not a licensed CPA firm

APPENDIX "4"
RECEIVER'S REVISED ANALYSIS

Profitability Analysis - October 1, 2022 to September 30, 2023 ("Pre-Appointment Period")

Canadian Dollars

Item	Note	Per Mizrahi Inc.			Receiver Proforma	
		Revenue / Cost	Allocation (%)	P&L	Change	Proforma P&L
Revenue						
Staffing & Labour	[1]	\$20,782,721	100%	\$20,782,721	(\$1,916,383)	\$18,866,338
Hard Costs & Recoverable Costs	[2]	-	n/a	-	107,223,297	107,223,297
Marketing Fees	[3]	-	n/a	-	1,100,000	1,100,000
CM Fee	[4]	-	n/a	-	6,298,231	6,298,231
Total Revenue			100%	\$20,782,721	\$112,705,145	\$133,487,866
Third Party Costs:						
Third Party Hourly Labour	[5]	(6,809,791)	100%	(6,809,791)	783,427	(6,026,364)
Hard Costs & Recoverable Costs	[2]	-	n/a	-	(107,223,297)	(107,223,297)
Mizrahi Inc. - Direct Staff Labour:						
Construction Team Salaries	[6]	(2,850,108)	100%	(2,850,108)	-	(2,850,108)
Construction Team Contractors		(1,475,000)	100%	(1,475,000)	-	(1,475,000)
Burden on Salaries		(570,022)	100%	(570,022)	-	(570,022)
Costs of Goods Sold				(\$11,704,921)	(\$106,439,870)	(\$118,144,791)
Gross Margin				\$9,077,800	\$6,265,275	\$15,343,075
Mizrahi Inc. - Indirect Labour:						
Sam Mizrahi	[7]	(1,000,000)	100%	(1,000,000)	1,000,000	-
Indirect Staff Costs	[8]	(2,136,826)	60%	(1,282,096)	-	(1,282,096)
Burden on Salaries	[8]	(427,365)	60%	(256,419)	-	(256,419)
Sales Centre Staff (including burden)	[9]	-	n/a	-	(290,400)	(290,400)
Mizrahi Inc. Overhead - SG&A:						
Legal Costs	[10]	(3,183,168)	100%	(3,183,168)	3,183,168	-
Recruiting Fees		(107,700)	100%	(107,700)	-	(107,700)
Rent & Office Overhead	[11]	(472,587)	60%	(283,552)	-	(283,552)
Bank & Payroll Fees	[11]	(13,214)	60%	(7,928)	-	(7,928)
Liability Insurance	[11]	(32,400)	60%	(19,440)	-	(19,440)
Entertainment	[12]	(42,839)	60%	(25,703)	25,703	-
Advertising & Donations	[12]	(305,627)	60%	(183,376)	183,376	-
Travel	[12]	(170,064)	60%	(102,038)	102,038	-
Indirect Costs				(\$6,451,421)	\$4,203,886	(\$2,247,535)
Estimated Profit				\$2,626,379	\$10,469,161	\$13,095,540

Notes:

- Staffing & labour include MI's invoiced amounts during the Pre-Appointment Period for costs related to construction office staff, site labour, and crane labour, all of which are based on the Labour Rates. Invoices dated outside the Pre-Appointment Period have been removed from the Proforma P&L.
- Flowthrough Hard Costs and Recoverable Costs were excluded by MI. The analysis has been adjusted to include both for completeness.
- MI invoiced the Debtors a monthly amount of \$100,000 (excluding HST) for marketing services, which were excluded by MI. The analysis has been adjusted to include the receipts MI received during the Pre-Appointment Period.
- MI excluded its revenues from CM Fees invoiced during the Pre-Appointment Period. The analysis has been adjusted to include same.
- Third party hourly labour costs per MI incorrectly includes HST which is a refundable cost. The Receiver has also adjusted for certain timing issues related to third party services provided.
- Direct staff labour include employees and contractors hired by MI who directly work on the Project and includes an illustrative 20% labour burden.
- MI included an annual payment of \$1 million to Sam Mizrahi for the services he renders to the Project in his capacity as president of MI. Costs allocated in respect of equity holders of MI have been excluded.
- Indirect staff costs and a 20% illustrative burden on same reflect the salaried costs of MI's office staff, such as accounting and administrative employees. It is assumed that 60% of the office staff's time is allocated to support the Project.
- Sales centre staff costs have been included and reflect the salaried costs of employees dedicated to support the Project's sales centre and include an illustrative 20% labour burden.
- Legal costs primarily relate to Mizrahi's dispute with Coco and the receivership of another MI project (181 Davenport Road). Given that these matters are not directly related to the Project, the analysis has been adjusted to remove these costs.
- It is assumed that 60% of MI's overhead costs are allocated to support the Project.
- Donations, entertainment, and travel costs, which include the cost of a private jet rental, do not appear to be a direct cost of the Project and have been removed from the analysis as an adjustment.

APPENDIX "5"
OCTOBER 2023 AND NOVEMBER 2023 PAYMENT LETTERS
AND COVERING EMAILS

From: Nevsky, Joshua <jnevsky@alvarezandmarsal.com>
Sent: Friday, October 27, 2023 9:33 AM
To: sam@mizrahidevelopments.ca; Mark Kilfoyle
Cc: Remy Del Bel; Ferguson, Stephen; Sterling, Andrew
Subject: September Payments
Attachments: September Hard Cost Payment Letter.pdf; 2023-10-02 - C1416 - HC.pdf; ScotiaConnect - Pending Payment Details.pdf; ScotiaBank Wire Instructions - Mizrahi Segragated.pdf; ScotiaBank Wire Instructions - Mizrahi Inc.pdf

Sam and Mark –

The Receiver will be making the following two payments to Mizrahi Inc. today. Prior to making the payments, can you please review and sign the attached 'September Hard Cost Payment Letter' confirming that the hard cost payment will be paid on to the individual trades summarized in the attached EFT pending payment listing.

Please also confirm that the two amounts should be sent to the following accounts (full banking details attached):

1. September Hard Cost payment of \$7,053,439.42 paid to the segregated Scotia account #91132-002-0222410.
2. Agreed August payment of \$783,305.03 paid to the Scotia account # 91132-002-0091618.

Thank you,
Josh

Josh Nevsky
Alvarez & Marsal
D: 416.847.5161
M: 416.710.0910



October 27, 2023

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

Re: Payment to Mizrahi Inc. (the “Developer”) of September 2023 Hard Costs

As you are aware, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Receivership Order**”), Alvarez & Marsal Canada Inc. has been appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of the Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including in connection with the development of the 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge and Bloor in Toronto (the “**The One Project**”).

Pursuant to the Receivership Order, the Receiver is entitled to, among other things, make payments owing by the Debtors, whether directly or indirectly, to suppliers, contractors, subcontractors and other creditors, including in connection with The One Project. For the purposes of payment of the September 2023 hard construction costs (excluding the construction management fee), the Receiver has agreed to make payment directly to the Developer in the amount of \$7,053,439.42 (the “**Payment**”), subject to the Developer’s confirmation of the following.

By signing below, the Developer acknowledges and agrees that the Receiver is making the Payment pursuant to the enclosed general contractor invoice, and that the Developer will undertake to pay the appropriate amounts owed to all trades for their work on The One Project during the September 2023 period.

MIZRAHI INC.

Per: 

Name: Sam Mizrahi President

Title:

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER 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: Josh Nevsky, Senior Vice President
cc: Brendan O'Neill, Goodmans LLP
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoice (Invoice #C1416)

From: Nevsky, Joshua <jnevsky@alvarezandmarsal.com>
Sent: Monday, October 30, 2023 12:03 PM
To: sam@mizrahidevelopments.ca
Cc: Ferguson, Stephen; Sterling, Andrew
Subject: September Cost Review
Attachments: A&M re Mizrahi Inc (0222410) re Sept Mizrahi Inc Costs - Oct 30 2023.pdf; GC Cost Review (10.30).xlsx; 2023-10-12 - Crane Labour - C1410.pdf; 2023-10-12 - Equipment - C1408.pdf; 2023-10-12 - Recoverables - C1415 (Header).pdf; 2023-10-12 - Site Labour - C1409 (Header).pdf; 2023-10-12 - Staff - C1406.pdf

Sam,

Please see the schedule we discussed. While our review of the underlying contracts remains ongoing, we are comfortable funding the amounts supported by third-party invoices/payroll registers.

If you can please sign the attached letter and confirm the attached wire details, we will process payment today.

Thank you,
Josh

Josh Nevsky
Alvarez & Marsal
D: 416.847.5161
M: 416.710.0910



October 30, 2023

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

Re: Payment to Mizrahi Inc. (the “Developer”) of certain September Costs

As you are aware, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Receivership Order**”), Alvarez & Marsal Canada Inc. has been appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of the Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including in connection with the development of the 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge and Bloor in Toronto (the “**The One Project**”).

Pursuant to the Receivership Order, the Receiver is entitled to, among other things, make payments owing by the Debtors, whether directly or indirectly, to suppliers, contractors, subcontractors and other creditors, including in connection with The One Project. For the purposes of payment of the September 2023 costs summarized in the attached schedule, the Receiver has agreed to make payment directly to the Developer in the amount of \$2,864,415.15 (the “**Payment**”), subject to the Developer’s confirmation of the following.

By signing below, the Developer acknowledges and agrees that the Receiver is making the Payment pursuant to the enclosed schedule of costs, and that the Developer will undertake to pay the appropriate amounts owed to all trades and employees for their work on The One Project during the September 2023 period.

MIZRAHI INC.

Per: 
Name: _____
Title: **Sam Mizrahi President**

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER 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: Josh Nevsky, Senior Vice President
cc: Brendan O'Neill, Goodmans LLP
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoice (Invoice #C1416)

From: Sterling, Andrew <asterling@alvarezandmarsal.com>
Sent: Monday, December 4, 2023 12:58 PM
To: Sam Mizrahi; Mark Kilfoyle
Cc: Nevsky, Joshua; Ferguson, Stephen; O'Neill, Brendan; Armstrong, Christopher
Subject: October 2023 Mizrahi Payments
Attachments: Letter to Mizrahi Inc re. October Hard Costs.pdf; 2023-11-02 - C1429 - HC.pdf; 2023-11-30 C1437 - Aurora Generators.pdf

Sam,

As you know, the Receiver continues to consider the Debtors' rights and obligations under the Construction Management Agreement and the GC Agreement (each as defined in the Order (Appointing Receiver) dated October 18, 2023 (the "Receivership Order") and any related contracts with Mizrahi Inc. (collectively, including the Construction Management Agreement and the GC Agreement, the "Construction Contracts"). The Receiver has not affirmed any Construction Contracts and will not affirm any Construction Contracts except by signed written communication to Mizrahi Inc. For greater certainty, in making this or any other payment to Mizrahi Inc., the Receiver is not affirming the Construction Contracts (or any of them) and the Receiver reserves all rights to terminate or disclaim the Construction Contracts (or any of them), including, without limitation, as contemplated by paragraph 5 of the Receivership Order. In addition, the Receiver shall have no, and hereby disclaims any, personal liability under the Construction Contracts (or any of them).

The Receiver will be making the following payment to Mizrahi Inc. today. Prior to making the payment, can you please review and sign the attached 'October Hard Cost Payment Letter' confirming that the hard cost payments will be paid on to the individual trades per Schedule A of the attached.

Vendor	Amount	Invoice Number
Bass Curtainwalls Inc.	210,149.39	3279
Gamma Windows & Walls International Inc.	1,482,496.11	1808-48
HIT Play Tech	83,112.09	23764, 23765
Nortem Corp.	249,165.00	20-2629
Aurora Generators Inc	27,557.71	23-17367
CM Fee to Mizrahi Inc.	102,624.01	C1429, C1437
Total	\$2,155,104.31	

Thanks,

Andrew Sterling, CFA

Associate
Alvarez & Marsal Canada
200 Bay Street, Suite 2900
Toronto, ON M5J 2J1
Direct: +1 416 847 5152
Mobile: +1 647 994 7646

AlvarezandMarsal.com

ALVAREZ & MARSAL

LEADERSHIP. ACTION. RESULTS.™



December 4, 2023

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

Re: Payment to Mizrahi Inc. (the “Developer”) of October 2023 Hard Costs

As you are aware, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Receivership Order**”), Alvarez & Marsal Canada Inc. has been appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of the Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including in connection with the development of the 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge and Bloor in Toronto (the “**The One Project**”).

Pursuant to the Receivership Order, the Receiver is entitled to, among other things, make payments owing by the Debtors, whether directly or indirectly, to suppliers, contractors, subcontractors and other creditors, including in connection with The One Project. For the purposes of payment of the October 2023 hard construction costs (excluding the construction management fee), the Receiver has agreed to make payment directly to the Developer in the amount of \$2,155,104.31 (the “**Payment**”), subject to the Developer’s confirmation of the following.

By signing below, the Developer acknowledges and agrees that the Receiver is making the Payment pursuant to **Schedule A**, and that the Developer will undertake to pay the appropriate amounts owed to all trades listed in Schedule A for their work on The One Project during the October 2023 period.

MIZRAHI INC.

Per:



Name:

Title: **Sam Mizrahi President**

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER 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: Josh Nevsky, Senior Vice President
cc: Brendan O'Neill, Goodmans LLP
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoices #C1429 and #C1437



Schedule A

Vendor	Amount	Invoice Number
Bass Curtainwalls Inc.	210,149.39	3279
Gamma Windows & Walls International Inc.	1,482,496.11	1808-48
HIT Play Tech	83,112.09	23764, 23765
Nortem Corp.	249,165.00	20-2629
Aurora Generators Inc	27,557.71	23-17367
CM Fee to Mizrahi Inc.	102,624.01	C1429, C1437
Total	\$2,155,104.31	



From: Sterling, Andrew <asterling@alvarezandmarsal.com>
Sent: Thursday, November 30, 2023 1:57 PM
To: Sam Mizrahi; Nevsky, Joshua
Cc: O'Neill, Brendan; Armstrong, Christopher; Ferguson, Stephen
Subject: FW: October 2023 Hard Cost Payments
Attachments: Letter to Mizrahi Inc re. Payment of October 2023 Hard Costs.pdf; 2023-11-02 - C1430 - HC.pdf; 2023-11-02 - C1429 - HC.pdf; ScotiaBank Wire Instructions - Mizrahi Inc.pdf; ScotiaBank Wire Instructions - Mizrahi Segragated.pdf

Sam,

The Receiver will be making the following two payments to Mizrahi Inc. today. Prior to making the payments, can you please review and sign the attached 'October Hard Cost Payment Letter' confirming that the hard cost payment will be paid on to the individual trades per Schedule A of the attached.

Please also confirm that the two amounts should be sent to the following accounts (full banking details attached):

1. October Hard Cost payment of \$8,565,690.82 paid to the segregated Scotia account #91132-002-0222410.
2. October CM Fee (5% of the above) of \$428,284.54 paid to the Scotia account # 91132-002-0091618.

Thanks,

Andrew Sterling, CFA

Associate

Alvarez & Marsal Canada
200 Bay Street, Suite 2900
Toronto, ON M5J 2J1

Direct: +1 416 847 5152

Mobile: +1 647 994 7646

AlvarezandMarsal.com

ALVAREZ & MARSAL

LEADERSHIP. ACTION. RESULTS.™



November 30, 2023

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

Re: Payment to Mizrahi Inc. (the “Developer”) of October 2023 Hard Costs

As you are aware, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Receivership Order**”), Alvarez & Marsal Canada Inc. has been appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of the Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including in connection with the development of the 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge and Bloor in Toronto (the “**The One Project**”).

Pursuant to the Receivership Order, the Receiver is entitled to, among other things, make payments owing by the Debtors, whether directly or indirectly, to suppliers, contractors, subcontractors and other creditors, including in connection with The One Project. For the purposes of payment of the October 2023 hard construction costs (excluding the construction management fee), the Receiver has agreed to make payment directly to the Developer in the amount of \$8,565,690.82 (the “**Payment**”), subject to the Developer’s confirmation of the following.

By signing below, the Developer acknowledges and agrees that the Receiver is making the Payment pursuant to **Schedule A**, and that the Developer will undertake to pay the appropriate amounts owed to all trades listed in Schedule A for their work on The One Project during the October 2023 period.

MIZRAHI INC.

Per: 
Name: _____
Title: **Sam Mizrahi President**

Yours very truly,

ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER 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: Josh Nevsky, Senior Vice President

cc: Brendan O'Neill, Goodmans LLP
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoices (Invoice #C1429 and #C1430)



Schedule A

Vendor	Invoice Amount	Invoice
Bike Rack Mfg. & Dist.	78,334.43	071623MMNL, 101523MPPL 101723AZXC
BM Windows Joint Stock Company	726,574.63	TOT-002
Bothwell-Accurate Co. Inc.	31,693.69	19J008060
Clifford Restoration Limited	28,672.16	013596A
Detal International Co. Limited	77,280.70	DTE-3098-03
GNI Management Group Inc.	56,333.14	1625017, 1632539
Hardwall Construction LTD.	1,731,883.82	J007563
Innocon Partnership	428,367.06	Acct#79226-CA92
Klaus Multiparking Inc.	34,133.70	1BLOOR-STG16, 26/10/23
Modern Niagara Toronto Inc.	1,622,545.86	INTO0070137
Otis Canada Inc.	2,067,825.11	FTM659048066
Ozz Electric Inc.	400,131.46	J026887
Earl Paddock Transportation Inc.	40,086.75	298480A, W6900712 W7100029, W7100030
PMF Plumbing Supplies (Toronto)	1,830.60	9811015 9794704
Riverside Group LTD.	636,656.41	8565, 8566
Salit Steel	406,784.73	11023U0985, 11023D0955 11023U0949, 11023D0897 11023U0920
Seele Canada Inc.	55,159.29	1762-23-102
Service Plus Aquatics Inc.	120,202.33	1881
Tractel LTD.	11,921.27	8L45-Oct2023
Yarl Metal Fabrications Inc.	5,700.90	63311
Don Expenses	3,572.79	C1429
Total	\$8,565,690.82	



From: Sterling, Andrew <asterling@alvarezandmarsal.com>
Sent: Tuesday, December 5, 2023 4:32 PM
To: Sam Mizrahi
Cc: Nevsky, Joshua; Ferguson, Stephen; O'Neill, Brendan; Armstrong, Christopher; Mark Kilfoyle; Remy Del Bel; Esteban Yanqueleveh
Subject: October 2023 Mizrahi Payments
Attachments: Letter to Mizrahi Inc. re Payment of October 2023 Hard Costs.pdf; Inv C1438.pdf; 1 Bloor - (SI-9688 R3) - PI-33 R3 - Oct 2023 - Invoice.pdf

Sam,

As you know, the Receiver continues to consider the Debtors' rights and obligations under the Construction Management Agreement and the GC Agreement (each as defined in the Order (Appointing Receiver) dated October 18, 2023 (the "Receivership Order") and any related contracts with Mizrahi Inc. (collectively, including the Construction Management Agreement and the GC Agreement, the "Construction Contracts"). The Receiver has not affirmed any Construction Contracts and will not affirm any Construction Contracts except by signed written communication to Mizrahi Inc. For greater certainty, in making this or any other payment to Mizrahi Inc., the Receiver is not affirming the Construction Contracts (or any of them) and the Receiver reserves all rights to terminate or disclaim the Construction Contracts (or any of them), including, without limitation, as contemplated by paragraph 5 of the Receivership Order. In addition, the Receiver shall have no, and hereby disclaims any, personal liability under the Construction Contracts (or any of them).

The Receiver will be making the following payment to Mizrahi Inc. Prior to making the payment, can you please review and sign the attached 'October Hard Cost Payment Letter' confirming that the hard cost payments will be paid on to the individual trades per Schedule A of the attached.

Vendor	Invoice Amount	Invoice
Cult Iron Works Ltd.	69,565.71	SI-9688 R3
CM Fee to Mizrahi Inc.	3,478.28	C1438
Total	\$73,043.99	

Thanks,

Andrew Sterling, CFA
Senior Associate
Alvarez & Marsal Canada
200 Bay Street, Suite 2900
Toronto, ON M5J 2J1
Direct: +1 416 847 5152
Mobile: +1 647 994 7646
AlvarezandMarsal.com
ALVAREZ & MARSAL
LEADERSHIP. ACTION. RESULTS.™



December 5, 2023

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

Re: Payment to Mizrahi Inc. (the “Developer”) of October 2023 Hard Costs

As you are aware, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Receivership Order**”), Alvarez & Marsal Canada Inc. has been appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of the Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including in connection with the development of the 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge and Bloor in Toronto (the “**The One Project**”).

Pursuant to the Receivership Order, the Receiver is entitled to, among other things, make payments owing by the Debtors, whether directly or indirectly, to suppliers, contractors, subcontractors and other creditors, including in connection with The One Project. For the purposes of payment of the October 2023 hard construction costs (excluding the construction management fee), the Receiver has agreed to make payment directly to the Developer in the amount of \$73,043.99 (the “**Payment**”), subject to the Developer’s confirmation of the following.

By signing below, the Developer acknowledges and agrees that the Receiver is making the Payment pursuant to **Schedule A**, and that the Developer will undertake to pay the appropriate amounts owed to all trades listed in Schedule A for their work on The One Project during the October 2023 period.

MIZRAHI INC.

Per:



Name:

Title: **Sam Mizrahi President**

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER 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: Josh Nevsky, Senior Vice President
cc: Brendan O'Neill, Goodmans LLP
Chris Armstrong, Goodmans LLP

Encl. Cult Invoice #SI-9688 R3, Mizrahi Invoice #C1438



Schedule A

Vendor	Invoice Amount	Invoice
Cult Iron Works Ltd.	69,565.71	SI-9688 R3
CM Fee to Mizrahi Inc.	3,478.28	C1438
Total	\$73,043.99	



From: Sterling, Andrew <asterling@alvarezandmarsal.com>
Sent: Thursday, November 30, 2023 2:42 PM
To: Sam Mizrahi; Mark Kilfoyle
Cc: O'Neill, Brendan; Armstrong, Christopher; Ferguson, Stephen; Nevsky, Joshua
Subject: October 2023 Mizrahi Payments
Attachments: Letter to Mizrahi Inc. re Payment of October 2023 Mizrahi Costs.pdf; GC Invoices Oct 2023.zip; GC Cost Review (11.30).xlsx; ScotiaBank Wire Instructions - Mizrahi Inc.pdf

Sam,

As you know, the Receiver continues to consider the Debtors' rights and obligations under the Construction Management Agreement and the GC Agreement (each as defined in the Order (Appointing Receiver) dated October 18, 2023 (the "Receivership Order") and any related contracts with Mizrahi Inc. (collectively, including the Construction Management Agreement and the GC Agreement, the "Construction Contracts"). The Receiver has not affirmed any Construction Contracts and will not affirm any Construction Contracts except by signed written communication to Mizrahi Inc. For greater certainty, in making this or any other payment to Mizrahi Inc., the Receiver is not affirming the Construction Contracts (or any of them) and the Receiver reserves all rights to terminate or disclaim the Construction Contracts (or any of them), including, without limitation, as contemplated by paragraph 5 of the Receivership Order. In addition, the Receiver shall have no, and hereby disclaims any, personal liability under the Construction Contracts (or any of them).

Please see the schedule we discussed. While our review of the underlying contracts remains ongoing, we are comfortable funding the amounts supported by third-party invoices/payroll registers.

If you can please sign the attached letter and confirm the attached wire details, we will process payment today.

Thanks,

Andrew Sterling, CFA
Associate
Alvarez & Marsal Canada
200 Bay Street, Suite 2900
Toronto, ON M5J 2J1
Direct: +1 416 847 5152
Mobile: +1 647 994 7646
AlvarezandMarsal.com
ALVAREZ & MARSAL
LEADERSHIP. ACTION. RESULTS.™



November 30, 2023

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

Re: Payment to Mizrahi Inc. (the “Developer”) of certain October Costs

As you are aware, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Receivership Order**”), Alvarez & Marsal Canada Inc. has been appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of the Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including in connection with the development of the 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge and Bloor in Toronto (the “**The One Project**”).

Pursuant to the Receivership Order, the Receiver is entitled to, among other things, make payments owing by the Debtors, whether directly or indirectly, to suppliers, contractors, subcontractors and other creditors, including in connection with The One Project. For the purposes of payment of the October 2023 costs summarized in **Schedule A**, the Receiver has agreed to make payment directly to the Developer in the amount of \$2,256,539.13 (the “**Payment**”), subject to the Developer’s confirmation of the following.

By signing below, the Developer acknowledges and agrees that the Receiver is making the Payment pursuant to the enclosed schedule of costs, and that the Developer will undertake to pay the appropriate amounts owed to all trades and employees for their work on The One Project during the October 2023 period.

MIZRAHI INC.

Per: 

Name:
Title: **Sam Mizrahi President**

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER 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: Josh Nevsky, Senior Vice President
cc: Brendan O'Neill, Goodmans LLP
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoices



Schedule A

Invoice	Amount	Invoice Number
Equipment Cost	12,482.26	C1425
Recoverable Cost	1,145,240.17	C1428
Construction Staff Cost	439,795.34	C1424
Crane Labour	65,865.59	C1422
Site Labour	511,117.80	C1423
Sales Gallery Management	27,345.99	C1426
Sales Gallery Management	27,345.99	C1427
Sales Gallery Management	27,345.99	C1421
Total	\$2,256,539.13	



APPENDIX “6”
DECEMBER 2023 PAYMENT LETTERS AND COVERING EMAILS

From: Sterling, Andrew <asterling@alvarezandmarsal.com>
Sent: Friday, December 22, 2023 11:33 AM
To: Sam Mizrahi
Cc: Mark Kilfoyle; Remy Del Bel; Ferguson, Stephen; Nevsky, Joshua; O'Neill, Brendan; Armstrong, Christopher
Subject: November 2023 GC Cost Payment
Attachments: Letter to Mizrahi Inc re. November 2023 GC Costs.pdf; GC Cost Review (12.22).xlsx; GC Invoices.zip

Sam,

The Receiver will be making the following payment to Mizrahi Inc. today. Prior to making the payment, can you please review and sign the attached 'November GC Cost Payment Letter' confirming that payment of costs included on the invoices in Schedule A of the attached will be paid.

Invoice from Mizrahi Inc.	Amount	Invoice
Equipment Cost	12,482.26	C1441
Recoverable Cost	1,444,933.27	C1445, C1447
Construction Staff Cost	439,795.34	C1442
Crane Labour	97,969.31	C1349
Site Labour	664,246.60	C1440
Sales Gallery	28,713.29	C1443
Total	\$2,688,140.07	

Thanks,

Andrew Sterling, CFA

Associate

Alvarez & Marsal Canada

200 Bay Street, Suite 2900

Toronto, ON M5J 2J1

Direct: +1 416 847 5152

Mobile: +1 647 994 7646

AlvarezandMarsal.com

ALVAREZ & MARSAL

LEADERSHIP. ACTION. RESULTS.™



December 22, 2023

DELIVERED BY EMAIL

Mizrahi Inc.
125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

Re: November 2023 Payment to Mizrahi Inc. (the “Developer”) re: GC Costs

As you are aware, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Receivership Order**”) dated October 18, 2023, Alvarez & Marsal Canada Inc. has been appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of the Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including in connection with the development of the 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge and Bloor in Toronto (the “**The One Project**”).

Pursuant to the Receivership Order, the Receiver is entitled to, among other things, make payments owing by the Debtors, whether directly or indirectly, to suppliers, contractors, subcontractors and other creditors, including in connection with The One Project.

Subject to the Developer countersigning and returning an executed copy of this letter to the Receiver, the Receiver will make payment to the Developer in the amount of **\$2,688,140.07** (the “**Payment**”), which Payment is in respect of general site condition costs for The One Project (“**GC Costs**”) and the Developer’s five per cent (5%) construction management fee thereon (the “**CM Fee**”) for November 2023, all as detailed on Schedule A hereto.

By signing in the space indicated below, the Developer agrees and acknowledges that:

- (i) the Developer shall use the Payment to make payment to all trades and employees for the work on The One Project during the November 2023 period as included in the invoices specified on Schedule A hereto (the “**Invoices**”) in the amounts specified thereon;
- (ii) upon the Receiver making the Payment, the Debtors shall acquire all right, title and interest into any and all goods, equipment, materials or other supplies (collectively, “**Materials**”) invoiced under the Invoices, and the Developer shall have no right, title or interest in any of the Materials (and the Developer hereby irrevocably assigns any right, title or interest it has in the Materials to the Debtors);

- (iii) the GC Costs and the CM Fee are being paid in full by the Receiver to the Developer. As such, the Developer shall have no entitlement to any further claim in respect of the GC Costs or the CM Fee, including to any holdback in respect of such GC Costs or CM Fee; and
- (iv) in making the Payment or any other payment to the Developer, the Receiver is not affirming the Construction Management Agreement and the GC Agreement (each as defined in the Receivership Order) and any related contracts with the Developer (collectively, including the Construction Management Agreement and the GC Agreement, the “**Construction Contracts**”), or any of them, and the Receiver reserves all rights to terminate or disclaim the Construction Contracts, or any of them, including, without limitation, as contemplated by paragraph 5 of the Receivership Order. In addition, the Receiver shall have no, and hereby disclaims any, personal liability under the Construction Contracts (or any of them).

Yours very truly,

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: Josh Nevsky
Title: Senior Vice-President

AGREED AND ACKNOWLEDGED this ____ day of December, 2023

MIZRAHI INC.

Per: 

Name: Sam Mizrahi
Title: President



SCHEDULE A

Invoice from Mizrahi Inc.	Amount	Invoice
Equipment Cost	12,482.26	C1441
Recoverable Cost	1,444,933.27	C1445, C1447
Construction Staff Cost	439,795.34	C1442
Crane Labour	97,969.31	C1349
Site Labour	664,246.60	C1440
Sales Gallery	28,713.29	C1443
Total	\$2,688,140.07	

A handwritten signature in black ink, appearing to be the initials 'AM' or similar, enclosed within a large, loopy flourish.

From: Sterling, Andrew <asterling@alvarezandmarsal.com>
Sent: Friday, December 22, 2023 11:30 AM
To: Sam Mizrahi
Cc: Mark Kilfoyle; Remy Del Bel; Ferguson, Stephen; Nevsky, Joshua; O'Neill, Brendan; Armstrong, Christopher
Subject: November 2023 Hard Cost Payment
Attachments: Letter to Mizrahi Inc re. November 2023 Hard Costs.pdf; 2023-12-02 - C1444 - Todd & Don Expense.pdf; 2023-12-02 - HC - C1448.pdf

Sam,

The Receiver will be making the following two payments to Mizrahi Inc. today. Prior to making the payments, can you please review and sign the attached 'November Hard Cost Payment Letter' confirming that the hard cost payment will be paid on to the individual trades per Schedule A of the attached.

Please also confirm that the two amounts should be sent to the following accounts:

1. November Hard Cost payment of \$12,503,993.93 paid to the segregated Scotia account #91132-002-0222410.
2. November CM Fee (5% of the above) of \$625,199.70 paid to the Scotia account # 91132-002-0091618.

Vendor	Invoice Amount	Invoice
2218840 Ontario Inc.	1,009.10	683
Bass Curtainwalls Inc.	193,164.47	3295
Blockwall Masonry 18 Inc.	28,311.04	2956
BM Windows Joint Stock Company	363,287.32	TOT-003
CanAM Waste Products Inc.	33,306.75	205249
Cult Iron Works LTD	5,085.00	SI-9009
Detal International Co. Limited	1,154,746.41	DTE-3087-02, DTE-3096-04 DTE-3096-05, DTE-3096-06 DTE-3098-04
Gamma Windows & Walls International Inc.	1,317,237.87	1808-50
GNI Management Group Inc.	24,322.44	1645048
Guardtek Systems Inc.	678,890.78	23865 , 23866
Hardwall Construction LTD.	1,759,922.12	J007596
Huizhou Alcade Curtainwall Co. Limited	247,551.37	3097-02
Innocon Partnership	528,461.40	Various
Modern Niagara Toronto Inc.	2,030,307.84	INTO0072493
Onyx Fire Protection Services Inc.	267,702.31	22545, 22546
Otis Canada Inc.	1,232,541.59	FTM659048067
Ozz Electric Inc.	302,567.44	J027038
Earl Paddock Transportation Inc.	30,295.30	W700126, W700127
Riverside Group LTD.	950,715.67	8574, 8575, 8576
Read Jones Christoffersen Ltd.	66,115.72	425363, 425697
Salit Steel	652,100.26	11123U1010 11123U1062
Tecoustics Limited	142,973.25	39971, 39973
Tractel LTD.	11,921.27	8L45-Nov 2023
United Drywall LTD	424,348.31	7255157, 7255158
Walters Inc.	45,861.62	B111430
Yarl Metal Fabrications Inc.	6,305.54	63517

Todd & Don Expense	28,262.59	C1444
Previously Submitted - Haimul	(1,100.00)	C1448
Previously Submitted - Detal	(2,136.25)	C1448
Previously Submitted - BM	(20,084.60)	C1448
Total	\$12,503,993.93	

Vendor	Invoice Amount	Invoice
CM Fee to Mizrahi Inc.	625,199.70	C1448
Total	\$625,199.70	

Grand Total	\$13,129,193.62	
--------------------	------------------------	--

Thanks,

Andrew Sterling, CFA

Senior Associate
 Alvarez & Marsal Canada
 200 Bay Street, Suite 2900
 Toronto, ON M5J 2J1

Direct: +1 416 847 5152
 Mobile: +1 647 994 7646

AlvarezandMarsal.com

ALVAREZ & MARSAL

LEADERSHIP. ACTION. RESULTS.™



December 22, 2023

DELIVERED BY EMAIL

Mizrahi Inc.
125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

Re: November 2023 Payment to Mizrahi Inc. (the “Developer”) re: Hard Costs

As you are aware, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Receivership Order**”) dated October 18, 2023, Alvarez & Marsal Canada Inc. has been appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of the Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including in connection with the development of the 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge and Bloor in Toronto (the “**The One Project**”).

Pursuant to the Receivership Order, the Receiver is entitled to, among other things, make payments owing by the Debtors, whether directly or indirectly, to suppliers, contractors, subcontractors and other creditors, including in connection with The One Project.

Subject to the Developer countersigning and returning an executed copy of this letter to the Receiver, the Receiver will make payment to the Developer in the amount of **\$13,129,193.62** (the “**Payment**”), which Payment is in respect of the construction hard costs for The One Project and the Developer’s five per cent (5%) construction management fee thereon (the “**CM Fee**”) for November 2023, all as detailed on Schedule A hereto.

By signing in the space indicated below, the Developer agrees and acknowledges that:

- (i) the Developer shall use the Payment to make payment of the subcontractor invoices specified on Schedule “A” hereto (the “**Invoices**”) in the amounts specified thereon. For greater certainty, the Invoices in Schedule A are presented net of a 10% holdback (as such term is defined in the *Construction Act* (Ontario)) where applicable;
- (ii) upon the Receiver making the Payment, the Debtors shall acquire all right, title and interest into any and all goods, equipment, materials or other supplies (collectively, “**Materials**”) invoiced under the Invoices, and the Developer shall have no right, title or interest in any of the Materials (and the Developer hereby irrevocably assigns any right, title or interest it has in the Materials to the Debtors);

- (iii) the CM Fee is being paid in full by the Receiver to the Developer. As such, the Developer shall have no entitlement to any further claim in respect of the CM Fee, including to any holdback in respect of the CM Fee; and
- (iv) in making the Payment or any other payment to the Developer, the Receiver is not affirming the Construction Management Agreement and the GC Agreement (each as defined in the Receivership Order) and any related contracts with the Developer (collectively, including the Construction Management Agreement and the GC Agreement, the “**Construction Contracts**”), or any of them, and the Receiver reserves all rights to terminate or disclaim the Construction Contracts, or any of them, including, without limitation, as contemplated by paragraph 5 of the Receivership Order. In addition, the Receiver shall have no, and hereby disclaims any, personal liability under the Construction Contracts (or any of them).

Yours very truly,

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: Josh Nevsky
Title: Senior Vice-President

AGREED AND ACKNOWLEDGED this ____ day of December, 2023

MIZRAHI INC.

Per: 

Name: Sam Mizrahi
Title: President



SCHEDULE A

Vendor	Invoice Amount	Invoice
2218840 Ontario Inc.	1,009.10	683
Bass Curtainwalls Inc.	193,164.47	3295
Blockwall Masonry 18 Inc.	28,311.04	2956
BM Windows Joint Stock Company	363,287.32	TOT-003
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Cult Iron Works LTD	5,085.00	SI-9009
Detal International Co. Limited	1,154,746.41	DTE-3087-02, DTE-3096-04 DTE-3096-05, DTE-3096-06 DTE-3098-04
Gamma Windows & Walls International Inc.	1,317,237.87	1808-50
GNI Management Group Inc.	24,322.44	1645048
Guardtek Systems Inc.	678,890.78	23865 , 23866
Hardwall Construction LTD.	1,759,922.12	J007596
Huizhou Alcade Curtainwall Co. Limited	247,551.37	3097-02
Innocon Partnership	528,461.40	Various
Modern Niagara Toronto Inc.	2,030,307.84	INTO0072493
Onyx Fire Protection Services Inc.	267,702.31	22545, 22546
Otis Canada Inc.	1,232,541.59	FTM659048067
Ozz Electric Inc.	302,567.44	J027038
Earl Paddock Transportation Inc.	30,295.30	W700126, W700127
Riverside Group LTD.	950,715.67	8574, 8575, 8576
Read Jones Christoffersen Ltd.	66,115.72	425363, 425697
Salit Steel	652,100.26	11123U1010 11123U1062
Tecoustics Limited	142,973.25	39971, 39973
Tractel LTD.	11,921.27	8L45-Nov 2023
United Drywall LTD	424,348.31	7255157, 7255158
Walters Inc.	45,861.62	B111430
Yarl Metal Fabrications Inc.	6,305.54	63517
Todd & Don Expense	28,262.59	C1444
Previously Submitted - Haimul	(1,100.00)	C1448
Previously Submitted - Detal	(2,136.25)	C1448
Previously Submitted - BM	(20,084.60)	C1448
Total	\$12,503,993.93	

Vendor	Invoice Amount	Invoice
CM Fee to Mizrahi Inc.	625,199.70	C1448
Total	\$625,199.70	

Grand Total	\$13,129,193.62	
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APPENDIX "7"
CLARK CONSTRUCTION MANAGEMENT INC. CONTRACT DATED JULY 2017

CCDC 5A

Construction Management Contract – for Services

2010

1 Bloor - The One

Apply a CCDC 5A copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

TABLE OF CONTENTS

ARTICLES OF AGREEMENT

A-1	The Services
A-2	Agreements and Amendments
A-3	Description of the Project
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A-5	Compensation for Services
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A-7	Receipt of and Addresses for Notices in Writing
A-8	Language of the Contract
A-9	Succession

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A2	Reimbursable Expenses Applicable to Schedule A1
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C	Time-Based Rates for Personnel Employed by the Construction Manager

DEFINITIONS

Class A Construction Cost Estimate
Class B Construction Cost Estimate
Class C Construction Cost Estimate
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Construction Cost
Construction Cost Estimate
Construction Documents
Construction Manager
Consultant
Contract
Contract Documents
Contract Time
Notice in Writing
Owner
Payment Certifier
Place of the Project
Project
Project In-Use Date
Services
Substantial Performance of Work
Supplier
Temporary Work
Trade Contractor
Value Added Taxes
Work
Working Day

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GC 1.2	Law of the Contract
GC 1.3	Rights and Remedies
GC 1.4	Assignment
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--------	----------

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--------	--

Part 8 Insurance

GC 8.1	Insurance
--------	-----------

Part 9 Indemnification and Waiver of Claims

GC 9.1	Indemnification
GC 9.2	Waiver of Claims

CCDC 5A is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 5A can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 5A.

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER – FOR SERVICES

This agreement made on the _____ day of July in the year 2017 by and between

Mizrahi Inc.

hereinafter called the *Owner* and

Clark Construction Management Inc.

hereinafter called the *Construction Manager*

The *Owner* and *Construction Manager* agree as follows:

ARTICLE A-1 THE SERVICES

The *Construction Manager* shall

- 1.1 perform the *Services* for
1 Bloor - The One

insert above the title of the Project

located at

1 Bloor Street West, Toronto Ontario

insert above the Place of the Project

and as further described in Article A-3 – DESCRIPTION OF THE PROJECT, for which the Agreement has been signed

by the parties, and for which

CORE Architects

insert above the name of the Consultant

is acting as and is hereinafter called the "*Consultant*", and

- 1.2 do and fulfill everything indicated by the *Contract Documents*, and
- 1.3 commence the *Services* by the _____ day of July in the year 2017 and continue in accordance with any schedule provided in Article A-3 – DESCRIPTION OF THE PROJECT. The *Construction Manager's* obligation to provide *Services* shall end no later than one year after the *Project In-Use Date*.

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 This *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Services*.
- 2.2 This *Contract* may be amended as provided in the *Contract Documents*.

ARTICLE A-3 DESCRIPTION OF THE PROJECT

3.1 The following is a description of the *Project* including intended use, scope, budget, schedule, phases if applicable, the anticipated *Project In-Use Date*, and any other information which further generally describes the nature of the *Project*:

Scope of Work

The work to be undertaken shall consist of managing the construction of luxury mixed-use building at 1 Bloor Street West, Toronto, ready for use and legal occupancy, in strict compliance with the plans, specifications and other related documents. Provide direction to planning, scheduling and engineering functions as required.

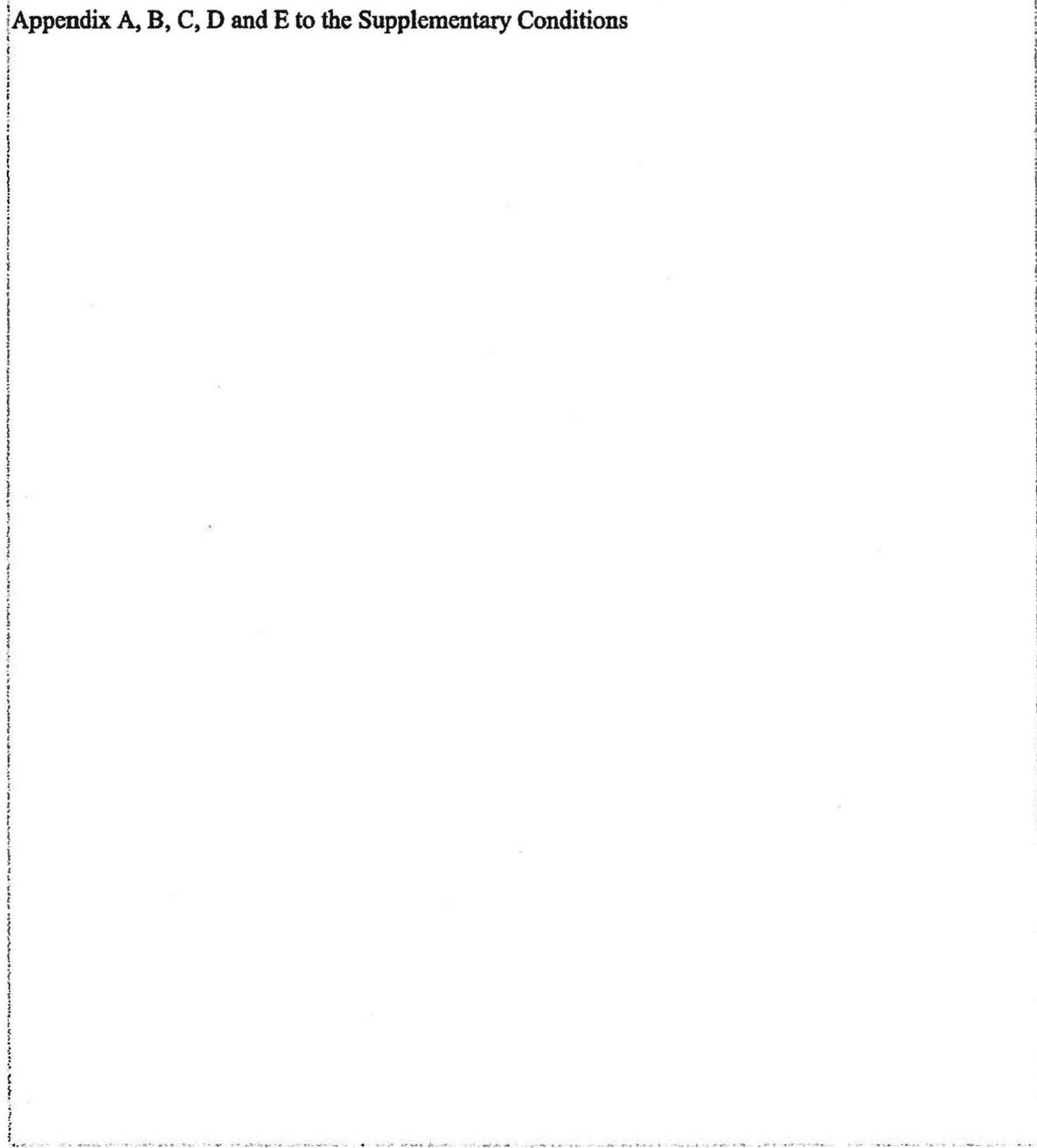
ARTICLE A-4 CONTRACT DOCUMENTS

4.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE SERVICES:

- the Agreement Between *Owner* and *Construction Manager* (including the Schedules to the Agreement)
- the Definitions
- the General Conditions

*

Appendix A, B, C, D and E to the Supplementary Conditions



* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents)

ARTICLE A-5 COMPENSATION FOR SERVICES

- 5.1 The *Construction Manager's* compensation shall be equal to the sum of the *Construction Manager's* fee as specified in paragraph 5.2 and the reimbursable expenses as described in paragraph 5.3.
- 5.2 The *Construction Manager's* fee is comprised of one or more of the following:
- .1^F ~~A fixed amount of _____; and~~
 - .2^F A percentage amount of one and a half _____ percent (1.5 %) of the *Construction Cost*. In the event that the *Owner* furnishes labour or material below market cost or materials are re-used beyond that anticipated in the original scope of the *Project*, the *Construction Cost* for purposes of establishing the *Construction Manager's* fee is the cost of all materials and labour necessary to complete the *Project* as if all materials had been new and as if all labour had been paid for at market prices at the time of construction or, in the event that the construction does not proceed, at existing market prices at the anticipated time of construction. Where the actual cost has not been determined for all or part of the *Project*, the *Construction Cost* shall be the *Construction Cost Estimate*, as agreed by the *Owner* and the *Construction Manager*, at market rates at the anticipated time of construction; and
 - .3^F An amount based on the time-based rates for personnel employed by the *Construction Manager* as described in Schedule C to the Agreement and engaged in performing the *Services* to the level of effort agreed prior to the commencement of the *Services*.
- * *Strike out inapplicable paragraph(s).*
- 5.3 The reimbursable expenses are the actual expenses, supported by receipts or invoices, that the *Construction Manager* incurred in performing the *Services*, and as identified in Schedules A2 and B2 to the Agreement plus the administrative charge of one and a half _____ percent (1.5 %). If there are no receipts or invoices, the expenses shall be at rates prevailing in the area of the *Place of the Project* and supported with suitable documentation.
- 5.4 The *Owner* may by written request require the *Construction Manager* to:
- .1 provide prior to commencement of the *Services* an estimate of the total amount of the *Construction Manager's* fee for the *Services* as described in paragraph 5.2.3;
 - .2 provide prior to commencement of the *Services* an estimate of the total amount of the reimbursable expenses as described in paragraph 5.3 for evaluation and verification purposes; and
 - .3 inform the *Owner* in writing prior to incurring reimbursable expenses as described in paragraph 5.3.
- 5.5 All amounts are in Canadian funds.

ARTICLE A-6 PAYMENT

- 6.1 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Project*. The *Owner* shall pay the *Construction Manager*:
- .1 payments on account of the compensation described in Article A-5 of the Agreement – COMPENSATION FOR SERVICES together with such *Value Added Taxes* as may be applicable to such payments, and
 - .2 upon completion of the *Services*, the unpaid balance of the compensation together with such *Value Added Taxes* as may be applicable to such payments.
- 6.2 Should the *Owner* fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
- .1 2% per annum above the prime rate for the first 60 days.
 - .2 4% per annum above the prime rate after the first 60 days.
- Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

(Insert name of chartered lending institution whose prime rate is to be used)
for prime business loans as it may change from time to time.

ARTICLE A-7 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 7.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 7.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 7.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 7.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.
- 7.5 An address for a party may be changed by *Notice in Writing* setting out the new address delivered to the other party in accordance with this Article.

Owner

Mizrahi Inc.

*name of Owner**

189 Forest Hill Road, Toronto ON

address

(866) 300-0219

facsimile number

remy@mizrahidevelopments.ca

email address

Construction Manager

Clark Construction Management Inc.

*name of Construction Manager**

387124 20th Sideroad, Mono, On, L9W 6V5

address

mclark@clarkcm.ca

facsimile number

email address

** If it is intended that the notice must be received by a specific individual, that individual's name shall be indicated.*

ARTICLE A-8 LANGUAGE OF THE CONTRACT

- 8.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English/French# language shall prevail.
- 8.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

Complete this statement by striking out inapplicable term.

CCDC 5A – 2010

Note: This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

ARTICLE A-9 SUCCESSION

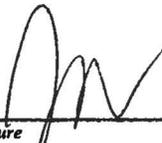
9.1 This Contract shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

In witness whereof the parties hereto have executed this Agreement by their respective hands or by the hands of their duly authorized representatives.

SIGNED AND DELIVERED
in the presence of:

WITNESS

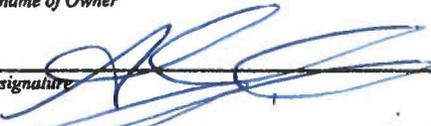
OWNER
Mizrahi Inc.



signature
Joshua Cox - VP

name of person signing

name of Owner

signature


name and title of person signing
Sam Mizrahi - President

signature

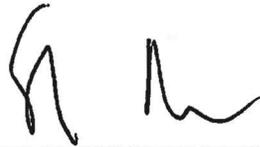
name of person signing

signature

name and title of person signing

WITNESS

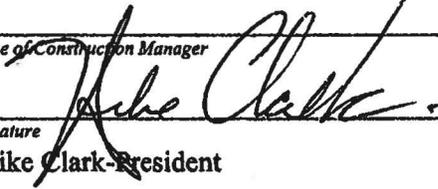
CONSTRUCTION MANAGER
Clark Construction Management Inc.



signature
Shawn Millican-General Superintendent

name of person signing

name of Construction Manager

signature


name and title of person signing
Mike Clark-President

signature

name of person signing

signature

name and title of person signing

- N.B. Where legal jurisdiction, local practice, or Owner or Construction Manager requirement calls for:
- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
 - (b) the affixing of a corporate seal, this Agreement should be properly sealed.

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

<p>1. PRECONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)</p>	<p>Performed by the Owner or Someone Other Than the Construction Manager</p>	<p>Performed by the Construction Manager (*F1/F2/F3)</p>	<p>Not Applicable</p>
<p>1.1 General Services</p> <p>.1 Attend regular <i>Project</i> meetings with the <i>Owner</i> and the <i>Consultant</i>.</p> <p>.2 Provide advice to the <i>Owner</i> and the <i>Consultant</i> with respect to construction and market conditions.</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>F3</p> <p>F3</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p>
<p>1.2 Pre-design</p> <p>.1 Estimating:</p> <p>(1) Confirm or prepare a <i>Class D Construction Cost Estimate</i>.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action.</p> <p>.2 Scheduling: Prepare a preliminary overall <i>Project</i> schedule.</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>F3</p> <p>F3</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p>
<p>1.3 Schematic Design Phase</p> <p>.1 Constructability: Provide advice on site use and possible improvements, selection of materials, assembly systems, and, equipment and provide recommendations on construction feasibility, availability of materials and labour, time requirements for installation and construction, and factors related to alternative designs and possible economies.</p> <p>.2 Estimating:</p> <p>(1) Prepare a <i>Class C Construction Cost Estimate</i> at the end of the Schematic Design Phase.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action.</p> <p>.3 Scheduling: Prepare in consultation with the <i>Consultant</i> and the <i>Owner</i> a preliminary <i>Project</i> schedule for the <i>Owner's</i> review; such <i>Project</i> schedule shall take into consideration the sequence and timing of the required basic program decisions, including anticipated design time, approval period, preparation of documentation, bid calls and subsequent evaluations, trade contract awards, on-site construction activities, and the <i>Project-In-Use Date</i>.</p> <p>.4 Other Services: Assist in providing liaison and coordination among government authorities, utility companies, and other authorities having jurisdiction over the <i>Place of the Project</i>.</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>F3</p> <p>F3</p> <p>F3</p> <p>F3</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>
<p>1.4 Design Development Phase</p> <p>.1 Constructability:</p> <p>(1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies.</p> <p>(2) Make recommendations to the <i>Owner</i> and the <i>Consultant</i> regarding the scope of <i>Work</i> packages, to help facilitate the subsequent bidding and awarding of trade and supply contracts.</p> <p>(3) Review the specifications and drawings and at the end of the Design Development Phase, make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to constructability and coordination among the <i>Trade Contractors</i>.</p> <p>(4) Prepare general functional layout of construction site access and organization and <i>Temporary Work</i>.</p> <p>.2 Estimating and Cost Control:</p> <p>(1) Prepare a <i>Class B Construction Cost Estimate</i> at the end of the Design Development Phase.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendations for corrective action.</p> <p>(3) Establish a cost control program, and prepare a cash flow forecast for the <i>Project</i>.</p> <p>.3 Scheduling:</p> <p>(1) Review and update the <i>Project</i> schedule with appropriate details.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Project</i> schedule may vary from that specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i>, update the <i>Project</i> schedule, and make recommendations for corrective action.</p> <p>(3) Make recommendations to the <i>Owner</i> regarding any equipment or materials, which should be pre-ordered to meet the <i>Project</i> schedule.</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>	<p>F3</p> <p>F3</p> <p>F3</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

<p>2. CONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)</p>	<p>Performed by the Owner or Someone Other Than the Construction Manager</p>	<p>Performed by the Construction Manager (*F1/F2/F3)</p>
<p>2.1 General Services</p> <p>.1 Chair and minute regular <i>Project</i> meetings with the <i>Owner</i>, the <i>Consultant</i> and <i>Trade Contractors</i>.</p> <p>.2 Organize and distribute all documents related to the performance of the contract and execution of the <i>Work</i> of each <i>Trade Contractor</i>.</p> <p>.3 Provide administration as described in the trade contract documents including.</p> <p>(1) Facilitate all communications among the <i>Owner</i>, the <i>Consultant</i>, the <i>Payment Certifier</i>, and <i>Trade Contractors</i> that relate to the <i>Project</i>.</p> <p>(2) In the first instance, receive all questions in writing by the <i>Owner</i> or <i>Trade Contractors</i> for interpretations and findings relating to the performance of the <i>Work</i> or the interpretation of the trade contract documents except with respect to financing information required of the <i>Owner</i>.</p> <p>(3) In the first instance, give interpretations and make findings on matters in question relating to the performance of any <i>Work</i> or the requirements of the trade contract documents, except with respect to any and all architectural and engineering aspects of the <i>Project</i> or financing information required of the <i>Owner</i>.</p> <p>(4) During the progress of the <i>Work</i>, issue supplemental instructions to <i>Trade Contractors</i> with reasonable promptness or in accordance with a schedule for such instructions agreed to by the <i>Construction Manager</i> and <i>Trade Contractors</i>.</p> <p>(5) Promptly investigate, make findings and inform the <i>Owner</i>, <i>Trade Contractors</i> and the <i>Consultant</i> concerning all concealed or unknown conditions which are discovered by the <i>Construction Manger</i> or of which <i>Notice in Writing</i> is given to the <i>Construction Manager</i>.</p> <p>(6) Make findings upon all claims for a change in any trade contract price, and provide <i>Notice in Writing</i> of such findings to all parties within 30 <i>Working Days</i> after receipt of such claim or within such other time period as may be agreed by the parties.</p> <p>(7) Give instructions necessary for the proper performance of <i>Work</i> of each <i>Trade Contractor</i> during any dispute so as to prevent delays pending settlement of such dispute.</p> <p>(8) Investigate the impact on <i>Work</i> of each <i>Trade Contractor</i> of the discovery of any fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the <i>Place of the Project</i>, and advise the <i>Owner</i> concerning the issuance of appropriate instructions for any change in <i>Work</i> as a result of such discovery.</p> <p>(9) Act on behalf of the <i>Owner</i>, <i>Trade Contractors</i> and the <i>Consultant</i> for the purpose of adjusting the amount of any loss or damage payment with insurers under property or boiler and machinery policies affecting any <i>Work</i>.</p>		<p>F3</p> <p>F3</p> <p>F3</p>
<p>2.2 Project Control and Scheduling</p> <p>.1 (1) Establish and implement organization and procedures with respect to all aspects of the <i>Project</i>.</p> <p>(2) Provide to <i>Trade Contractors</i> the <i>Project</i> schedule that indicates the timing of major activities of the <i>Project</i> in sufficient detail for <i>Trade Contractors</i> to schedule their <i>Work</i>.</p> <p>(3) Provide coordination and general direction for the progress of the <i>Project</i>.</p> <p>(4) Monitor the <i>Work</i> of each <i>Trade Contractor</i>.</p> <p>(5) Coordinate all <i>Trade Contractors</i> in the performance of their respective <i>Work</i>, with one another and with the activities and responsibilities of the <i>Owner</i> and the <i>Consultant</i>.</p> <p>(6) Review the performance of <i>Trade Contractors</i>' personnel and equipment and the availability of materials and supplies to meet the <i>Project</i> schedule and recommend courses of action to the <i>Owner</i> when requirements of a trade contract are not being met.</p> <p>(7) Provide regular monitoring of the schedule as construction progresses. Identify potential variances to planned completion dates. Review schedule for work not started or incomplete and recommend to the <i>Owner</i> and <i>Trade Contractors</i> adjustments in the schedule to achieve the <i>Project In-Use Date</i>. Provide summary reports of each monitoring and document all changes in schedule.</p>		<p>F3</p>

2. CONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)
2.3 Common Construction Facilities and Services .1 Arrange for the required <i>Temporary Work</i> .		F3
2.4 Cost Control and Accounting .1 (1) Prepare and update the <i>Construction Cost</i> cash flow forecasts in accordance with the <i>Project</i> budget as specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i> . (2) Develop, implement and maintain a system of <i>Project</i> cost control and accounting. (3) Advise the <i>Owner</i> and the <i>Consultant</i> on the variances between actual cost and <i>Construction Cost Estimate</i> . (4) Provide reasonable assistance and information to permit recovery of all tax rebates where applicable. (5) Jointly with each <i>Trade Contractor</i> , prepare a schedule showing when items called for under cash allowances must be ordered to avoid delaying the progress of <i>Work</i> . (6) Provide recommendations to the <i>Owner</i> for necessary changes to maintain <i>Project</i> budget and <i>Project</i> schedule.		F3
2.5 Changes in Work .1 (1) Develop and implement a system for processing changes in any <i>Work</i> . (2) Recommend appropriate changes in any <i>Work</i> to the <i>Owner</i> and the <i>Consultant</i> . (3) Review requests for changes in any <i>Work</i> and provide recommendations to the <i>Owner</i> and the <i>Consultant</i> and, if necessary, assist in negotiation. (4) Prepare and issue to <i>Trade Contractors</i> change orders and change directives, including written descriptions of proposed changes in <i>Work</i> , all of which are to be prepared in consultation with the <i>Consultant</i> when they are related to the specifications and drawings.		F3
2.6 Payments to Trade Contractors and Suppliers .1 (1) Develop and implement a procedure for timely process of payments to <i>Trade Contractors</i> and <i>Suppliers</i> . (2) Promptly inform the <i>Owner</i> of the date of receipt of the <i>Trade Contractors</i> ' applications for payment. (3) Promptly forward to the <i>Payment Certifier</i> the applications for payment received from the <i>Trade Contractors</i> . .2 (1) Determine the amounts owing to <i>Trade Contractors</i> and issue certificates for payment based on the <i>Construction Manager</i> 's observations and evaluation of <i>Trade Contractors</i> ' applications for payment.		F3 F3
2.7 Field Review .1 (1) Develop, implement and maintain a system for quality assurance and quality control. (2) Reject work that in the opinion of the <i>Construction Manager</i> or the <i>Consultant</i> does not conform to the requirements of the trade contract documents and whenever it is considered necessary or advisable, require inspection or testing of work.		F3
2.8 Health and Construction Safety .1 (1) Subject to paragraph 3.1.2 of GC 3.1 – PROVISION OF INFORMATION AND OBLIGATIONS, be responsible for establishing, initiating, maintaining, and overseeing the health and safety precautions and programs required to be put in place at the <i>Place of the Project</i> and review with the <i>Owner</i> all safety programs for adequacy. (2) Review with the <i>Owner</i> the <i>Trade Contractors</i> ' safety programs for compliance.		F3

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

<p>2. CONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)</p>	<p>Performed by the Owner or Someone Other Than the Construction Manager</p>	<p>Performed by the Construction Manager (*F1/F2/F3)</p>
<p>2.9 Submittals</p> <p>.1 (1) Establish procedures for processing submittals. (2) Coordinate all relevant information required to perform any <i>Work</i>. (3) Upon request by any <i>Trade Contractor</i> or the <i>Consultant</i>, jointly prepare a schedule of the dates for provision, review and return of shop drawings. (4) Forward to the <i>Consultant</i> for review all shop drawings that are considered to be complete. (5) Indicate in writing the <i>Consultant's</i> acceptance or rejection of all deviations in the shop drawings from the requirements of the trade contract documents. (6) Return all shop drawings in accordance with the agreed schedule, or in the absence of such agreed schedule, with reasonable promptness so as to cause no delay in the performance of any <i>Work</i>.</p>		<p>F3</p>
<p>2.10 Reports and Project Site Documents</p> <p>.1 (1) Keep a daily log available to the <i>Owner</i> and the <i>Consultant</i>. (2) Maintain copies of all necessary documents at the <i>Place of the Project</i>. (3) Collate and compile record documents and operating and maintenance manuals in accordance with the <i>Owner's</i> requirements.</p>		<p>F3</p>
<p>2.11 Start-up</p> <p>.1 (1) Assist the <i>Owner</i> in coordinating and monitoring initial start-up and testing conducted by <i>Trade Contractors</i>. (2) Coordinate the commissioning of utilities, systems and equipment.</p>		<p>F3</p>
<p>2.12 Substantial Performance of the Work</p> <p>.1 (1) Subject to applicable legislation, arrange for the issuance of the necessary certificates respecting <i>Substantial Performance of the Work</i> of each <i>Trade Contractor</i> or designated portions thereof, lists of incomplete or unsatisfactory items, and schedules for their completion. (2) Distribute certificates of <i>Substantial Performance of the Work</i> and final certificates for payment of <i>Work</i> of each <i>Trade Contractor</i>. (3) Arrange with <i>Trade Contractors</i> to finish <i>Work</i> to be completed or corrected.</p>		<p>F3</p>
<p>2.13 Project In-Use Date</p> <p>.1 (1) Determine, in consultation with the <i>Owner</i> and the <i>Consultant</i>, and advise <i>Trade Contractors</i> in writing of, the <i>Project In-Use Date</i>.</p>		<p>F3</p>
<p>2.14 Handover</p> <p>.1 (1) Inform the <i>Owner</i> and the <i>Consultant</i> in writing when <i>Work</i> of each <i>Trade Contractor</i> is ready for final review prior to issuance of final certificate for payment. (2) Seek, obtain and transmit to the <i>Owner</i> warranties (in consultation with the <i>Consultant</i>, if applicable), affidavits, releases, bonds, insurances, and waivers received from <i>Trade Contractors</i>. (3) Turn over to the <i>Owner</i> all keys and maintenance stocks. (4) Arrange for the issuance of the final certificate for payment for each <i>Trade Contractor</i>. (5) Assist the <i>Owner's</i> operating staff to facilitate a smooth and proper takeover of <i>Work</i> of each <i>Trade Contractor</i> and the <i>Project</i>, including all necessary training and instruction of the <i>Owner's</i> operating staff.</p>		<p>F3</p>

3. POST-CONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)
3.1 General Services .1 (1) Chair and minute <i>Project</i> meetings with the <i>Owner</i> , the <i>Consultant</i> , and <i>Trade Contractors</i> . (2) Prepare final <i>Construction Cost</i> report.		F3
3.2 Occupancy Review .1 Assist the <i>Owner</i> in conducting post-construction occupancy review.		F3
3.3 Warranties .1 Assist the <i>Owner</i> in administering warranties.		F3

SCHEDULE A2 – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1

Unless otherwise agreed to by the parties or as indicated in the following table, all expense items relating to *Services* are included in the *Construction Manager's* fee as described in paragraph 5.2 of Article of the Agreement A-5 – COMPENSATION FOR SERVICES.

	Costs Included in the Construction Manager's Fee (A5.2)	Reimbursable Expenses (A5.3)
1. Travel and subsistence expenses of the <i>Construction Manager's</i> personnel outside a radius of 50km from the <i>Place of the Project</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Charges for long distance telephone and facsimile communications, courier services, and reproduction of trade contract documents incurred in relation to the performance of this <i>Contract</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. The cost of <i>Project</i> specific information technology support in accordance with the method determined by the parties.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Deposits lost, provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		<input checked="" type="checkbox"/>
5. The costs to the <i>Construction Manager</i> that result from any <i>Trade Contractor's</i> insolvency or failure to perform.		<input checked="" type="checkbox"/>
6. Charges levied by authorities having jurisdiction at the <i>Place of the Project</i> .		<input checked="" type="checkbox"/>
7. Royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefore.		<input checked="" type="checkbox"/>
8. Any adjustment in taxes and duties directly related to the <i>Project</i> for which the <i>Construction Manager</i> is liable.		<input checked="" type="checkbox"/>
9. Losses and expenses sustained by the <i>Construction Manager</i> for matters which are the subject of the insurance coverages obtained pursuant to GC 8.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, within the deductible amounts or are not insurable.		<input checked="" type="checkbox"/>
10. The costs incurred due to emergencies affecting the safety of persons or property.		<input checked="" type="checkbox"/>
11. Legal costs incurred by the <i>Construction Manager</i> in relation to the performance of the <i>Services</i> provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		<input checked="" type="checkbox"/>
12. Such other costs directly incurred by the <i>Construction Manager</i> in the performance of this <i>Contract</i> as follows: See Appendix B		<input checked="" type="checkbox"/>

SCHEDULE B1 – ADDITIONAL SERVICES AND COMPENSATION

The *Construction Manager* will provide the following additional services and *Temporary Work* that are within the scope of the *Services*:

	Method of Compensation (*F1/F2/F3)

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SCHEDULE B2 – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE B1

Unless otherwise agreed to by the parties or as indicated in the following table, all expense items relating to additional services are included in the *Construction Manager's* fee as described in paragraph 5.2 of Article of the Agreement A-5 – COMPENSATION FOR SERVICES.

	Costs Included in the Construction Manager's Fee (A5.2)	Reimbursable Expenses (A5.3)
1. Travel and subsistence expenses of the <i>Construction Manager's</i> personnel outside a radius of 50km from the <i>Place of the Project</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Charges for long distance telephone and facsimile communications, courier services, reproduction of trade contract documents incurred in relation to the performance of this <i>Contract</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Deposits lost provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. The costs to the <i>Construction Manager</i> that result from any <i>Trade Contractor's</i> insolvency or failure to perform.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. The cost of all products purchased by the <i>Construction Manager</i> for the <i>Project</i> , including cost of transportation thereof.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. The cost of all equipment and services required for the <i>Construction Manager's</i> field office.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. The amounts of all contracts between the <i>Construction Manager</i> and subcontractors and suppliers.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. The cost of quality assurance such as independent inspection and testing services.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Any adjustment in premiums for insurance which the <i>Construction Manager</i> is required, by this <i>Contract</i> , to purchase and maintain.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. If applicable, the cost of time-based rate for labour in the direct employ of the <i>Construction Manager</i> in performing the additional services described in Schedule B1.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Charges levied by authorities having jurisdiction at the <i>Place of the Project</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefore.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Any adjustment in taxes and duties directly related to the <i>Project</i> for which the <i>Construction Manager</i> is liable.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14. Losses and expenses sustained by the <i>Construction Manager</i> for matters which are the subject of the insurance coverages obtained pursuant to GC 8.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, are within the deductible amounts or are not insurable.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. The costs incurred due to emergencies affecting the safety of persons or property.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Legal costs, incurred by the <i>Construction Manager</i> in relation to the performance of the <i>Project</i> provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Such other costs directly incurred by the <i>Construction Manager</i> in performing the additional services as follows:	<input type="checkbox"/>	<input checked="" type="checkbox"/>

DEFINITIONS

The following Definitions apply to the *Contract Documents*. References in the definition to the singular shall be considered to include the plural as the context requires.

Class A Construction Cost Estimate

The *Class A Construction Cost Estimate* is an estimate of the *Construction Cost* based on the completed *Construction Documents*. *Class A Construction Cost Estimate* is the final estimate before the bid or proposal call. *Class A Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class B Construction Cost Estimate

The *Class B Construction Cost Estimate* is an estimate of the *Construction Cost* with a level of precision that is based on the degree of completion of the *Construction Documents* at the time of preparation of the estimate. The *Class B Construction Cost Estimate* is typically prepared when all site or installation investigations are completed and the design of the major systems and sub-systems of the *Project* (including outline specifications and preliminary drawings and models) are well underway. *Class B Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class C Construction Cost Estimate

The *Class C Construction Cost Estimate* is an estimate of the *Construction Cost* based on updated *Owner* requirements, general description of the *Project*, preliminary site information and existing conditions, and takes into consideration market conditions as well as basic implementation logistics. *Class C Construction Cost Estimate* shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Class D Construction Cost Estimate

The *Class D Construction Cost Estimate* is an estimate of the *Construction Cost* based on the *Owner's* functional requirements to the degree known at the time. The *Class D Construction Cost Estimate* shall as a minimum be based on historical cost data for similar projects, suitably adjusted for such factors as inflation, location, risk, quality, size, and time. All related factors affecting cost are considered to the extent possible. The *Class D Construction Cost Estimate* provides the *Owner* an indication of the order of magnitude of the *Construction Cost* for a project completed within the estimated completion date, and shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Construction Cost

Construction Cost means the actual cost of all elements of the *Project* including all applicable taxes but excluding the applicable value added taxes, whether recoverable or not. *Construction Cost* does not include the compensation of the *Construction Manager* and the *Consultant*.

Construction Cost Estimate

Construction Cost Estimate is either a *Class A Construction Cost Estimate*, a *Class B Construction Cost Estimate*, a *Class C Construction Cost Estimate*, or a *Class D Construction Cost Estimate*, as the context shall require and is prepared with a level of precision commensurate with the level of detail of information available at the time.

Construction Documents

The *Construction Documents* consist of the specifications and drawings that are consistent with the *Contract Documents* and are prepared by the *Consultant* and accepted by the *Owner* after execution of the Agreement for the performance of the *Project*.

Construction Manager

The *Construction Manager* is the person or entity identified as such in the Agreement.

Consultant

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Project*.

Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

Contract Documents

The *Contract Documents* consist of those documents listed in Article A-4 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

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Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE SERVICES.

Notice in Writing

A *Notice in Writing*, where identified in this *Contract*, is a written communication between the parties that is transmitted in accordance with the provisions of Article A-7 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Owner

The *Owner* is the person or entity identified as such in the Agreement.

Payment Certifier

The *Payment Certifier* is either the *Construction Manager* or the *Consultant* identified as such in a trade contract.

Place of the Project

The *Place of the Project* is the designated site or location of the *Project* identified in this Agreement.

Project

The *Project* means the total construction as described in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT contemplated by the *Owner*.

Project In-Use Date

Project In-Use Date shall have been reached when the *Project* is ready for use or is being used for the purpose intended and is so confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*.

Services

The *Services* means all services described in Schedule A1 to the Agreement – SERVICES AND COMPENSATION and Schedule B1 to the Agreement – ADDITIONAL SERVICES AND COMPENSATION to be performed by the *Construction Manager* under this *Contract*.

Substantial Performance of the Work

Substantial Performance of the Work is defined in the lien legislation applicable to the *Place of the Project* with respect to each *Trade Contractor*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* of each *Trade Contractor* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

Supplier

A *Supplier* is a person or entity having a direct contract with the *Owner* to supply products.

Temporary Work

Temporary Work means temporary supports, structures, facilities, services, and other temporary items required for the execution of *Work* but not incorporated into *Work*.

Trade Contractor

Trade Contractor is the person or entity identified as such in a trade contract between the *Owner* and the *Trade Contractor* to perform *Work*.

Value Added Taxes

Value Added Taxes means such sums as shall be levied upon the *Owner's* payment to the *Construction Manager* by the Federal or any Provincial or Territorial government and is computed as a percentage of such payment and includes the Goods and Services Tax, the Quebec Sales Tax, The Harmonized Sales Tax, and any other similar tax, the collection and payment of which have been imposed on the *Construction Manager* by tax legislation.

Work

Work means the construction and related services required to be performed by a *Trade Contractor*.

Working Day

Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Project*.

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

1.1.1 If there is a conflict within the *Contract Documents*:

- .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and the *Construction Manager* (including the Schedules to the Agreement),
 - the Definitions,
 - Supplementary Conditions, if any
 - the General Conditions.
- .2 later dated documents shall govern over earlier documents of the same type.
- .3 amendments to documents shall govern over documents so amended.

GC 1.2 LAW OF THE CONTRACT

1.2.1 The law of the *Place of the Project* shall govern the interpretation of this *Contract*.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the *Owner* or the *Construction Manager* shall constitute a waiver of any right or duty afforded either of them under this *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

GC 1.4 ASSIGNMENT

1.4.1 Neither party to this *Contract* shall assign this *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

GC 1.5 PROJECT REPRESENTATIVES

1.5.1 The *Owner*, *Construction Manager* and *Consultant* may appoint one or more project representatives to assist in carrying out their responsibilities under this *Contract*. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing.

PART 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

GC 2.1 SERVICES

- 2.1.1 The *Construction Manager* shall provide the basic services identified in Schedule A1 to the Agreement and additional services identified in Schedule B1 to the Agreement.
- 2.1.2 The *Construction Manager* shall retain the personnel named in the Agreement in their designated roles for the duration of the assignment and promptly inform and obtain approval by the *Owner* of any change.
- 2.1.3 In providing the *Services*, the *Construction Manager* assumes no responsibility for, nor offers any professional advice with respect to, any and all architectural or engineering aspects of the *Project* or the *Consultant's* services.
- 2.1.4 The authority of the *Construction Manager* as agent of the *Owner* is expressly limited to the provision of the *Services* more particularly described in Schedules A1 and B1 to the Agreement.
- 2.1.5 Interpretations and findings of the *Construction Manager* shall be consistent with the intent of the *Contract Documents* as they relate to the *Work*. In making such interpretations and findings the *Construction Manager* will not show partiality to either the *Owner* or *Trade Contractors*.

PART 3 OWNER'S RESPONSIBILITIES

GC 3.1 PROVISION OF INFORMATION AND OBLIGATIONS

3.1.1 The *Owner* shall:

- .1 retain the *Consultant* who shall be responsible for the design and design-related services required for the *Project*;
- .2 inform the *Construction Manager* of the scope and terms of the *Consultant's* services;

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- .3 inform the *Consultant* of the scope and terms of the *Services*;
 - .4 coordinate and facilitate the services of the *Construction Manager* and the *Consultant*;
 - .5 enter into contracts or written agreements with *Trade Contractors* to perform the *Work*. Such agreements shall be consistent with the requirements of CCDC 17 – STIPULATED PRICE CONTRACT BETWEEN OWNER AND TRADE CONTRACTOR FOR CONSTRUCTION MANAGEMENT PROJECTS;
 - .6 inform the *Construction Manager* of the scope and terms of each trade contract;
 - .7 upon request by the *Construction Manager*, furnish to the *Construction Manager* reasonable evidence that financial arrangements have been made and that adequate financing is available in order to ensure the completion of the *Project*;
 - .8 communicate with *Trade Contractors* through the *Construction Manager* except:
 - (1) for direct communications with the *Payment Certifier*,
 - (2) with respect to formal notices in writing, or
 - (3) when expressly specified in a trade contract.
 - .9 pay *Trade Contractors* in accordance with the terms and conditions of each trade contract;
 - .10 furnish promptly to the *Construction Manager* all information that is required for the *Project* regarding the *Place of the Project* including surveys as to the physical characteristics of the site, soils reports, subsurface investigations, legal limitations, utility locations, and legal description. The *Construction Manager* shall be entitled to rely on such information;
 - .11 provide full and timely information and approvals regarding the requirements of the *Project* for the orderly progress of the *Services*;
 - .12 review documents submitted by the *Construction Manager* and give the *Construction Manager* timely decisions for the orderly progress of the *Services*;
 - .13 obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits;
 - .14 provide, maintain and pay for the insurance coverages required for the *Project* in accordance with Part 8 of the General Conditions – INSURANCE;
 - .15 immediately notify the *Construction Manager* if the *Owner* observes or otherwise becomes aware of any fault or defect in the *Work*, the *Project* or any non-conformity with the requirements of the *Contract*;
 - .16 designate in writing a representative who shall be fully acquainted with the *Project* and shall have the authority to act on the *Owner*'s behalf in relation to all duties and responsibilities of the *Owner* under this *Contract*; and
 - .17 designate in writing a *Payment Certifier* and advise the *Construction Manager* and the *Consultant*.
- 3.1.2 The *Owner* shall be responsible for construction health and safety at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable health and construction safety legislation.

PART 4 PAYMENT

GC 4.1 APPLICATIONS FOR PAYMENT

- 4.1.1 The *Construction Manager*'s applications for payment shall be made monthly as the *Services* progress or in accordance with such other period agreed to by the *Owner* and the *Construction Manager*.
- 4.1.2 The amount claimed shall be in accordance with a schedule agreed to by the *Owner* and the *Construction Manager*, or in the absence of such a schedule, equal to the value of the *Services* provided as of the last day of the payment period.

GC 4.2 PAYMENT

- 4.2.1 The *Owner* shall make payment to the *Construction Manager* on account in accordance with the provisions of Article A-6 of the Agreement – PAYMENT no later than 20 calendar days following the date of receipt of an application for payment.
- 4.2.2 No deductions shall be made by the *Owner* from amounts payable to the *Construction Manager* other than those for which the *Construction Manager* is proven to be responsible as in accordance with Part 7 – DISPUTE RESOLUTION or has agreed to pay.
- 4.2.3 Variance from the *Construction Cost Estimate* established under this *Contract* shall not constitute grounds for the *Owner* to withhold fees due to the *Construction Manager*.
- 4.2.4 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Project*.

PART 5 CHANGES

GC 5.1 CHANGES TO THE PROJECT

- 5.1.1 The *Owner*, without invalidating this *Contract*, may make changes in the *Project* provided they are within the general scope of the *Project* and of the *Services*.
- 5.1.2 The *Construction Manager* shall promptly advise the *Owner* if a change contemplated by the *Owner* under paragraph 5.1.1 will change the *Construction Manager's* compensation or the *Project In-Use Date*.
- 5.1.3 If the *Owner* and the *Construction Manager* agree on an adjustment to the *Construction Manager's* compensation or *Contract Time*, such agreement shall be recorded in writing.
- 5.1.4 If the *Owner* and *Construction Manager* cannot agree on the change in *Construction Manager's* compensation, the matter shall be determined in accordance with the provisions of Part 7 of the General Conditions – DISPUTE RESOLUTION.
- 5.1.5 If the *Contract Time* is exceeded or extended through no fault of the *Construction Manager*, the *Construction Manager's* compensation shall be adjusted accordingly to cover the *Construction Manager's* additional costs.

GC 5.2 CHANGES IN SERVICES

- 5.2.1 Any agreement between the *Owner* and the *Construction Manager* on a change to the *Services* shall be recorded in writing.

PART 6 DEFAULT NOTICE

GC 6.1 OWNERS' RIGHT TO TERMINATE THE CONTRACT

- 6.1.1 If a party is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or a receiver is appointed because of its insolvency, the other party may, without prejudice to any other right or remedy it may have, terminate this *Contract* by giving the party or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 6.1.2 If the *Construction Manager* neglects to properly perform the *Service* or otherwise fails to comply with the requirements of this *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Construction Manager Notice in Writing* that the *Construction Manager* is in default of the *Construction Manager's* contractual obligations and instruct the *Construction Manager* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 6.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Construction Manager* shall be in compliance with the *Owner's* instructions if the *Construction Manager*:
 - .1 commences the correction of the default within the specified time, and
 - .2 provides an acceptable schedule to the *Owner* for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 6.1.4 If the *Construction Manager* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
 - .1 correct such default and deduct the cost thereof from any payment then or thereafter due to the *Construction Manager*, or
 - .2 terminate the *Construction Manager's* right to continue with the *Services* in whole or in part or terminate this *Contract*.
- 6.1.5 If the *Owner* terminates this *Contract* as provided in paragraphs 6.1.1 and 6.1.4, the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* properly performed to the effective termination date, including reimbursable expenses and applicable taxes then due.
- 6.1.6 The *Owner* may, if conditions arise which make it necessary for reasons other than as provided in paragraphs 6.1.1 and 6.1.4, terminate this *Contract* by giving *Notice in Writing* to that effect to the *Construction Manager*.
- 6.1.7 Suspension of the *Project* shall be deemed to have occurred if:
 - .1 the *Project* has been stopped at the *Owner's* request or due to no fault of the *Construction Manager*, and
 - .2 such stoppage or stoppages have continued individually for a period of 30 calendar days or collectively for a period of 60 calendar days.

6.1.8 If the *Owner* terminates this *Contract* as provided in paragraph 6.1.6 or suspends the *Project* as described in paragraph 6.1.7:

- .1 the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* performed to the effective termination date, including reimbursable expenses and applicable taxes then due; and
- .2 the *Construction Manager* shall be entitled to reasonable termination costs and an amount for anticipated loss of profit.

GC 6.2 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE THE CONTRACT

6.2.1 If the *Owner* fails to comply with the requirements of this *Contract* to a substantial degree, including but not limited to the non-payment of compensation for *Services* described in Article A-5 – COMPENSATION FOR SERVICES, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, give the *Owner* *Notice in Writing* that the *Owner* is in default of the *Owner's* contractual obligations and notify the *Owner* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.

6.2.2 If the *Owner* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Construction Manager* may have, the *Construction Manager* may terminate this *Contract*.

6.2.3 If the *Construction Manager* terminates this *Contract* as described in paragraph 6.2.2:

- .1 the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* performed to the effective termination date, including reimbursable expenses and applicable taxes then due; and
- .2 the *Construction Manager* shall be entitled to reasonable termination costs and an amount for anticipated loss of profit.

PART 7 DISPUTE RESOLUTION

GC 7.1 NEGOTIATION, MEDIATION AND ARBITRATION

7.1.1 Differences between the parties to this *Contract* as to the interpretation, application or administration of this *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, shall be settled in accordance with the requirements of this General Condition.

7.1.2 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

7.1.3 If the parties so agree the dispute shall be submitted to mediation or arbitration in accordance with the provisions of the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect as at the date of this *Contract*.

7.1.4 If no agreement is made for mediation or arbitration as described in paragraph 7.1.3, the parties may refer the unresolved dispute to the courts or to any other agreed form of dispute resolution.

PART 8 INSURANCE

GC 8.1 INSURANCE

8.1.1 The *Owner* shall obtain, maintain and pay for 'wrap-up' general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, all *Trade Contractors*, all subconsultants, and all trade subcontractors with limits of not less than \$10,000,000 per occurrence and a deductible not more than \$10,000. The insurance coverage shall be primary to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of commencement of the *Project* until 90 calendar days after the *Project In-Use Date*. The *Owner* is responsible to provide coverage for completed operations hazards from the *Project In-Use Date* for a period of 2 years.

- 8.1.2 The *Owner* shall obtain, maintain and pay for 'broad form' property insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less than the sum of 1.1 times the *Construction Cost Estimate* with a deductible not more than \$10,000. The "Broad Form" property insurance shall be provided from the date of commencement of the *Project* until the earliest of:
- .1 10 calendar days after the *Project In-Use Date*;
 - .2 on the commencement of use or occupancy of any part or section of the *Work* of any *Trade Contractors* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Project*;
 - .3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
- 8.1.3 The *Owner* shall or cause to obtain, maintain and pay for an Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Project*. The policy shall have limits of not less than \$10,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$5,000,000 for aircraft passenger hazard.
- 8.1.4 The *Construction Manager* shall provide, maintain and pay for general liability insurance that has limits of not less than \$5,000,000 per occurrence and a deductible not more than \$5,000. The policy shall be maintained from the date of commencement of the *Project* until the *Construction Manager* completes the *Services*. Liability coverage shall be provided for completed operations hazards on an ongoing basis for a period of 6 years following the *Project In-Use Date*.
- 8.1.5 The *Construction Manager* shall provide, maintain and pay for Automobile Liability Insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy. The policy shall have limits not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all vehicles owned or leased by the *Construction Manager*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Construction Manager* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Construction Manager*.
- 8.1.6 Prior to commencement of the *Project* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the parties shall promptly provide each other with confirmation of coverage that they are responsible for and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Project*.
- 8.1.7 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of this *Contract*.
- 8.1.8 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Project*.

PART 9 INDEMNIFICATION AND WAIVER OF CLAIMS

GC 9.1 INDEMNIFICATION

- 9.1.1 The *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
 - .2 made by *Notice in Writing* within a period of 6 years from the date of *Project In-Use Date* or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Project*.
- The parties expressly waive the right to indemnify for claims other than those provided for in this *Contract*.
- 9.1.2 The obligation of either party to indemnify as set forth in paragraph 9.1.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is to be provided by either party pursuant to GC 8.1 – INSURANCE, the insurance limit for the loss so covered as prescribed in GC 8.1 – INSURANCE.

- 2 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 8.1 – INSURANCE, the *Construction Manager's* compensation as recorded in Article A-5 of the Agreement – COMPENSATION FOR SERVICES.
- 3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 9.1.2.1 and 9.1.2.2 shall apply.

9.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 9.1.1 and 9.1.2 shall be inclusive of interest and all legal costs.

9.1.4 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Construction Manager*:

- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known to the party required to give such *Notice in Writing*;
- .2 should either party be required as a result of its obligation to indemnify the other pay or satisfy a final order, judgment or award made against the party entitled by this *Contract* to be indemnified, then the indemnifying party, upon assuming all liability for any costs that might result, shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 9.2 WAIVER OF CLAIMS

9.2.1 As of the date of one year from the *Project In-Use Date*, the *Construction Manager* waives and releases the *Owner* from all claims which the *Construction Manager* has or reasonably ought to have knowledge of that could be advanced by the *Construction Manager* against the *Owner* arising from the *Construction Manager's* involvement in the *Project*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the *Project In-Use Date*, except as follows:

- .1 claims arising prior to or on the *Project In-Use Date* for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* no later than 20 days after the *Project In-Use Date*;
- .2 indemnification for claims advanced against the *Construction Manager* by third parties for which a right of indemnification may be asserted by the *Construction Manager* against the *Owner* pursuant to the provisions of this *Contract*;
- .3 claims resulting from acts or omissions which occur after the *Project In-Use Date*.

9.2.2 The *Construction Manager* waives and releases the *Owner* from all claims referenced in paragraph 9.2.1.3 except for those referred in paragraph 9.2.1.2 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* within 395 calendar days following the *Project In-Use Date*.

9.2.3 As of the date of one year from the *Project In-Use Date*, the *Owner* waives and releases the *Construction Manager* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Construction Manager* arising from the *Owner's* involvement in the *Project*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the *Project In-Use Date*, except as follows:

- .1 claims arising prior to or on the *Project In-Use Date* for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* no later than 20 days from the *Project In-Use Date*;
- .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Construction Manager* pursuant to the provisions of this *Contract*;
- .3 damages arising from the *Construction Manager's* actions which result in substantial defects or deficiencies in the *Project*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Project* which affect the *Project* to such an extent or in such a manner that a significant part or the whole of the *Project* is unfit for the purpose intended by this *Contract*;
- .4 claims arising from acts or omissions which occur after the *Project In-Use Date*.

9.2.4 The *Owner* waives and releases the *Construction Manager* from all claims referred to in paragraph 9.2.3.3 except for those referred in paragraph 9.2.3.2 and claims for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* within a period of six years from *Project In-Use Date* should any limitation statute of the Province or Territory of the *Place of the Project* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:

- .1 any limitation statute of the Province or Territory of the *Place of the Project*; or
- .2 the Civil Code of Quebec if the *Place of the Project* is the Province of Quebec.

- 9.2.5 The *Owner* waives and releases the *Construction Manager* from all claims referenced in paragraph 9.2.3.4 except for those arising from claims for which *Notice in Writing* has been received by the *Construction Manager* from the *Owner* within 395 calendar days following the *Project In-Use Date*.
- 9.2.6 *Notice in Writing* of claim as provided for in GC 9.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 9.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;
 - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
 - .3 a statement of the estimated quantum of the claim.
- 9.2.7 The party giving *Notice in Writing* of claim as provided for in GC 9.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 9.2.8 Where the event or series of events giving rise to a claim made under paragraphs 9.2.1 or 9.2.3 has a continuing effect, the detailed account submitted under paragraph 9.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events that gave rise to the claim.
- 9.2.9 If a *Notice in Writing* of claim pursuant to paragraph 9.2.1.1 is received on the 18th or 19th calendar day after the *Project In-Use Date*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 9.2.3.1 shall be extended to 24 calendar days after the *Project In-Use Date*.
- 9.2.10 If a *Notice in Writing* of claim pursuant to paragraph 9.2.3.1 is received on the 18th or 19th calendar day after the *Project In-Use Date*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 9.2.1.1 shall be extended to 24 calendar days after the *Project In-Use Date*.

SUPPLEMENTARY CONDITIONS TO CCDC 5A, 2010, CONSTRUCTION MANAGEMENT
CONTRACTS FOR SERVICES

A. GENERAL

PREAMBLE

Without exception, the *Owner* assumes no legal duty or obligation in respect of the Request for Proposals or the Proposal process unless and until the *Owner* actually enters into a contract with the Proponent. The Request for Proposals and the Proposal process are expressly stated to be contingent on funds being committed for the *Project* to the satisfaction of the *Owner*.

SC 1 These Supplementary General Conditions presuppose the use of the Standard Construction Document CCDC 5A, 2010 Construction Management Contracts – for Services consisting of the Agreement Between Owner and *Construction Manager* as amended (the "Agreement"), Definitions (the "Definitions"), Schedules (the "Schedules") and General Conditions of the Construction Management Contracts – for Services (the "General Conditions"), GC 1 to GC 20 inclusive in full. These "Supplementary Conditions" void, supersede or amend the Agreement, the Definitions and the Conditions as the case may be, and shall form part of the *Contract Documents* as defined in the definitions.

SC 2 Throughout the *Contract Documents* reference to the "General Conditions of the Contract" shall imply the inclusion of these "Supplementary Conditions."

SC 3 Article A- 5: Section 5.3.3 Delete "as described in Schedule C" in the first and second line and replace it with the following:

"as described in Appendix A to the Supplementary Conditions"

SC 4 Article A- 6: Delete Item 6.2 in its entirety and replace with the following:

"6.2 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or a court, interest shall also become due and payable on such unpaid amounts at 2% above the prime rate. If the payments are disputed as per Part 7 of the *Contract*, interest shall not be applied to the disputed amount until such time as the dispute is settled by mutual agreement. Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by Royal Bank of Canada for prime business loans as it may change from time to time."

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B. SCHEDULES

SC 5 Amend SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION as follows:

1. PRECONSTRUCTION		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)	Not applicable
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.			
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.			
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.			
1.1	General Services Add the following as paragraph 1.1.3:			
.3	Continuously assists the <i>Consultant</i> and <i>Owner</i> in refining <i>Project</i> scope, sequencing and general requirements.		F3	
1.4	Design Development Phase			
.1	Constructability: Amend paragraph 1.4.1 (3) by adding the following to the end of the paragraph: "Take diligent, commercially reasonable measures to identify defects or omissions in the <i>Construction Documents</i> and to promptly advise the <i>Owner</i> and the <i>Consultant</i> of the same."		F3	
.2	Estimating and Cost Control: Amend paragraph 1.4.2 (3) by adding the following to the end of the paragraph: "Update the cash flow forecast on a monthly basis throughout the entire duration of the Preconstruction and provide reports to the <i>Owner</i> in a mutually agreeable format."		F3	
Add the following as Article 1.4.4:			F3	
".4	Systems Evaluation and Value Engineering:			
.1	Conduct a continuing analysis and re-evaluation program to scrutinize each system included in the <i>Construction Documents</i> in order to provide the <i>Owner</i> and the <i>Consultant</i> with prompt feedback on the cost implications of each facet of the design of		F3	

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<p>the <i>Project</i>.</p> <p>.2 Prepare comparative cost analyses, value engineering studies and suggest alternative products, methods and approaches to achieve the cost effectiveness of each component included in the <i>Construction Documents</i>, without assuming design responsibility."</p> <p>Add the following as Article 1.4.5:</p> <p>.5 Investigative Work and Testing:</p> <p>.1 Identify to the <i>Owner</i> all tests inspections, or investigative work which the <i>Construction Manager</i> recommends be completed during the preconstruction phase along with a proposal and estimate of the cost of such tests inspections, or investigative work. Upon the written approval of the <i>Owner</i>, the <i>Construction Manager</i> shall arrange for such tests or investigative work."</p>		F3	
<p>1.5 Construction Document Phase</p> <p>.1 Constructability:</p> <p>Amend paragraph 1.5.1 (2) by adding the following to the end of the paragraph:</p> <p style="padding-left: 40px;">"Take diligent, commercially reasonable measures to identify defects, deviations from <i>Project</i> requirements or omissions in the <i>Construction Documents</i> and to promptly advise the <i>Owner</i> and the <i>Consultant</i> of the same."</p> <p>.2 Estimating and Cost Control:</p> <p>Add the following as paragraph 1.5.2 (5):</p> <p>"(5) Update the <i>Class A Construction Cost Estimate</i> at regular intervals as directed by the <i>Owner</i>. Review the <i>Class A Construction Cost Estimate</i> with the <i>Owner</i> and the <i>Consultant</i> to allow the <i>Owner</i> to establish the final value of each of the Class A Budgets."</p>		F3	
<p>1.5 Construction Document Phase</p> <p>.3 Scheduling:</p> <p>Add the following as paragraph 1.5.3 (3) to 1.5.3 (5):</p> <p>"(3) The <i>Project</i> schedule must be updated and monitored at least on a monthly basis and more frequently as required. Provide progress updates and confirm compliance with <i>Project</i> schedule to maintain all critical delivery dates.</p> <p>(4) Co-ordinate with the <i>Owner</i>, and the <i>Consultant</i> to</p>		F3	

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	<p>develop a detailed <i>Project</i> schedule, formatted in Primavera 6 and for Microsoft Project 2007, within two (2) weeks of commencement of the <i>Services</i>. The <i>Project</i> schedule must be updated and monitored on a monthly basis, or more as required. Provide progress updates and confirm compliance with <i>Project</i> schedule to maintain all critical delivery dates throughout the phases of the <i>Project</i>.</p> <p>(5) Upon the <i>Owner's</i> request make recommendations with reasonable supporting analysis and information to the <i>Owner</i> and the <i>Consultant</i> on the separation of the <i>Project</i> into the segments of the <i>Project</i> to allow for construction of the <i>Project</i> in phases or for accelerated construction of portions of the <i>Project</i> on a fast track basis. The <i>Owner</i> shall, in its sole discretion, approve the number of segments of the <i>Project</i>."</p>	F3	
<p>1.6 Construction Procurement Phase .2 Contracting:</p>	<p>Amend paragraph 1.6.2 (2) by adding the following to the end of the paragraph:</p> <p style="padding-left: 40px;">"Pre-qualify bidders as may be required by the <i>Owner</i> for the trade packages based on an <i>Owner</i> approved bid list that encompasses all trade divisions. The <i>Construction Manager</i> shall submit the list of potential bidders to the <i>Owner</i> and the <i>Consultant</i> for review and approval. The bid list shall include <i>Trade Contractors</i> that are: known to the <i>Construction Manager</i>, known to the <i>Owner</i>, and known to have a reputation for performance of high quality work. The pre-qualification exercise shall assess the financial stability, the capacity to complete the <i>Work</i> and the resources of the <i>Trade Contractor</i> available to complete the <i>Work</i>. The pre-qualification exercise shall be carried out based on transparent and pre-determined evaluation criteria. "</p>	F3	
<p>1.6 Construction Procurement Phase .2 Contracting:</p>	<p>Add the following as paragraph 1.6.2 (4) to 1.6.2 (7):</p> <p>"(4) Obtain the approval of the <i>Owner</i> for the bid documents prior to the issuance of any bid package. Complete transparency in the bid process is required by the <i>Owner</i>.</p> <p>(5) Develop a contracting work plan in collaboration with the <i>Owner</i> and the <i>Consultant</i> and prepare bid</p>	F3 F3	

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<p>packages accordingly.</p> <p>(6) Take diligent, commercially reasonable precautions to ensure that all required <i>Work</i> for the <i>Project</i> shall be included and co-ordinated in the various bid packages when considered as a whole, but without duplication of requirements.</p> <p>(7) Unless otherwise approved in writing by the <i>Owner</i>, in accordance with industry standard bidding practices, obtain at least two (2) independent written competitive bids for any subcontract valued less than \$25,000 and at least three (3) independent written competitive bids for any subcontract value equal to or in excess of \$25,000."</p>		F3	
<p>1.6 Construction Procurement Phase</p>			
<p>Delete paragraph 1.6.3 in its entirety and replace with the following:</p>			
<p>"3 Receive bids and conduct a bid opening in the presence of the <i>Owner</i> and the <i>Consultant</i>. Upon the completion of a bid opening, complete a bid review and assist in making a determination as to the successful bidder. Facilitate and prepare, on behalf of the <i>Owner</i>, the CCDC 17 2010, Stipulated Price Contract between <i>Owner</i> and <i>Trade Contractor</i> for Construction Management Projects, for award to the successful bidder. Should the <i>Owner</i>, in its sole and absolute discretion, choose to award the <i>Work</i> for Building B to a General Contractor managed by the <i>Construction Manager</i>, then the <i>Owner</i> shall conduct a separate tender for the Building B <i>Work</i> through the <i>Project Manager (PM)</i>. The <i>Owner</i> shall solicit and receive bids for the <i>Work</i>. Upon the completion of a bid opening, the <i>Construction Manager</i> shall complete a bid review and assist in making a determination as to the successful bidder. Facilitate and prepare, on behalf of the <i>Owner</i>, the CCDC 2, 2008, Stipulated Price Contract, for award to the successful bidder."</p>		F3	
<p>Delete paragraph 1.6.4 in its entirety and replace with the following:</p>			
<p>"4 Prepare and submit for review by the <i>Owner</i> and the <i>Consultant</i> the Supplementary Conditions to the CCDC 17, 2010, Stipulated Price Contract between <i>Owner</i> and <i>Trade Contractor</i> for Construction Management Projects, which shall be the form of Contract used by the <i>Owner</i> to engage successful bidders in the various trade disciplines. Structure the Supplementary Conditions in a manner that effectively transfer the <i>Owner's</i> risks, wherever applicable, that are inherent in the <i>Project</i> to the <i>Trade Contractors</i>."</p>		F3	
<p>Delete paragraph 1.6.5 in its entirety and replace with the following:</p>			
<p>"5 Update the construction cost control plan with actual budget allocations for all trade packages and general requirements and update the cash flow forecasts for the <i>Project</i>."</p>		F3	

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2. CONSTRUCTION		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
2.1	General Services		
	Delete paragraph 2.1.1 in its entirety and replace with the following:		
".1	Chair weekly construction meetings with <i>Trade Contractors</i> to review safety, coordination efforts, procedures, progress, scheduling and any open issues. Chair separate weekly meetings with the <i>Owner</i> , <i>Consultant</i> and other members of the <i>Project</i> team as required by the <i>Owner</i> to review coordination efforts, procedures, progress, scheduling and open issues. All meeting minutes are to be recorded by the <i>Construction Manager</i> and issued within forty-eight 48 hours of the completion of the meeting.		F3
	Delete paragraph 2.1.3 (3) in its entirety and replace with the following:		
"(3)	Give interpretations and make findings on matters in question relating to the performance of any <i>Work</i> in a manner consistent with the <i>Standard of Care</i> , or the requirements of the <i>Contract Documents</i> , except with respect to any and all architectural and engineering aspects of the <i>Project</i> or financing information required of the <i>Owner</i> . The <i>Construction Manager</i> shall issue supplemental instructions to <i>Trade Contractors</i> with reasonable promptness or in accordance with a schedule for such instructions agreed to by the <i>Construction Manager</i> and <i>Trade Contractors</i> ."		F3
2.1	General Services		
	Add the following as paragraph 2.1.3 (10) to 2.1.3 (14):		
(10)	Direct and control construction activity on site.		F3
(11)	Provide all resources as appropriate to coordinate supervise and direct the construction work as required to deliver the <i>Project</i> as described in the RFP.		F3
(12)	Coordinate and manage the <i>Work</i> to be performed by all <i>Trade Contractors</i> and <i>Suppliers</i> from the commencement of the <i>Work</i> through <i>Total Performance of the Work</i> . Make reasonable efforts to ensure <i>Products</i> furnished and the <i>Work</i> performed are in accordance with the <i>Contract Documents</i> . If any <i>Products</i> furnished or <i>Work</i> performed are not in accordance with the <i>Contract Documents</i> , provide timely notice to <i>Owner</i> and cooperate with <i>Owner</i> in dealing with <i>Trade Contractors</i> and <i>Suppliers</i> as reasonably required to ensure that any such failure is remedied.		F3
(13)	Establish a clear organization with true lines of authority, accountability and report to deliver the scope of work within the		F3

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	<p>"(2) Collect from the <i>Trade Contractors</i> all documentation required to substantiate their claims (including a statutory declaration) in a manner acceptable to the <i>Owner</i>."</p> <p>Delete paragraph 2.6.1 (3) in its entirety and replace with the following:</p> <p>"(3) Provide the <i>Payment Certifier</i> with all documentation necessary to allow him to certify each <i>Trade Contractor's</i> monthly payment applications and ensure that the <i>Payment Certifier</i> has sufficient access to the <i>Work</i> to allow him to certify each <i>Trade Contractor's</i> monthly payment application."</p> <p>Delete paragraph 2.6.2 (1) in its entirety and replace with the following:</p> <p>"(1) In accordance with the <i>Standard of Care</i>, conduct a pre-review of the <i>Trade Contractors'</i> monthly payment applications to verify that the amount claimed reflects the amount of the <i>Trade Contractor's Work</i> that has been completed as of the date of the monthly payment application. Issue a document to the <i>Payment Certifier</i> that reflects the <i>Construction Manager's</i> review of the application from the <i>Trade Contractors</i>."</p>		F3
			F3
			F3

2. CONSTRUCTION			
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.	Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
2.6	Payments to Trade Contractors and Suppliers Add the following as paragraph 2.6.2 (2) to 2.6.2 (3): <p>"(2) Chair an onsite review, if so requested by the <i>Owner</i> and <i>Payment Certifier</i>, of the <i>Trade Contractors</i> applications for payment with <i>Owner</i>, and the <i>Payment Certifier</i> to facilitate timely and accurate approval of the <i>Trade Contractors'</i> monthly applications for payment.</p> <p>(3) Once each of the monthly progress draws has been certified, present to the <i>Owner</i> a package including all the required documentation, to allow the <i>Owner</i> to process payments for each of the <i>Trade Contractors</i>."</p>		F3
			F3
2.7	Field Review		

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<p>Add the following to the end of paragraph 2.7.1 (1):</p> <p style="padding-left: 40px;">"The system for quality control and assurance shall include, without limitation, a process outlining, equipment integration, and maintenance/operation/use requirements for the <i>Owner's</i> operation team. Monitor, identify and have rectified all non-compliance items within the <i>Project</i> schedule."</p>		F3
<p>Add the following as paragraph 2.7.1 (3):</p> <p>"(3) Coordinate all testing and inspection procedures as required by the <i>Contract Documents</i>, the <i>Owner</i> and <i>Applicable Laws</i>. Keep accurate records of all tests, inspections, findings and reports. Services of independent testing agencies, professional engineers, and the <i>Consultant</i> shall be retained by the <i>Owner</i> through direct contract, unless otherwise noted in the <i>Contract Documents</i>."</p>		F3

2. CONSTRUCTION	Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
<p>F1 Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.</p>		
<p>F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.</p>		
<p>F3 Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.</p>		
<p>2.8 Health and Construction Safety</p> <p>Delete paragraph 2.8.1 (1) and 2.8.1 (2) in their entirety and replace with the following:</p> <p>"(1) Be solely responsible for construction safety at the <i>Place of the Project</i> and for compliance with the <i>Applicable Laws</i> and practices which relate to construction health and safety. Without any exceptions the <i>Construction Manager</i> will act as "Constructor" within the meaning of the <i>Occupational Health and Safety Act (OHSA)</i> (Ontario) with respect to the <i>Project</i>.</p> <p>(2) Be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the <i>Work</i>.</p> <p>(3) Take diligent, commercially reasonable steps to prevent interference with adjacent properties. Take diligent, commercially reasonable steps to not close or obstruct streets, sidewalks, alleys, or other public thoroughfares unless all permits required by <i>Applicable Laws</i> have been obtained and take diligent, commercially reasonable steps ensure compliance with all such permits.</p>		<p>F3</p> <p>F3</p> <p>F3</p>

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	Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F3)
2. CONSTRUCTION		
F1 Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F3 Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
2.8 Health and Construction Safety		
(4) Prepare a program of supervision and initiate, maintain, and supervise safety precautions and programs to assure that the <i>Trade Contractors</i> and <i>Suppliers</i> comply with all legal requirements, all safety and insurance requirements and other standards and requirements applicable to construction of the <i>Project</i> .		F3
(5) Provide site specific health and safety orientation to all parties.		F3
(6) Communicate, monitor and enforce <i>Construction Managers' Safety Policy</i> with all <i>Trade Contractors</i> . If required in the application of the <i>Safety Policy</i> , remove from site any person who fails to comply with the policy.		F3
(7) Prior to commencement of its services on this <i>Project</i> , the <i>Construction Manager</i> shall submit to the <i>Owner</i> :		F3
.1 a current WSIB clearance certificate and confirmation of the <i>Construction Manager's</i> current WSIB CAD-7 performance rating;		
.2 copies of the <i>Construction Manager's</i> insurance coverage that has application to the <i>Project</i> if requested by <i>Owner</i> ;		
.3 documentation of the <i>Construction Manager's</i> in-house safety-related programs; and		
.4 a copy of the <i>Notice of Project</i> filed with the Ministry of Labour naming itself as "constructor" under the applicable Health and Construction Safety legislation."		

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2. CONSTRUCTION		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
2.9	Submittals Add the following as paragraph 2.9.1 (7) to 2.9.1 (9):		
	“(7) Establish a co-ordinated shop drawing control system to expedite and track co-ordinated shop drawings. Maintain and update on a daily basis the co-ordinated shop drawing control system and provide reports to the <i>Owner</i> and the <i>Consultant</i> during the weekly meetings.		F3
	(8) Receive and review, for compliance with the <i>Contract</i> , all <i>Trade Contractors</i> shop drawings, all other required information submitted by <i>Trade Contractors</i> . All submittals shall be reviewed and commented upon by the <i>Construction Manager</i> for <i>Contract</i> compliance prior to submittal to the <i>Consultant</i> . Maintain and manage a set of all <i>Trade Contractors</i> shop drawings and submittals at the <i>Place of the Project</i> .		F3
	(9) Schedule, monitor and implement the flow of all documents and <i>Products</i> for the proper sequence of approvals by the <i>Consultant</i> so as to meet the <i>Project</i> schedule.”		F3

2. CONSTRUCTION		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
2.10	Reports and Project Site Documents Add the following as paragraph 2.10.1 (4) to 2.10.1 (5):		
	“(4) Maintain a record-keeping database system which shall be backed up to a third party server (acceptable to the Owner, acting reasonably) on a weekly basis, to monitor and track the progress of the Work. Such records shall include, but not be limited to, correspondence, emails and other electronic communications, Trade Contracts, purchase orders, meeting minutes, daily reports, logs, progress schedules, jobsite manpower reports, material		F3

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	<p>delivery shipment tickets and co-ordinated shop drawings on site to comply with the Contract Documents. All records, information and data shall be instantly accessible the Owner directly and without restriction or permission from the Construction Manager for such period as the Owner determines, in its sole discretion.</p> <p>(5) Prepare monthly cost reports and construction progress reports for the Owner's approval. The cost report shall record the current value of the Work performed by the <i>Trade Contractors</i> and track approved and pending change order costs to anticipate and estimate the final cost to complete the <i>Work</i>. The progress report shall specify among other things, an estimated percentage of completion, whether the <i>Project</i> is on schedule, and if not, the reasons therefore and the <i>Construction Manager's</i> recommendations for getting the <i>Project</i> back on schedule, as well as the number of man-days worked for each category of labour and the <i>Work</i> to be completed in the succeeding month. Accompanying the progress report shall be an updated current proposed <i>Construction Manager's</i> construction schedule submitted for the <i>Owner's</i> review, and a listing and the status of all change orders, bulletins and other relevant documents. The <i>Construction Manager</i> shall prepare such additional reports as the <i>Owner</i>, may reasonably request."</p>	F3
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	Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
<p>2. CONSTRUCTION</p> <p>F1 Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.</p> <p>F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.</p> <p>F3 Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.</p>		
<p>2.12 Substantial Performance of the Work</p> <p>Add the following as paragraph 2.12.1 (4) to 2.12.1 (5):</p> <p>“(4) Review and present, in accordance with the <i>Standard of Care</i>, the application for <i>Substantial Performance</i> for each of the <i>Trade Contractors</i>.</p> <p>(5) Once satisfied that a <i>Trade Contractor</i> has met the requirements of <i>Substantial Performance</i>, as defined in the <i>Lien Act</i>, inform the <i>Owner</i> and the <i>Consultant</i> in writing that <i>Work</i> of each <i>Trade Contractor</i> is ready for final review prior to issuance of final certificate for payment.</p>		<p>F3</p> <p>F3</p>
<p>2.14 Handover</p> <p>Add the following as paragraph 2.14.1 (6) and 2.14.1 (7):</p> <p>“(6) Coordinate the activities of all <i>Trade Contractors</i> with respect to the commissioning of the <i>Project</i>.</p> <p>(7) Make reasonable effort to ensure that all required <i>Trade Contractors</i> and <i>Suppliers</i> work with the <i>Owner's</i> Third Party Commissioning Agent and respond in a timely fashion to any inquiries or requests from the Third Party Commissioning Agent. If any <i>Trade Contractors</i> or <i>Suppliers</i> fail to respond in a timely fashion to any inquiries or request from the Third Party Commissioning Agent, provide timely notice to <i>Owner</i> and cooperate with <i>Owner</i> in dealing with <i>Trade Contractors</i> and <i>Suppliers</i> as reasonably required to ensure that any such failure is remedied. Develop and integrate all commissioning activities into the <i>Project</i> schedule and provide the services of a commissioning manager to ensure commissioning procedures are completed and documented, and commissioning records including any required attachments are submitted for approval.”</p>		<p>F3</p> <p>F3</p>

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2. CONSTRUCTION		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
Add the following as 2.15:			
2.15 Coordination with Authority Having Jurisdiction			
“.1	(1) Provide coordination, as required, with all government agencies including TSSA (Technical Standards and Safety Authority), to obtain approvals and permits required for the construction of the <i>Project</i> . Make diligent, commercially reasonable efforts to ensure all building and other required permits are obtained in a manner to meet all <i>Project</i> delivery milestones and other milestones in the <i>Project</i> schedule. Provide timely notice to the Owner if any required permit has not been obtained or is reasonably expected to be obtained, as and when required.		F3
Add the following as 2.16			
2.16 Small Tool Log			
“.1	(1) If the <i>Construction Manager</i> procures, on behalf of the <i>Project</i> , any small tools then the <i>Construction Manager</i> shall track his small tools on a small tool inventory. This inventory will show vendor, type of tool, serial number, model number, date received, and purchase cost. All small tools must be stamped with an identifying number.”		F2

2. CONSTRUCTION		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
Add the following as 2.17			
2.17 Trade Contract Administration			
“.1	(1) Manage all of the contracts for the <i>Trade Contractors</i> and <i>Suppliers</i> on behalf of the <i>Owner</i> as if the <i>Contracts</i> were held by the <i>Construction Manager</i> . Using its best discretion, the <i>Construction Manager</i> shall employ all reasonable measures to enforce the adherence of each of the <i>Trade Contractors</i> and		F3

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	<p><i>Suppliers to the terms and conditions of their contracts. The Construction Manager shall report instances of Trade Contractor non-compliance, which it is unable to resolve satisfactorily, to the Owner.</i></p> <p>(2) Collect and present to the Owner all Trade Contractors' current certificates of clearance from the WSIB.</p> <p>(3) Verify that each Trade Contractor has obtained all permits required to execute its respective Scope of Work;</p> <p>(4) Verify that all Trade Contractors have insurance coverage that is current and compliant with the requirements of their Trade Contracts;</p> <p>(5) Verify that all Trade Contractors submit their monthly progress draws in a timely fashion."</p>		<p>F3</p> <p>F3</p> <p>F3</p> <p>F3</p> <p>F3</p>
<p>Add the following as 2.18</p> <p>2.18 Insurance</p>	<p>(2) ".1 (1) Take out and maintain in force throughout the duration of the Project at its cost its own policies for: Automobile Liability insurance, with coverage limits acceptable to the Owner.</p> <p>The Owner, the Consultant, and all other consultants retained by the Owner, and if requested by Owner, the Ontario Infrastructure Projects Corporation, the Province of Ontario (MOHLTC), and the City of Toronto, shall be named as additional insureds on all insurance policies required in relation to this Project and will provide true copies of certificates or other evidence of such insurance as may be reasonably requested from time to time by Owner. If the Construction Manager fails to provide or maintain insurance as required herein, the Owner shall have the right to obtain and maintain such insurance and give evidence thereof to the Construction Manager on demand and the Owner may deduct the costs thereof from monies which are due, or may become due, to the Construction Manager."</p>		<p>F3</p> <p>F3</p> <p>F3</p>

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2. CONSTRUCTION		Performed by the Owner or Someone Other than the Construction Manager	the Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
Add the following as 2.19			
2.19 Defective Work			
".1	(1) The <i>Construction Manager</i> shall administer the removal and repair of defective <i>Work</i> by the <i>Trade Contractors</i> for a period of one (1) year from the <i>Project In-Use Date</i> ."		F3
Add the following as 2.20			
2.20 Cutting and Patching			
".1	(1) The <i>Construction Manager</i> shall supervise and coordinate the <i>Work</i> of the <i>Trade Contractors</i> and make diligent, commercially reasonable efforts to minimize any requirement for cutting and patching of the <i>Work</i> .		F3
	(2) The <i>Construction Manager</i> shall supervise and coordinate the <i>Work</i> of any specialist contractors required to perform cutting and remedial work.		F3
	(3) The <i>Construction Manager</i> shall verify that the <i>Trade Contractor</i> does not perform any cutting through the existing structure without first having performed all required tests and inspections as may be required by the <i>Owner and Consultant</i> ."		F3
Add the following as 2.21			
2.21 Cleanup			
".1	(1) The <i>Construction Manager</i> shall coordinate and supervise the cleaning of the <i>Place of the Project</i> by the <i>Trade Contractors</i> on an ongoing basis throughout the <i>Project</i> .		F3
	(2) The <i>Construction Manager</i> shall supervise the cleaning of the <i>Place of the Project</i> prior to the <i>Project In-Use Date</i> to allow for occupancy by the <i>Owner</i> .		F3
Add the following as 2.22			
2.22 Detection and Avoidance of Errors			
".1	(1) Using the <i>Standard of Care</i> , the <i>Construction Manager</i> shall review information furnished to it by or on behalf of the <i>Owner</i>		

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	<p>and shall advise the <i>Owner</i> of any error omission or inconsistency in such that it discovers.</p> <p>(2) If the <i>Construction Manager</i> discovers any error, inconsistency, or omission in the drawings and specifications, the <i>Construction Manager</i> shall obtain clarification from the <i>Owner</i> and the <i>Consultant</i> before allowing the <i>Trade Contractors</i> to proceed with any <i>Work</i> that would be affected by the discovered omission or inconsistency."</p>		F3
			F3
Add the following as 2.23			
2.23	Removal and Relocation of Utilities		
“.1	(1) The <i>Construction Manager</i> shall coordinate and schedule the permanent relocation of utilities.		F3

3. POST-CONSTRUCTION		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
3.2	Occupancy Review		
Add the following as paragraph 3.2.2 to 3.2.6:			
“.2	Manage and coordinate the completion of the deficiencies in accordance with deficiency list prepared by the <i>Consultant</i> and in conjunction with the schedule for deficiency completion approved by the <i>Owner</i> .		F3
.3	Compile in an organized manner <i>Trade Contractor</i> and <i>Supplier</i> close-out documents, such as guarantees, warranties, operation manuals, testing reports, as-built drawings (in electronic and hard copy format) and submit to the <i>Consultant</i> for final review and approval prior to <i>Project</i> closeout.		F3
.4	Compile and deliver to <i>Owner</i> as-built documentation produced by <i>Trade Contractors</i> in AutoCAD format.		F3
.5	Make diligent, commercially reasonable efforts to ensure that deficiencies are cleared and arrange for twelve (12) month warranty inspection.		F3
.6	Assist in rectifying all outstanding construction issues, assist in obtaining occupancy permits and assist in <i>Owner</i> training."		F3
3.3	Warranties		
Add the following as paragraph 3.3.2:			
“.2	During the one (1) year warranty period be solely responsible for		

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<p>administering the warranty work of all <i>Trade Contractors</i>, promptly and to the satisfaction of the <i>Owner</i>, have the <i>Trade Contractors</i> repair all <i>Products</i> and components thereof and any other element of the <i>Work</i>, which are found to be defective in materials and workmanship or are found not to conform to the requirements of their <i>Contract</i>. If other property of the <i>Owner</i> is damaged by a <i>Trade Contractor</i> during the completion of a warranty repair, make all reasonable efforts to ensure that the damage is corrected by the <i>Trade Contractor</i> to the satisfaction of the <i>Owner</i>."</p>		F3
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C. DEFINITIONS

SC 6 Amend the definition **Contract Time** by adding the following to the end of the paragraph:

"Time is of the essence for this *Contract*."

SC 7 Amend the definition **Owner** by adding the following to the end of the paragraph:

"The term *Owner* means the *Owner* or the *Owner's* authorized agent or representative as designated to the *Construction Manager* in writing, but does not include the *Consultant*."

SC 8 Amend the definition of **Payment Certifier** by deleting the words, "either the *Construction Manager* or," in the first sentence.

SC 9 Add the following Definition:

"Applicable Environmental Law

Applicable Environmental Law means all applicable federal, provincial, municipal and other laws, statutes, regulations, by-laws and codes, now or hereafter in existence having the force of law, intended to protect the environment or relating to "Hazardous Material" (as hereafter defined), including, without limitation, the Environmental Protection Act (Ontario) (the "EPA"), and the Canadian Environmental Protection Act (the "CEPA")."

SC 10 Add the following Definition:

"Applicable Laws

Applicable Laws means all applicable relevant laws, statutes, by-laws, codes, ordinances regulations, guidelines, development and site plan agreements, building codes, orders and restrictive covenants, and such permissions and consents of which the *Construction Manager* is made aware or should be aware, and includes, without limitation, *Applicable Environmental Law*, zoning by-laws, design and building codes, and permits, decrees, writs, injunctions, orders guidelines, policies, and official plans of any governmental authority."

SC 11 Add the following Definition:

"Construction Management Staff

The members of the *Construction Manager's Project* team are the persons identified in the Proposal. The persons designated in the *Proposal* as key members of the *Construction Management Staff* will not be changed without the prior approval of the *Owner*."

SC12 Add the following Definition:

"Certificate of Total Performance of the Work

Certificate of Total Performance of the Work means a certificate of completion of the *Contract* issued by the *Consultant* and or the *Authorized Agent* (subject to project or program type) in accordance with the provision of the *Contract Documents* and applicable provisions of the *Lien Act*."

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SC 13 Add the following Definition:

"Hazardous Material

Hazardous Material means, collectively, any contaminant, waste or subject waste (as defined in the EPA and regulations there under), toxic substance (as defined in the CEPA), dangerous goods (as defined in the Transportation of Dangerous Goods Act (Canada)) or pollutant (as defined in the EPA), or any other substance which when released to the natural environment is likely to cause in some immediate or foreseeable future time, material harm or degradation to the natural environment or material risk or harm to human health."

SC 16 Add the following Definition:

"Standard of Care

Standard of Care means the degree of care, skill and diligence of a prudent, knowledgeable and experienced *Construction Manager* for a project which is similar in size, magnitude and complexity to the *Project*."

SC 17 Add the following Definition:

"OHSA

'OHSA' means the Occupational Health and Safety in the Province of Ontario.

SC18 Add the following Definition:

"Lien Act

Lien Act means the Construction Lien Act (Ontario)."

SC 19 Add the following Definition:

"Project Manager

Project Manager means [Note to draft: insert the name of the Project Manager] (herein referred to as PM) or such other person, firm or corporation identified by written notice by the *Owner* to the *Construction Manager*, engaged by the *Owner* on behalf of the *Owner* to act for and represent the *Owner* in respect of the *Project*. Wherever appropriate in the context, the expression "*Owner*" as used in the *Contract Documents* shall be deemed to include and be a reference to the *Project Manager*."

D. GENERAL CONDITIONS

SC 21 Delete GC 1.1.1.1 in its entirety and replace with the following:

"1.1.1.1 The order of priority of documents from highest to lowest, shall be:

- The Agreement between *Owner* and *Construction Manager* (including the Schedules to the Agreement);
- The Supplementary Conditions to CCDC 5A, 2010, Construction Management Contracts -- for Services;
- The Definitions;

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- The General Conditions

SC 22 Add the following as GC 1.1.1.3 to GC 1.1.1.11:

- 1.1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.1.6 The specifications are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, and the services necessary for the performance of the *Work*.
- 1.1.1.7 The drawings are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location, and dimensions of the *Work*, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.1.8 *Construction Manager* will comply with all specifications pertaining to the *Work* and will supervise the *Work* of all *Trade Contractors* and *Suppliers* to ensure compliance with all specifications pertaining to the *Work*.
- 1.1.1.9 All issued drawings and as-built drawings, are to be returned at the end of the *Project* to *Owner*, including *Contract* sets, issued for construction sets and progress drawings issued by the *Consultants*. Should the *Construction Manager* require retention of drawings or information during the one (1) year warranty period, the *Construction Manager* shall return drawings to the *Owner* upon completion of the one (1) year warranty period.
- 1.1.1.10 *Construction Manager* is expected to treat all documents issued by *Owner* and its *Consultant* as confidential and not for use or viewing by parties not involved in the project. The *Construction Manager* will keep the Information safe and secure and ensure that the information cannot be viewed or distributed by or to anyone other than persons authorized in accordance with this *Contract*. The *Construction Manager* is not to have project documents open for public viewing.
- 1.1.1.11 Drawings, specifications, models, plans, information and data relating to the *Project* and copies thereof furnished by the *Consultant*, or the *Owner* ("*Information*") are and shall remain the property of the *Owner*. Such *Information* is to be used by the *Construction Manager* only with respect to the *Work* and is not to be used on any other work. The *Construction Manager* shall use reasonable best efforts to maintain the confidentiality of the *Information*, except to the extent required by *Applicable Laws*."

SC 23 Delete GC 1.2 in its entirety and replace with new GC 1.2.1 to GC 1.2.7 as follows:

- "1.2.1 The *Construction Manager* shall at all times comply with all *Applicable Laws* in the performance of its obligations hereunder.
- 1.2.2 This *Contract* shall in all respects be governed by, and construed and enforced in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties do hereby irrevocably and unconditionally submit and attorn to the jurisdiction of the courts of the Province of Ontario in connection with any disputes or other matters arising out of or in connection with this *Contract*.
- 1.2.3 The *Construction Manager* shall at all times comply with all *Owner* issued policies with respect to the Project in respect of which *Owner* has provided copies to the *Construction Manager*.

SC 24 Add the following as GC 2.1.6 to GC 2.1.15:

- "2.1.6 The *Construction Manager* agrees that, notwithstanding anything to the contrary contained in the *Contract*, it shall fully comply with policies or procedures, as issued by *Owner* to *Construction Manager*, which are relevant to any activity of the *Construction Manager* to be performed under the *Contract*. The *Construction Manager* further agrees that it will use reasonable efforts to inquire from the *Owner* if such policies or procedures exist for any activity of the *Construction Manager* to be performed under the *Contract*. The *Owner* agrees it will use reasonable efforts to communicate to the *Construction Manager* policies or procedures it may have, relevant to any such activity.
- 2.1.7 The *Construction Manager* shall make diligent, commercially reasonable efforts to ensure that the *Work* and the *Owner's* property and property adjacent to and in the vicinity or proximate to the *Place of the Project* are protected from damage which may arise as the result of the *Trade Contractor's* operations under the *Contract* (including without limitation any operations relating to mould or asbestos-containing, mercury containing or PCB containing *Products* and other toxic or *Hazardous Materials*).
- 2.1.8 The *Construction Manager* shall coordinate and supervise the efforts of all *Trade Contractors* and *Suppliers*, make diligent, commercially reasonable effort to ensure that the *Project* is on schedule and constructed in accordance with the approved and current *Contract Documents*.
- 2.1.9 The *Construction Manager* shall maintain the good order and discipline of its employees and other persons under its direction and control or present at the *Place of the Project* in connection with the *Work*, and shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled substances and other activities that will or may constitute a danger to life, health or property and shall not employ on the *Work* anyone not skilled in the tasks assigned.

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- 2.1.10 The *Construction Manager* shall ensure that the proposed *Construction Manager* project management and *Construction Manager* construction staff is assigned to ensure proper coordination and supervision of the *Work*.
- 2.1.11 The *Construction Manager* shall maintain the good order and discipline of its employees and other persons under its direction and control or present at the *Place of the Project* in connection with the *Work*, and shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled substances and other activities that will or may constitute a danger to life, health or property and shall not employ on the *Work* anyone not skilled in the tasks assigned.
- 2.1.12 The *Construction Manager* shall not employ any person for the *Project* whose labour affiliation (or lack thereof) is incompatible with other labour employed in connection with the *Project*.
- 2.1.13 At the *Owner's* instruction, the *Construction Manager* shall promptly remove from the *Place of the Project* any employee or other person who in the *Owner's* reasonable opinion represents a threat to the safety or progress of the *Project* or persons on the *Place of the Project*.
- 2.1.14 The *Construction Manager* shall make diligent, commercially reasonable efforts to ensure that the *Trade Contractors* perform the *Work* in accordance with the *Contract Documents* and that they employ only *Products* and workmanship and materials which comply with the specific requirements of the *Contract Documents*. Notwithstanding prior review and action by the *Consultant*, only *Products* and *Owner* supplied equipment conforming to the requirements of the *Contract Documents* shall be incorporated into the *Work*. The *Construction Manager* shall make diligent, commercially reasonable efforts to ensure that all *Products* and *Owner* supplied equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the *Contract Documents*. In the absence of other standards being required by the *Contract Documents*, the *Work* shall conform to, or exceed, the minimum standards of the Electrical Safety Authority, Canadian General Standards Board, the Canadian Standard Association, the National Building Code of Canada (latest edition with all current addenda), or the Ontario Building Code, whichever is applicable.
- 2.1.15 The *Construction Manager*, shall accurately and continuously note, on the *Contract Documents* kept by the *Construction Manager* at the *Place of the Project*, (1) all approved changes and deviations made during the *Work* which differ from that shown or specified in the *Contract Documents* and approved shop drawings indicating, in a neat, accurate and legible manner the *Work* as actually installed; (2) the exact location and detail of buried, embedded or concealed as-built conditions and all other as-built conditions of the *Work* (including the location of all asbestos abatement work dealing with such matters as floor tiles and pipe insulation); and (3) the exact location and detail of *Work* installed on a "field run" basis (collectively, the "Record Drawings"). If any *Work* is performed otherwise than as shown in the *Contract Documents* the *Construction Manager* shall have noted on such Record Drawings the *Work* as installed. Without limiting the generality of the foregoing, with respect to the mechanical, electrical and fire protection work, the *Construction Manager* shall

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have recorded, accurately, the exact location and detail of all "field run" services. The Record Drawings shall be made available for review by the *Owner* and the *Consultant* at all times. The Construction Manager shall have two (2) complete sets of good quality mylar reproducible final Record Drawings and two (2) computer disks containing the final Record Drawings, arranged in proper order in accordance with the various divisions of the *Work*; indexed and endorsed, delivered to the *Consultant* following final review of the *Work* by the *Consultant* but prior to application for final payment.

SC 25 Delete GC 3.1.1.14 in its entirety.

SC 25A Add new GC 3.1.3:

- (a) *Owner* represents and warrants that, prior to or upon execution of this *Contract*, *Owner* has secured sufficient financing arrangements or otherwise has sufficient funds available to it to meet its payment obligations to *Construction Manager* under the *Contract*.
- (b) *Owner* shall forthwith provide written notice to *Construction Manager* upon the occurrence of any of the following events:
 - a. *Owner* receives written notice from any lender that *Owner* is in default of a material term of any lending agreement that might reasonably result in *Owner* having insufficient funds to meet its payment obligations to *Construction Manager* under the *Contract*;
 - b. *Owner* reasonably believes that it will not have sufficient funds to meet its payment obligations to *Construction Manager* under the *Contract*; or
 - c. the representation in GC 3.1.3(a) above ceases to be true for any reason.
- (c) Upon receipt of a notice provided pursuant to section (b) above, *Construction Manager* shall be entitled, upon notice in writing to *Owner*, to suspend its *Services* pending delivery by *Owner* to *Construction Manager* of reasonable evidence that the condition for which notice was provided has been cured or other reasonable measures have been take to provide for sufficient funds for *Owner* to meet its payment obligations to *Construction Manager* under the *Contract*.
- (d) If *Owner* receives written notice from any party to whom *Owner* has conditionally assigned its rights to the *Contract* that such party intends to invoke such assignment, *Owner* will forthwith provide written notice thereof to *Construction Manager* and, if as a result of such assignment, *Construction Manager* determines, acting reasonably, that the assignee does not have sufficient funds to meet the payment obligations to *Construction Manager* under the *Contract*, *Construction Manager* shall be entitled, upon notice in writing to the assignee, to suspend its *Services* pending delivery by the assignee to *Construction Manager* of reasonable evidence that the condition for which notice was provided has been cured or other reasonable measures have been take to provide for sufficient funds for the assignee to meet its payment obligations to *Construction Manager* under the *Contract*.

SC 26 Add the following as GC 4.1.3 and GC 4.1.4:

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- “4.1.3 The *Construction Manager* shall include, as part of *Construction Manager’s* monthly applications for payment, all information and supporting documentation required by the *Owner* or the *Consultant* to substantiate the *Construction Manager’s* claim.
- 4.1.4 Prior to the submission of the *Construction Manager’s* first monthly application for payment the *Construction Manager* shall provide to the *Owner* proof of Registration with Canada Revenue Agency (CRA) for Harmonized Sales Tax purposes.
- 4.1.5 For each application for payment following its first application to the *Owner*, the *Construction Manager* shall submit to the *Owner* a statutory declaration using the standard form document, CCDC 9A, 2001, Statutory Declaration of Progress Payment Distribution by Contractor. The *Construction Manager’s* application for payment shall not be processed by the *Owner* unless the *Construction Manager* has submitted a statutory declaration.”
- 4.1.6 If the *Construction Cost* exceeds \$35 million dollars, the fixed fee (B) for profit and OH identified in Article 5.2.1 will be replaced by a percentage fee (2%) identified in Article 5.2.2.
- SC 27** Amend GC 4.2.1 by substituting the number “25” for the number “20” following the word “than” in the first sentence.
- SC 28** Amend GC 5.1.2 by adding the following to the end of the paragraph:
- “In the event that a contemplated change is expected by the *Construction Manager* to extend the *Project In-Use Date*, the *Construction Manager* shall provide the *Owner* with a mitigation strategy to minimize the impact of the proposed change. For all proposed changes that affect the *Construction Manager’s* compensation or the *Project In-Use Date*, the *Construction Manager* shall provide the *Owner* with and a detailed breakdown of the nature and magnitude of the proposed change to the *Construction Manager’s* compensation.”
- SC 29** Amend GC 5.1.3 by adding the following to the end of the paragraph:
- “There shall be no adjustment in the *Construction Manager’s* compensation or the *Contract Time* without the prior written consent of the *Owner*, which shall not be unreasonably withheld.
- SC 30** Add the following as GC 6.1.9 and GC 6.1.10:
- “6.1.9 The *Owner* reserves the right to terminate the *Contract* for convenience during the Preconstruction period, upon 30 days written notice. For greater certainty, the Preconstruction period will continue through completion of the construction procurement phase until the *Owner* has confirmed in writing that it is satisfied with the tender process and the bids, the proposed contracts with all *Trade Contractors* and *Suppliers*, and that the *Project* will be completed within its \$35 million budget. If the *Owner* exercises its right

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pursuant to this GC 6.1.9 to terminate the *Contract*, 50% of the *Construction Manager's* fee (i.e. \$340,000, being 50% of \$680,000) will be paid to the *Construction Manager* within 30 days of the notice of such termination. The *Construction Manager* shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by the *Owner* under the provisions of this GC 6.1.9.

6.1.10 After the Preconstruction period the *Owner* may at any time and in its sole discretion, by giving written notice to the *Construction Manager*, terminate or suspend the *Contract* or the *Work*, or any portion thereof upon written notice and, upon receipt of written notice the *Construction Manager* will make diligent, commercially reasonable efforts to redeploy its project staff, minimize or reduce costs for which the *Construction Manager* may seek reimbursement under the *Contract* and demobilize as soon as possible. If the *Contract* is terminated by the *Owner* pursuant to this GC 6.1.10 in the period after the Preconstruction period and before completion of the Project, the *Owner* will pay to the *Construction Manager* the balance of its fee adjusted as follows:(i) through to and including April 30, 2012, the *Owner* will pay to the *Construction Manager* an amount equal to 50% of the *Construction Manager's* fee (i.e. \$340,000, being 50% of \$680,000) plus a *per diem* in the amount of \$2,615.38 for each day during that period up to the effective date of such termination, and (ii) after April 30, 2012 through to the completion of the *Project* the unpaid balance of the *Construction Manager's* fee (as applicable, the "Termination Fee"). The Termination Fee will be paid within 30 days of the effective date of the termination. In addition to the Termination Fee, if the *Contract* is terminated by the *Owner* pursuant to this GC 6.1.10, the *Owner* will continue for a period of up to 120 days from the date of notice of such termination (the "Demobilization Period") to pay to the *Construction Manager* the costs for which the *Construction Manager* is entitled to seek reimbursement under the *Contract* to the extent the *Construction Manager* has not been able to avoid using diligent, commercially reasonable efforts. During the Demobilization Period, to the extent any of its staff or equipment dedicated to the *Project*, have not been redeployed, the *Construction Manager* will make reasonable efforts using the services of such staff to complete components as may be reasonably requested by the *Owner* and to effect an orderly demobilization of the *Project*. Except for the Termination Fee and for reimbursable expenses as expressly provided in this GC 6.1.10, the *Owner* shall have no other financial obligation or liability to the *Construction Manager*, if this *Contract* is terminated pursuant to this GC 6.1.10 and the *Construction Manager* shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by the *Owner* under the provisions of this GC 6.1.10.

- SC 31 Amend GC 6.2.1 by substituting the number "10" for the number "5" following the word "the" in the last sentence of the paragraph.
- SC 31 Amend GC 6.2.3.1 by substituting the number "45" for the number "30" in the first sentence of the paragraph.
- SC 32 [Intentionally left blank]
- SC 33 [Intentionally left blank]
- SC 34 Amend GC 8.1.3 as follows. At the beginning of the first sentence of the paragraph, following the word "The," delete the word, "Owner" and replace it with the word, "Construction Manager."
- SC 35 [Intentionally left blank]



SC 36 [Intentionally left blank]

SC 37 Delete GC 9.1.1 to 9.1.4 in their entirety and replace with the following:

"9.1.1 *Construction Manager* shall defend, indemnify and hold harmless *Owner* and *Consultant* and their respective parents, subsidiaries, affiliates, partners, officers, directors, agents and employees from and against any and all third party claims, costs, losses, expenses, liens, demands, damages, actions, suits, orders (whether administrative or otherwise), proceedings, liabilities and causes of action of whatsoever kind or nature (including all legal fees and disbursements and the amount of any judgment, penalty, interest charge, and fee) (collectively, the "*Claims*"), directly or indirectly, arising out of any breach of this *Contract* by *Construction Manager* or any negligent act, error or omission of *Construction Manager* or its respective agents and employees, directors, partners and officers and any other persons for whom it is law responsible (including any patent or copyright infringement and bodily injury, death or property damage). *Owner* shall defend, indemnify and hold harmless *Construction Manager* and its parent, subsidiaries, affiliates, partners, officers, directors, agents and employees from and against any and all *Claims*, directly or indirectly, arising out of any breach of this *Contract* by *Owner* or any negligent act, error or omission of the *Owner* or its respective agents and employees, directors, partners and officers and any other persons for whom it is law responsible (including any patent or copyright infringement and bodily injury, death or property damage)."

SC 38 Add the following as new GC 10:

"10.1 REVIEW AND INSPECTION OF THE WORK

10.1.1 The *Owner* and the *Consultant* shall have access to the *Work* at all times. The *Construction Manager* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Project*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.

10.1.2 If work is designated for tests, inspections, or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or the laws or ordinances of the *Place of the Project*, the *Construction Manager* shall give the *Consultant* reasonable notice of when the *Work* will be ready for review and inspection. The *Construction Manager* shall arrange for and shall give the *Consultant* reasonable notice of the date and time of inspections by other authorities.

10.1.3 The *Construction Manager* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.

10.1.4 If the *Construction Manager* permits to be covered, *Work* that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or completed, the *Construction Manager* shall, if so directed, uncover such *Work*, have the

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inspections or tests satisfactorily completed, and make good covering work at the *Construction Manager's* expense.

- 10.1.5 The *Construction Manager* shall arrange for *Trade Contractors* to furnish samples of all materials and component parts of the *Work* required as test specimens in connection with the tests and inspections and shall furnish labour and facilities at the *Place of the Project* as deemed necessary by the *Consultant* or the testing and inspection agencies for the testing and inspection of the *Work*. All inspection or testing shall be done in a timely manner so as to avoid unnecessary delay in the completion of the *Work*.

SC 38 Add the following as new GC 13:

"13.1 USE OF THE WORK

- 13.1.1 The *Construction Manager* shall confine construction machinery and equipment, storage of *Products*, and operations of employees to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Work*. All *Owner* supplied equipment shall be stored under suitable conditions to prevent damage, deterioration and contamination. No *Owner* supplied equipment shall be temporarily used or installed as a facility for construction purposes except with the prior written approval of the *Owner*.
- 13.1.2 The *Owner* shall have the right to enter and occupy the *Place of the Project* in whole or in part for the purpose of placing equipment, or for any other use before completion of the *Contract* if, in the reasonable opinion of the *Construction Manager*, such entry and occupation does not prevent or interfere with the *Construction Manager* in achieving the *Project In-Use Date* within the *Contract Time* stipulated in the *Contract*. Such entry or occupation shall neither constitute nor be considered as acceptance of the *Work*, or in any way relieve the *Construction Manager* of its responsibility to complete the *Work*.
- 13.1.3 Whether the *Project* contemplates work by way of renovations in (a) building(s) which will be in use or be occupied during the course of the *Work* or where the *Project* involves *Work* that is adjacent to a structure which is in use or is occupied, the *Construction Manager*, without in any way limiting its responsibilities under this contract, shall take diligent, commercially reasonable steps to manage and maintain fire exits, building access and egress, continuity of electric power and all other utilities, suppression of dust and noise and all other steps reasonably necessary to promote and maintain the safety and comfort of the users and occupants of such structures or adjacent structures.
- 13.1.4 The *Owner* shall have the right at any time or times to take possession of or use any completed or partially completed parts of the *Work*. Such possession or use will not be deemed an acceptance of *Work* not completed in accordance with the *Contract* nor relieve the *Construction Manager* from any other obligation or responsibility under the *Contract* (including, without limitation, the *Construction Manager's* warranty administration obligations). While the *Owner* is in such possession, the *Construction Manager* will be relieved of the responsibility for loss or damage to such completed or partially completed parts of the *Work* while they are in the possession or use of the *Owner* other than that resulting from the *Construction Manager's* negligence.

SC 39 Add the following as GC 14:

"14.1 SECURITY REGULATIONS

- 14.1.1 The *Construction Manager* agrees that its employees, when using the *Place of the Project*, shall comply with all security rules and regulations of the *Owner* in effect throughout the *Project*. In the event that any servant, agent, employee, invitee or representative of the *Construction Manager* shall wilfully fail or refuse to abide by such rules and regulations, they shall be removed from the *Place of the Project* by the *Construction Manager* and prevented from performing any part of the *Services*. The *Owner* shall provide the *Construction Manager* with a copy of the rules and regulations referred to in this paragraph.
- 14.1.2 The *Construction Manager* shall conduct security checks with respect to such of its servants, agents, employees and invitees having access to the *Place of the Project* or to any confidential information of *Owner* as the *Owner* may reasonably request and provide authorization in writing, when so requested by the *Owner* in writing, for the *Owner* to undertake a security check for a servant, agent, employee, invitee or representative of the *Construction Manager* to be provided access to the *Place of the Project*.
- 14.1.3 All costs incurred by the *Construction Manager* in complying with this GC 14.1 – SECURITY REGULATIONS shall be borne by the *Owner*.

SC 40 Add the following as GC 15:

"15.1 STANDARD OF CARE

- 15.1.1 In performing its services and obligations under the *Contract*, the *Construction Manager* shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent *Construction Manager* supplying similar service for similar projects. The *Construction Manager* acknowledges and agrees that throughout the *Contract*, the *Construction Manager's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Construction Manager* shall exercise the same standard of due care and diligence in respect of any personnel, or procedures which it may recommend to the *Owner*.
- 15.1.2 The *Construction Manager* further represents covenants and warrants to the *Owner* that:
- .1 the personnel it assigns to the *Project* are and will be appropriately experienced;
 - .2 as of the date hereof it has a sufficient staff of qualified and competent personnel to replace its designated supervisor and project manager, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation; and
 - .3 there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Construction Manager* to perform its *Work* under the *Contract*."

15.1.3 If *Construction Manger's* designated supervisor or project manager is for any reason unable or unwilling to serve in the capacity, *Construction Manager* will

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promptly supply a qualified and competent replacement satisfactory to *Owner*, acting reasonably.

SC 41 Add the following as GC 16:

"16.1 OWNERSHIP & CONFIDENTIALITY:

16.1.1 The *Owner* will have at all times all ownership rights, including where applicable copyright, in:

- .1 any items which the *Owner* and *Consultant* supplies to the *Construction Manager* or the *Construction Manager's Staff* for the performance of the *Work*; and
- .2 any items the *Construction Manager* buys under the *Contract* for the *Owner* or for which the *Owner* pays or reimburses the *Construction Manager*.

The *Construction Manager* will create and keep up-to-date an inventory of the items in 16.1.1.1 and 16.1.1.2 above and provide a copy of it to the *Owner* upon request and the *Construction Manager* will clearly identify these items as belonging to the *Owner* under the *Contract* on the *Construction Manager's* premises or at the *Place of the Project* as being property of the *Owner*.

16.1.2 Each of the parties will take reasonable precautions to protect the confidential information of the other, and will not disclose the confidential information of the other to any third party except for employees, *Suppliers* and *Trade Contractors* with a need to know. For the purposes of the *Contract*, "confidential information" shall mean any business or financial information about either party, including but not limited to information about their customers, suppliers or finances, but shall exclude any information in the public domain without a breach of this *Contract* or information a party gets from a source other than the other party without a breach of this *Contract*. Before granting access to any confidential information of the other to any third party other than an employee, a party will undertake to have such third party sign an agreement causing them to be bound by terms substantially the same as those in this present paragraph. In addition to the foregoing, the *Construction Manager* agrees, when dealing with confidential information of the *Owner*, to comply with any applicable policies of the *Owner* upon reasonable request by the *Owner*. At either party's request, the other will immediately return to that party any confidential information of that party then in its possession or under its control, except for information necessary to perform duties under the *Contract*.

16.1.3 If any unauthorized disclosure of, loss of, or inability to account for, confidential information of a party occurs while it is in the possession of the other, the other will notify the party in writing immediately.

16.1.4 If any confidential information contains information received under confidence from any third party, the party receiving that information will on request enter into any non-disclosure agreement that third party may reasonably require that creates similar obligations of confidentiality as those in the *Contract*."

SC 42 Add the following as GC 17:

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"17.1. RECORDS AND AUDIT

17.1.1 The *Owner* may inspect such *Project* records of the *Construction Manager*, which relate to the *Project* at any time as reasonably required by the *Owner* prior to date of the final certificate for payment and thereafter for a period of seven (7) years for the purpose of verifying the *Construction Manager's* estimates and valuation of changes in the *Work* and claims, and the *Construction Manager* shall supply certified copies of such records to the *Owner* when so requested in writing.

SC 43 Add the following as GC 19:

"19. 1. DESTRUCTION OF PROJECT.

19.1.1 If the *Project* is totally or partially destroyed and the *Owner* elects to rebuild, at the discretion of the *Owner*, the *Construction Manager* shall continue its services during the reconstruction and if such destruction is the result of an act or omission by the *Owner* the *Construction Manager* shall be entitled to the reimbursement for costs as provided for in the *Contract*."

SC 44 Add the following as GC 20:

"20.1 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

20.1.1 If the *Construction Manager*

.1 encounters *Hazardous Material* at the *Place of the Project*, or
.2 has reasonable grounds to believe that *Hazardous Material* is present at the *Place of the Project*, the *Construction Manager* shall:

.1 take all reasonable steps, including stopping the *Work*, and endeavouring to direct that *Trade Contractors*, *Suppliers* or others take reasonable steps to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the *Hazardous Materials*,

.2 immediately report the circumstances to the *Consultant* and the *Owner* in writing, and

.3 cooperate reasonably with *Owner* and *Consultant* to implement such steps as are required to properly store, manage, handle, clean up or dispose of any *Hazardous Material*.

20.1.2 If the *Construction Manager* introduces any materials to the *Project* site, the *Construction Manager* must ensure that such materials are labelled and handled in accordance with the "Workplace Hazardous Materials Information System" ("WHMIS"). If requested by the *Owner*, as an *Additional Service*, *Construction Manager* will develop and follow procedures for the storage, use and disposal of *Hazardous Material* sufficient to satisfy the requirements of all *Applicable Environmental Law* including, without limitation, the provisions of the and the *Ontario Occupational Health and Safety Act* (collectively, "*Environmental Protocols*"). The *Construction Manager* will ensure that all *Trade Contractors* and *Suppliers* are aware of those *Environmental Protocols*. The *Construction Manager* will provide timely notice in writing to *Owner* if it learns that any *Trade Contractor* or *Supplier* fails to comply with those *Environmental Protocols* and will cooperate reasonably with *Owner* to implement steps to ensure full compliance with those *Environmental Protocols*.

20.1.3 The *Construction Manager* will immediately notify the *Owner* of any notice it receives from any governmental authority of any actual or potential violation of any *Applicable Environmental Law* and will cooperate with the *Owner* in dealing with that notice and in correcting or contesting that violation.

SC 45 Add the following as GC 20.2:

"20.2 ARCHAEOLOGICAL MATERIALS

20.2.1 If the *Construction Manager* encounters fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites on the *Project* site, the *Construction Manager* will

- 20.2.1.1 immediately inform the *Owner* of such discovery;
- 20.2.1.2 take, and ensure that all *Trade Contractors* and *Suppliers* take, all steps not to disturb the item and, if necessary, cease any *Work* in so far as performing such *Work* would endanger the item or prevent or impede its excavation;
- 20.2.1.3 take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found;
- 20.2.1.4 comply, and ensure compliance by all *Trade Contractors* and *Suppliers* with all *Applicable Laws* and all requirements of the *Owner* with respect to such discovery; and
- 20.2.1.5 if requested by the *Owner*, as an *Additional Service*, develop and follow procedures for its preservation and evacuation.

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Appendix A
Time Base Rates

STAFF RATES	15Sept2016 - 30Aug2017	15Sept2017 - 30Aug2018	15Sept2018 - 30Aug2019	15Sept2019 - 30Aug2020	Sept 1 2020- Aug 30 2021	Sept 1 2021- Aug 30 2022
	E	F	G	H	I	J
	Rate	Rate	Rate	Rate	Rate	Rate
Mike Clark	\$ 250.00	\$ 257.50	\$ 265.23	\$ 273.19	281.39	289.83
Field Operations Manager	\$ 226.29	\$ 233.08	\$ 240.07	\$ 247.27	254.68	262.32
Construction Manager 1	\$ 147.22	\$ 151.64	\$ 156.19	\$ 160.87	165.7	170.67
Senior Project Manager	\$ 131.62	\$ 135.57	\$ 139.64	\$ 143.83	148.15	152.59
BIM Scheduling Manager	\$ 125.00	\$ 128.75	\$ 132.61	\$ 136.59	140.69	144.91
Timekeeper	\$ 72.73	\$ 74.92	\$ 77.16	\$ 79.48	81.86	84.32
Project Manager 1	\$ 116.79	\$ 120.29	\$ 123.90	\$ 127.62	131.45	135.39
Coordinator 1	\$ 69.84	\$ 71.94	\$ 74.10	\$ 76.32	78.61	80.97
Materials Coordinator	\$ 62.33	\$ 64.20	\$ 66.13	\$ 68.11	70.15	72.26
Overall Project Superintendent	\$ 200.85	\$ 206.88	\$ 213.08	\$ 219.47	226.05	232.84
Superintendent 1	\$ 131.45	\$ 135.39	\$ 139.45	\$ 143.64	147.95	152.39
Assistant Superintendent	\$ 72.73	\$ 74.92	\$ 77.16	\$ 79.48	81.86	84.32
Field Engineer	\$ 64.62	\$ 66.56	\$ 68.56	\$ 70.61	72.73	74.91
Accountant 2	\$ 60.47	\$ 62.28	\$ 64.15	\$ 66.08	68.06	70.1

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Admin Assistant 1	\$ 60.71	\$ 62.53	\$ 64.41	\$ 66.34	\$ 68.33	\$ 70.38
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Monthly Rates	Monthly Rates	Monthly Rates	Monthly Rates	Monthly Rates	Monthly Rates	Monthly Rates
Mike Clark	43333.33	44633.33	45972.33	47351.5	48772.05	50235.21
Field Operations Manager	39223.6	40400.31	41612.32	42860.69	44146.51	45470.91
Construction Manager 1	25518.13	26283.67	27072.18	27884.35	28720.88	29582.51
Senior Project Manager	22814.13	23498.55	24203.51	24929.62	25677.51	26447.84
BIM Scheduling Manager	21666.67	22316.67	22986.17	23675.76	24386.03	25117.61
Timekeeper	12606.53	12984.73	13374.27	13775.5	14188.76	14614.42
Project Manager 1	20243.6	20850.91	21476.44	22120.73	22784.35	23467.88
Coordinator 1	12105.6	12468.77	12842.83	13228.11	13624.95	14033.7
Materials Coordinator	10803.87	11127.99	11461.83	11805.68	12159.85	12524.65
Overall Project Superintendent	34814	35858.42	36934.17	38042.2	39183.47	40358.97
Superintendent 1	22784.67	23468.21	24172.26	24897.43	25644.35	26413.68
Assistant Superintendent	12606.53	12984.73	13374.27	13775.5	14188.76	14614.42
Field Engineer	11200.8	11536.82	11882.92	12239.41	12606.59	12984.79
Accountant 2	10481.47	10795.91	11119.79	11453.38	11796.98	12150.89
Admin Assistant 1	10523.07	10838.76	11163.93	11498.85	11843.82	12199.13

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LABOUR RATES	E		F		G		H		I		J	
	1Sept2016 - 30Aug2017	Rate	1Sept2017 - 30Aug2018	Rate	1Sept2018 - 30Aug2019	Rate	1Sept2019 - 30Aug2020	Rate	Sept 1 2020- Aug 30 2021	Rate	Sept 1 2021- Aug 30 2022	Rate
Flagman	\$ 78.25	\$	\$ 80.99	\$	\$ 83.82	\$	\$ 86.76	\$	\$ 90.23	\$	\$ 93.84	\$
Flagman - OT	\$ 117.38	\$	\$ 121.49	\$	\$ 125.74	\$	\$ 130.14	\$	\$ 135.35	\$	\$ 140.76	\$
Hoist Operator		\$	\$ 95.84	\$	\$ 99.19	\$	\$ 102.66	\$	\$ 106.77	\$	\$ 111.04	\$
Hoist Operator - OT		\$	\$ 157.85	\$	\$ 163.37	\$	\$ 169.09	\$	\$ 175.85	\$	\$ 182.89	\$
2nd Hoist Operator		\$	\$ 86.48	\$	\$ 89.51	\$	\$ 92.64	\$	\$ 96.35	\$	\$ 100.2	\$
2nd Hoist Operator - OT		\$	\$ 129.71	\$	\$ 134.26	\$	\$ 138.96	\$	\$ 144.52	\$	\$ 150.3	\$
Carpenter		\$	\$ 96.97	\$	\$ 100.36	\$	\$ 103.87	\$	\$ 108.02	\$	\$ 112.36	\$
Labourer - Base	\$ 83.55	\$	\$ 86.48	\$	\$ 89.51	\$	\$ 92.64	\$	\$ 96.36	\$	\$ 100.2	\$
Labourer - Foreman	\$ 88.27	\$	\$ 91.35	\$	\$ 94.55	\$	\$ 97.86	\$	\$ 101.77	\$	\$ 105.84	\$

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Appendix B
Cost of Work Definition



Clark Construction Management INC
COST OF WORK DEFINITION

The Cost of the Work shall include:

- (a) Wages and benefits paid for field hourly staff in the direct employ of the Contractor in the performance of the Work as pre-approved by owner.
- (b) Salaries, wages, assessments and benefits for the Contractor's personnel when stationed at any field office, in whatever capacity employed for actual hours spent on the work will be charged in accordance with the rates listed in Schedule "C"; salaries, wages, assessments and benefits of personnel engaged at shops, or on the road, in expediting the production or transportation of materials or equipment for actual hours spent on the work will be charged in accordance with the rates listed in Schedule "C"; salaries wages, assessments and benefits of other personnel for actual hours spent on the work will be charged in accordance with the rates listed in Schedule "C";
- (c) Contributions, assessments and taxes incurred for such items as employment insurance, provincial or territorial health insurance, worker's compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Contractor and included in the Cost of Work as provided in paragraphs (a) and (b) above.
- (d) The portion of travel and subsistence expenses of the officers or employees of the Contractor incurred while traveling outside of the GTA in discharge of duties connected with the work as pre-approved by owner.
- (e) The cost of all materials, products, supplies and equipment incorporated into the work, including costs of transportation thereof as pre-approved by owner.
- (f) The costs of materials, products, supplies, equipment, temporary services and facilities, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the work, and cost less salvage value on such items used, but not consumed, which remain the property of the Contractor as pre-approved by owner.
- (g) The rental costs of all tools, machinery, and equipment and facilities exclusive of hand tools, used in the performance of the Work, whether rented from or provided by the Contractor or others, including installation, insurance, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, rental of "small tools" as defined in the Contractor's equipment manual, having a replacement value of less than five hundred dollars, shall be charged at an assessment rate of five percent of costs in paragraphs (a), (b), and (c) above.
- (h) The cost of quality assurance such as independent inspection and testing services as pre-approved by owner.
- (i) Charges levied by authorities having jurisdiction over the work.
- (j) Royalties, patent license fees and damages for infringement of patents and the costs of defending suits thereof.



Clark Construction Management INC

- (k) Premiums and assessments for all applicable bonds and insurance, including subcontractor default insurance, and related adjuster costs;
 - (l) Value-added taxes (GST), sales taxes and duties related to the work and for which the Contractor is liable;
 - (m) Charges for telegrams, faxes, telephones, photocopiers, courier services, expressage, and petty cash items incurred in connection with the work;
 - (n) The cost of Site Pickup Truck and associated FOG cost as pre-approved by owner;
 - (o) Costs incurred due to emergencies affecting the safety of persons or property;
 - (p) The cost associated with the *Construction Manager's* safety orientation programs, to a maximum of fifteen hundred dollars per session.
 - (q) The cost of computer equipment;
 - (r) The cost associated with the Contractor's safety and training and recruiting programs;
 - (s) Insurance costs associated with the project insurance coverage's to be placed by the Contractor as follows:
 - 1. General Liability insurance (including the Contractor's equipment, owned/non-owned auto and pollution exposure) shall be provided by the Contractor and included at the rate of seven dollars per thousand dollars of the Building Contract Price; and
 - 2. Builder's risk (Course of Construction) insurance, if provided by the Contractor, shall be included at the rates available at the time of construction;
- The rates for insurance described above are 2015 rates based on a deductible of twenty-five thousand dollars per claim and are subject to escalation to reflect increases in rates as charged under the Contractor's corporate risk program from time to time.
- (t) Project management and administration staff, who are stationed in our office will only be charged as a cost of the work for that portion of their time relating to this Project in accordance with (c) and (d) above;
 - (u) The cost of duplication or reproduction of any plans and drawings;

The Cost of the Work shall cover and include all other costs reasonably incurred by the Contractor in performing work and services in accordance with the Agreement from time to time, or as otherwise approved in writing by the Owner, and at rates prevailing in the locality of the place of the Project.

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Appendix C
Staff Plan Histogram

The ONE Retail and Residence - Staff Plan for Core, Shell & Finishes

The table is a staff plan histogram for 'The ONE Retail and Residence - Staff Plan for Core, Shell & Finishes'. It features a grid of data points across multiple columns and rows. The columns are labeled with months from 2017 to 2020. The rows are organized into several sections, including 'Retail Staff' and 'Residence Staff'. The data points are numerical values representing staff counts or hours. The table is highly detailed and spans most of the page's width and height.

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Appendix D
Master Schedule



1 Bloor West Master
Schedule R13 - 20171

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Appendix E
Altus Estimate

Job No: 16675
27-Sep-17

DEAD FOR DISCUSSION PURPOSES ONLY



One Bloor West - Held Option
Construction Cost Estimate
Toronto, Ontario
September 2017

DEAD FOR DISCUSSION PURPOSES ONLY



One Bloor West - Held Option
Construction Cost Estimate
Toronto, Ontario
September 2017

Job No: 16675
27-Sep-17

EXCLUSIVE ESTIMATE
The 1st-4th Construction Cost Estimate can be summarized as follows:

Item	Quantity	Unit	Unit Price	Value	Percentage	Total Value	Unit Price
1st-4th Construction Cost Estimate	10,715	sqm	994	10,637,000	211	225,000	211
5th-8th Construction Cost Estimate	1,618	sqm	938	1,517,000	30	332,000	30
9th-12th Construction Cost Estimate	12,801	sqm	644	8,253,000	166	1,644,000	166
13th-16th Construction Cost Estimate	13,601	sqm	810	11,018,000	222	2,420,000	222
17th-20th Construction Cost Estimate	27,202	sqm	1,397	37,978,000	764	8,440,000	764
21st-24th Construction Cost Estimate	2,530	sqm	881	2,229,000	45	980,000	45
Total Construction Cost Estimate	67,467	sqm	1,000	67,467,000	1,368	15,100,000	1,368
Design & Pricing Contingency	7.2%			4,867,764	9	1,066,000	9
Total Construction Cost Estimate (including contingencies)				72,334,764	1,377	16,166,000	1,377
Construction Contingency - EXCLUDED	0%			0	0	0	0
Construction Contingency - EXCLUDED	5%			3,616,764	7	800,000	7
Total Construction Cost Estimate (including contingencies)				75,951,528	1,384	16,966,000	1,384
Construction Contingency - EXCLUDED				0	0	0	0
Total Construction Cost Estimate (including contingencies)				75,951,528	1,384	16,966,000	1,384

1. See Our Estimate Summary for breakdown of estimated costs by component.
2. NET is excluded.
3. Removal of any construction materials, abnormal site conditions including soil columns, surface gas management/venting, Bulkhead or conventional water are included.
4. Any construction cost fluctuations beyond September 2017 has been included.
5. Design & Pricing Contingency & Post-Contract Construction Contingency has been included.
6. All items are included unless otherwise specified.
7. All items are included unless otherwise specified.
8. All items are included unless otherwise specified.
9. All items are included unless otherwise specified.
10. All items are included unless otherwise specified.
11. All items are included unless otherwise specified.
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23. All items are included unless otherwise specified.
24. All items are included unless otherwise specified.
25. All items are included unless otherwise specified.
26. All items are included unless otherwise specified.

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END OF SUPPLEMENTARY CONDITIONS

EM

APPENDIX "8"
E-MAIL SENT BY MARK KILFOYLE (MI'S CFO) TO JENNY COCO
ON NOVEMBER 9, 2017 AND JENNY COCO'S RESPONDING E-MAIL
SENT TO MARK KILFOYLE

From: Richard Yu[Richard.yu@raymondjames.ca]
Sent: Thur 11/9/2017 7:24:59 PM (UTC-05:00)
To: Jenny Coco[JCoco@cocogroup.com]; Mark Kilfoyle[mark@mizrahidevelopments.ca]
Cc: sam@mizrahidevelopments.ca[sam@mizrahidevelopments.ca]; Roy Booth[RBooth@cocogroup.com]; Elliott Kobulnik[EKobulnik@cocogroup.com]; Natasha Sharpe[NSharpe@bridgingfinance.ca]; Josh Lax (josh@mizrahidevelopments.ca)[josh@mizrahidevelopments.ca]; bosco.chan@livesolar.ca[bosco.chan@livesolar.ca]; yithaifood@hotmail.com[yithaifood@hotmail.com]
Subject: RE: 3 month cash flow queries

Jenny,

I'm just reading your email again and I think you may be confusing the word GC with general contractor. What Mark is referring to below is actually General Conditions. The General Condition costs are always project costs and goes directly to pay site labour (there is no profit to Mizrahi Inc here). The General Contractor/Construction Management fee, in this case referred as the CM fee of 5%, is a profit for the management of construction site. That's a reasonable margin for any company to tackle a project of this scale.

I also checked with a few industry people on this and they all agreed the above is normal course and in line with market for a project like this. I'm sure Mark would be happy to clarify and discuss your concerns at the board meeting tomorrow.

Best regards,

Richard

From: Jenny Coco [mailto:JCoco@cocogroup.com]
Sent: Thursday, November 09, 2017 4:30 PM
To: Mark Kilfoyle
Cc: sam@mizrahidevelopments.ca; Roy Booth; Elliott Kobulnik; Natasha Sharpe; Josh Lax (josh@mizrahidevelopments.ca); Richard Yu; bosco.chan@livesolar.ca; yithaifood@hotmail.com
Subject: FW: 3 month cash flow queries
Importance: High

Mark

Thanks for your responses.

See my comments below.

Thanks!
Jenny

From: Mark Kilfoyle [mailto:mark@mizrahidevelopments.ca]

Sent: Thursday, November 9, 2017 3:41 PM

To: Jenny Coco <JCoco@cocogroup.com>

Cc: Sam Mizrahi <sam@mizrahidevelopments.ca>; Josh Lax <josh@mizrahidevelopments.ca>; Roy Booth <RBooth@cocogroup.com>; Elliott Kobulnik <EKobulnik@cocogroup.com>

Subject: 3 month cash flow queries

Hi Jenny,

Before I answer your questions, I will start off with the process on how the approved list of cheques ("List") was created:

- Sam negotiated the funding from CERIECO and its timing of receipt. This was the \$8 million in October, \$8 million in November and \$8 million in December and \$1 million in January until we can start drawing on deposits and further CERIECO funding will be received.

I HAVE COPIED RICHARD, KEVIN AND BOSCO TO REQUEST CLARIFICATION AND WHY COCO WAS NOT INVOLVED IN THE DISCUSSION? WE HAVE NO AGREEMENTS ON FILE TO REFLECT THE SAME AND COCO APPROVAL IS ALSO REQUIRED.

- I was required to provide a List of what and who would be paid from those funds and in which periods. China would not fund without this list and it was certified in a letter by Sam and myself that this is where the funds would be directed. The List was presented to you, Roy and Elliott.

AS A SHAREHOLDER WITH THE ONLY CASH EQUITY INJECTION TO DATE, COCO IS REQUIRED TO PRE-APPROVE ALSO, GIVEN WE ARE THE GUARANTORS ALSO.

- The List had two components, the first was a payments of accounts payable which the amounts outstanding to you and Sam for your Advisory Fee (\$7.5 million) and my Development Fee (\$20 million) were part of. The second part was the ongoing costs which are comprised of payments that will need to be made to vendors to keep the project going forward. These ongoing costs were only estimates at the time and all of which were in the Altus Budget. For example, we had to pay for the renting of Roy Thompson Hall or we would not had the event.

FURTHER DISCUSSION WARRANTED.

- With respect to the payment of outstanding payables, we broke them down into three categories: (1) those that needed to be paid immediately, (2) those that would accept instalments and (3) those we could hold off until we get the deposits and CERIECO draws in January/February. For example, the smaller trades need to be paid out immediately and those will be paid immediately. Next, those vendors like Fosters are accepting partial payments. Lastly, vendors like Altus have accepted no payment until we get to the first Deposit draw.

THIS SHOULD BE DISCUSSED COLLECTIVELY AS WE ALSO HAVE RELATIONSHIPS WITH VENDORS ON THE LIST AND SUGGEST THEY BE PAID.

Now for your specific questions. The first two items below are within the Scope of the Subcontract Agreements and budgeted in the Altus budget. These specific costs have their own lines, and are not buried within any number in any of the reports issued by Altus.

(1) The Mizrahi GC Fees are the monthly costs of keeping the construction office running for Mike Clark and his team plus any costs by the Mizrahi Construction team. These are in the Altus budget and payments are in accordance with Altus's report. These costs are at market and are cost plus Mike Clark's Fee. This is not a profit centre for Mizrahi Inc. and are in accordance with the Subcontract.

WE HAVE YET TO SEE AND APPROVE THE ALTUS BUDGET. THIS WARRANTS DISCUSSION AND

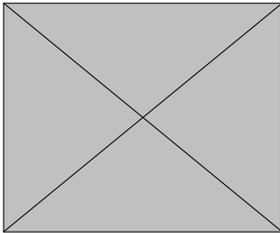
WE HAVE NOT BEEN APARTY TO SEVERAL NEGOTIATIONS AND COCO IS ONLY COMMITTING TO THE AGREEMENTS WE EXECUTED! IT'S TIME FOR CHINA, COCO AND MIZRAHI TO DISCUSS THIS PROJECT PRIOR TO US TAKING ALTERNATIVE ACTIONS.

(2) The Mizrahi CM Fee is the 5% fee on construction costs as per the Subcontract Agreement. The amounts on the List were based on the budgeted costs, and were as per the Altus Budget. The amounts actually paid will be based on the actual Consturction spends times the 5% fee. Therefore it is unlikely the amount will be the same as the number in the estimate, it maybe higher or lower depending on spends. In the future the actual amount will move up and down depending on the construction spends in that given month.

(3) With respect to the Development and Advisory fees these are both due and outstanding and part of the Payables and are both long overdue. They were lumped into Vendors that will accept partial payments. The amount payable was calculated after determining the available funds after payments required to pay both the determined Accounts Payable balances and ongoing costs. They will only be paid if we achieve the spends we have estimated or if additional funds are received, such as HST. If we are able to get through spending less on the ongoing costs than these fees will go up and if the spends are higher are higher then these fees will decrease. As a note the Development and Advisory fees are on a prorate basis of each other. Based on the current cash flow, we are aiming to release the condo deposits in January/February and as such the outstanding balance will be paid at that point.

If you have any questions happy to discuss them with you.

Best regards,
Mark



Mark Kilfoyle

CFO and COO

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www.MizrahiDevelopments.ca

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APPENDIX “9”
GC AGREEMENT DATED MAY 14, 2019

CCDC 2

stipulated price contract

2 0 0 8

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- * The Association of Canadian Engineering Companies
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AGREEMENT BETWEEN OWNER AND CONTRACTOR

For use when a stipulated price is the basis of payment.

This Agreement made on the _____ day of _____ in the year _____ .

by and between the parties

hereinafter called the "*Owner*"

and

hereinafter called the "*Contractor*"

The *Owner* and the *Contractor* agree as follows:

ARTICLE A-1 THE WORK

The *Contractor* shall:

1.1 perform the *Work* required by the *Contract Documents* for

insert above the name of the Work

located at

insert above the Place of the Work

for which the Agreement has been signed by the parties, and for which

insert above the name of the Consultant

is acting as and is hereinafter called the "*Consultant*" and

1.2 do and fulfill everything indicated by the *Contract Documents*, and

1.3 commence the *Work* by the _____ day of _____ in the year _____ and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work*, by the _____ day of _____ in the year _____ .

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

2.1 The *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Work*, including the bidding documents that are not expressly listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS.

2.2 The *Contract* may be amended only as provided in the *Contract Documents*.

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ARTICLE A-3 CONTRACT DOCUMENTS

3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement - THE WORK:

- Agreement between *Owner* and *Contractor*
- Definitions
- The General Conditions of the Stipulated Price Contract
- *

* *(Insert here, attaching additional pages if required, a list identifying all other Contract Documents e.g. supplementary conditions; information documents; specifications, giving a list of contents with section numbers and titles, number of pages and date; material finishing schedules; drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date)*

ARTICLE A-4 CONTRACT PRICE

4.1 The *Contract Price*, which excludes *Value Added Taxes*, is:

/100 dollars \$

4.2 *Value Added Taxes* (of _____ %) payable by the *Owner* to the *Contractor* are:

/100 dollars \$

4.3 Total amount payable by the *Owner* to the *Contractor* for the construction of the *Work* is:

/100 dollars \$

4.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

4.5 All amounts are in Canadian funds.

ARTICLE A-5 PAYMENT

5.1 Subject to the provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of

_____ percent (_____ %), the *Owner* shall:

- .1 make progress payments to the *Contractor* on account of the *Contract Price* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payments, and
- .2 upon *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, pay to the *Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Contractor* in accordance with the provisions of GC 11.1 – INSURANCE.

5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
 - (1) 2% per annum above the prime rate for the first 60 days.
 - (2) 4% per annum above the prime rate after the first 60 days.Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

(Insert name of chartered lending institution whose prime rate is to be used)

for prime business loans as it may change from time to time.

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

6.1 *Notices in Writing* will be addressed to the recipient at the address set out below. The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender. A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day. A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof. An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

Owner

*name of Owner**

address

facsimile number

email address

Contractor

*name of Contractor**

address

facsimile number

email address

Consultant

*name of Consultant**

address

facsimile number

email address

** If it is intended that the notice must be received by a specific individual, that individual's name shall be indicated.*

ARTICLE A-7 LANGUAGE OF THE CONTRACT

7.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English / French # language shall prevail.
Complete this statement by striking out inapplicable term.

7.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

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ARTICLE A-8 SUCCESSION

8.1 The *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

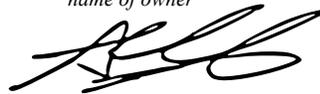
In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED
in the presence of:

WITNESS

OWNER


signature

name of owner

signature

name of person signing

name and title of person signing

signature

signature

name of person signing

name and title of person signing

WITNESS

CONTRACTOR


signature

name of Contractor

signature

name of person signing

name and title of person signing

signature

signature

name of person signing

name and title of person signing

N.B. Where legal jurisdiction, local practice or Owner or Contractor requirement calls for:
(a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
(b) the affixing of a corporate seal, this Agreement should be properly sealed.

DEFINITIONS

The following Definitions shall apply to all *Contract Documents*.

1. **Change Directive**
A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Contractor* to proceed with a change in the *Work* within the general scope of the *Contract Documents* prior to the *Owner* and the *Contractor* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.
2. **Change Order**
A *Change Order* is a written amendment to the *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Contractor* stating their agreement upon:
 - a change in the *Work*;
 - the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
 - the extent of the adjustment in the *Contract Time*, if any.
3. **Construction Equipment**
Construction Equipment means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.
4. **Consultant**
The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Work*. The term *Consultant* means the *Consultant* or the *Consultant's* authorized representative.
5. **Contract**
The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.
6. **Contract Documents**
The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS and amendments agreed upon between the parties.
7. **Contract Price**
The *Contract Price* is the amount stipulated in Article A-4 of the Agreement - CONTRACT PRICE.
8. **Contract Time**
The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement - THE WORK from commencement of the *Work* to *Substantial Performance of the Work*.
9. **Contractor**
The *Contractor* is the person or entity identified as such in the Agreement. The term *Contractor* means the *Contractor* or the *Contractor's* authorized representative as designated to the *Owner* in writing.
10. **Drawings**
The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.
11. **Notice in Writing**
A *Notice in Writing*, where identified in the *Contract Documents*, is a written communication between the parties or between them and the *Consultant* that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.
12. **Owner**
The *Owner* is the person or entity identified as such in the Agreement. The term *Owner* means the *Owner* or the *Owner's* authorized agent or representative as designated to the *Contractor* in writing, but does not include the *Consultant*.
13. **Place of the Work**
The *Place of the Work* is the designated site or location of the *Work* identified in the *Contract Documents*.
14. **Product**
Product or Products means material, machinery, equipment, and fixtures forming the *Work*, but does not include *Construction Equipment*.

- 15. Project**
The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.
- 16. Provide**
Provide means to supply and install.
- 17. Shop Drawings**
Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Contractor* provides to illustrate details of portions of the *Work*.
- 18. Specifications**
The *Specifications* are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Work*.
- 19. Subcontractor**
A *Subcontractor* is a person or entity having a direct contract with the *Contractor* to perform a part or parts of the *Work* at the *Place of the Work*.
- 20. Substantial Performance of the Work**
Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Consultant*.
- 21. Supplemental Instruction**
A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents* as required for the performance of the *Work*.
- 22. Supplier**
A *Supplier* is a person or entity having a direct contract with the *Contractor* to supply *Products*.
- 23. Temporary Work**
Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the execution of the *Work* but not incorporated into the *Work*.
- 24. Value Added Taxes**
Value Added Taxes means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Contractor* by the tax legislation.
- 25. Work**
The *Work* means the total construction and related services required by the *Contract Documents*.
- 26. Working Day**
Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.

GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT**PART 1 GENERAL PROVISIONS****GC 1.1 CONTRACT DOCUMENTS**

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products* and services necessary for the performance of the *Work* by the *Contractor* in accordance with these documents. It is not intended, however, that the *Contractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- .1 the *Owner* and a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
 - .2 the *Consultant* and the *Contractor*, a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.6 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Contractor* in dividing the work among *Subcontractors* and *Suppliers*.
- 1.1.7 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and the *Contractor*,
 - the Definitions,
 - Supplementary Conditions,
 - the General Conditions,
 - Division 1 of the *Specifications*,
 - technical *Specifications*,
 - material and finishing schedules,
 - the *Drawings*.
 - .2 *Drawings* of larger scale shall govern over those of smaller scale of the same date.
 - .3 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
 - .4 later dated documents shall govern over earlier documents of the same type.
- 1.1.8 The *Owner* shall provide the *Contractor*, without charge, sufficient copies of the *Contract Documents* to perform the *Work*.
- 1.1.9 *Specifications*, *Drawings*, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property, with the exception of the signed *Contract* sets, which shall belong to each party to the *Contract*. All *Specifications*, *Drawings* and models furnished by the *Consultant* are to be used only with respect to the *Work* and are not to be used on other work. These *Specifications*, *Drawings* and models are not to be copied or altered in any manner without the written authorization of the *Consultant*.
- 1.1.10 Models furnished by the *Contractor* at the *Owner's* expense are the property of the *Owner*.

GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the *Owner*, *Consultant* or *Contractor* shall constitute a waiver of any right or duty afforded any of them under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1 AUTHORITY OF THE CONSULTANT

- 2.1.1 The *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.1.2.
- 2.1.2 The duties, responsibilities and limitations of authority of the *Consultant* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner*, the *Contractor* and the *Consultant*.
- 2.1.3 If the *Consultant's* employment is terminated, the *Owner* shall immediately appoint or reappoint a *Consultant* against whom the *Contractor* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Consultant*.

GC 2.2 ROLE OF THE CONSULTANT

- 2.2.1 The *Consultant* will provide administration of the *Contract* as described in the *Contract Documents*.
- 2.2.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the work and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
- 2.2.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the *Contractor*.
- 2.2.4 The *Consultant* will promptly inform the *Owner* of the date of receipt of the *Contractor's* applications for payment as provided in paragraph 5.3.1.1 of GC 5.3 – PROGRESS PAYMENT.
- 2.2.5 Based on the *Consultant's* observations and evaluation of the *Contractor's* applications for payment, the *Consultant* will determine the amounts owing to the *Contractor* under the *Contract* and will issue certificates for payment as provided in Article A-5 of the Agreement - PAYMENT, GC 5.3 - PROGRESS PAYMENT and GC 5.7 - FINAL PAYMENT.
- 2.2.6 The *Consultant* will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations or general construction practice. The *Consultant* will not be responsible for the *Contractor's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of or be responsible for the acts or omissions of the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees, or any other persons performing portions of the *Work*.
- 2.2.7 Except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER, the *Consultant* will be, in the first instance, the interpreter of the requirements of the *Contract Documents*.
- 2.2.8 Matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents* shall be initially referred in writing to the *Consultant* by the party raising the question for interpretations and findings and copied to the other party.
- 2.2.9 Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents*. In making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Contractor*.
- 2.2.10 The *Consultant's* interpretations and findings will be given in writing to the parties within a reasonable time.
- 2.2.11 With respect to claims for a change in *Contract Price*, the *Consultant* will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.
- 2.2.12 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees, or other persons performing any of the *Work*.

- 2.2.13 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Contractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Contractor*.
- 2.2.14 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other *Contractor's* submittals, in accordance with the *Contract Documents*.
- 2.2.15 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 2.2.16 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* as provided in GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK.
- 2.2.17 All certificates issued by the *Consultant* will be to the best of the *Consultant's* knowledge, information and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.2.18 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Contractor* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.

GC 2.3 REVIEW AND INSPECTION OF THE WORK

- 2.3.1 The *Owner* and the *Consultant* shall have access to the *Work* at all times. The *Contractor* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.
- 2.3.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or by the laws or ordinances of the *Place of the Work*, the *Contractor* shall give the *Consultant* reasonable notification of when the work will be ready for review and inspection. The *Contractor* shall arrange for and shall give the *Consultant* reasonable notification of the date and time of inspections by other authorities.
- 2.3.3 The *Contractor* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.3.4 If the *Contractor* covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the *Contractor* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Contractor's* expense.
- 2.3.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Contractor* shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.
- 2.3.6 The *Contractor* shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the *Contract Documents* to be performed by the *Contractor* or is designated by the laws or ordinances applicable to the *Place of the Work*.
- 2.3.7 The *Contractor* shall pay the cost of samples required for any test or inspection to be performed by the *Consultant* or the *Owner* if such test or inspection is designated in the *Contract Documents*.

GC 2.4 DEFECTIVE WORK

- 2.4.1 The *Contractor* shall promptly correct defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Contractor*.
- 2.4.2 The *Contractor* shall make good promptly other contractors' work destroyed or damaged by such corrections at the *Contractor's* expense.
- 2.4.3 If in the opinion of the *Consultant* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Contractor* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Owner* and the *Contractor* do not agree on the difference in value, they shall refer the matter to the *Consultant* for a determination.

PART 3 EXECUTION OF THE WORK

GC 3.1 CONTROL OF THE WORK

- 3.1.1 The *Contractor* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Contractor* shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work* under the *Contract*.

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- 3.2.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform work with own forces.
- 3.2.2 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall:
- .1 provide for the co-ordination of the activities and work of other contractors and *Owner's* own forces with the *Work* of the *Contract*;
 - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
 - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*;
 - .4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 - INSURANCE and co-ordinate such insurance with the insurance coverage of the *Contractor* as it affects the *Work*; and
 - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors or the *Owner's* own forces.
- 3.2.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Contractor* shall:
- .1 afford the *Owner* and other contractors reasonable opportunity to store their products and execute their work;
 - .2 cooperate with other contractors and the *Owner* in reviewing their construction schedules; and
 - .3 promptly report to the *Consultant* in writing any apparent deficiencies in the work of other contractors or of the *Owner's* own forces, where such work affects the proper execution of any portion of the *Work*, prior to proceeding with that portion of the *Work*.
- 3.2.4 Where the *Contract Documents* identify work to be performed by other contractors or the *Owner's* own forces, the *Contractor* shall co-ordinate and schedule the *Work* with the work of other contractors and the *Owner's* own forces as specified in the *Contract Documents*.
- 3.2.5 Where a change in the *Work* is required as a result of the co-ordination and integration of the work of other contractors or *Owner's* own forces with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 3.2.6 Disputes and other matters in question between the *Contractor* and other contractors shall be dealt with as provided in Part 8 of the General Conditions - DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Contractor* shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the *Owner* contains a similar agreement to arbitrate.

GC 3.3 TEMPORARY WORK

- 3.3.1 The *Contractor* shall have the sole responsibility for the design, erection, operation, maintenance, and removal of *Temporary Work*.
- 3.3.2 The *Contractor* shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by law or by the *Contract Documents* and in all cases where such *Temporary Work* is of such a nature that professional engineering skill is required to produce safe and satisfactory results.

3.3.3 Notwithstanding the provisions of GC 3.1 - CONTROL OF THE WORK, paragraphs 3.3.1 and 3.3.2 or provisions to the contrary elsewhere in the *Contract Documents* where such *Contract Documents* include designs for *Temporary Work* or specify a method of construction in whole or in part, such designs or methods of construction shall be considered to be part of the design of the *Work* and the *Contractor* shall not be held responsible for that part of the design or the specified method of construction. The *Contractor* shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the *Work*.

GC 3.4 DOCUMENT REVIEW

3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* shall be to the best of the *Contractor's* knowledge, information and belief and in making such review the *Contractor* does not assume any responsibility to the *Owner* or the *Consultant* for the accuracy of the review. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies or omissions in the *Contract Documents*, which the *Contractor* did not discover. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

GC 3.5 CONSTRUCTION SCHEDULE

3.5.1 The *Contractor* shall:

- .1 prepare and submit to the *Owner* and the *Consultant* prior to the first application for payment, a construction schedule that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time*;
- .2 monitor the progress of the *Work* relative to the construction schedule and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
- .3 advise the *Consultant* of any revisions required to the schedule as the result of extensions of the *Contract Time* as provided in Part 6 of the General Conditions - CHANGES IN THE WORK.

GC 3.6 SUPERVISION

3.6.1 The *Contractor* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representative shall not be changed except for valid reason.

3.6.2 The appointed representative shall represent the *Contractor* at the *Place of the Work*. Information and instructions provided by the *Consultant* to the *Contractor's* appointed representative shall be deemed to have been received by the *Contractor*, except with respect to Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 3.7 SUBCONTRACTORS AND SUPPLIERS

3.7.1 The *Contractor* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:

- .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
- .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
- .3 be as fully responsible to the *Owner* for acts and omissions of *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Contractor*.

3.7.2 The *Contractor* shall indicate in writing, if requested by the *Owner*, those *Subcontractors* or *Suppliers* whose bids have been received by the *Contractor* which the *Contractor* would be prepared to accept for the performance of a portion of the *Work*. Should the *Owner* not object before signing the *Contract*, the *Contractor* shall employ those *Subcontractors* or *Suppliers* so identified by the *Contractor* in writing for the performance of that portion of the *Work* to which their bid applies.

3.7.3 The *Owner* may, for reasonable cause, at any time before the *Owner* has signed the *Contract*, object to the use of a proposed *Subcontractor* or *Supplier* and require the *Contractor* to employ one of the other subcontract bidders.

3.7.4 If the *Owner* requires the *Contractor* to change a proposed *Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the differences occasioned by such required change.

- 3.7.5 The *Contractor* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to which the *Contractor* may reasonably object.
- 3.7.6 The *Owner*, through the *Consultant*, may provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor's* or *Supplier's* work which has been certified for payment.

GC 3.8 LABOUR AND PRODUCTS

- 3.8.1 The *Contractor* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.
- 3.8.3 The *Contractor* shall maintain good order and discipline among the *Contractor's* employees engaged on the *Work* and shall not employ on the *Work* anyone not skilled in the tasks assigned.

GC 3.9 DOCUMENTS AT THE SITE

- 3.9.1 The *Contractor* shall keep one copy of current *Contract Documents*, submittals, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and the *Consultant*.

GC 3.10 SHOP DRAWINGS

- 3.10.1 The *Contractor* shall provide *Shop Drawings* as required in the *Contract Documents*.
- 3.10.2 The *Contractor* shall provide *Shop Drawings* to the *Consultant* to review in orderly sequence and sufficiently in advance so as to cause no delay in the *Work* or in the work of other contractors.
- 3.10.3 Upon request of the *Contractor* or the *Consultant*, they shall jointly prepare a schedule of the dates for provision, review and return of *Shop Drawings*.
- 3.10.4 The *Contractor* shall provide *Shop Drawings* in the form specified, or if not specified, as directed by the *Consultant*.
- 3.10.5 *Shop Drawings* provided by the *Contractor* to the *Consultant* shall indicate by stamp, date and signature of the person responsible for the review that the *Contractor* has reviewed each one of them.
- 3.10.6 The *Consultant's* review is for conformity to the design concept and for general arrangement only.
- 3.10.7 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Contractor* for approval.
- 3.10.8 The *Contractor* shall review all *Shop Drawings* before providing them to the *Consultant*. The *Contractor* represents by this review that:
- .1 the *Contractor* has determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
 - .2 the *Contractor* has checked and co-ordinated each *Shop Drawing* with the requirements of the *Work* and of the *Contract Documents*.
- 3.10.9 At the time of providing *Shop Drawings*, the *Contractor* shall expressly advise the *Consultant* in writing of any deviations in a *Shop Drawing* from the requirements of the *Contract Documents*. The *Consultant* shall indicate the acceptance or rejection of such deviation expressly in writing.
- 3.10.10 The *Consultant's* review shall not relieve the *Contractor* of responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Contract Documents*.
- 3.10.11 The *Contractor* shall provide revised *Shop Drawings* to correct those which the *Consultant* rejects as inconsistent with the *Contract Documents*, unless otherwise directed by the *Consultant*. The *Contractor* shall notify the *Consultant* in writing of any revisions to the *Shop Drawings* other than those requested by the *Consultant*.
- 3.10.12 The *Consultant* will review and return *Shop Drawings* in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the *Work*.

GC 3.11 USE OF THE WORK

- 3.11.1 The *Contractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees and *Subcontractors* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.
- 3.11.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

GC 3.12 CUTTING AND REMEDIAL WORK

- 3.12.1 The *Contractor* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly.
- 3.12.2 The *Contractor* shall co-ordinate the *Work* to ensure that the cutting and remedial work is kept to a minimum.
- 3.12.3 Should the *Owner*, the *Consultant*, other contractors or anyone employed by them be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 3.12.4 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

GC 3.13 CLEANUP

- 3.13.1 The *Contractor* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other contractors or their employees.
- 3.13.2 Before applying for *Substantial Performance of the Work* as provided in GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK, the *Contractor* shall remove waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees, and shall leave the *Place of the Work* clean and suitable for use or occupancy by the *Owner*. The *Contractor* shall remove products, tools, *Construction Equipment*, and *Temporary Work* not required for the performance of the remaining work.
- 3.13.3 Prior to application for the final payment, the *Contractor* shall remove any remaining products, tools, *Construction Equipment*, *Temporary Work*, and waste products and debris, other than those resulting from the work of the *Owner*, other contractors or their employees.

PART 4 ALLOWANCES

GC 4.1 CASH ALLOWANCES

- 4.1.1 The *Contract Price* includes the cash allowances, if any, stated in the *Contract Documents*. The scope of work or costs included in such cash allowances shall be as described in the *Contract Documents*.
- 4.1.2 The *Contract Price*, and not the cash allowances, includes the *Contractor's* overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner* through the *Consultant*.
- 4.1.4 Where the actual cost of the *Work* under any cash allowance exceeds the amount of the allowance, the *Contractor* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Contract Documents*. Where the actual cost of the *Work* under any cash allowance is less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Contractor's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the amount of each cash allowance and the actual cost of the work under that cash allowance.
- 4.1.6 The value of the work performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Contractor* and the *Consultant* shall jointly prepare a schedule that shows when the *Consultant* and *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

GC 4.2 CONTINGENCY ALLOWANCE

- 4.2.1 The *Contract Price* includes the contingency allowance, if any, stated in the *Contract Documents*.
- 4.2.2 The contingency allowance includes the *Contractor's* overhead and profit in connection with such contingency allowance.
- 4.2.3 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.

PART 5 PAYMENT

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- 5.1.1 The *Owner* shall, at the request of the *Contractor*, before signing the *Contract*, and promptly from time to time thereafter, furnish to the *Contractor* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall give the *Contractor Notice in Writing* of any material change in the *Owner's* financial arrangements to fulfill the *Owner's* obligations under the *Contract* during the performance of the *Contract*.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- 5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement - PAYMENT may be made monthly as the *Work* progresses.
- 5.2.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 5.2.3 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the payment period.
- 5.2.4 The *Contractor* shall submit to the *Consultant*, at least 15 calendar days before the first application for payment, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.
- 5.2.5 The schedule of values shall be made out in such form and supported by such evidence as the *Consultant* may reasonably direct and when accepted by the *Consultant*, shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.2.6 The *Contractor* shall include a statement based on the schedule of values with each application for payment.
- 5.2.7 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.

GC 5.3 PROGRESS PAYMENT

- 5.3.1 After receipt by the *Consultant* of an application for payment submitted by the *Contractor* in accordance with GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT:
 - .1 the *Consultant* will promptly inform the *Owner* of the date of receipt of the *Contractor's* application for payment,
 - .2 the *Consultant* will issue to the *Owner* and copy to the *Contractor*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly advise the *Contractor* in writing giving reasons for the amendment,
 - .3 the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement - PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Consultant* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.4.1 When the *Contractor* considers that the *Work* is substantially performed, or if permitted by the lien legislation applicable to the *Place of the Work* a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Contractor* shall, within one *Working Day*, deliver to the *Consultant* and to the *Owner* a comprehensive list of items to be completed or corrected, together with a written application for a review by the *Consultant* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*. Failure to include an item on the list does not alter the responsibility of the *Contractor* to complete the *Contract*.
- 5.4.2 The *Consultant* will review the *Work* to verify the validity of the application and shall promptly, and in any event, no later than 20 calendar days after receipt of the *Contractor's* list and application:
- .1 advise the *Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or
 - .2 state the date of *Substantial Performance of the Work* or a designated portion of the *Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Contractor*.
- 5.4.3 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish a reasonable date for finishing the *Work*.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor* shall:
- .1 submit an application for payment of the holdback amount,
 - .2 submit CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Contractor* in the *Substantial Performance of the Work* and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.
- 5.5.2 After the receipt of an application for payment from the *Contractor* and the statement as provided in paragraph 5.5.1, the *Consultant* will issue a certificate for payment of the holdback amount.
- 5.5.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate holdback account, the *Owner* shall, 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Contractor*.
- 5.5.4 In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the first calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.
- 5.5.5 In the Province of Quebec, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days after the issuance of the certificate. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

- 5.6.1 In the common law jurisdictions, where legislation permits and where, upon application by the *Contractor*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Contractor* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the first calendar day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Work*. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.

- 5.6.2 In the Province of Quebec, where, upon application by the *Contractor*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Contractor* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, no later than 30 calendar days after such certification by the *Consultant*. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.
- 5.6.3 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the *Contractor* shall ensure that such subcontract work or *Products* are protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

GC 5.7 FINAL PAYMENT

- 5.7.1 When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment.
- 5.7.2 The *Consultant* will, no later than 10 calendar days after the receipt of an application from the *Contractor* for final payment, review the *Work* to verify the validity of the application and advise the *Contractor* in writing that the application is valid or give reasons why it is not valid.
- 5.7.3 When the *Consultant* finds the *Contractor's* application for final payment valid, the *Consultant* will promptly issue a final certificate for payment.
- 5.7.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 - WORKERS' COMPENSATION, and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Contractor* as provided in Article A-5 of the Agreement - PAYMENT.

GC 5.8 WITHHOLDING OF PAYMENT

- 5.8.1 If because of climatic or other conditions reasonably beyond the control of the *Contractor*, there are items of work that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such remaining work.

GC 5.9 NON-CONFORMING WORK

- 5.9.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Work* or *Products* which are not in accordance with the requirements of the *Contract Documents*.

PART 6 CHANGES IN THE WORK

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

- 6.1.1 The *Owner*, through the *Consultant*, without invalidating the *Contract*, may make:
- .1 changes in the *Work* consisting of additions, deletions or other revisions to the *Work* by *Change Order* or *Change Directive*, and
 - .2 changes to the *Contract Time* for the *Work*, or any part thereof, by *Change Order*.
- 6.1.2 The *Contractor* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* will provide the *Contractor* with a written description of the proposed change in the *Work*. The *Contractor* shall promptly present, in a form acceptable to the *Consultant*, a method of adjustment or an amount of adjustment for the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change in the *Work*.
- 6.2.2 When the *Owner* and *Contractor* agree to the adjustments in the *Contract Price* and *Contract Time* or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in the application for progress payment.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Contractor* to proceed with a change in the *Work* prior to the *Owner* and the *Contractor* agreeing upon the corresponding adjustment in *Contract Price* and *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the change in the *Work*.
- 6.3.5 For the purpose of valuing *Change Directives*, changes in the *Work* that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Contractor's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with paragraph 6.3.7 and as follows:
- 1 If the change results in a net increase in the *Contractor's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Contractor's* cost, plus the *Contractor's* percentage fee on such net increase.
 - 2 If the change results in a net decrease in the *Contractor's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Contractor's* cost, without adjustment for the *Contractor's* percentage fee.
 - 3 The *Contractor's* fee shall be as specified in the *Contract Documents* or as otherwise agreed by the parties.
- 6.3.7 The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the following:
- 1 salaries, wages and benefits paid to personnel in the direct employ of the *Contractor* under a salary or wage schedule agreed upon by the *Owner* and the *Contractor*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Contractor*, for personnel
 - (1) stationed at the *Contractor's* field office, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings, and coordination drawings; or
 - (4) engaged in the processing of changes in the *Work*.
 - 2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Contractor* and included in the cost of the *Work* as provided in paragraph 6.3.7.1;
 - 3 travel and subsistence expenses of the *Contractor's* personnel described in paragraph 6.3.7.1;
 - 4 all *Products* including cost of transportation thereof;
 - 5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Contractor*;
 - 6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Contractor* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
 - 7 all equipment and services required for the *Contractor's* field office;
 - 8 deposits lost;
 - 9 the amounts of all subcontracts;
 - 10 quality assurance such as independent inspection and testing services;
 - 11 charges levied by authorities having jurisdiction at the *Place of the Work*;
 - 12 royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Contractor's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 - PATENT FEES;
 - 13 any adjustment in premiums for all bonds and insurance which the *Contractor* is required, by the *Contract Documents*, to purchase and maintain;
 - 14 any adjustment in taxes, other than *Value Added Taxes*, and duties for which the *Contractor* is liable;
 - 15 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the *Work*;
 - 16 removal and disposal of waste products and debris; and
 - 17 safety measures and requirements.

- 6.3.8 Notwithstanding any other provisions contained in the General Conditions of the *Contract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by any failure on the part of the *Contractor* to exercise reasonable care and diligence in the *Contractor's* attention to the *Work*. Any cost due to failure on the part of the *Contractor* to exercise reasonable care and diligence in the *Contractor's* attention to the *Work* shall be borne by the *Contractor*.
- 6.3.9 The *Contractor* shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the *Work* attributable to the *Change Directive* and shall provide the *Consultant* with copies thereof when requested.
- 6.3.10 For the purpose of valuing *Change Directives*, the *Owner* shall be afforded reasonable access to all of the *Contractor's* pertinent documents related to the cost of performing the *Work* attributable to the *Change Directive*.
- 6.3.11 Pending determination of the final amount of a *Change Directive*, the undisputed value of the *Work* performed as the result of a *Change Directive* is eligible to be included in progress payments.
- 6.3.12 If the *Owner* and the *Contractor* do not agree on the proposed adjustment in the *Contract Time* attributable to the change in the *Work*, or the method of determining it, the adjustment shall be referred to the *Consultant* for determination.
- 6.3.13 When the *Owner* and the *Contractor* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Owner* or the *Contractor* discover conditions at the *Place of the Work* which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
- then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Consultant* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 - CHANGE ORDER or GC 6.3 - CHANGE DIRECTIVE.
- 6.4.3 If the *Consultant* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Consultant* will report the reasons for this finding to the *Owner* and the *Contractor* in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 - ARTIFACTS AND FOSSILS and GC 9.5 - MOULD.

GC 6.5 DELAYS

- 6.5.1 If the *Contractor* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.
- 6.5.2 If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.

- 6.5.3 If the *Contractor* is delayed in the performance of the *Work* by:
- 1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Contractor* is a member or to which the *Contractor* is otherwise bound),
 - 2 fire, unusual delay by common carriers or unavoidable casualties,
 - 3 abnormally adverse weather conditions, or
 - 4 any cause beyond the *Contractor's* control other than one resulting from a default or breach of *Contract* by the *Contractor*,
- then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Consultant* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.2.13 of GC 2.2 - ROLE OF THE CONSULTANT, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 If the *Contractor* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim against the *Contractor* for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party and to the *Consultant*.
- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
- 1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
 - 2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the *Consultant* a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the *Consultant* may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 The *Consultant's* findings, with respect to a claim made by either party, will be given by *Notice in Writing* to both parties within 30 *Working Days* after receipt of the claim by the *Consultant*, or within such other time period as may be agreed by the parties.
- 6.6.6 If such finding is not acceptable to either party, the claim shall be settled in accordance with Part 8 of the General Conditions - DISPUTE RESOLUTION.

PART 7 DEFAULT NOTICE

GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

- 7.1.1 If the *Contractor* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Contractor's* insolvency, or if a receiver is appointed because of the *Contractor's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Contractor's* right to continue with the *Work*, by giving the *Contractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.1.2 If the *Contractor* neglects to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract* to a substantial degree and if the *Consultant* has given a written statement to the *Owner* and *Contractor* that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Contractor* *Notice in Writing* that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.

- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Contractor* shall be in compliance with the *Owner's* instructions if the *Contractor*:
- .1 commences the correction of the default within the specified time, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.1.4 If the *Contractor* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Contractor* provided the *Consultant* has certified such cost to the *Owner* and the *Contractor*, or
 - .2 terminate the *Contractor's* right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Contractor's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall be entitled to:
- .1 take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense, and
 - .2 withhold further payment to the *Contractor* until a final certificate for payment is issued, and
 - .3 charge the *Contractor* the amount by which the full cost of finishing the *Work* as certified by the *Consultant*, including compensation to the *Consultant* for the *Consultant's* additional services and a reasonable allowance as determined by the *Consultant* to cover the cost of corrections to work performed by the *Contractor* that may be required under GC 12.3 - WARRANTY, exceeds the unpaid balance of the *Contract Price*; however, if such cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* the difference, and
 - .4 on expiry of the warranty period, charge the *Contractor* the amount by which the cost of corrections to the *Contractor's* work under GC 12.3 - WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Contractor* the difference.
- 7.1.6 The *Contractor's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Contractor* up to the time of termination shall continue after such termination of the *Contract*.

GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

- 7.2.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Work* is suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Contractor* or of anyone directly or indirectly employed or engaged by the *Contractor*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.
- 7.2.3 The *Contractor* may give *Notice in Writing* to the *Owner*, with a copy to the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Contractor*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
 - .2 the *Consultant* fails to issue a certificate as provided in GC 5.3 - PROGRESS PAYMENT, or
 - .3 the *Owner* fails to pay the *Contractor* when due the amounts certified by the *Consultant* or awarded by arbitration or court, or
 - .4 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Consultant*, except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Contractor* that sufficient cause exists.
- 7.2.4 The *Contractor's* *Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, suspend the *Work* or terminate the *Contract*.
- 7.2.5 If the *Contractor* terminates the *Contract* under the conditions set out above, the *Contractor* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the termination of the *Contract*.

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSULTANT

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the *Consultant* as provided in GC 2.2 - ROLE OF THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions - DISPUTE RESOLUTION.
- 8.1.2 If a dispute arises under the *Contract* in respect of a matter in which the *Consultant* has no authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of GC 8.2 - NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.3 - RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.
- 8.1.3 If a dispute is not resolved promptly, the *Consultant* will give such instructions as in the *Consultant's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Contractor* costs incurred by the *Contractor* in carrying out such instructions which the *Contractor* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.2.1 In accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, the parties shall appoint a Project Mediator
- .1 within 20 *Working Days* after the *Contract* was awarded, or
 - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Consultant* under GC 2.2 - ROLE OF THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.2.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing.
- 8.2.5 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.2.4 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner*, the *Contractor* and the *Consultant*.
- 8.2.6 By giving a *Notice in Writing* to the other party and the *Consultant*, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the Rules for Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.

- 8.2.8 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.2.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be
- .1 held in abeyance until
 - (1) *Substantial Performance of the Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Contractor* has abandoned the *Work*,whichever is earlier; and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

GC 8.3 RETENTION OF RIGHTS

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions - DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of GC 8.1 – AUTHORITY OF THE CONSULTANT.
- 8.3.2 Nothing in Part 8 of the General Conditions - DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.6 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Contractor* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Contractor's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*;
 - .2 acts or omissions by the *Owner*, the *Consultant*, other contractors, their agents and employees.
- 9.1.2 Before commencing any work, the *Contractor* shall determine the location of all underground utilities and structures indicated in the *Contract Documents* or that are reasonably apparent in an inspection of the *Place of the Work*.
- 9.1.3 Should the *Contractor* in the performance of the *Contract* damage the *Work*, the *Owner's* property or property adjacent to the *Place of the Work*, the *Contractor* shall be responsible for making good such damage at the *Contractor's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Contractor* is not responsible, as provided in paragraph 9.1.1, the *Contractor* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Contractor* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
 - .2 provide the *Consultant* and the *Contractor* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substances exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Contractor* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Contractor* commencing the *Work*.

- 9.2.5 If the *Contractor*
- .1 encounters toxic or hazardous substances at the *Place of the Work*, or
 - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Contractor* or anyone for whom the *Contractor* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Contractor* shall
 - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and
 - .4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.
- 9.2.6 If the *Owner* and *Contractor* do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Contractor*.
- 9.2.7 If the *Owner* and *Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the *Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 reimburse the *Contractor* for the costs of all steps taken pursuant to paragraph 9.2.5;
 - .3 extend the *Contract* time for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and the expert referred to in 9.2.6 and reimburse the *Contractor* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Contractor* as required by GC 12.1 - INDEMNIFICATION.
- 9.2.8 If the *Owner* and *Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the place of the *Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, the *Contractor* shall promptly at the *Contractor's* own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substances;
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the place of the *Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
 - .4 indemnify the *Owner* as required by GC 12.1 - INDEMNIFICATION.
- 9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions - Dispute Resolution. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place or Work* shall, as between the *Owner* and the *Contractor*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Contractor* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Consultant* upon discovery of such items.
- 9.3.3 The *Consultant* will investigate the impact on the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 - CHANGE ORDER or GC 6.3 CHANGE DIRECTIVE.

GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 Subject to paragraph 3.2.2.2 of GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, the *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*.

GC 9.5 MOULD

- 9.5.1 If the *Contractor* or *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,
- .1 the observing party shall promptly report the circumstances to the other party in writing, and
 - .2 the *Contractor* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and
 - .3 if the *Owner* and *Contractor* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and *Contractor*.
- 9.5.2 If the *Owner* and *Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Contractor*'s operations under the *Contract*, the *Contractor* shall promptly, at the *Contractor*'s own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 make good any damage to the *Work*, the *Owner*'s property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 - PROTECTION OF WORK AND PROPERTY, and
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
 - .4 indemnify the *Owner* as required by GC 12.1 - INDEMNIFICATION.
- 9.5.3 If the *Owner* and *Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Contractor*'s operations under the *Contract*, the *Owner* shall promptly, at the *Owner*'s own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 reimburse the *Contractor* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 - PROTECTION OF WORK AND PROPERTY, and
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and the expert referred to in paragraph 9.5.1.3 and reimburse the *Contractor* for reasonable costs incurred as a result of the delay, and
 - .4 indemnify the *Contractor* as required by GC 12.1 - INDEMNIFICATION.
- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions - DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 - MOULD.

PART 10 GOVERNING REGULATIONS

GC 10.1 TAXES AND DUTIES

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Contractor* as stipulated in Article A-4 of the Agreement - CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Contractor* due to changes in such included taxes and duties after the time of the bid closing shall increase or decrease the *Contract Price* accordingly.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Contract Documents* specify as the responsibility of the *Contractor*.
- 10.2.3 The *Contractor* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The *Contractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.

- 10.2.5 The *Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Contractor* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 - OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 10.2.6 If the *Contractor* fails to advise the *Consultant* in writing; and fails to obtain direction as required in paragraph 10.2.5; and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes; the *Contractor* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

GC 10.3 PATENT FEES

- 10.3.1 The *Contractor* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Contractor* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Contractor* or anyone for whose acts the *Contractor* may be liable.
- 10.3.2 The *Owner* shall hold the *Contractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, the model, plan or design of which was supplied to the *Contractor* as part of the *Contract Documents*.

GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Work*, again with the *Contractor's* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Contractor's* application for final payment, the *Contractor* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance by the *Contractor* and *Subcontractors*.

PART 11 INSURANCE AND CONTRACT SECURITY

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.1 - INDEMNIFICATION, the *Contractor* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – CCDC Insurance Requirements in effect at the time of bid closing except as hereinafter provided:
- 1 General liability insurance in the name of the *Contractor* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner* and the *Consultant* as insureds but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the *Contractor* with regard to the *Work*. General liability insurance shall be maintained from the date of commencement of the *Work* until one year from the date of *Substantial Performance of the Work*. Liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*.
 - 2 Automobile Liability Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
 - 3 Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Work*
 - 4 "Broad form" property insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The "Broad form" property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
 - (1) 10 calendar days after the date of *Substantial Performance of the Work*;

- (2) on the commencement of use or occupancy of any part or section of the *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*;
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
- 5 Boiler and machinery insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
 - 6 The “Broad form” property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Contractor* as their respective interests may appear. In the event of loss or damage:
 - (1) the *Contractor* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Consultant* may recommend in consultation with the *Contractor*;
 - (2) the *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Contractor's* interest in the restoration of the *Work*; and
 - (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces or another contractor, the *Owner* shall, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, pay the *Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.
 - 7 Contractors' Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
- 11.1.2 Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Contractor* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*.
 - 11.1.3 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Contract*.
 - 11.1.4 If the *Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Contractor* and the *Consultant*. The *Contractor* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from the amount which is due or may become due to the *Contractor*.
 - 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
 - 11.1.6 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Contractor's* insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
 - 11.1.7 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Owner* may request the increased coverage from the *Contractor* by way of a *Change Order*.
 - 11.1.8 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – INSURANCE REQUIREMENTS.

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Contractor* shall, prior to commencement of the *Work* or within the specified time, provide to the *Owner* any *Contract* security specified in the *Contract Documents*.

11.2.2 If the *Contract Documents* require surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1 INDEMNIFICATION

12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:

- .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
- .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.2.2 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.

12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

- .1 In respect to losses suffered by the *Owner* and the *Contractor* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the general liability insurance limit for one occurrence as referred to in CCDC 41 in effect at the time of bid closing.
- .2 In respect to losses suffered by the *Owner* and the *Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.

12.1.4 The *Owner* and the *Contractor* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

12.1.5 The *Owner* shall indemnify and hold harmless the *Contractor* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:

- .1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and
- .2 arising out of the *Contractor's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.

12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Contractor*:

- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
- .2 should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.2 WAIVER OF CLAIMS

- 12.2.1 Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Contractor* waives and releases the *Owner* from all claims which the *Contractor* has or reasonably ought to have knowledge of that could be advanced by the *Contractor* against the *Owner* arising from the *Contractor's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- 1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Contractor* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - 2 indemnification for claims advanced against the *Contractor* by third parties for which a right of indemnification may be asserted by the *Contractor* against the *Owner* pursuant to the provisions of this *Contract*;
 - 3 claims for which a right of indemnity could be asserted by the *Contractor* pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of GC 12.1 – INDEMNIFICATION; and
 - 4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.2 The *Contractor* waives and releases the *Owner* from all claims referenced in paragraph 12.2.1.4 except for those referred in paragraphs 12.2.1.2 and 12.2.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Contractor* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.3 Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Owner* waives and releases the *Contractor* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Contractor* arising from the *Owner's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- 1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Contractor* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - 2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Contractor* pursuant to the provisions of this *Contract*;
 - 3 claims for which a right of indemnity could be asserted by the *Owner* against the *Contractor* pursuant to the provisions of paragraph 12.1.4 of GC 12.1 - INDEMNIFICATION;
 - 4 damages arising from the *Contractor's* actions which result in substantial defects or deficiencies in the *Work*. “Substantial defects or deficiencies” mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
 - 5 claims arising pursuant to GC 12.3 - WARRANTY; and
 - 6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.4 The *Owner* waives and releases the *Contractor* from all claims referred to in paragraph 12.2.3.4 except claims for which *Notice in Writing* of claim has been received by the *Contractor* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- 1 any limitation statute of the Province or Territory of the *Place of the Work*; or
 - 2 if the *Place of the Work* is the Province of Quebec, then Article 2118 of the Civil Code of Quebec.
- 12.2.5 The *Owner* waives and releases the *Contractor* from all claims referenced in paragraph 12.2.3.6 except for those referred in paragraph 12.2.3.2, 12.2.3.3 and those arising under GC 12.3 – WARRANTY and claims for which *Notice in Writing* has been received by the *Contractor* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.6 “*Notice in Writing* of claim” as provided for in GC 12.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- 1 a clear and unequivocal statement of the intention to claim;
 - 2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
 - 3 a statement of the estimated quantum of the claim.
- 12.2.7 The party giving “*Notice in Writing* of claim” as provided for in GC 12.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.

- 12.2.8 Where the event or series of events giving rise to a claim made under paragraphs 12.2.1 or 12.2.3 has a continuing effect, the detailed account submitted under paragraph 12.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.2.9 If a *Notice in Writing* of claim pursuant to paragraph 12.2.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.
- 12.2.10 If a *Notice in Writing* of claim pursuant to paragraph 12.2.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

GC 12.3 WARRANTY

- 12.3.1 Except for extended warranties as described in paragraph 12.3.6, the warranty period under the *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.3.2 The *Contractor* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.
- 12.3.3 The *Owner*, through the *Consultant*, shall promptly give the *Contractor Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the *Contractor* shall correct promptly, at the *Contractor's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.
- 12.3.5 The *Contractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Contractor's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

CONFIDENTIAL APPENDIX "10"
ALTUS PRELIMINARY REPORT NO. 1 AS AT JULY 31, 2019

CONFIDENTIAL APPENDIX OMITTED

**APPENDIX “11”
MEDIATOR’S PROPOSAL DATED NOVEMBER 26, 2019**

The One – Mediator's Proposal

I am not entirely sure that the proposal I am about to make is the right way to deal with this situation but, frankly, I have run out of alternatives, and it is my observation that, after more than two months, the parties have run out of patience for this ongoing mediation process. A mediator's proposal made jointly to the parties to a dispute is the exception, not the rule. I have only done it a few times in the past 20 years. The reason that it is generally avoided is that, once made, if either or both parties reject it, there is really no choice but for the mediator to terminate the process.

The proposal that I am going to outline in a few minutes is, first and foremost, based on my assessment of the needs and interests of the parties and, to the best of my ability, represents an attempt to balance those needs and interests as equitably and fairly as I can. Both sides have exhibited extraordinary levels of anxiety with respect to the behaviour of the other, and no resetting of the relationship will ultimately be successful unless those anxieties and concerns can be addressed to the greatest extent possible. This is essential to re-establishing the stability that will allow the successful completion and delivery of the project.

Both parties should be highly motivated to reset the relationship and re-establish stability. The Coco entities have a very significant financial incentive to see the project delivered on time and on budget with no further disruptions caused by the contentious relationship between the parties. MI has a huge reputational investment in seeing this project through to its successful completion. Both parties must find ways to get past their historical animosity and distrust to achieve these objectives. This is not merely desirable; it is essential. This proposal is designed to promote that goal.

Second, my proposal is not grounded primarily in the existing agreements between the parties which, as we have discussed, were in many respects, poorly drafted and fail to address, with any real degree of precision, the rights and obligations of the parties in a number of contentious areas. In fact, many of the aspects of this proposal have no grounding whatsoever in the existing contractual agreements. This gives me the freedom to be more creative in trying to craft a resolution that best meets the needs of the parties. If, however, this proposal is rejected by one or both parties, and I am required to arbitrate the dispute, I will be legally required to restrict myself to the interpretation and enforcement of the agreements the parties have entered into and will have far less scope for creativity than what I am trying to achieve here.

Third, it is, in part, based on my perceptions formed over the past 2 ½ months of the strengths and weaknesses of each side's organization and the desire to capitalize on those characteristics most effectively for the benefit of the project. The individuals and their organizations both have demonstrable capabilities in various areas that should be exploited to produce the best possible result under all the circumstances. To the extent that I have adjusted the fee structure, it is intended to incentivize and motivate each party to invest its time and efforts in a manner most likely to benefit the project.

Fourth, I am concerned, at one and the same time, with both transparency and opaqueness. Given the history and apparent distrust that has developed, complete transparency going forward is a must, not just with respect to financial matters, but in regard to all aspects of the project. On the other hand, reputations are at stake, and it is imperative that, to the outside world, there must be no perceived change or suggestion that there is dissension between the parties. I am concerned not just with the reputational damage that could be done to each participant and their respective organizations, but also with respect to the reputation of the project itself, which must still achieve approximately 50% or more of its residential revenue from new sales. Purchasers of units in this price range are going to be extremely sensitive to any negative rumours or publicity. That must be avoided at all costs.

Finally, and perhaps most significantly, this proposal recognizes the simple fact that things have changed. Without any attempt on my part to assign blame for the series of events that have occurred, which is beyond my mandate, when the parties entered into the current arrangement, they were full of optimism with respect to the success of the project, from every perspective. It was expected to be very profitable and stand as a significant project in the City, enhancing the profile of the owners and all of the consultants who had anything to do with it. While it still has the opportunity to deliver on its promise as a landmark project, by all indications, it is not expected to be profitable to any significant extent and, indeed, the major equity investor may not recover the entirety of her initial investment and preferred return. This reality must be factored into any adjustment to the relationship.

This proposal has many separate aspects to it. I have attempted to address all of the outstanding issues that have been raised by either party. Each side will like some of what I am proposing and find other aspects less appealing. As I go through the points, I will try to give you some candid insight into my thinking on each point, so that you will have a fuller appreciation of how my proposal addresses each of the objectives that I have just reviewed.

Recognizing that some aspects will not be well received by one party or the other, I simply ask that you reserve judgement until you have heard the entire proposal, and then evaluate it in its totality. You will not, of course, be expected to accept or reject the proposal today without an opportunity to take it away, discuss it with your advisors, and decide whether acceptance is preferable to an arbitrated resolution. On that note, this is my proposal. For the sake of simplicity, I will simply refer to the parties as MI and Coco:

- 1) A major point of contention between the parties relates to financial controls and administration. Again, I do not intend to go into the competing positions of the parties with respect to how things were handled in the past. We must focus on the future. By financial controls and administration, I am not simply referring to the source and use of funds coming into and out of the project, but the disciplined use of basic financial control measures common to most successful businesses

to manage their affairs, provide management personnel with up-to-date information for decision-making purposes, and the avoidance of loss due to misappropriation or impropriety.

Most of the things I am talking about are covered in first- or second-year accounting courses. I am referring to things such as budgets that are realistically established and regularly updated, financial obligations that are incurred in accordance with those budgets and reflected in formal contracts or purchase orders approved before work is undertaken, the proper processing and approval of change orders or change directives, segregated bank accounts, dual signatures on financial obligations and payments, and regular, timely, and accurate monthly reporting to stakeholders. With a properly managed financial administration system with appropriate controls, there should be no surprises.

Based on my cursory review, I am not satisfied that all of these disciplines are currently being employed with the kind of diligence necessary to satisfy a substantial investor in the project. More importantly, the investor has grave concerns in this regard. This has resulted in conflict and bad will between the parties and, at times, has resulted in delayed payments to third parties which jeopardize the reputations of the principals and the project. This cannot continue.

My proposal would see the transition of the financial administration and control for this project from MI to Coco coupled with the introduction of a new individual, Maria Rici, who will be charged with oversight of this aspect of the project. Maria Rici has been sourced by Coco through a third-party search firm. I have shared her resume with MI. She is a chartered accountant whose specific background, training, and experience seem to be perfectly suited to undertaking this responsibility.

Although she will be employed by Coco and work out primarily out of the Coco offices, for the sake of maintaining opaqueness with the outside world, she will be given the designation of Financial Controller, or some other suitable title, of MI and have joint signing authority with another designated individual or individuals at MI on the segregated MI project bank account. She will work under the direction of Coco and develop approval mechanisms within the Coco organization acceptable to them but, going forward, under her Financial Controller title with MI, she will be the face of the financial administration and control function for the project. Jenny Coco and Sam Mizrahi will continue to co-sign the draws from the KEB account that fund the segregated MI bank account. It is my intention that outside trades, suppliers, and consultants, will have no transparency into the relationship and simply assume that she is co-signing on behalf of and as an officer of MI.

It is expected that, so long as all financial obligations conform to the control mechanisms reviewed above, all payments to trades, suppliers, and consultants will be made on a timely basis. If financial obligations are incurred outside of approved hard and soft cost budgets, without contracts or purchase orders in place, or otherwise do not conform to the financial control requirements, delays will occur, and ultimately, payment may have to be submitted to the adjudication process outlined below. Everyone in both organizations must be fully committed to these disciplines.

By way of example, if costs of any sort are incurred that are not reflected in the appropriate up-to-date budgets, are not backed up by the proper paperwork, or, for example, in the case of change orders, have not been reviewed and approved by representatives of both parties after they have been recommended for approval by Mike Clark, they will not be paid unless both parties agree or they have been submitted to adjudication under the procedure described below.

Moreover, to address any issues regarding financial transparency, Ms. Rici will institute a comprehensive system of monthly reporting of cash flows, source and use of funds, account balances, and hard and soft cost budget variances, such that both parties will be fully informed on a regular basis of the financial condition of the project.

- 2) In my view, nothing useful is to be gained by undertaking a comprehensive historical audit of the project from 2014 forward. An audit was performed by BDO and, as I understand, disclosed no issues. There does not appear to be any real concern that funds from lenders have not ultimately been used to satisfy legitimate project expenses. A comprehensive audit at this point in time will be disruptive and delay the implementation of the transition measures outlined above. Nothing, however, negates the right that either party has under the existing agreements to have the financial statements of the project audited on an annual basis.
- 3) The HST reserve of approximately \$1.2 million, which is currently held partly in the non-segregated MI account and partly in the segregated MI account, and which exists to protect MI against a potential CRA assessment associated with the structure of the Cereico financing, will be paid into a joint trust account or used to purchase of a GIC, to be held pursuant to a simple trust agreement providing that, in the event of an adverse CRA assessment, the funds will be remitted to the CRA in accordance with the assessment. So long as the funds have been remitted, so that MI is not at risk, either party shall be free to challenge the assessment.
- 4) The parties will immediately execute an acknowledgement of debt and tolling agreement indicating the principal and accumulated interest as at November 30, 2019.

- 5) Coco will be paid the approximately \$6 million of entitlement as per the previously agreed upon schedule in three payments in the first quarter of 2020.
- 6) There will be no change to the existing real estate commission structure payable to MI in respect of past and future sales.
- 7) Each party will be entitled to reserve one unit of their choice with the benefit of a reduced deposit equal to 50% of the deposit payable by arm's-length parties. All other units reserved must be on the standard terms and conditions regarding price and deposits.
- 8) Given the financial realities referred to above, the project cannot afford upward spiraling fees and administration costs. At the same time, appropriate market or near-market compensation must be paid for the services necessary to successfully complete the project. In light of the proposed change in responsibilities, the existing fee structure will be revised and reflected in an amended Development Management Agreement.

The Development Fee of \$30 million as per the original agreement, which has been earned and paid in full, does not change.

The Construction Management Fee of 5% of the hard construction costs, currently estimated at approximately \$560 million, will be reduced to 3.5%, of which 1.5% will continue to be paid to Mike Clark, and the remaining 2% will be paid to MI in respect of its ongoing, but reduced, construction management duties.

A new Financial Administration Fee will be paid to Coco equal to 0.5% of the future hard construction costs to offset those financial administration expenses, including the retainer of Maria Rici and any necessary support staff.

A Residential Management Fee will be paid to MI in respect of all existing and future residential sales equal to 2.0% of the selling price, including upgrades and extras. 50% of this fee will be payable upon entering into a firm agreement of purchase and sale with payment of the appropriate deposit, and the remaining 50% will be paid on closing of each unit. The second 50% will not, however, be earned and payable unless an application for an additional six floors is submitted to the City on or before December 31, 2020.

This fee will include all efforts and services rendered associated with marketing and selling the remaining units, including all creative direction provided by Sam Mizrahi. It is intended to include everything save and except for services provided by arm's-length consultants and suppliers, save and except for the current real estate commission structure, which as I have already said, remains the same. To be more specific, Sam will no longer mark up third-party marketing invoices.

To the extent that construction management fees to date have been paid in accordance with the original structure, any such fees received to date in excess of the new percentage (3.5%) will be offset against the Residential Management Fee otherwise payable for residential sales made to date. For example, assuming for the sake of illustration that there have been \$100 million of hard costs expended to date and that there are currently \$500 million of firm residential sales. MI would be entitled to receive \$5 million in Residential Management Fee at this time (i.e. 1% of current sales), less \$1.5 million of Construction Management Fees received to date (i.e. 1.5% of \$100 million) for a net payment of \$3.5 million. Going forward, MI will receive Construction Management Fees at the reduced level of 3.5%, of which 1.5% will be paid to Mike Clark, and 1% on all new sales, plus a further 1% of total sales at the time of the closing each unit.

Assuming hard construction costs of approximately \$560 million and residential sales of \$1 billion, the anticipated fees earned by MI are as follows:

Development Management Fee	\$30.0 million
Construction Management Fee (net of Mike Clark)	\$11.2 million
Residential Management Fee	<u>\$20.0 million</u>
Total	\$61.2 million

As noted above, this does not include the real estate commissions under the current structure.

- 9) This brings me to the issue of compensation for historical and future overheads. The existing contractual agreement makes vague but unhelpful reference to this entitlement on the part of MI, as it provides no basis or formula for determining how this recovery is to be calculated. On the other hand, Coco takes the position that overheads were to be included within the negotiated fees. Neither does the contract support this position. Regrettably, MI made no demand in this regard for the better part of five years, and this makes it extremely difficult, if not impossible to assess MI's entitlement to the requested \$3.3 million. To do so would require a retroactive allocation based on the total overhead of the organization in each year and the percentage of time and effort devoted to each of the ongoing projects during that period. It is now impossible to do that with any accuracy. Accordingly, it is my proposal that MI be allowed a lump sum payment of \$2 million to cover overhead and administration costs for the years 2014 through and including 2019. To the extent that MI has taken any amount greater than this, it must be refunded to the project. Moreover, I have established the above-noted proposed revised fee structure on the basis that it will include all overhead and administrative costs incurred by each party, so that it will be unnecessary to deal with this issue in the final 2 to 3 years of the project.
- 10) As noted above, this proposal is intended to resolve all outstanding issues between the parties and eliminate, to the greatest extent possible, the existing strife affecting the relationship. The agreement must include a full and final

release of all issues identified to date, coupled with a strong non-disparagement and confidentiality provision.

- 11) Certain invoices related to marketing, reporting, and legal fees have been outstanding and are overdue for payment. To protect the integrity of the project, they must be paid immediately, subject to the right of either party to submit to me any dispute with respect to whether those invoices involve proper project expenses.
- 12) Finally, I propose that the agreement include a two-phase dispute resolution process. The first phase, which I will refer to as adjudication, is designed to protect the project against harm caused by deferred or delayed payments of trades, suppliers, and consultants, thereby resulting in delayed performance or, in extreme cases, the imposition of liens and the commencement of litigation. To ensure the timely resolution of all such disputes, either party may refer any matter to me for adjudication on an expedited basis. I will provide a set of rules governing this aspect of the process.

Because of the need for an expeditious decision, the process will not involve a full record of evidence or legal argument, or all of the usual due process safeguards but, rather, will be based on informal submissions made to me by the parties and the examination by me of any documents that I require. Generally speaking, this process is designed to have all submitted disputes resolved within a maximum of 30 days. Any decision I make will, however, only be provisionally binding on the parties, such that payments will be made, or other steps taken, on an interim basis in accordance with my decision.

Any such adjudication decision may, however, at the instance of either party be submitted to me for subsequent arbitration, after my adjudicative decision has been carried out. As the arbitration process will follow the more normal procedural protocols, which may involve the submission of further evidence or legal argument, I will not be bound by my earlier expedited decision and will revisit the matter in light of all of the facts and circumstances disclosed through the arbitration process. If my subsequent arbitral decision produces a different result, I will then determine the appropriate remedy.

In other words, the first process is designed to get a quick decision made so that the project is not delayed or otherwise harmed, whereas the second phase, if required by either party, could produce a different result. Based on my past experience with this type of process, most adjudicated decisions will not be subsequently challenged, but the right to do so exists.

As I said at the outset, this proposal is, by definition, imperfect but, then again, in the context of what we are dealing with, there can be no expectation of perfection. I believe that despite its inherent imperfections, it does, to a great extent, address each party's primary concerns. In the case of Coco, it provides complete transparency and oversight with respect to the financial management of the project. With respect to MI, it provides

certainty with respect to fees and cashflow and addresses the need for reputational preservation. For both parties, it establishes a framework designed to make use of each party's identified strengths for the benefit of the project. Finally, it provides for a quick and efficient means of resolving any future disputes that may arise.

Stephen Richard Morrison
November 26, 2019

APPENDIX "12"
E-MAIL EXCHANGE DATED FEBRUARY 28, 2020

From: Mark Kilfoyle[mark@mizrahidevelopments.ca]
Sent: Fri 2/28/2020 4:05:25 PM (UTC-05:00)
To: MARIA RICO[maria@mizrahidevelopments.ca]
Cc: Sam Mizrahi[Sam@MizrahiDevelopments.ca]; Remy Del Bel[remy@mizrahidevelopments.ca]; Jenny Coco[JCoco@cocogroup.com]; Anton Scheglov[AScheglov@cocogroup.com]
Subject: Re: Invoices owed to Mizrahi

Maria,
I completely disagree with your most of what you said below.

Under protest, adjust the items below and we will deal with them after.

We need to get this listing to KEB immediately as we need to pay trades.

Best regards
Mark

Mark Kilfoyle
CFO and COO
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T. 416.922.4200 ext.4220
F. 1.866.300.0219
E. Mark@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

On Feb 28, 2020, at 3:49 PM, Maria Rico <maria@mizrahidevelopments.ca> wrote:

Mark, Sam,

The Arb stated that I had 24 hours to complete my review.

Here are my comments to date:

- C775 for commissions \$188,477.39 – I agree with the calculation and the amount due
- C762 for recoverable costs includes \$100,000 from Prom and Circumstance with little detail of the work performed
 - Is there information of efforts expended by them for PR (eg meetings held, design work etc)
- C763 - \$19,921 – salaries for sales office - ok
- \$2,121,030.00 – deposits not received: MI estimate is \$58 million & I am calculating at least \$68 million
 - This number needs to be reconciled
- CM fee give back – I am looking at this number now and it will take another

hour to check.

- HST – I have not received supporting information that the funds were put into the Project Bank Account
 - o I need to have this evidence in order to use the balance as an offset
 - o I spoke with Elliott and he had not verified the transfer of funds to the Project either

Conclusion: I am only comfortable paying the commission invoice of \$188,477.39 & C763 for \$19,921 & subject to Jenny's approval.

<image001.gif>

Maria Rico, CPA, CA
Senior Financial Consultant - THE ONE

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. [416.922.4200](tel:416.922.4200) ext. 3514
M. [416.268.8492](tel:416.268.8492)
F. [1.866.300.0219](tel:1.866.300.0219)
E. Maria@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

E. Maria@MizrahiDevelopments.cawww.MizrahiDevelopments.ca

From: Mark Kilfoyle <mark@mizrahidevelopments.ca>
Sent: February 28, 2020 10:08 AM
To: MARIA RICO <Maria@MizrahiDevelopments.ca>
Cc: Sam Mizrahi <sam@mizrahidevelopments.ca>; Remy Del Bel <Remy@MizrahiDevelopments.ca>
Subject: Invoices owed to Mizrahi

Hi Maria,

You need to include the following invoices to Mizrahi:

1. Invoice C775 to Mizrahi for \$188,477.39
2. Invoice C762 to Mizrahi for \$197,684.49 as attached in the link
3. Invoice C763 to Mizrahi for \$19,921.95 as attached in the link
4. Credit Memo C764 to Mizrahi for minus \$1,760.92 (Credit re invoice C762), as attached in the link
5. Settlement payment from Mr. Morrison - \$2,121,030.70
6. HST Settlement Amount - \$1,220,000
7. Deposits owed on Units - \$2,704,640 (Agreed with your schedule)

Total of 5, 6 and 7 are \$636,390.70 is owed to Mizrahi for Settlement.

This excludes construction cheques and fees for those which have been separately reported.

Best regards
Mark

ITEM #1 - Commission Payment:

<2020-02-25 - Inv C775.pdf><Untitled attachment 00105.htm><2020-02-25 -
Commission Report.xlsx><Untitled attachment 00108.htm><2020-02-27 - 1
Bloor Mediation Billing Amount.xlsx><Untitled attachment
00111.htm><Mizrahi - Memo HST on Construction Contracts
Final.pdf><Untitled attachment 00114.htm>

APPENDIX "13"
CCM TERMINATION NOTICE DATED OCTOBER 26, 2020



October 26, 2020

Clark Construction Management Inc.
387124 20th Sideroad
Mono, Ontario L9W 6V5

Attention: Mike Clark

TERMINATION NOTICE RE ONE BLOOR

Mizrahi Inc. hereby provides Notice of Termination of CCDC 5A regarding the 1 Bloor project between Mizrahi Inc. and Clark Construction Management Inc., dated July 2017, as supplemented by the Supplementary Conditions (the "**Contract**"), effective today and Assignment of the Contract to Mizrahi Inc.

This Notice of Termination is delivered pursuant to section 6.1.10 of the Contract. Pursuant to that section, Mizrahi Inc. requires CCM to:

1. Cooperate with Mizrahi Inc. to achieve an orderly transition of the site;
2. Minimize costs to demobilize from the site; and
3. Provide all project-related information, documentation, electronic equipment, and other assets to Mizrahi Inc.

Mizrahi Inc.'s transition team will meet with CCM's site team today to discuss these items.

Sincerely,

A handwritten signature in black ink, appearing to be 'A. Mizrahi', is written over a horizontal line.

Mizrahi Inc.
President

APPENDIX "14"
EMAIL FROM SAM MIZRAHI TO MIKE CLARK DATED MAY 18, 2020

From: Sam Mizrahi[sam@mizrahidevelopments.ca]
Sent: Mon 5/18/2020 3:41:48 PM (UTC-04:00)
To: Mike Clark[mclark@clarkcm.ca]
Cc: Jenny Coco[jcoco@cocogroup.com]; Joshua Lax[josh@mizrahidevelopments.ca]; Mark Kilfoyle[Mark@MizrahiDevelopments.ca]
Subject: 1 Bloor St W

Good afternoon Mike,
I trust you and the family are well and enjoying the long weekend.

Jenny and I had a call with our project leaders last night. During the call, Jenny mentioned that she is meeting with you this Tuesday (tomorrow).

I was not aware of any meeting.

Under our Contract, Clark Construction is contracted to Mizrahi Inc., not to the Project or Jenny. Although, I have no issue with you meeting or communicating with Jenny, you should include me in all such communications and or meetings.

Please provide me the agenda, as well as the location and time of the meeting.

Sam Mizrahi

President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4210

C. 416.818.5288

F. 1.866.300.0219

E. Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

APPENDIX "15"
EMAIL FROM SAM MIZRAHI TO JENNY COCO DATED OCTOBER 26, 2020

From: Sam Mizrahi[sam@mizrahidevelopments.ca]
Sent: Mon 10/26/2020 2:54:14 PM (UTC-04:00)
To: Jenny Coco[jcoco@cocogroup.com]
Bcc: sam@mizrahidevelopments.ca[sam@mizrahidevelopments.ca]
Subject: Clark Construction Management Inc. (CCM) Termination 1 Bloor St West Update

Jenny,

As you know from our discussions in the past, including at our meeting on September 10, Clark Construction Management Inc (CCM) performance on the project is not acceptable including that it is not performing its obligations in respect of project scheduling, budgeting and staffing.

Today Mizrahi Inc. terminated CCM. The Mizrahi Team is presently on site to ensure an orderly transition with minimum disruption to the project.

I will continue to keep you updated on further developments.

Should Mike Clark reach out to you, please direct him to me or my office. Thank you.

Sincerely,

Sam Mizrahi

President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4210

C. 416.818.5288

F. 1.866.300.0219

E. Sam@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

APPENDIX "16"
WRITTEN SUBMISSIONS FROM COCO DATED NOVEMBER 6, 2020

IN THE MATTER OF AN ARBITRATION in respect of the development of the One Bloor West Project in Toronto, Ontario

B E T W E E N:

8891303 CANADA INC.

Applicant

and

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

Respondents

WRITTEN SUBMISSIONS OF 8891303 CANADA INC.

November 6, 2020

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Lawyers for 8891303 Canada Inc.

TO: **LAX O'SULLIVAN LISUS GOTTLIEB LLP**
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Lawyers for the Mizrahi Parties

IN THE MATTER OF AN ARBITRATION in respect of the development of the One Bloor West Project in Toronto, Ontario

B E T W E E N:

8891303 CANADA INC.

Applicant

and

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

Respondents

WRITTEN SUBMISSIONS OF 8891303 CANADA INC.

PART I - RELIEF REQUESTED

1. For the reasons set out below, 8891303 Canada Inc. ("Coco") seeks the following relief from this Panel under the adjudicative authority vested in paragraph 12 of the mediator's proposal dated November 26, 2019 (the "Settlement Agreement"):

- (a) a declaration that Mizrahi Inc. has breached the Settlement Agreement (as defined below) by unilaterally terminating Clark Construction Management Inc.'s ("CCM") contract;
- (b) a declaration that, subject to any further agreement between the parties, that Mizrahi GP and/or the Nominee (as each term is defined below) is not obligated to pay the 1.5% construction management fee that would otherwise be payable to CCM under the Settlement Agreement to Mizrahi Inc. or an alternative construction manager of Mizrahi Inc.'s choosing;
- (c) a declaration that the Project is not required to pay the fees of Esteban Yanquelevech, David Paris, Najla Azizi, and Shashmita Mizana as reflected on Mizrahi Inc. invoice #C874;

- (d) an order that, until a replacement construction manager and their role and responsibilities is mutually determined by the parties, Mizrahi Inc. is required to provide the Project with the same detailed disclosure contained in the CCM Status Reports (as defined below);
- (e) an order requiring Mizrahi Inc. and Sam M Inc. to deliver within 5 days:
 - (i) An itemized spreadsheet that corresponds with the headings and subheadings contained in the Altus budget, listing all contracts, agreements and relationships which result (or in the past have resulted) in fees payable by the Nominee or Mizrahi GP;
 - (ii) Organized copies of all contracts, whether signed or otherwise, that result (or in the past have resulted) in the fees payable by the Nominee or Mizrahi GP; and
 - (iii) The amounts paid to date under each of these contracts and the amounts to be paid under each of these contracts.
- (f) a declaration that Ms. Rico and Ms. Coco are entitled to attend the Consultant Meetings (as defined below) and to be provided notice of all forthcoming Consultant Meetings, and copies of the minutes of all past and future Consultant Meetings, to the extent this information has not already been provided;
- (g) an order directing Sam M Inc. and Mizrahi Inc. (and their representatives):
 - (i) to disclose all communications to date which have taken place concerning a proposed \$60 million loan facility with Hana Financial Investment (the "Proposed Financing");
 - (ii) to provide summaries of all non-written discussions between Mizrahi Inc., Sam M Inc., and the proposed lenders, brokers, agents, and arrangers of the Proposed Financing; and

(iii) directing Sam M Inc. and/or Mizrahi Inc. to include Ms. Rico and/or Ms. Coco in all future communications and negotiations concerning the Proposed Financing with the Project's counsel and the proposed lenders, brokers, agents, and arrangers of the Proposed Financing.

(h) if opposed, Coco's costs of this proceeding on a full indemnity basis.

PART II - OVERVIEW

a. The Parties and the Project

2. Sam M. Inc. and Coco are limited partners in Mizrahi Commercial (The One) LP ("Mizrahi LP"), an Ontario-based limited partnership formed to undertake the development of a mixed-use real estate development located on the southwest corner of Bloor Street West and Yonge St. in Toronto (the "Project"). The general partner of Mizrahi LP is Mizrahi Commercial (The One) GP Inc. ("Mizrahi GP"). Title to the property is held by Mizrahi Development Group (The One) Inc. as nominee on behalf of Mizrahi GP (the "Nominee").

3. Mizrahi Inc. serves as the development manager for the Project. Sam M Inc. and Mizrahi Inc. are both controlled by Sam Mizrahi.

4. Mizrahi Inc. is bound by this dispute resolution process.¹

b. Jurisdiction of the Panel

5. Under the Settlement Agreement, the parties agreed to submit certain categories of disputes that may arise between them to arbitration. This makes the Settlement Agreement an "arbitration agreement" within the meaning of sections 1 and 5(2) of the *Arbitration Act, 1991*, SO 1991, c-17 (the "*Arbitration Act*").

6. The Settlement Agreement contains a two stage adjudication/arbitration process for specific types of disputes. There are no preconditions that must be satisfied to

¹ Award of the Panel, dated October 21, 2020 (the "Award"), para 48.

initiate this process. The adjudication/arbitration mandate of the original mediator was vested in this Panel pursuant to a subsequent agreement of the parties.²

7. At a minimum, this Panel has the jurisdiction to determine the following categories of dispute:

- (a) Disputes arising out of and relating to the interpretation and implementation of the terms of the Settlement Agreement³, including "*[f]uture disputes of like kind and nature*" to those which were resolved by the Settlement Agreement⁴; and
- (b) Disputes of the kind and nature specifically articulated by the Settlement Agreement, namely disputes which may result in "*project harm caused by deferred or delayed payments of trades, suppliers, and consultants, thereby resulting in delayed performance or, in extreme cases, the imposition of liens and the commencement of litigation*".⁵

8. As explained below, all of the relief sought by Coco in paragraph 1, above, arises from these types of dispute.

c. Events since the Core Invoice Arbitration

9. This proceeding is necessary to avoid future disputes like the matter concerning Core Architects Inc. ("Core").

10. On October 21, 2020, this Panel released its Award concerning the Core invoices. The Panel found that Mr. Mizrahi breached various contractual and corporate

² Award, page 3, footnote 1.

³ Paragraph 1 of the Settlement Agreement explicitly confirms that disputes concerning the implementation of the financial controls and accountability mechanisms contemplated by the Settlement Agreement may be "*submitted to the adjudication process outlined below*". The last sentence of the Settlement Agreement confirms that the parties intended to adjudicate/arbitrate "*any future disputes that may arise*". In *Haas v Gunasekaram*, [2016 ONCA 744](#), the Court of Appeal confirmed at paragraph 40 that "*the law favours the enforcement of arbitration agreements*".

⁴ Award, para 5.

⁵ Settlement Agreement, para 12.

governance instruments that govern the Project by executing and updating the Core contracts without Coco's prior knowledge or consent.⁶

11. However, the Panel found that Coco's delay in seeking a remedy in relation to these breaches precluded it from subsequently refusing to pay the Core invoices. Specifically, the Panel concluded that *"if Coco was dissatisfied with the information that it was being provided with, it could have had resort to the adjudication or arbitration provisions in [the settlement agreement] at a much earlier point in time, and certainly well before the stalemate with the architect occurred."*⁷

12. In other words, Coco was encouraged to address Mr. Mizrahi's misconduct immediately rather than waiting until a point that addressing the impugned conduct would detrimentally affect the Project.

13. Since the release of the Panel's Award, there have been significant developments impacting the Project. These issues include, but are not limited to, Mr. Mizrahi's unilateral decision to terminate CCM and the delivery of a term sheet for a \$60 million financing from Hana Financial Investment ("Hana") which that Coco had no involvement in. According to Mr. Mizrahi, the term sheet was unsolicited and was prepared and delivered to the Project without his involvement.

14. As discussed in further detail below, these developments are a consequence of Mr. Mizrahi's deliberate disregard for the bargain reached under the Settlement Agreement and his ongoing disregard for its transparency requirements. If this conduct is not addressed now, it will no doubt give rise to more serious disputes that may result in *"project harm caused by deferred or delayed payments of trades, suppliers, and consultants, thereby resulting in delayed performance or, in extreme cases, the imposition of liens and the commencement of litigation"*.⁸

⁶ Award, paras 37 and 39.

⁷ Award, para 36. Coco appreciates that the Panel's findings in relation to the Core invoices are specific to the circumstances of Core's engagement, and are not of general application to other Project trades and suppliers.

⁸ Settlement Agreement, para 12.

15. This Panel ought to hold Sam M Inc. and Mizrahi Inc. accountable for their conduct to ensure the effectiveness of this arbitral process and to address Mr. Mizrahi's attempts to ridicule the Settlement Agreement and this Panel's Award.

PART III - UNILATERAL TERMINATION OF CCM

16. Coco seeks the relief sought in paragraph 1(a) to 1(d) above in order to protect the bargain reached under the Settlement Agreement, and to avoid future disputes concerning the payment of construction management fees. Mizrahi Inc.'s decision to terminate CCM ought to have included Coco.

a. CCM's relationship to the Project

17. CCM has been the Project's construction manager since 2015.

18. Like Core, CCM executed a contract directly with Mizrahi Inc. (also known as "Mizrahi Developments"). Mizrahi Inc. and Sam M Inc. have refused to disclose the terms of this contract to Coco. Also like Core, CCM "*deliver[s] services for the benefit of the Project*"⁹, not Mizrahi Inc..

19. CCM gets paid fees equal to 1.5% of the Project's hard construction costs.

20. Each month, Mizrahi Inc. delivers CCM's invoice to the Project, together with a claim for a 3.5% construction management fee. The Project pays the CCM invoices by remitting funds to Mizrahi Inc. who, in turn, pays CCM. The Project relies on Mizrahi Inc. to ensure that the 1.5% construction management fee is remitted to CCM.

21. Mizrahi Inc. does not treat CCM as its own obligation, and relies on funds received from the Project in order to pay CCM's invoices. When the Project has previously experienced cashflow shortages, Mizrahi Inc. has refused to pay CCM out of its own pocket.¹⁰

⁹ Award, para 33.

¹⁰ See, for example, the situation described at paragraphs 75-80 of the affidavit of Sam Mizrahi, sworn June 15, 2020 (attached as Appendix 32).

22. It bears repeating that in the Core proceeding, Mizrahi Inc. sought to affirm that the Core contracts (executed by Mizrahi Inc. officers, without Ms. Coco's approval or signature, under its registered trade name, "Mizrahi Developments") were actually an obligation of the Project. Mr. Mizrahi's counsel argued that even if the Core contracts were "*between Jack and Jill and the man on the moon*", that did not stop them from being binding on the Project.¹¹

23. Applying the same logic, Mizrahi Inc. cannot credibly claim six weeks later that it, alone, had the authority to terminate CCM. Coco's consent was required.

24. In various affidavits sworn in this proceeding, Mr. Mizrahi has given the following evidence concerning CCM's integration to the Project:

- (a) **Affidavits sworn April 25, 2020, at para 5¹² and June 2, 2020 at para 8(b)¹³**: Mike Clark of CCM is a "*reputable well-known and highly experienced construction manager with a long track-record at PCL and has been involved in and managed many complex, large projects.*"
- (b) **Affidavits sworn April 25, 2020, at para 30(d) and June 2, 2020 at para 48(d)**: Ms. Coco and/or Ms. Rico receive "*all invoices issued by ...[CCM] which are only processed after she approves the invoices.*" Ms. Rico "*then receives confirmations of payment after the invoices are processed and paid.*"
- (c) **Affidavit sworn June 2, 2020 at para 52(g)**: that Ms. Rico attends "*regular meetings with the Project's construction manager, Clark Construction.*"
- (d) **April 25, 2020, at paras 101 and 110**: that "*Mizrahi Inc. and Clark Construction have worked diligently and successfully to mitigate the delays where possible*" and that "*[a]lllegations that Mizrahi Inc. and Clark Construction were negligent or somehow harmed the Project are unjustified. Together, Mizrahi Inc. and Clark Construction took every reasonable step to move the Project forward.*"

¹¹ Core Rough Transcript, p 260, lines 10-20.

¹² Appendix 30.

¹³ Appendix 31.

25. The Project cannot terminate its relationship with CCM without also breaching its agreements with lenders:

- (a) Section 10.01(s) of the Credit Agreement with Meritz/KEB Hana forbids the termination of any "Material Agreement" without KEB Hana's consent (via Altus) (**Appendix "1"**). "Material Agreements" are defined to include construction contracts and subcontracts that provide for aggregate payments in excess of \$1 million. CCM was set to receive well in excess of this amount under the fee structure contemplated by the Settlement Agreement.
- (b) Section 8.02(16) of the CERIECO Supplier Credit Agreement forbids the termination of any "Material Agreement" without CERIECO's consent (**Appendix "2"**). A "Material Agreement" is any contract or subcontract "relating to Construction" which contemplates payments in excess of \$1 million.
- (c) Section 8.2(m) of the Coco International Inc. ("CII") forbids the Project from entering into, waiving, or appointing any construction manager without CII's prior consent (**Appendix "3"**).

26. CCM's importance to the Project has been recognized in various other Project agreements. For example, section 5.2 of The Technical Services Agreement between the Nominee and Hyatt (**Appendix "4"**), one of the Project's tenants, specifically confirms that the Project (and not Mizrahi Inc.) retained CCM as the Project's "*suitably qualified*" construction manager who has "*substantial experience in the construction and development of a luxury first class hotel in Ontario*".

27. One of the conditions precedent to the Project's \$55 million financing with Nonghyup Bank/Hana in May 2020 was the lender's review and approval of CCM's construction schedule (section 3.01(d)(ii)(B), **Appendix "5"**). It is expected that a similar condition precedent will be included in any agreement concerning the Proposed Financing, which is also with Hana.

28. As indicated in the minutes enclosed at **Appendix "6"**, CCM was heavily involved in the coordination of the construction of the fit out for Apple, the Project's key tenant.

29. Mike Clark was also the Project's single most important witness in the litigation commenced by EMM Financial Inc., the owner of the adjacent property to the Project, in which EMM alleges that the Project installed tiebacks under its property without its prior consent.

b. CCM's involvement was incorporated into the Settlement Agreement

30. In September 2019, the parties agreed to submit a number of issues to arbitration concerning the management of the Project. One of the major areas of dispute between the parties were the fees payable to Mizrahi Inc., and, according to Coco, Mizrahi Inc.'s mismanagement of the Project's construction.

31. At that time, Mr. Mizrahi was refusing to perform any work on the Project without a renegotiation of his fees. To protect the Project's best interests, Ms. Coco engaged in the negotiation of a new, comprehensive fee structure that was intended to govern the parties' relationship going forward.

32. Eventually, the parties agreed to Settlement Agreement, which contemplated a significant restructuring of the existing fee structure. The fees payable to Mizrahi Inc. were reduced to reflect this new arrangement.¹⁴

33. Prior to the Settlement Agreement, Mizrahi Inc. was collecting a construction management fee of 5% of the Project's hard construction costs. In light of the rearrangement, Mizrahi Inc. was to be paid a lower fee "*in respect of its ongoing, but reduced, construction management duties.*"

34. Under the Settlement Agreement, the parties agreed that of the total "reduced" construction fees payable, 1.5% was payable to Mike Clark and CCM. This renegotiated fee structure was explicitly predicated on the parties' shared assumption that Mike Clark and CCM would continue to be involved in the construction of the Project:

The Construction Management Fee of 5% of the hard construction costs, currently estimated at approximately \$560 million, will be reduced to 3.5,

¹⁴ Settlement Agreement, paragraph 8. A "new Development Management Agreement" has not been signed.

*of which 1.5% will continue to be paid to Mike Clark, and the remaining 2% will be paid to MI in respect of its ongoing, but reduced, construction management duties.*¹⁵

...

Going forward, MI will receive Construction Management Fees at the reduced level of 3.5%, of which 1.5% will be paid to Mike Clark. [Emphasis added.]

35. This arrangement reflects the fact that unlike Mizrahi Inc., CCM and Mike Clark have (in Sam's words) "*a long track-record at PCL and ha[ve] been involved in and managed many complex, large projects*". It also reflects the fact that at the time the Settlement Agreement was entered into, both parties had complete confidence in CCM and anticipated that CCM would finish the construction of the Project.

36. Importantly, neither the Settlement Agreement nor any other instrument gives Mizrahi Inc. the right to assign the 1.5% construction management fee allocated to CCM under the Settlement Agreement to any other contractor (or itself).

c. Mr. Mizrahi Terminates CCM

37. CCM continued to provide construction management services to the Project without, to the best of Coco's knowledge, any complaint from Mizrahi Inc.. As outlined above, Mr. Mizrahi has represented in his affidavit evidence to this Panel, the importance of CCM's role in completing the Project and the effectiveness of its services to date.

38. However, on October 26, 2020, Mizrahi Inc. purported to terminate CCM's contract. Although Ms. Coco has asked for a copy of the termination letter, her requests have gone unanswered (**Appendix "7"**).

39. Mr. Mizrahi made this decision without Coco's input or approval. He did so knowing that Ms. Coco had continuously been raising concerns regarding transparency concerning the Project's financing and construction, especially in light of delays caused by the stop work order that was lifted in March 2020. Based on an invoice from Glaholts

¹⁵ Settlement Agreement, paragraph 8.

LLP that was sent to Ms. Rico (**Appendix "8"**), it appears that Mizrahi Inc. has contemplated "descoping" CCM since March 2020:

Mar-30-20	Conference call regarding Clark Construction Management issues; research role of consultant and construction manager under CCDC17;	2.10	735.00	MR
Apr-02-20	Research feasibility of descoping Clark under CCA 1 contracts;	2.10	735.00	MR
	TOTAL FEES	13.00	<u>\$4,940.00</u>	
	HST ON FEES		\$642.20	

40. Again, at the same time Mr. Mizrahi was exploring the "descoping" of CCM, he was also heavily engaged in an acrimonious arbitral process with Ms. Coco regarding his lack transparency and ongoing breaches of the Settlement Agreement.

41. In a letter to Mizrahi Inc.'s counsel dated October 28, 2020 (**Appendix "9"**), Coco's counsel advised that this unilateral decision was a breach of the Settlement Agreement, the Amended and Restated Covenant Agreement, and the Amended and Restated Unanimous Shareholders Agreement (the "USA").

42. The termination also put the Project in breach of its lending agreements (as described in paragraph 25, above) and other agreements with its tenants, including the Technical Services Agreement with the Hyatt referenced above.

43. In response, and in stark contrast to its position in relation to the Core contracts and invoices, Mizrahi Inc.'s counsel asserted through a letter dated October 30, 2020 that (**Appendix "10"**):

Mizrahi Inc. had sole discretion to terminate CCM pursuant to its contract with CCM. The Project companies are not party to the contract. CCM was contracted to, and paid by [Mizrahi Inc.]. There is nothing in the Project contracts that requires Mizrahi Inc. to obtain permission from your client in respect of CCM's termination... The decision to terminate CCM was not made "on behalf of the Project" as you suggest. It was made by Mizrahi Inc. in its capacity as developer and construction manager to the Project...

44. For the reasons stated above, this position is incredulous given the Mizrahi position taken during the Core arbitration (discussed at paragraph 22, above).

45. The full financial implications of the decision to terminate CCM have yet to materialize. While Coco does not have a copy of the CCM contract, the termination of this consultant, without notice, is likely to give rise to claims (and liens) by CCM and/or its subtrades against Mizrahi Inc. and/or the Project. In fact, the most recent Altus report includes an "exclusion" for "*any termination fees payable to Clark Construction Management*" (**Appendix 10.1**).

46. It is unclear what the cost of replacing CCM with a competent, experienced construction manager will be. As construction of the building is well underway, the Project may not be in a position of leverage to negotiate a cost-effective alternative solution with an experienced and sophisticated replacement construction manager.

47. Prior to being terminated, CCM would deliver monthly status reports to the Project (the "CCM Status Reports"). A sample CCM Status Report is enclosed at **Appendix 10.2**. These reports contain important information relating to subcontract cost forecasts, budget reports, cash flows, the construction schedule, and tendering processes. Without this information, Ms. Rico's ability to perform her obligations under the Settlement Agreement is significantly hindered.

48. Finally, and most importantly, by terminating CCM Mr. Mizrahi has deprived the Project (and Ms. Rico) of an important financial control. Each month, CCM would review and approve the invoices submitted by various subtrades. Mike Clark himself would sign off on the invoices, confirming that the work claimed was actually performed in a competent manner. The invoice was then delivered to Mizrahi Inc. who, in turn, would seek payment from the Project.

49. Ms. Rico would only release payment in relation to these invoices based on the trust that she and Ms. Coco had in Mr. Clark's review. This control was expressly incorporated into the Settlement Agreement:

[I]f costs of any sort are incurred that...have both been reviewed and approved by representatives of both parties after they have been recommended for approval by Mike Clark they will not be paid unless both parties agree...¹⁶

50. In short, by terminating CCM without consulting Coco or obtaining its approval, Mizrahi Inc. has upended the renegotiated fee structure, exposed the Project to additional costs (whether by litigation or through replacing CCM), and has deprived Coco of an important financial control process. All of which constitutes a breach of the Settlement Agreement.

d. Mizrahi Inc. has no clear plan moving forward

51. Mizrahi Inc. has not clearly articulated its reasons for terminating CCM. On October 29, 2020, after multiple requests from Coco for clarity, Mizrahi Inc. issued an update progress report (**Appendix "11"**). This progress report contains scant detail explaining Mizrahi Inc.'s decision. Mizrahi Inc.'s only stated reason for terminating is incomprehensible. Mizrahi Inc. purports to terminate CCM because of an apparent miscalculation that had no material impact on the Project's construction:

Based on MI's review, CCM was not fulfilling its obligations to move the Project forward in a timely manner and consistent with the construction schedule. In addition, MI uncovered a number of inaccuracies and errors in CCM's reporting. For example, in the attached monthly report, CCM identifies a 21-day delay due to "Manpower and Productivity" over the 30 days from September 20th-October 20th. There are only 21 Working days between those dates. MI therefore has serious concerns about the accuracy of the dates in the construction schedule provided by CCM in its monthly reports.¹⁷

52. If Mizrahi Inc. expects perfection, it should seriously consider whether it has upheld this standard. Coco's experience suggests it has not, especially given its chronic mismanagement of the permitting process which resulted in a the stop work order and months of delay.

¹⁶ Settlement Agreement, paragraph 1.

¹⁷ Even this analysis is flawed, given that many of the trades perform work on the Project over the weekends.

53. The progress report contains no proposal relating to how the Project's construction management will be performed going forward. It merely states:

MI has communicated with all trades and consultants who have expressed their continued commitment to and support for the Project. MI has also assumed contracts with key site supply companies formerly engaged by CCM to ensure continuity. As a result, work on site is progressing in the normal course.

54. Altus, the Project's independent cost consultant, has already expressed "ongoing concerns" in its monthly reports that CCM's construction schedule is "not achievable". (**Appendix "12"**). However, in its progress report, Mizrahi Inc. suggests that it plans to further expedite this unachievably aggressive schedule.

55. The progress report indicates that Mizrahi Inc. "expects to provide a more complete next monthly report and to respond to inquiries on the next scheduled update call." That call was scheduled for Wednesday, November 4, at 1 p.m.

56. On Friday, October 30, Coco committed to delivering submissions to the Panel on the CCM issue by Friday, November 6, at 5 p.m..

57. On Monday, November 2, 2020, Mizrahi Inc. unilaterally pushed the monthly update meeting to Friday, November 6 at 4:30 p.m., citing unparticularized scheduling concerns (**Appendix "13"**). The meeting was pushed again to Monday, November 9, at 4:00 p.m.. These scheduling changes have prevented Coco from addressing any new strategy that might be proposed by Mizrahi Inc. at that meeting. As of the submission of this document, no further update has been received from Mizrahi Inc.

e. Mizrahi Inc. has not proposed a suitable replacement to CCM

58. Based on invoice #C874 received from Mizrahi Inc. on October 26, 2020 (**Appendix "14"**) it appears that Mizrahi Inc. plans to transition construction management responsibilities to individuals named Esteban Yanquelevech, David Paris, Najla Azizi, and Shashmita Mizana. This invoice claims payment of approximately \$200,000 for unparticularized contributions that these individuals allegedly made to the Project.

59. As these expenses were not pre-approved by Ms. Coco or contemplated by the Altus budget, Ms. Rico refused to pay them. Mr. Mizrahi appears to have temporarily accepted Ms. Rico's refusal. He has indicated however that he plans to seek payment of these amounts on behalf of Mizrahi Inc. in November 2020 (**Appendix "15"**).

60. In spite of clear guidance Mr. Mizrahi has received from this Panel concerning his obligations under the Settlement Agreement (and the other constating Project agreements), he appears to have independently negotiated an agreement with these individuals, without Coco's involvement. The terms of this agreement have not been disclosed to Coco. However, just like the Core invoices, Mr. Mizrahi expects that these fees be paid by the Project.

61. In the Core Award, this Panel held that new obligations incurred "*by way of new contracts or amendments to the existing contracts, without the express written approval of Coco...they may be held to not be regarded as expenses of the Project.*"¹⁸ The same rationale should apply to any proposed replacement construction manager who, like Core, provides services for the "*benefit of the Project*".¹⁹

62. Coco has not previously heard of (let alone worked with) Mr. Yanqueleveh, Mr. Paris, Mr./Ms. Azizi or Mr./Ms. Mizan. Mizrahi Inc. has not demonstrated to Coco that any of these individuals have "*been involved in and managed many complex, large projects*", or have the "*long track record*" that Mr. Mizrahi valued in Mike Clark.

63. A review of Mr. Yanqueleveh's website (<http://eydesign.ca/>) indicates that he specializes in "Custom Home Design and Renovations". It also appears that Mr. Yanqueleveh's only Project management experience has been on other Mizrahi Inc. condominium projects, which, aside from their developer, are not comparable to the Project in any respect.

64. Coco has serious doubts that these individuals will serve as suitable replacements for CCM. They do not appear to have experience constructing skyscraper

¹⁸ Award, para 52.

¹⁹ Award, para 33.

buildings, luxury hotels, or sophisticated tenant retail fit outs. They are unfit to construct a Project worth \$1.5 billion. If this Project fails, Ms. Coco will undoubtedly lose many millions of dollars.

65. Ms. Coco is the CEO of one of Canada's largest construction companies. Contractual relationships aside, she should have a say in who is responsible for the ultimate construction of a building in which she has made considerable investment.

f. Mizrahi Inc. (or its delegate) is not entitled to payment of CCM's fee

66. Mizrahi Inc. seeks to pay the 1.5% construction fee that was previously paid to CCM to itself or its delegate.

67. In essence, Mizrahi Inc. is seeking to re-write the terms of the Settlement Agreement by adding the following **highlighted** language:

*The Construction Management Fee of 5% of the hard construction costs, currently estimated at approximately \$560 million, will be reduced to 3.5, of which 1.5% will continue to be paid to Mike Clark **or a replacement construction manager selected exclusively by Mizrahi Inc. (including Mizrahi Inc. itself)**, and the remaining 2% will be paid to MI in respect of its ongoing, but reduced, construction management duties.²⁰*

...

*Going forward, MI will receive Construction Management Fees at the reduced level of 3.5%, of which 1.5% will be paid to Mike Clark **or a replacement construction manager selected exclusively by Mizrahi Inc. (including Mizrahi Inc. itself)***

68. This Panel has the jurisdiction to reject Mizrahi Inc.'s proposed interpretation of the Settlement Agreement.

69. In reviewing the Settlement Agreement, this Panel should keep in mind the following principle:

Where the contract is between sophisticated commercial players who have had the full opportunity to negotiate and consider the terms of the proposed contract, the court should assume that the parties agree to the

²⁰ Settlement Agreement, paragraph 8.

*terms of the contract. The court will not interfere lightly with the words the parties have used.*²¹

70. The Settlement Agreement was the product of a contested mediation process between sophisticated parties. Both parties accepted its terms knowing that "[e]ach side will like some of what [the Mediator was] proposing and find other aspects less appealing".²² That deal cannot be recast.

71. There are also no indicia of a factual matrix that supports the contention that at the time the Settlement Agreement was finalized, the parties intended to provide Mizrahi Inc. with the flexibility concerning construction management fees that it now seeks.

72. The "*mutual and objective intentions*"²³ of the parties were to the contrary. The mediation process and the Settlement Agreement was predicated, in part, on "*transferring substantial control over the financial controls and administration from it to Coco and adjusting Mizrahi Inc.'s construction management fees accordingly*".²⁴ It makes no sense to suggest that Coco intended to agree to a fee restructuring that gave Mizrahi Inc. more autonomy concerning the payment of construction management fees.²⁵

73. A practical, common sense review of the ordinary and grammatical terms of the Settlement Agreement do not provide a right of substitution in Mizrahi Inc.'s favour.²⁶ Nor do they suggest that the references to "Mike Clark" were a stand-in for any construction manager of Mizrahi Inc.'s choosing (including Mizrahi Inc., itself).

74. Such an interpretation would ultimately give Mizrahi Inc. the power to direct Project funds to trades and suppliers who were not pre-approved by Coco. This conclusion is inconsistent with the Settlement Agreement and this Panel's conclusion at paragraph 53 of the Core Award.

²¹ *8254125 Canada Inc v Celernus Investment Partners Inc*, [2019 ONSC 3144](#) at para 9.

²² Settlement Agreement, preamble.

²³ *Sattva*, para 57.

²⁴ Award, para 46.

²⁵ Coco is prepared to provide further evidence (whether *viva voce* or by way of affidavit) in support of this narrow contention if this Panel determines that such confirmation is a "*necessary interpretive step*" to support the relief claimed by Coco (*Way v Schembri*, [2020 ONCA 691](#), at para 21).

²⁶ *Sattva Capital Corp. v. Creston Moly Corp.*, [2014 SCC 53](#) [*Sattva*], at para 47.

75. Alternatively, Mizrahi Inc. might attempt to choose to perform CCM's role itself and in turn receive CCM's compensation (of 1.5%). In effect, this would negate the reduction in Mizrahi Inc.'s fees (also 1.5%) that the parties agreed to under the Settlement Agreement.

76. Leaving aside that Mizrahi Inc. does not have the expertise or personnel to construct a \$1.5 billion Project on its own, this is not the bargain that Coco made under the Settlement Agreement. Nor is it consistent with the provisions of the USA (section 3.7(t)) which require Coco's consent before Mizrahi GP enters into non-arm's length contracts.

77. In particular, this interpretation conflicts with paragraph 1 of the Settlement Agreement which requires Coco's approval (through Ms. Rico) of the Project's hard and soft costs:

If financial obligations are incurred outside of the approved hard and soft cost budgets, without contracts or purchase orders in place, or otherwise do not conform to the financial control requirements, delays will occur, and ultimately, payment may have to be submitted to the adjudication process outlined below. Everyone in both organizations must be fully committed to these disciplines.

By way of example, if costs of any sort are incurred that are not reflect in the appropriate up-to-date budgets, are not backed up by the proper paperwork or, for example, in the case of change orders, have not been reviewed and approved by representatives of both parties after they have been recommended for approval by Mike Clark, they will not be paid unless both parties agree or they have been submitted to adjudication under the procedure described below.

78. Given that Mizrahi Inc.'s proposed interpretation would be inconsistent with both the spirit and the letter of other terms of Settlement Agreement and the USA, it should be rejected.²⁷

79. Coco seeks the relief sought in paragraphs 1(a) to 1(d) above in order to clarify the parties' obligations under the Settlement Agreement, and to avoid future disputes that may have significant adverse effects on the Project.

²⁷ *Shaun Development Inc. v Shamsipour*, [2018 ONSC 440](#), at para. 46, affirmed, 2018 ONCA 707.

80. If Mr. Mizrahi expects to engage a replacement construction manager to CCM, he ought to consult and engage Ms. Coco in that process.

PART IV - DISCLOSURE OF PROJECT INFORMATION

81. This Panel's Award concerning the Core invoices signalled a clear expectation: the parties should be proactive in the face of non-compliance with the Settlement Agreement.

82. Heeding this suggestion, Coco immediately wrote to Mizrahi Inc. and Sam M Inc. on October 22, 2020 (**Appendix "16"**) seeking production of information relating to the Project's budgeting and finance requirements.

83. In response, Coco received a blanket denial (**Appendix "17"**). Mizrahi Inc. claimed that Coco's "sweeping demands" amounted to a "forensic audit" of the Project. A similar response was advanced in Mizrahi's letter to this Panel dated October 27, 2020 (**Appendix "18"**).

84. In light of Mizrahi's unwillingness to cooperate, Coco seeks the relief sought in paragraphs 1(e), (f), and (g), above.

a. Disclosure of Project agreements

85. Before the parties entered into the Settlement Agreement, one of the major accountability mechanisms between Coco and Sam M Inc., in theory, was the Project's budget. Under section 3.7(y) of the USA (**Appendix "19"**), the Project was precluded from incurring expenses that were not pre-approved by both parties and incorporated into the budget.

86. This protection was of some significance during the Core arbitration. In the Award following that proceeding, this Panel determined that Sam M Inc. failed to adhere to the terms of the USA by committing the Project to paying Core amounts that far exceeded the amount budgeted for architects.²⁸ These commitments were made under

²⁸ Award, para 39.

a series of contracts which were often unexecuted and did not name any of the Project entities.

87. Coco's ability to challenge these overpayments was hampered, in part, by the fact that Mizrahi Inc. and Sam M Inc. failed to disclose a copy of the Core contract (copies were only provided by Core in April 2020). Coco had no way of determining how Core's monthly invoices were being calculated or how long the Project would be expected to pay them.

88. Core is just one of the Project's trades. In order to avoid a similar situation with the Project's numerous other trades and suppliers, Coco sought the following relief as part of a global compromise contained in its post-hearing submissions:

(i) The Mizrahi Group will provide to Coco and the Panel to itemize a list of all contracts, agreements and relationships, which result (or have in the past resulted) in fees payable by the Project, whether or not these contracts have been executed, regardless of whether the contract was entered into by the Nominee, Mizrahi GP, Mizrahi Inc., or any other related entity, and regardless of whether these contracts were consented to by Jenny in accordance with the Resolution or any other Project-related agreement.

(ii) The Mizrahi Group will provide organized copies of each of these contracts together with the necessary support to justify the fees payable under same. In the Mizrahi Group fails to disclose any of the information required above which, in the future, gives rise to an expense that is payable by the Project, the Mizrahi Group will be liable for these expenses.

(iii) In the event that the Mizrahi Group discloses such contracts and an agreement with Coco cannot be reached regarding payment of these invoices, the matter will be referred to the Panel for adjudication pursuant to section 12 of the Mediator's Proposal.

89. With the exception of the second sentence of subparagraph (ii), this Panel concluded at paragraph 56 of its Award that this relief was "*already consistent with the requirements of the settlement agreement with respect to Maria Rico's ability to fulfil her duties to the Project. It is also consistent with Coco's audit rights under certain constating Project Agreements.*"

90. Coco sought almost identical relief in its October 22, 2020 letter to Mr. Mizrahi's counsel, and seeks the same relief in this proceeding.

91. Mr. Mizrahi's dismissal of these requests as a "forensic audit" is irrational. This is inconsistent with the Settlement Agreement's transparency requirements. It demonstrates Mr. Mizrahi's worries that the Project has historically failed to employ the type of infrastructure that is "*covered in first or second year accounting courses*", which the Settlement Agreement now requires.²⁹

92. Ontario courts have defined an "audit" as an "*examination of books of account and supporting evidence to determine the reliability of the information recorded*".³⁰ The dictionary definition of audit is a "*formal or official examination and verification of books of accounts*".³¹

93. Under either definition, an "audit" requires the reconciliation of financial information against primary financial records for the purpose of assessing its accuracy. That is not what Coco is seeking through this exercise.

94. Coco is simply attempting to avoid another situation like the Core dispute. Ms. Rico is endeavouring to fulfill her mandate, which includes "*things such as budgets that are realistically established and regularly updated, financial obligations that are incurred in accordance with those budgets and reflected in formal contracts or purchase orders approved before work is undertaken*" [Emphasis is original].³² However, Ms. Rico's attempts to perform this work will be frustrated if she cannot get her arms around the instruments that drive the Project's main source of expense.

95. Sam M Inc. and Mizrahi Inc., who served as the gatekeepers of the Project's finances for years, are the only parties that can assist in this regard. This assistance is

²⁹ Settlement Agreement, paragraph 1.

³⁰ See, for example, *Toromont Industrial Holdings Ltd. v Thorne, Gunn, Helliwell & Christenson* (1975), 1975 CarswellOnt 522, 10 O.R. (2d) 65, 62 D.L.R. (3d) 225, 23 C.P.R. (2d) 59 (Ont. H.C.) at para. 25 Holland J.

³¹ Websters Third New International Dictionary.

³² Settlement Agreement, paragraph 1.

also a necessary part of "*the transition of the financial administration and control for this project*" required by the Settlement Agreement.³³

96. Accordingly, Coco seeks the relief claimed in paragraph 1(e) above.

b. Integration at consultant meetings

97. In a similar vein, Coco also seeks access – for both Ms. Coco and Ms. Rico – to the biweekly construction consultant meetings that Core hosts with Mizrahi Inc. and all of the Project's trades and suppliers (the "**Consultant Meetings**"). Coco also seeks production of the minutes the Consultant Meetings to the extent they have not already been provided.³⁴

98. To date, Mr. Mizrahi has consistently "[d]enied" Ms. Rico's access to the Consultant Meetings (**Appendix "20"**). He has provided no explanation for this refusal, although through his counsel, Mr. Mizrahi suggests that Coco's attempts to attend also amount to a "forensic audit". The theory of this allegation is unclear.

99. Although the distribution list for the minutes of the Consultant Meetings is approximately 50 people, who each work on the Project, Mr. Mizrahi refuses to disclose them to Coco. It is unclear why these consultants should have access to information concerning the Project's construction that the Project's owners do not.

100. However, based on a cursory review of the Consultant Meeting minutes that Coco does have access to, it is clear that what goes on at the Consultant Meetings has an obvious impact on the status of the Project's construction and its budget.

101. By way of example, in the minutes attached as **Appendix "21"**, it appears the parties engaged in important discussions concerning costs to completion, budget updates, tender estimates, and other issues that will impact the Project's finances.

102. This is precisely the type of meeting that Ms. Coco and Ms. Rico should be entitled to attend. This Panel confirmed as much in its Core Award, stating:

³³ Settlement Agreement, paragraph 1.

³⁴ As part of the Core arbitration, Mizrahi Inc. disclosed minutes of these meetings from May 2019 onward.

*[T] his is already well within the ambit of the letter and spirit of the existing settlement agreement, insofar as Maria Rico is concerned. In our view it is essential to her ability to fulfill her financial control and administration responsibilities that she has complete transparency to literally everything that can have a financial impact on the project. To the extent that this has not been fully implemented ... any deficiencies in this regard must be remedied immediately. Again, given the history of the relationship between the parties, it is appropriate that Mike Clark also be made aware of this obligation...*³⁵

103. Mr. Mizrahi's continuous efforts to thwart Coco's access to these meetings necessitates the relief sought in paragraph 1(f), above.

c. Disclosure of Information Concerning the Proposed Financing

104. The Project's current financial situation is precarious. It was not able to pay all of its hard and soft costs in October.

105. As a result of construction delays, it is now being asked by its tenants to pay delay fees, including an invoice for \$1.6 million from Apple alone, which Mr. Mizrahi has rejected (**Appendix "22"**).

106. In addition, sales of condominiums have flatlined. Over the past 18 months, Mr. Mizrahi has sold 10 units. Mr. Mizrahi's failure to meet the sales milestones set out in the credit agreement with KEB Hana/Meritz has resulted in penalties to the Project totalling \$1,060,342.00. The Project has no way of paying these amounts, which KEB Hana has demanded as recently as October 1, 2020 (**Appendix "23"**). Similar luxury condominium developments in the Yorkville region threaten to further saturate a condominium market that has already been depressed by COVID-19.

107. The Project's cashflow crisis was caused predominately by a shortage of funding from CERIECO. As Mr. Mizrahi explains in his affidavit sworn April 20, 2020:

The Project is at a critical stage. Its construction lender, CERIECO, has not advanced construction draws in accordance with the CERIECO Construction Loan. CERIECO was required to advance a total of \$213

³⁵ Award, paras 29 and 53.

million by March 31, 2020. It has not done so. The shortfall is \$53,900,000.³⁶

108. The only reasonable options facing the Project in the circumstances are to borrow more money or operate through insolvency. Mr. Mizrahi knows this, and has sought an additional \$60 million financing from Hana in the form of the Proposed Financing. One would think that Mr. Mizrahi would make every attempt to ensure that Coco, his partner, was involved in every step of this critical financing, especially in light of Coco's ongoing concerns regarding Mr. Mizrahi's unilateral conduct.

109. However, the manner in which Mr. Mizrahi has sought out the Proposed Financing has been just the opposite.

110. Ms. Rico has regularly asked for updates and to be involved in the Project's efforts regarding the Proposed Financing (**Appendix "24"**). Mr. Mizrahi's response was consistent, typified by his email to Ms. Rico on October 14, 2020 (**Appendix "25"**):

*I have already addressed this question multiple times Maria. Asked and Answered on our conference calls. You keep asking the same thing and You will keep getting the same answer. **There are no email communications.** We have the conference call updates with Korea which you are on and aware of with IGIS. Those are the only updates at this time. We are waiting on the Korea law firm to issue the Term Sheet as I have stated multiple times to you.*

111. Mr. Mizrahi's responses defies commercial reality. The "Korea law firm" had to have been instructed by *someone* to prepare a term sheet. This instruction must have been prompted by a request from the Project, as the borrower in the Proposed Financing. Term sheets do not get prepared without prior solicitation.

112. However even if there were no external discussions with Hana (as unlikely as that seems), there were nonetheless internal Project discussions concerning the Proposed Financing with Dentons, the Project's counsel, that Coco was excluded from.

113. The dockets contained on an invoice from Dentons to the Project dated October 1, 2020 (**Appendix "26"**), suggest that Mr. Mizrahi and Mark Kilfoyle of Mizrahi Inc. had

³⁶ Paragraphs 13-14.

continuous calls with Phil Rimer (of Dentons) throughout September, including calls related to a "financing" and the preparation of a "closing agenda" that Coco has yet to see.

114. Through his counsel, Mr. Mizrahi suggested that the Term Sheet was being negotiated on the Project's behalf by Terry Kim. Coco did not know about this arrangement, let alone approve it in advance.

115. The Term Sheet was finally delivered on October 21, 2020 (**Appendix "27"**). It was sent to Mr. Mizrahi first, who later forwarded it to Ms. Coco and Ms. Rico.

116. As it currently stands, the Term Sheet is missing material terms, including the amount of the fees payable upon the close of the deal.

117. It is imperative that Ms. Coco and Ms. Rico be both involved in the discussions going forward, while also having an understanding of the conversations that have taken place to date. This missing context might help explain the absence of material terms in the financing.

118. Coco wishes to avoid a situation like the \$55 million financing that Mr. Mizrahi negotiated independently in May 2020. Of the \$55 million that the Project borrowed, only \$7 million was actually advanced to the Project's construction account. The remaining \$48 million was used to pay investment banker fees and interest.

119. Coordinating the Project's finances is the core of Ms. Rico's role under the Settlement Agreement. The "negotiation" process with Hana ought to have involved her from the outset to ensure that Ms. Rico *"has complete transparency to literally everything that can have a financial impact on the Project."*³⁷

120. The relief sought by Coco at paragraph 1(g), above, is not a "forensic audit", as Mr. Mizrahi's counsel suggests. It is necessary to remedy Mr. Mizrahi's failure to abide by the Settlement Agreement and to ensure that Ms. Rico up to speed.

³⁷ Award, para 53.

121. Ms. Coco has recently sent a letter to KEB Hana confirming her support for the Proposed Financing (**Appendix "28"**). However, she needs complete cooperation from Sam M Inc. and Mizrahi Inc. in order to be fully comfortable with the Proposed Financing's terms.

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8891303 CANADA INC.

-and- SAM M. INC., MIZRAHI COMMERCIAL (THE ONE) GP
INC., MIZRAHI DEVELOPMENT GROUP (THE ONE)
INC. and MIZRAHI INC.

Applicant

Respondents

IN THE MATTER OF AN ARBITRATION in respect of
*the development of the One Bloor West Project in
Toronto,
Ontario*

SUBMISSIONS OF THE APPLICANT

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**APPENDIX “17”
RESPONDING WRITTEN SUBMISSIONS FROM MIZRAHI
DATED NOVEMBER 9, 2020**

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November 9, 2020

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Dear Messrs. Morrison, Newbould and Keefe:

On Friday evening, 889 delivered 26 pages of written argument and nearly 500 pages of supporting documents, seeking significant relief not previously proposed and making numerous contested factual allegations. 889's submissions go well beyond what was contemplated or agreed to during the case conference on October 30 and it is impossible for Sam M. Inc. to respond by this Friday.

Instead of making focused legal arguments based on the Project agreements and the Mediator's Proposal, as it said it would do, 889's submissions and the relief it seeks requires a proper evidentiary record, cross-examinations, and a hearing, as well as jurisdictional determinations.

In addition, after stating at the case conference that the issue of CCM's termination was "off the table", 889 now seeks the following new relief:

1. A declaration that Mizrahi Inc. breached the Settlement Agreement by unilaterally terminating CCM;

2. A declaration that Mizrahi GP and/or the Nominee is not obligated to pay the 1.5% construction management fee that would otherwise be payable to CCM to Mizrahi Inc. or an alternative construction manager of Mizrahi Inc.'s choosing;
3. A declaration that the Project is not required to pay the fees of Esteban Yanquelevec, David Paris, Najla Azizi, and Shashmita Mizana, as reflected on Mizrahi Inc. invoice #C874; and
4. An order that, until a replacement construction manager and their role and responsibilities is mutually determined by the parties, Mizrahi Inc. is required to provide the Project with the same detailed disclosure contained in the CCM Status Reports.

In seeking this and other relief, 889 makes numerous contested factual allegations including the following (Sam M. Inc.'s summary position is set out in italics after each):

1. The recent Hana term sheet was delivered without the involvement or knowledge of Ms. Coco and Ms. Coco did not know or approve of Mr. Kim's involvement.

Ms. Rico and Ms. Coco have been kept regularly informed of the progress of the Hana financing during update calls with the senior lender, communications to and from Project counsel (Dentons) and, most recently, execution of a Waiver Agreement related to the proposed financing. With respect to Mr. Kim's involvement, Ms. Coco has known and approved of his involvement for many months, including that she signed his commission agreement in June of this year at the time the initial arbitration before this Panel was resolved.

2. CCM continued to provide construction management services to the Project without, to the best of Coco's knowledge, any complaint from Mizrahi Inc.

Mr. Mizrahi expressed his concerns with CCM's performance to Ms. Coco in the summer of 2020. Ms. Coco concurred that CCM was performing poorly and Mr. Mizrahi indicated he would take steps to address the situation. Ms. Coco did not ask for details nor did she ask to be kept apprised because she recognized that this was a matter for Mizrahi Inc. to address. Ms. Coco even questioned why Mizrahi Inc. was continuing to pay CCM.

3. Mizrahi Inc. has chronically mismanaged the permitting process resulting in the stop work order.

The stop work order was the unavoidable result of Ms. Coco's failure to meet her obligation to secure Project financing, and her deliberate obstruction of alternative financing secured by Mr. Mizrahi. The steps Mizrahi Inc. took significantly mitigated the consequences of Ms. Coco's conduct. This allegation has been the subject of extensive evidence filed by the parties in prior arbitration proceedings before this Panel.

4. Mizrahi Inc. has “no clear plan moving forward” regarding on-site construction.

Mizrahi Inc. has an experienced team in place and has been working on-site since CCM's termination to ensure a smooth transition. ISO 9001 daily reports are being provided to Ms. Coco and Ms. Rico. In addition, Mizrahi Inc. has already delivered, and will continue to deliver, regular updates to Ms. Coco and the senior lender. It is also developing and implementing a long-term plan to accelerate construction. Moreover, many of the trades and contractors working on site have expressed support for Mizrahi Inc. and have confirmed that with CCM's termination, construction work is proceeding in a more efficient, cooperative and organized manner. The lenders are also supportive of Mizrahi Inc. and its decision to terminate CCM.

5. Mizrahi Inc.'s team does not have sufficient skill or experience and are “unfit” to manage the Project's construction.

Mizrahi Inc.'s core team has significant experience in the construction of complex and luxury condominium high-rises and Mizrahi Inc. has recruited specialized expertise where needed. The senior construction lender, and CERIECO, have lent hundreds of millions of dollars to the Project based on Mizrahi Inc.'s experience and reputation, ability to execute and the licenses issued to it to build the Project. Mizrahi Inc, is written into all of the lending agreements as the General Contractor and Developer. By contrast, CCM is not written into any of the lending agreements because it was a subcontractor to CCM.

6. Ms. Rico's work will be frustrated if she cannot get her arms around the instruments that drive the Project's main source of expense.

Ms. Rico has access to a significant volume of Project documents and records and has complete control over the Project's finances. Since her appointment last December she has repeatedly demonstrated that she is unwilling or unable to perform her basic functions and is more focused on advancing Ms. Coco's interests as compared to the interests of the Project, with the result that trades have been paid late or not paid at all. The Project's lenders and other key stakeholders have expressed serious concerns regarding her conduct and communications with external parties.

7. The Project has a cash shortfall caused by a shortage of funding from CERIECO.

This unfortunate situation was the direct result of Ms. Coco and Ms. Rico improperly, and against the advice of Project counsel, withholding funds that belonged to CERIECO and waiting nearly a month before releasing them. As a result, CERIECO refused to provide the Project with funding in October, causing a cash shortfall. Ms. Coco ultimately recognized the issue and agreed to release the funds, following which 889 withdrew the complaint it made to this Panel in respect of the recirculation of funds issue. Notwithstanding this, it now seeks to reintroduce the issue by alleging a cash shortfall.

8. Mizrahi Inc. has failed to meet sales milestones set out in the agreement with the senior lender.

Ms. Coco and Ms. Rico have deliberately interfered with Mizrahi Inc.'s ability to sell units by, among other things, refusing to approve a marketing plan that was presented to them more than six months ago, refusing to approve the renewal of the Project's advertising, and refusing to pay Mizrahi Inc.'s sales commissions as set out in the Settlement Agreement, alleging that the listing agreement has expired and no longer applies.

These reflect only a sample of the significant disputes raised by 889's submissions.

Sam M. Inc. agreed to streamline and expedite an arbitration, in writing, on the basis of the relief 889 had already requested and on the premise that its submissions would comprise focused legal argument on the Project agreements and the Mediator's Proposal. 889 now seeks wide-ranging new relief and its submissions are permeated with contested factual allegations. Determination of these issues cannot be done on a paper record. Evidence and cross-examinations are required, in addition to an arbitral hearing.

Moreover, as set out in prior correspondence, Sam M. Inc. intends to advance claims that require resolution including that 889 has breached the Mediator's Proposal by refusing to pay to Mizrahi Inc. fees and commissions to which it is entitled. Mizrahi Inc. also intends to seek Ms. Rico's removal from the Project in light of the serious concerns that have been repeatedly asserted by the lenders.

We ask that the Panel convene a further case conference to set an arbitration timetable.

Yours truly,



Nadia Campion

cc. Nina Perfetto, David Levangie, and Kyle Kuepfer, Fogler Rubinoff LLP (via email)
Jonathan Lisus and Matthew Law, Lax O'Sullivan Lisus Gottlieb LLP (via email)