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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

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

Applicant

- and -

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

Respondents

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

FIFTH REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA INC.

October 11, 2024

TABLE OF CONTENTS

Appendix "4"	–	Receiver's Revised Analysis
Appendix "5"	–	October 2023 and November 2023 Payment Letters and covering emails
Appendix "6"	–	December 2023 Payment Letters and covering emails
Appendix "7"	–	Clark Construction Management Inc. Contract dated July 2017
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
Appendix "9"	–	GC Agreement dated May 14, 2019
Appendix "10"	–	Altus Preliminary Report No. 1 as at July 31, 2019 **[Confidential]**
Appendix "11"	–	Mediator's Proposal dated November 26, 2019
Appendix "12"	–	E-mail exchange dated February 28, 2020
Appendix "13"	–	CCM Termination Notice dated October 26, 2020
Appendix "14"	–	Email from Sam Mizrahi to Mike Clark dated May 18, 2020
Appendix "15"	–	Email from Sam Mizrahi to Jenny Coco dated October 26, 2020
Appendix "16"	–	Written Submissions from Coco dated November 6, 2020
Appendix "17"	–	Responding Written Submissions from Mizrahi dated November 9, 2020
Appendix "18"	–	Payment Listing requesting Funds re: Senior Secured Lenders dated January 2021
Appendix "19"	–	Example of an MI Staff Invoice **[Confidential]**
Appendix "20"	–	Control Agreement dated May 2021
Appendix "21"	–	Amendment to the GC Agreement dated May 4, 2022
Appendix "22"	–	E-mail from MI to Altus sending the Unilateral Amendment dated August 28, 2023
Appendix "23"	–	Arbitration Award dated June 24, 2023
Appendix "24"	–	Control Resolution dated August 6, 2022

Appendix "25"	–	Excerpts from the Payment Listings from August 2022 to September 2023
Appendix "26"	–	Cost to Date Report No. 1 as of March 12, 2024 **[Confidential]**
Appendix "27"	–	Project Budget and Cost to Complete **[Confidential]**
Appendix "28"	–	Preliminary Schedule **[Confidential]**
Appendix "29"	–	Summary of KDC's Relevant Experience
Appendix "30"	–	Issues Log from KDC
Appendix "31"	–	Excerpts from the Altus Reports **[Confidential]**
Appendix "32"	–	MI's Monthly Construction Management Report for October 2023
Appendix "33"	–	Report by KDC dated December 31, 2023 **[Confidential]**
Appendix "34"	–	Memo to File - MI CM Issues dated January 2, 2024 **[Confidential]**
Appendix "35"	–	KDC Memo regarding Outstanding MI Deliverables dated January 18, 2024
Appendix "36"	–	Altus' Schedule Validator Report dated January 23, 2024
Appendix "37"	–	Core Architects Inc.'s Construction Progress Report dated February 16, 2024 **[Confidential]**
Appendix "38"	–	MI Factum dated August 7, 2024
Appendix "39"	–	Summary of SKYGRiD Fees Chart
Appendix "40"	–	KDC Report dated August 21, 2024 **[Confidential]**
Appendix "41"	–	E-mail dated May 1, 2023
Appendix "42"	–	Correspondence dated October 5, 2023
Appendix "43"	–	Receivers' letters to the Defaulting Purchasers dated May 1, 2024
Appendix "44"	–	Correspondence dated May 15, 2024
Appendix "45"	–	Marketing Agency Agreement with Magix Technologies LLC effective July 13, 2022

Appendix "46"	–	Correspondence re Senior Secured Lenders approved Magix
Appendix "47"	–	Listing Agreements with Royal LePage dated November 29, 2021 and March 11, 2022
Appendix "48"	–	Receiver's calculation of the CM Fee overpayment to MI
Appendix "49"	–	Invoice from 1118741 Ontario Limited o/a Irpinia Kitchens dated February 2, 2023
Appendix "50"	–	Royal Bedrock Inc. invoices to SKYGRiD for the material required by the Project
Appendix "51"	–	Internal correspondence between MI employees relating to Royal Bedrock Inc.'s materials
Appendix "52"	–	Letter from MI to the Receiver dated May 29, 2024
Appendix "53"	–	Documents relating to payment of $719,121.49 to MI

1.0 INTRODUCTION

1.1 On October 18, 2023 (the "**Appointment Date**"), pursuant to an Order (Appointing Receiver) (the "**Receivership Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), Alvarez & Marsal Canada Inc. was appointed as receiver and manager (in such capacities, the "**Receiver**"), without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP (the "**Beneficial Owner**"), Mizrahi Development Group (The One) Inc. (the "**Nominee**") and Mizrahi Commercial (The One) GP Inc. ("**GP Inc.**", and, together with the Beneficial Owner and the Nominee, the "**Debtors**"[1]), acquired for, or used in relation to, a business carried on by the Debtors, including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower (the "**Project**") located on the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario ("**One Bloor**").

1.2 A copy of the Receivership Order is attached hereto as **Appendix "1"**.

2.0 OVERVIEW AND PURPOSE OF THIS REPORT

(i) Purpose of the Report

2.1 This fifth report (the "**Fifth Report**") has been prepared for two purposes:

(i) to provide the Court with information and evidence regarding the relief sought in the motion brought by Mizrahi Inc. ("**MI**"), the former developer and general contractor of the Project, seeking, among other things, an order directing the

[1] The Debtors are referred to collectively in this report, for convenience.

Receiver to pay MI fees and costs for labour and construction management services pursuant to the Receivership Order (the "**MI Payment Motion**"), and to set out the factual basis for the Receiver's opposition thereto; and

(ii) to provide evidentiary support for the Receiver's cross-motion seeking, among other things, a declaration that no further amounts are owed to MI and granting judgment against MI for the amounts that MI owes to the Debtors, which amounts are particularized below.

(ii) The Receiver's position

2.2 In the MI Payment Motion, MI claims to be entitled to: (i) $4,086,007.53 for the period from October 18, 2023 to February 22, 2024; and (ii) an unspecified amount for the period after February 22, 2024. The Receiver understands that MI subsequently revised its claim amount to approximately $6.6 million as of May 31, 2024.[2]

2.3 The Receiver's position is that MI is not entitled to any further payment from the Debtors for the following reasons:

(i) the MI Payment Motion is premised on the allegation that the Receivership Order requires the Receiver to continue the non-arm's length payment practices used before the Receiver was appointed, but the Receivership Order imposes no such obligation;

[2] MI's total claim, as of May 31, 2024, was for $10.9 million. However, approximately $4.3 million of this amount relates to claims by MI in respect of subcontractors who may claim against MI for unpaid invoices. The Receiver is addressing these claims directly with the relevant subcontractors.

(ii) the amount claimed by MI is not payable pursuant to any contract between the Debtors and MI, and MI has, in fact, been paid significantly more than it is contractually entitled to;

(iii) MI failed to fulfill its most fundamental obligations as general contractor of the Project, namely, its agreement to complete construction on the Project by December 31, 2022 for a total fixed price of $583.2 million plus HST; and

(iv) even if the Debtors owe MI anything (which the Receiver denies), MI owes the Debtors much more. MI received significant payments that it was not entitled to, and breached the contracts that governed its work on the Project.

(iii) The MI Payment Motion and the MI Payment Practices

2.4 The MI Payment Motion is founded on the assertion that the Receiver was required to pay MI using the same payment practices that Sam Mizrahi ("**Sam**") implemented when he controlled both MI and the Debtors (the "**MI Payment Practices**"). The MI Payment Practices involved paying MI, among other amounts:

(i) a construction management fee (the "**CM Fee**") equal to 5% of all hard costs incurred in connection with the Project; and

(ii) payments for time spent by staff hired by MI at rates (the "**Labour Rates**") that significantly exceeded MI's actual labour costs (the "**Labour Costs**").

(iv) The MI Payment Practices are not required by the Receivership Order

2.5 MI alleges that paragraph 17 of the Receivership Order ("**Paragraph 17**") required that the Receiver make payments based on "normal payment practices", and that the MI Payment Practices constituted "normal payment practices" for the Project.

2.6 This is not what Paragraph 17 requires. Paragraph 17 exists for the *benefit* of the Receiver and the Project. It prohibits various parties from, among other things, discontinuing services required by the Receiver if certain conditions are met. MI did not try and discontinue its services, and the Receiver did not invoke Paragraph 17 to prevent MI from doing so. Paragraph 17 therefore has no application to MI, or to the MI Payment Motion.

2.7 More specifically, Paragraph 17 provides that all persons having agreements or mandates for the supply of goods and/or services to the Debtors and/or the Project are restrained from discontinuing the supply of such goods and/or services, provided that the "normal prices or charges" for such goods or services are paid by the Receiver in accordance with "normal payment practices", such other practices as may be agreed with the Receiver, or as may be ordered by the Court. Payment based on one of these options is a condition to the Receiver enforcing the prohibition provided for in Paragraph 17, in effect permitting the Receiver to compel a supplier to continue providing services so long as it satisfies one of the conditions. Paragraph 17 does not, however, impose an independent payment obligation of any kind on the Receiver.

2.8 The Receiver did not pay MI for work done during the receivership based on the MI Payment Practices because it was under no obligation to do so. The Receiver paid MI on a different basis that it considered to be commercially reasonable in light of the services

rendered by MI during this period, having regard for the need to continue advancing construction of the Project while the Receiver investigated various issues relating to the Project, including MI's performance as general contractor of the Project and the terms of the relevant contracts governing MI's various roles on the Project. If MI was not prepared to work on the Project in exchange for these payments, then it could have withdrawn its services and taken the position it was not subject to the prohibition in Paragraph 17. It did not do so.

2.9 While Paragraph 17 and its reference to "normal payment practices" is therefore irrelevant and inapplicable to the MI Payment Motion, even if it were, the Receiver does not agree that the MI Payment Practices were "normal". As described below, the MI Payment Practices were: (i) not authorized by any contract between MI and the Debtors; (ii) paid on a non-arm's length basis; and (iii) not commercially reasonable.

(v) The MI Payment Practices were not authorized by any contract between MI and the Debtors

2.10 The relationship between MI and the Debtors was governed by a series of contracts involving MI, the Debtors, Coco (defined below), and Mizrahi (defined below). None of these contracts authorizes the MI Payment Practices.

2.11 The Debtors' contractual relationship with MI is relatively complicated because: (i) multiple contracts appear to have been in force at the same time; and (ii) the parties did not specifically state which contract took precedence. The key contracts that governed MI's relationship with the Debtors are summarized at **Schedule "A"** and in this section.

2.12 The Receiver has concluded that MI is not contractually entitled to the amounts claimed in the MI Payment Motion and to significant sums that it charged the Debtors, both before and after the Receivership Order was entered.

2.13 **MI did not deliver the Project on or before December 31, 2022 for a total price of $583.2 million, as it agreed to do.** MI entered into a CCDC2 Stipulated Price Contract dated May 14, 2019 with the Nominee (the "**GC Agreement**") that required MI to complete the Project by December 31, 2022 for a total fixed price of $583.2 million (including all MI labour and third-party construction costs). MI did not fulfill its obligations under the GC Agreement, and the Project was not close to complete on December 31, 2022.

2.14 By the time MI's role on the Project had ended (i.e., March 13, 2024), MI had charged approximately 84% of the Contract Price (defined below) to complete less than 50% of the Project.[3] The Receiver now expects the total construction costs to complete the Project [redacted] with a Project completion date in the second half of 2027. MI's failure to complete the Project by December 31, 2022, has also caused a material increase to the Project's total soft costs and financing costs.

2.15 Leaving aside MI's obligations under the GC Agreement and its breach of those obligations, MI has been paid significantly more than it was ever entitled to, as further described below.

[3] Based on an updated Project budget prepared by Finnegan Marshall (defined below) on June 10, 2024, approximately 49% of the Project's construction was complete as at the Effective Date (defined below).

2.16 **MI was not entitled to charge the Labour Rates.** The Receiver has determined that there was no contractual basis for the Labour Rates that MI charged the Debtors – separate fees that MI was not contractually entitled to charge. The GC Agreement specifically stated that the fixed price for the Project *included* the value for any labour provided by MI.

2.17 MI agreed to pay the Labour Rates to Clark Construction Management Inc. ("**CCM**"), an experienced construction manager, pursuant to a CCDC 5A – 2010 Construction Management Contract dated July 2017 (the "**CCM Contract**") entered into between MI and CCM (the Debtors are not a party to the CCM Contract). On October 26, 2020, MI terminated the CCM Contract and purported to assign the CCM Contract to itself, which it could not do as that would create a contract between MI and itself.

2.18 More importantly, no agreement between MI and *the Debtors* authorized MI to charge the Labour Rates or required that the Debtors pay MI based on the Labour Rates.

2.19 **MI was only entitled to a 3.5% CM Fee, but charged a 5% CM Fee between August 2022 and March 2024.** The Receiver has concluded that, on the Appointment Date, MI was entitled to charge the Debtors a 3.5% CM Fee in accordance with the terms of a mediator's proposal dated November 19, 2019 agreed to by MI and Coco (as defined below) (the "**Mediator's Proposal**"). However, MI had continued charging a 5% CM Fee despite the fact that the agreement that authorized this higher fee expired on August 30, 2022 (the "**Control Agreement**" dated May 2021).

(vi) The MI Payment Practices are not commercially reasonable

2.20 The Receiver also concluded, after consulting with its advisors, that the MI Payment Practices were not commercially reasonable. Specifically, the Receiver concluded that MI charging a 5% CM Fee *and* Labour Rates (which included a very substantial embedded profit margin) significantly exceeded the amounts charged by other experienced construction managers for similar services. By way of example, SKYGRiD Construction Inc. ("**SKYGRiD**"), the construction manager hired by the Receiver to replace MI, has charged approximately $1 million less per month than MI invoiced and has provided superior service in comparison to MI.

(vii) MI's performance on the Project did not justify above-market compensation.

2.21 With the assistance of the experienced project manager that it retained to assist it, Knightsbridge Development Corporation ("**KDC**"), the Receiver assessed MI's performance as general contractor of the Project. Based on this assessment, KDC and the Receiver identified that MI failed to implement a number of basic, industry standard procedures that are required to effectively manage a construction project of the nature and scale of the Project. Among other things, MI was unwilling or unable to produce reliable budgets or construction schedules and lacked basic procurement and site management procedures. These issues, and others noted below, contributed to the significant difficulties faced by the Project.

(viii) Conclusion on the MI Payment Motion.

2.22 In summary, MI was significantly overpaid relative to the amounts that it was entitled to receive under the applicable contracts and the value of the services that it provided. The

Receiver does not believe any further payment to MI is required or appropriate and the relief sought in the MI Payment Motion should be denied.

2.23 The MI Payment Motion seeks payment based solely on MI's incorrect interpretation of the terms of the Receivership Order. The Receiver's cross-motion seeks a declaration that no further payment is owed to MI under any agreement or the terms of the Receivership Order. The Receiver believes that the requested declaration is necessary to ensure that MI cannot claim fees from the Debtors on any basis and to provide certainty and finality with respect to MI's asserted claims as part of these proceedings.

(ix) The Receiver has concluded that MI owes the Debtors significant amounts

2.24 The Receiver has concluded that MI owes the Debtors approximately $58.8 million.

2.25 As noted, the Receiver has concluded that MI had no contractual right to charge the Debtors for the Labour Rates. It made significant profits by charging approximately $49.3 million (comprised of $47.4 million in Labour Rates plus $1.9 million in CM Fees that MI charged on the Labour Rates)[4] to the Debtors, and the Receiver has concluded that MI is liable to return the amounts that it improperly charged.

2.26 The Receiver has also concluded that MI is liable to the Debtors for at least $9,539,853.71 because it breached the contracts that governed its work on the Project.

[4] MI had a significant mark-up embedded in the Labour Rates and then also charged a 5% CM Fee on the Labour Rates.

Claim	Amount
(i) Commissions that MI is obliged to return pursuant to the ELA (defined below)	$1,816,012.85
(ii) Amounts paid to outside brokers in breach of the ELA	$891,778.60
(iii) Reserve not held by MI in breach of the Mediator's Proposal	$1,200,000.00
(iv) Marketing Fees improperly charged by MI	$2,700,000.00
(v) CM Fees improperly charged by MI	$2,932,062.26
Total	**$ 9,539,853.71**

2.27 MI's breaches include the following:

(i) Refusing to return sales commissions totaling approximately $1.8 million after the underlying purchase agreements were terminated for purchaser default. The Exclusive Listing Agreement dated July 12, 2017 (the "**ELA**") between MI and the Debtors specifically requires that any commissions paid to MI in respect of a condominium unit must be returned to the Debtors if the condominium sale agreement is terminated for purchaser default. On May 13, 2024, the Receiver (on behalf of the Debtors) terminated several condominium sales agreements because the purchasers failed to pay the deposits they owed and, in many cases, had paid no deposit at all. MI was paid a commission in respect of all these sales, even those with no deposits paid. MI has refused to return commissions totaling $1.8 million paid to it in respect of these transactions, in breach of the ELA;

(ii) MI is liable to the Debtors for approximately $892,000 that it caused the Debtors to pay to third-party brokers in respect of commissions and other fees regarding condominium unit sales for which MI had also received commissions;

(iii) MI is also liable to the Debtors for $1.2 million that it agreed to place in trust for the benefit of the Project. Under the terms of the Mediator's Proposal, MI agreed to transfer the $1.2 million it held as a reserve against a specific future potential liability to a trust fund or GIC. Such liability did not arise, and so the funds ought to have been returned and made available to the Project. MI has refused to provide these funds to the Receiver or explain what happened to them. MI's failure to hold the funds in trust is a further breach of the Mediator's Proposal;

(iv) MI is liable to the Debtors for marketing fees totaling $2.7 million. Under the terms of the Mediator's Proposal, MI was entitled to a Residential Management Fee (as defined below) on the sale of condominium units. The fee was to provide *complete* compensation for MI's marketing services, aside from the commissions owed under the ELA. Despite this agreement, MI now alleges that it is entitled to the Residential Management Fee *and* a monthly marketing fee of $100,000 plus HST. The Receiver is not aware of any contract that authorized or required the payment of marketing fees to MI totaling $100,000 per month. The unauthorized additional marketing fees totaled $2.7 million; and

(v) MI charged CM Fees to the Project that it was not entitled to, in the amount of approximately $2.9 million. MI agreed to a 3.5% CM Fee as part of the Mediator's Proposal. The parties agreed to increase the CM Fee to 5% in the Control Agreement, but the Control Agreement expired on August 30, 2022. MI should have charged a 3.5% CM Fee after August 30, 2022, but wrongly continued to charge a 5% CM Fee. MI breached the Mediator's Proposal by charging fees that were not authorized.

2.28 In sum, and as set out in detail below, the Receiver has concluded that the Debtors do not owe any further amounts to MI. To the contrary, as of the date of this Fifth Report, MI owes at least $58.8 million to the Debtors.

(x) Matters the Receiver continues to investigate

2.29 In addition to the foregoing, the Receiver has reason to believe that MI submitted invoices (that were ultimately paid by the Debtors) for work that was not performed or material that was not supplied to the Project. Specifically, certain subcontractors have advised SKYGRiD that they did not do certain work or procure certain material shown on invoices submitted by MI and paid by the Debtors. In order to determine whether MI or the relevant subcontractors are liable for amounts that should not have been paid, the Receiver requires evidence about what work each relevant subcontractor performed or what material they supplied. The Receiver's cross-motion includes a request that MI and the relevant subcontractors provide this evidence, and the Receiver reserves the right to assert further claims after it has reviewed that evidence.

3.0 RECEIVER'S REPORTS

3.1 The Receiver has filed seven reports to date, outlining its activities in respect of the Receivership:

(i) the First Report dated February 26, 2024, and a Supplemental Report to the First Report dated March 6, 2024;

(ii) the Second Report dated May 28, 2024;

(iii) The Third Report dated June 21, 2024, the Supplemental Report to the Third Report of the Receiver dated July 11, 2024, and the Second Supplemental Report to the Third Report of the Receiver dated August 7, 2024; and,

(iv) The Fourth Report dated July 29, 2024.

3.2 Additional details regarding the Debtors and the Project, including an overview of the circumstances leading to the appointment of the Receiver, are contained in the application record dated October 17, 2023, of the Debtors' senior secured lenders, KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 301 and of IGIS Global Private Placement Real Estate Fund No. 434 (collectively, the "**Senior Secured Lenders**").

3.3 The Receiver's reports and other Court-filed documents and notices in these receivership proceedings (the "**Receivership Proceedings**") can be found on the Receiver's case website at: www.alvarezandmarsal.com/theone.

4.0 TERMS OF REFERENCE AND DISCLAIMER

4.1 In preparing this Fifth Report, the Receiver has obtained and relied upon bank account statements, cash receipts and disbursements, journal reports, as well as various other financial records from MI; electronic records, including e-mails, relating to the Project; certain payment applications and related documents provided by the Senior Secured Lenders; unaudited financial information, books and records, and other documents of the Debtors; and has held discussions with, and been provided with certain additional

information from, management and employees of MI, Coco, Coco International Inc., KDC and SKYGRiD (collectively, the "**Information**").

4.2 The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

4.3 This Fifth Report has been prepared to provide the Court with further information regarding the relief sought in the MI Payment Motion returnable on a date to be fixed by the Court and the Receiver's cross-motion. Accordingly, the reader is cautioned that this Fifth Report is not appropriate for any other purpose, and that the Receiver will not assume any responsibility or liability for any losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Fifth Report.

4.4 In this Fifth Report, the Receiver has referenced certain conclusions that it reached based on advice from counsel. Neither these references, nor any other statement in this Fifth Report constitutes a waiver of privilege.

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

5.0 THE DEBTORS

5.1 The Debtors are comprised of the following entities: (i) the Beneficial Owner, an Ontario-based limited partnership formed to undertake the development of the Project; (ii) GP Inc., the Beneficial Owner's sole general partner, incorporated under the laws of Ontario; and (iii) the Nominee, a corporation incorporated under the laws of Ontario that is wholly owned by GP Inc. The Nominee is the registered owner of One Bloor as bare trustee on behalf of the Beneficial Owner.

5.2 Sam owns an indirect 50% equity interest in the Beneficial Owner through Sam M Inc. (together with Sam, "**Mizrahi**"). Jenny Coco ("**Jenny**") and Rocky Coco ("**Rocky**") own the other 50% equity interest in the Beneficial Owner through 8891303 Ontario Inc. (together with Jenny and Rocky, "**Coco**"). Sam and Jenny were directors of GP Inc. until the Receiver was appointed.[5]

5.3 A schedule outlining the key individuals and entities relevant to the MI Payment Motion is attached hereto as **Schedule "B"**.

6.0 THE PROJECT, MI AND MIZRAHI

6.1 MI is owned (directly or indirectly) and controlled by Sam. Sam and MI have had effective control over the Project from its inception in 2014 to the appointment of the Receiver on October 18, 2023. According to the Project's marketing website, the Project is "the singular vision of Sam Mizrahi".

---

[5] Sam resigned as a director of GP Inc. shortly before the Appointment Date. The current directors of GP Inc. are Jenny Coco and Amanda Brown (who is an employee of MI).

6.2 Once completed, the Project will be among Canada's tallest residential buildings. It is comprised of 85 floors, including 641,796 square feet of residential space and 188,952 square feet of commercial space. As initially envisioned by Sam, it was to include a luxury hotel, 416 residential condominium units and high-end retail spaces. The Project was marketed as a luxury development, with the top 23 floors to be comprised of ultra high-end units marketed as the "Limited Collection".

6.3 MI had little or no prior experience developing, marketing or building real estate that approaches the size, scope and complexity of the Project. A summary of MI's projects, based on publicly available information and marketing information provided by MI to the Receiver, is summarized below:

Project	Description	Status
Lytton Park	12 townhouse development in mid-town Toronto.	Completed.
133 Hazelton Avenue	9 floor, 36 suite mid-rise condominium in Yorkville.	Completed.
128 Hazelton Avenue	9 floor, 19 suite mid-rise development involving 20 condominiums in Yorkville.	Construction completed; receiver appointed over remaining units.
181 Davenport Avenue	12 floor, 68 suite mid-rise condominium in Yorkville.	Construction completed; receiver appointed over remaining property.
180 Steeles Avenue West	Six buildings, 5.5 acres, master plan community redevelopment.	Pre-development stage; receiver appointed over equity interests in the property.

Project	Description	Status
1451 Wellington Street	12 floor, 93 suite mid-rise condominium in the west end of Ottawa.	Under construction.

7.0 PAYMENTS TO MI AND THE MI PAYMENT MOTION

(i) The MI Payment Motion

7.1 As further described in the First Report, MI continued to work as the general contractor of the Project for approximately five months after the Receiver was appointed. The Receiver issued a disclaimer notice to MI on February 26, 2024, in accordance with the terms of the Receivership Order, with such disclaimer becoming effective on March 13, 2024 (the "**Effective Date**"). MI's role as developer and general contractor of the Project ended on the Effective Date. The rationale for the disclaimer was described in the First Report and included concerns regarding MI's performance on the Project and its ability to work constructively with the Receiver, as well as the Receiver's view that the disclaimer was more likely to facilitate a successful SISP.

7.2 On February 26, 2024, MI served the MI Payment Motion seeking to compel payment by the Receiver of: (i) $4,086,007.53 for the period from October 18, 2023 to February 22, 2024; and (ii) an unspecified amount for the period after February 22, 2024.

7.3 The amount sought in the MI Payment Motion has varied since the MI Payment Motion was served. The Receiver understands that MI claims to be owed approximately $10.9 million as of May 31, 2024.

7.4 The amount claimed by MI in its letter to the Receiver dated June 14, 2024 (and setting out MI's claim as of May 31, 2024) and attached as **Appendix "2"** includes approximately $4.3 million claimed by third-party subcontractors that could potentially seek payment from MI. The Receiver is in the process of addressing these third-party claims, either consensually or through the dispute resolution process approved by this Court in the Lien Claims Resolution Order dated August 9, 2024.

7.5 Based on the foregoing, the Receiver understands that MI claims that it is entitled to $6,350,762 for its own services (the "**MI Claimed Amount**"). As described further below, the MI Claimed Amount is comprised primarily of the profit component of the Labour Rates charged by MI for MI staff working on the Project (which is in addition to the profits made by MI on the CM Fee it charged to the Debtors).[6]

7.6 MI also claims that it is entitled to interest on the MI Claimed Amount at rates specified in the GC Agreement. The Receiver does not agree, for the reasons explained below.

(ii) The MI Payment Practices

7.7 Upon its appointment, the Receiver conducted a comprehensive review and examination of the payments made to MI in its role as general contractor of the Project during the period from October 1, 2022 to September 30, 2023 (the "**Pre-Appointment Period**"). Based on this analysis, the Receiver concluded that during the Pre-Appointment Period, on a monthly basis, MI issued an invoice to the Project for, among other things, the following:

[6] As described below, the Receiver reimbursed MI for the labour costs that it actually incurred after the Appointment Date. The Receiver subsequently concluded that MI had no contractual right to this reimbursement.

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

(ii) out-of-pocket recoverable costs, including various equipment rentals, storage, materials, and other third-party costs (the "**Recoverable Costs**");

(iii) the Labour Rates, which included two components: (a) the Labour Costs; and (b) a substantial mark-up on the Labour Costs (the "**Labour Profits**"). MI's labour included its senior staff (including, for example, its project director, VP Construction, and Director of Construction) and its project managers, supervisors and site labour (including, for example, its general labourers, security staff and traffic control personnel);

(iv) a marketing fee of $100,000 per month for "creative design management coordination - new marketing development program" (the "**Monthly Marketing Fee**"); and

(v) a 5% CM Fee on the sum of (i) Hard Costs, (ii) Recoverable Costs, and (iii) Labour Rates.

7.8 Based on the Receiver's review of the Debtors' books and records, during the Pre-Appointment Period, the Debtors paid $25.2 million (excluding amounts paid to third-party subcontractors) to MI in its capacity as general contractor of the Project, which is comprised of the following amounts:

(i) CM Fees totaling approximately $6.3 million (exclusive of HST); and

(ii) Labour Rates totaling $18.9 million (exclusive of HST).

(iii) The Project has been highly lucrative for MI

7.9 As part of its assessment of MI's fees, the Receiver tried to ascertain how much profit MI had made from the Project in the Pre-Appointment Period. MI provided a calculation on or about November 20, 2023 (the "**MI Calculation**") that showed that it had made a profit of $2.6 million during the 12-month period from November 1, 2022 to October 31, 2023. The Receiver reviewed the MI Calculation and concluded that: (i) MI had improperly included certain costs allegedly incurred to perform work on the Project; and (ii) MI had improperly excluded substantial revenue and other receipts it was paid in respect of the Project. Both errors had the effect of reducing the profit MI claimed to have made from the Project.

7.10 In particular, MI improperly included as costs:

(i) a placeholder for a $1 million payment to Sam personally;

(ii) $3.2 million in legal fees primarily related to Mizrahi's dispute with Coco and the receivership of another Mizrahi project;

(iii) donations made to a variety of causes with no apparent connection to the Project;

(iv) entertainment and travel costs with no apparent relation to the Project, including the cost of renting a private jet for unspecified travel; and

(v) costs for staff with no known connection to the Project

(collectively, the "**MI Cost Errors**").

7.11 In addition, MI neglected to include as revenues:

(i) the income generated from CM Fees in respect of the Project;

(ii) cash inflows from HST refunds (i.e., MI showed HST payments as costs but did not include the HST refunds received in respect of the same payments); and

(iii) the income generated from the Monthly Marketing Fee

(together with the MI Cost Errors, the "**MI Calculation Errors**").

7.12 The Receiver revised the MI Calculation to adjust for the MI Calculation Errors. Based on the Receiver's adjusted calculation, the Receiver reached an initial conclusion that MI had made an estimated profit of approximately $9.5 million. The Receiver's e-mail communicating this conclusion to MI is attached at **Appendix "3"**.

7.13 The Receiver subsequently conducted a further revised analysis and determined that MI earned an estimated profit from the Project totaling approximately $13.1 million during the Pre-Appointment Period. The Receiver's revised analysis is set out in **Appendix "4"**.

(iv) Payments to MI during the Receivership

7.14 The Receiver, with counsel's assistance, reviewed the contracts between MI and the Debtors and determined that those contracts did not authorize the MI Payment Practices. In addition, the Receiver consulted with KDC and was advised that MI had been paid above-market fees for its work on the Project in the period prior to the Receivership.

7.15 In November 2023, the Receiver advised MI that it was not prepared to pay MI based on the MI Payment Practices, which it had determined were not commercially reasonable or

contractually required. At the same time, it was important to ensure that construction continued on the Project. Specifically, the Receiver determined that it was not appropriate to pay MI for the Labour Rates (i.e., inclusive of the embedded Labour Profits) as well as paying a 5% CM Fee on the Hard Costs, Recoverable Costs, and Labour Rates.

7.16 Accordingly, during the period between the Appointment Date and the Effective Date, the Receiver paid the following amounts to MI (or to subcontractors on behalf of MI):

(i) Hard Costs;

(ii) Recoverable Costs;

(iii) Labour Costs (as opposed to the Labour Rates that MI invoiced for); and

(iv) a 5% CM Fee on the sum of (a) Hard Costs, (b) Recoverable Costs, and (c) Labour Costs.

7.17 The Receiver's refusal to pay the Labour Profits (the profit embedded in the Labour Rates) resulted in a monthly reduction of approximately $1 million relative to the amounts claimed by MI in the general contractor invoices submitted to the Receiver.

7.18 In or around January 2024, the Senior Secured Lenders retained Finnegan Marshall Inc. ("**Finnegan Marshall**"), a leading real estate and development cost consulting firm in Toronto.[7] As such, the Receiver began consulting with Finnegan Marshall, who also concluded that the MI Payment Practices were not consistent with market rates.

[7] Finnegan Marshall subsequently replaced Altus (defined below) as the Project's cost consultant in February 2024.

7.19 At the outset of its mandate, the Receiver was primarily focused on ensuring that construction continued to progress in order to maximize value for all stakeholders. Its decision to pay MI the amounts described above was not based on a conclusion that MI was legally entitled to those amounts. The Receiver made these payments (including the Labour Costs) as an interim measure and without affirming any contract between MI and the Debtors or admitting that any specific amount was owed to MI. As described below, the Receiver has now concluded that MI has been significantly overpaid.

(v) The Payment Dispute

7.20 MI did not agree with the Receiver's position with respect to the MI Payment Practices. MI asserts that the MI Payment Practices were reasonable, properly authorized by the Debtors, and binding on the Receiver. Despite this position and notwithstanding that the Receiver did not make payments in accordance with the MI Payment Practices, MI continued to work on the Project and never withdrew (or tried to withdraw) its services.

7.21 As a result, the Receiver and MI continued to disagree on, among other things, the appropriate amount required to be paid to MI in respect of its role as general contractor of the Project in the post-receivership period (the "**Payment Dispute**").

(vi) The Payment Letters

7.22 When it made payments to MI, the Receiver required that MI execute a form of payment letter (the "**Payment Letter**") pursuant to which MI acknowledged and agreed that the Receiver was making the monthly payment, and that MI would undertake to use the funding provided pursuant to the Payment Letter to make payment to the specified trades,

MI staff, and other service providers who had completed work on the Project in the relevant period. Copies of the October 2023 and November 2023 Payment Letters (for September 2023 and October 2023 costs, respectively) and related covering emails are attached hereto as **Appendix "5"** by way of example.

7.23 In late December 2023, the Receiver determined that it was appropriate to modify the form of Payment Letter to include certain additional terms. Although MI signed the revised Payment Letter, shortly following its execution, Sam advised the Receiver that he was not aware of the changes to the form of Payment Letter when he signed it. MI indicated it opposed the new form of Payment Letter and took the position that the December 2023 Payment Letters should be rescinded and deemed null and void. Copies of the December 2023 Payment Letters (for November 2023 costs) and related covering emails are attached hereto as **Appendix "6"**.

7.24 The Receiver does not believe that MI's objection to the December 2023 Payment Letters is relevant to the outcome of the MI Payment Motion, because the Receiver does not take the position that MI is precluded from claiming the amounts it claims in the MI Payment Motion by virtue of the December 2023 Payment Letters.

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

(vii) MI's position that the Receivership Order required the Receiver to follow the MI Payment Practices

7.26 On the same day the Receiver issued the disclaimer notice to MI, MI served the MI Payment Motion. In the MI Payment Motion, MI alleges that Paragraph 17 requires that the Receiver continue the MI Payment Practices. Paragraph 17 is reproduced below for reference:

> 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. [emphasis added]**

7.27 The Receiver does not agree with MI's interpretation of Paragraph 17. In the Receiver's view, Paragraph 17:

(i) identifies a group of persons, specifically all Persons having oral or written agreements with the Debtors for the supply of goods and/or services to the Debtors and/or the Project;

(ii) imposes a prohibition on those persons, specifically a prohibition on discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver;

(iii) requires that "normal prices or charges" for the goods or services provided be paid to such persons as a condition to the Receiver enforcing this prohibition; and

(iv) allows the Receiver to "determine" such normal prices or charges and to pay them in accordance with "normal payment practices of the Debtors", a new agreement or a Court order.

7.28 Importantly, as previously described, Paragraph 17 does not impose any payment obligation on the Receiver. Rather, Paragraph 17 prevents parties from discontinuing the supply of goods and services to the Project so as long as they are paid the normal prices or charges for such goods or services in accordance with normal payment practices, a new agreement, or a Court order (the "**Payment Options**"). A party that is not paid based on one of the Payment Options is not restrained from discontinuing, altering, interfering with or terminating the supply of such goods and services as may be required by the Receiver. MI never sought to discontinue its services to the Project, and the Receiver, after unsuccessfully attempting to negotiate a mutually agreeable compensation arrangement with MI, ultimately issued a disclaimer notice to MI such that its services as general

contractor came to an end. Accordingly, the Receiver never needed to rely on the prohibition in Paragraph 17 in its dealings with MI.

7.29 In light of the foregoing, Paragraph 17 does not govern the quantum of fees to be paid to MI. MI's compensation is based on the contracts it entered into with the Debtors. The Receiver has reviewed those contracts and determined that MI was significantly overpaid, and that nothing further is owed to MI.

8.0 THE RELATIONSHIP BETWEEN COCO, MIZRAHI, THE DEBTORS AND MI

(i) MI's contractual entitlement is complex

8.1 MI's role as general contractor of the Project, and the compensation for its work, were governed by a series of agreements. The Receiver has reviewed these agreements to determine which of them governed MI's compensation at various periods during the life of the Project. The Receiver's conclusions are summarized in section 10 below.

8.2 Determining what payment MI was entitled to receive at any given time is relatively complicated, because the parties did not clearly specify what contract governed MI's compensation, multiple inconsistent contracts existed at the same time, and MI was not always paid based on the terms of its contracts with the Debtors.

8.3 The Receiver has summarized the key contracts relevant to MI's compensation at **Schedule "A"** and summarized the timeline with respect to relevant contractual events in the paragraphs below.

(ii) The contentious relationship between Coco and Mizrahi

8.4 The relationship between Coco and Mizrahi was contentious and litigious. In simple terms, Coco accused Mizrahi of acting unilaterally and in breach of the applicable contracts. Coco also lost confidence in Mizrahi's judgment and ability to complete the Project on schedule and within budget. Mizrahi accused Coco of interfering with the successful completion of the Project by withholding approvals and challenging Sam's judgment.

8.5 The Receiver has not conducted a detailed review of each of the disputes between Coco and Mizrahi, and (except to the extent explicitly stated below) it does not offer any opinion with respect to whether Coco's or Mizrahi's position was (or is) correct.

8.6 That said, the dispute between Coco and Mizrahi provides an important backdrop to the events that are relevant to the MI Payment Motion. One important issue on the MI Payment Motion is whether the Debtors agreed to any contract that required them to follow the MI Payment Practices. This, in turn, requires an evaluation of the history of the Debtors and the dispute between Mizrahi and Coco.

(iii) Coco's right to approve contracts between the Debtors and MI

8.7 In order to determine whether the Debtors agreed to pay MI based on the MI Payment Practices, in addition to reviewing the agreements with MI, the Receiver reviewed the agreements between Coco and Mizrahi. As described below, the Receiver concluded that, except for the period from May 2021 to August 2022 (the "**Control Period**"), Mizrahi did not have the legal authority to unilaterally bind the Debtors; rather, Coco's approval was required for any agreement between MI and the Debtors to be valid.

9.0 TIMELINE OF RELEVANT CONTRACTS AND EVENTS

(i) July 7, 2014 – The First GC Agreement – MI agreed to complete the Project by September 30, 2021 for $422.7 million

9.1 MI and the Nominee entered into a CCDC2 Stipulated Price Contract dated July 7, 2014 (the "**First GC Agreement**"). The First GC Agreement was signed by Sam, on behalf of both MI and the Nominee. The terms of the First GC Agreement are substantially similar to the terms of the GC Agreement (which is described below). MI agreed to complete substantially all of the construction work on the Project in exchange for a stipulated price of approximately $422.7 million, plus HST. MI agreed to commence work by February 8, 2015, and complete the work by September 30, 2021.

9.2 The First GC Agreement was a fixed price contract. It did not contemplate a CM Fee based on Hard Costs and it did not authorize MI to charge the Debtors for staff working on the Project based on the Labour Rates.

(ii) December 17, 2014 – Coco and Mizrahi execute agreements governing Coco's investment in the Debtors

9.3 Coco invested in the Project in or around 2014, and the parties entered into a series of agreements dated December 17, 2014 to govern that investment. These agreements, together with subsequent agreements between Mizrahi and Coco, effectively divided control of the Debtors between Coco and Mizrahi. This division of control was reflected in, among other things, a resolution of the Board of Directors of the Nominee dated November 2016 requiring that any contract entered into by the Nominee had to be executed by: (i) one of either Jenny or Rocky; and (ii) Sam. That resolution, reproduced from an Arbitral Award dated October 21, 2020, is set out below:

> 1. Any and all deeds, transfers, assignments, **contracts** and other documents….to be entered into from time to time by [the Nominee] shall be signed on behalf of [the Nominee] **by any one of Jenny Virginia Coco, Vice-President or Rock Anthony Coco, Vice President, together with Sam Mizrahi, President, unless the board of directors of the Corporation by unanimous decision** authorizes otherwise. …

(iii) July 2017 CCM Contract – MI entered into a construction management contract with CCM

9.4 The Receiver understands that construction of the Project commenced in mid-2017. At the same time, MI retained CCM as construction manager pursuant to the CCM Contract.

9.5 CCM was founded by Mike Clark, an experienced construction manager formerly employed by a major Toronto construction company. The Receiver understands that up until CCM's termination in October 2020 (which is described below), CCM was primarily responsible for managing construction work on the Project including, among other things, managing the subcontractors working on the Project.

9.6 Pursuant to the CCM Contract, MI paid CCM a CM Fee equal to 1.5% of Hard Costs on the Project. MI also paid for CCM staff to work on the Project based on negotiated rates (i.e., the Labour Rates) that were incorporated into the CCM Contract. The Receiver understands that the Labour Rates are substantially higher than the actual cost that CCM paid the relevant staff and, as a result, CCM recovered some of its overhead and earned a profit by charging the Labour Rates. The CCM Contract is attached hereto as **Appendix "7"** hereto.

9.7 MI recovered the amounts that it paid to CCM with respect to the Labour Rates from the Debtors.

9.8 Importantly, for reasons described below, section 1.4 of the CCM Contract prohibited assignment of the CCM Contract by either party without the consent of the other.

9.9 During the period from July 2017 to October 2020, CCM had direct responsibility for managing certain aspects of the construction of the Project. CCM employed the staff responsible for, among other things, supervising subcontractors working on the Project, approving subcontractor invoices, and establishing and monitoring the construction schedule for the Project. CCM provided detailed reporting to the Project's stakeholders, including Coco and the Senior Secured Lenders.

(iv) November 2017 – Coco and Mizrahi disagreed about fees charged by MI

9.10 As previously noted, the First GC Agreement did not authorize any CM Fee to be paid to MI. According to MI's evidence on the MI Payment Motion, MI charged a 5% CM Fee from the outset of the Project. It appears that Jenny questioned MI's fees beginning in November 2017. According to an e-mail sent by Mark Kilfoyle ("**Mr. Kilfoyle**", MI's CFO and COO) to Jenny on November 9, 2017, and attached hereto as **Appendix "8"**:

> **(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 Construction 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. (emphasis added)

9.11 In his e-mail, Mr. Kilfoyle advised that the 5% CM Fee was authorized by the "Subcontract Agreement". Based on the Receiver's review, there is no "Subcontract Agreement"

between MI and the Debtors that authorized the 5% CM Fee when Mr. Kilfoyle sent his e-mail.

9.12 In the same e-mail, Mr. Kilfoyle told Jenny that MI was charging "GC Fees" to "keep the construction office running for Mike Clark and his team plus any costs by the Mizrahi Construction team."

9.13 Mr. Kilfolye told Jenny that the GC Fees were charged at cost and were "not a profit centre for Mizrahi Inc. and are in accordance with the Subcontract." Jenny appears to have disagreed, and stated that Coco was "ONLY COMMITTING TO THE AGREEMENTS WE EXECUTED!" Jenny's response is included in **Appendix "8"**.

(v) May 14, 2019 – The GC Agreement – MI agreed to complete the Project for approximately $583.2 million.

9.14 MI has advised the Receiver that the primary agreement governing its role as general contractor in respect of the Project is the GC Agreement. The GC Agreement, without all schedules, is attached hereto as **Appendix "9"**.[8]

9.15 The GC Agreement, on its face, supersedes all "representations or agreements, either written or oral" and therefore replaces the First GC Agreement. In very simple terms, the GC Agreement requires that MI complete all of the construction work on the Project for a fixed price of approximately $583.2 million plus HST (the "**Contract Price**").

[8] The schedules omitted from **Appendix "9"** are voluminous and irrelevant to the MI Payment Motion.

9.16 According to a breakdown provided by MI to the cost consultant on the Project at the time, Altus Group Limited ("**Altus**"),[9] As set out below, the Contract Price had an embedded CM Fee included:[10]

Cost Category	Budget[11]
Construction Hard Costs	$510,656,521
Design and Post Contract Contingency	$20,006,850
Hotel and Retail Finishes	$24,731,000
Construction Management Fees (5%)	$27,769,719
Total	**$ 583,164,090**

9.17 The GC Agreement provided that MI was to be paid, subject to a 10% holdback, based on progress certified by the independent cost consultant, Altus. The relevant portion of the GC Agreement is excerpted below:

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 TEN percent (10 %), 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.

[9] Altus was replaced as cost consultant by Finnegan Marshall in February 2024.

[10] MI was also entitled to certain development fees totaling $30,000,000, but has confirmed these fees were paid. Therefore, these amounts are not relevant to the current issues.

[11] Based on the Altus Preliminary Report No. 1 as at July 31, 2019, and attached hereto as **Confidential Appendix "10"**. The Receiver notes that Altus was retained before the Debtors and MI executed the Credit Agreement (defined below) and produced a series of reports for the Project's prior lenders. When Altus was retained by the Senior Secured Lenders, it restarted the numbering scheme for its reports. As a result, there are two reports titled Altus Report No. 1 with different dates. The first report was prepared for the Project's prior lenders and the second report was prepared for the Senior Secured Lenders.

9.18 To be clear, the GC Agreement does not allow MI to charge a CM Fee of 5% (or any other amount) on all Hard Costs or its staff costs. According to the GC Agreement, MI was responsible for completing the work in exchange for the Contract Price. If the work to complete the Project cost more than the Contract Price, then (unless the Contract Price was adjusted in accordance with the terms of the GC Agreement) MI had to bear that loss. Conversely, if the work cost less than the Contract Price, then MI could earn a greater profit.

9.19 MI was entitled to be paid based on how much progress it made, not on how much time it spent or the cost of the work. By way of example, if Altus certified that the Project was 20% complete, then MI would be entitled to 20% of the fixed Contract Price (which includes the CM Fee), plus HST and less a 10% holdback, as required by the GC Agreement and the *Construction Act* (Ontario) as it existed immediately prior to July 1, 2018.

9.20 Payments to MI under the GC Agreement explicitly included the labour, products and services necessary for the performance of the Work. MI was not entitled to charge separately for labour that it provided for the Project (including both the Labour Rates and the Labour Costs).

9.21 The parties also agreed, in the GC Agreement, that they could only alter their obligations by specific written agreement.

9.22 The GC Agreement provided that MI is entitled to interest on unpaid amounts at a rate of prime plus 2% per annum for the first 60 days and 4% per annum thereafter. Interest is calculated based on the prime rate quoted by HSBC Bank of Canada.

9.23 MI also agreed, in the GC Agreement, to commence work on August 1, 2017 (although the GC Agreement was executed in May 2019) and achieve substantial performance of its work by December 31, 2022 (the "**Contract Schedule**").

9.24 The GC Agreement provided that the Contract Price and the Contract Schedule could be adjusted in accordance with certain terms. Other than as described below, the Receiver is not aware of any formal adjustments to the GC Contract Price and Contract Schedule pursuant to these terms.

9.25 The GC Agreement remained in force until at least August 2022 (when Sam purported to amend it without Jenny's consent), but the Debtors and MI do not appear to have followed its payment terms. MI also did not fulfill its obligation to complete the Project in accordance with the Contract Schedule.

9.26 Despite this, MI claims that it is entitled to interest on the claimed amounts pursuant to the terms of the GC Agreement. The Receiver is of the view that even if any amounts are due to MI (which the Receiver denies, for the reasons set out in this Fifth Report), no amounts are due to MI under the GC Agreement, and therefore, the interest provisions of the GC Agreement are irrelevant.

(vi) August 30, 2019 – the Debtors entered into the Credit Agreement with the Senior Secured Lenders

9.27 The Beneficial Owner and the Nominee, as borrower, the Senior Secured Lenders, IGIS Asset Management Co., Ltd., as asset manager, GP Inc., Sam, Jenny, MI and KEB Hana Bank Canada entered into a credit agreement dated August 30, 2019 (as amended, the "**Credit Agreement**").

9.28 Pursuant to the Credit Agreement, the Senior Secured Lenders primarily advanced funds to the Project in order to fund specific construction costs. In order to secure funding under the Credit Agreement, the Debtors submitted (among other documents) a Construction Financing Release Request (also referred to as a "**Payment Listing**") on a monthly basis.

9.29 Each Payment Listing set out the monthly expenses incurred on the Project. Those expenses were reviewed by the Senior Secured Lenders and then funded by monies loaned to the Debtors under the Credit Agreement. The Debtors then paid these funds to MI, and MI used (or should have used) these funds to pay the various Project expenses for the relevant month, less the amounts to be retained by MI on account of its fees and expenses.[12]

9.30 Altus was appointed as "Independent Cost Consultant" under the Credit Agreement to, among other things, review the ongoing cost of, and schedule for, the Project against the approved Project budget and schedule. The Senior Secured Lenders were entitled to receive confirmation from Altus with respect to the following, among other things,:

(i) Altus had reviewed the Project budget and that the Project could be completed in accordance with that budget;

(ii) Altus had certified the construction costs incurred and identified cost overruns; and

[12] The Debtors also borrowed funds from other sources that were funded directly to MI and, according to MI, used to pay Project expenses.

(iii) Altus had estimated the cost to complete the Project and confirmed that the cost of the entire Project (including both construction costs and all other costs including financing and land acquisition costs) would not exceed $1.39 billion.[13]

9.31 MI has asserted that it was entitled to *all* amounts paid to it, including amounts paid based on the MI Payment Practices, because those amounts were "approved" by Altus and funded by the Senior Secured Lenders. The Receiver does not agree. MI's entitlement was based on its contracts with the Debtors.

(vii) November 2019 – Coco and Mizrahi accept the Mediator's Proposal – MI became entitled to a 3.5% CM Fee

9.32 In September 2019, Coco commenced an arbitration against Mizrahi, which gave rise to an extended mediation process before Stephen Morrison (the "**Mediator**"). On November 26, 2019, the Mediator made the Mediator's Proposal jointly to the parties. Both Mizrahi and Coco ultimately accepted the Mediator's Proposal. The Mediator's Proposal is attached hereto as **Appendix "11"**.

9.33 The Mediator's Proposal intended to "reset the relationship" between Coco and Mizrahi with respect to the Project. As part of this effort, the Mediator's Proposal made significant changes to certain fundamental aspects of the relationship among MI, Mizrahi, Coco, and the Debtors.

9.34 The Mediator's Proposal revised the CM Fee structure charged by MI. The Mediator's Proposal provided that MI was effectively entitled to a CM Fee of 2%. MI was also allowed

[13] The $1.39 billion budget in the Credit Agreement included the Contract Price for MI's scope as general contractor of the Project as set out in the GC Agreement.

to charge the Debtors for CCM's CM Fee of 1.5% resulting in a total CM Fee of 3.5% to be paid to MI.

9.35 These payment terms effectively superseded the payment terms of the GC Agreement, although the GC Agreement was never terminated or amended to reflect the terms of the Mediator's Proposal.

9.36 The Mediator's Proposal required that the parties implement "the disciplined use of basic financial control measures" including "budgets that are realistically established and regularly updated… segregated bank accounts and…accurate monthly reporting to stakeholders." The Mediator concluded that these changes were required because "I am not satisfied that all of these disciplines are being employed with the kind of diligence necessary to satisfy a substantial investor in the project."

9.37 In order to address these concerns, the Mediator's Proposal required that financial administration and management be transferred to a new employee, Maria Rico ("**Ms. Rico**"). Ms. Rico was to be given this position at MI, but she was to report primarily to Coco.

9.38 The Mediator's Proposal also required that a $1.2 million reserve, being held partially in MI's bank accounts and partially in the Project's bank accounts to satisfy a potential liability (the "**Liability Reserve**"), be transferred to a GIC or joint trust account. This did not occur. The Liability Reserve is further described below.

9.39 The Mediator's Proposal also provided that MI was entitled to a Residential Management Fee (the "**Residential Management Fee**") equal to 2% of the sale price for condominium

units in the Project. MI was entitled to be paid half the Residential Management Fee (equal to 1% of the purchase price) when a purchaser signed an agreement and paid the appropriate deposit. The balance of the Residential Management Fee was due on closing of the sale of the condominium unit.

(viii) December 2019 – Ms. Rico begins her involvement with the Project

9.40 Ms. Rico began the role contemplated by the Mediator's Proposal in or around December 2019.

9.41 Beginning in December 2019, the Receiver understands that Ms. Rico reviewed the Payment Listings submitted by the Debtors. These Payment Listings included the amounts paid by the Debtors to MI. MI was entitled to a 3.5% CM Fee under the Mediator's Proposal, and MI's invoices were consistent with this CM Fee. In addition, the Debtors paid MI certain amounts owed pursuant to CCM's invoices. Those invoices included payments for CCM staff charged at the Labour Rates.

(ix) February 4, 2020 – Coco and Mizrahi disagree about whether MI could charge the Debtors for its own staff

9.42 MI also appears to have charged the Debtors certain "general conditions" costs relating to its own staff during the same period. This resulted in a dispute between Coco and MI on February 4, 2020, about whether MI was entitled to use Project funds to pay its own payroll. E-mails relating to the dispute are attached hereto as **Appendix "12"**. MI ultimately agreed to return the funds that it claimed for its payroll "under protest".

(x) October 26, 2020 – MI terminated CCM and began to charge the Labour Rates to the Project

9.43 On October 26, 2020, MI terminated CCM and began charging the Project for amounts formerly charged by CCM. By termination notice dated October 26, 2020 (the "**CCM Termination Notice**"), MI terminated CCM as construction manager for the Project. The CCM Termination Notice, which is attached hereto as **Appendix "13"**, also purported to provide a notice of "Assignment of the Contract to [MI]".

9.44 After terminating CCM, MI hired staff to complete the construction management tasks that were previously completed by CCM. MI charged the Debtors for its staff using the Labour Rates.

9.45 The Debtors did not enter into any contract with MI, before or after CCM's termination, that authorized MI to charge the Debtors the Labour Rates for work on the Project. MI has asserted that, because it assigned the CCM Contract to itself, it was entitled to charge the Labour Rates for the staff that it hired.

9.46 The Receiver has reviewed the applicable documents and concluded, with assistance from counsel, that MI did not have the authority to assign the CCM Contract to itself. First, the CCM Contract itself requires the consent of both CCM and MI before an assignment could occur. The Receiver is not aware of any evidence that CCM consented to the purported assignment of the CCM Contract to MI.

9.47 Second, and more fundamentally, the CCM Contract was a contract between MI and CCM. The Debtors were not parties to the CCM Contract. Sam specifically confirmed this in an e-mail to Mike Clark dated May 18, 2020, and attached hereto as **Appendix "14"**. It

follows that when MI purported to assign the CCM Contract to itself, it purported to create a contract between MI and MI. The Receiver understands, based on advice from counsel, that this is not legally possible (and, even if it were, it would not bind the Debtors).

(xi) November 6, 2020 – Coco's objection to CCM's termination and MI's increased control over the Project

9.48 Sam and MI did not consult Coco before terminating CCM. Sam advised Jenny that CCM had been terminated by e-mail dated October 26, 2020, and attached hereto as **Appendix "15"**.

9.49 By written submissions dated November 6, 2020, and attached hereto as **Appendix "16"**, Coco sought to commence an arbitration relating to, among other things, the termination of CCM. Specifically, Coco asked for a declaration that:

(i) MI breached the Mediator's Proposal by terminating CCM; and

(ii) the Debtors were not required to pay fees charged by MI for staff working on the Project.

9.50 Mizrahi responded to Coco's written submissions by letter dated November 9, 2020. Mizrahi's submissions are attached hereto as **Appendix "17"**.

9.51 Coco's request for relief relating to CCM's termination did not proceed to a hearing on the merits. Coco advised the Receiver that the arbitral panel with carriage of the matter denied Coco's request for urgent relief, and that Coco and Mizrahi instead entered into negotiations relating to Coco's potential sale of its interest in the Project. Coco advised that

it ultimately decided to pursue the possible sale of its interest and so it did not continue with its arbitration relating to MI's termination of CCM.

9.52 The Receiver understands that MI and the Debtors never entered into any agreement that allowed MI to charge the Debtors based on what CCM had formerly charged MI. After CCM's termination, the relationship between MI and the Debtors was still governed by the GC Agreement and the Mediator's Proposal.

(xii) November 2020 to May 2021 – MI charged the Debtors a 3.5% CM Fee and staff costs based on the Labour Rates

9.53 MI began charging the Labour Rates for staff working on the Project beginning in November 2020. During the period from November 2020 to May 2021 (when the parties executed the Control Agreement) both Mizrahi and Coco executed Payment Listings that requested funding from the Senior Secured Lenders for payments to MI. An example of such a Payment Listing, dated January 2021, and executed by both Sam and Jenny, is attached hereto as **Appendix "18"**.

9.54 MI has asserted that these Payment Listings, and the payments made by the Senior Secured Lenders based on the Payment Listings, are evidence that Coco, the Senior Secured Lenders and Altus all approved the MI Payment Practices.

9.55 In order to assess this claim, the Receiver requested, and received, documents relating to the approval of payments from Altus, the Senior Secured Lenders, and Coco (the "**Payment Documents**"). The Receiver also requested, and reviewed, electronic records (including e-mails) relating to the Project and stored on MI's servers.

9.56 Based on its review of the available information, the Receiver has reached the following conclusions:

(i) The Receiver has been unable to locate specific evidence that the Senior Secured Lenders, Altus, or Coco explicitly approved the MI Payment Practices or payments to MI using the Labour Rates;

(ii) The Senior Secured Lenders appear to have received invoices for some months beginning in July 2021 that showed how much MI had charged for staff working on the Project (the "**MI Staff Invoices**"). These MI Staff Invoices do not specify how the staff costs were calculated or specify the embedded Labour Profits included in the Labour Rates charged by MI. An example of such an invoice is attached hereto as **Confidential Appendix "19"**;

(iii) The MI Staff Invoices were not included in the Payment Documents produced by either Coco or MI, and the Receiver was unable to locate any evidence that the MI Staff Invoices were provided to, or approved by, Coco; and

(iv) Jenny executed Payment Listings in each month from November 2020 to May 2021 that included payments to MI.

9.57 It is unclear, based on the Receiver's review of the Payment Documents, how much information MI provided to Coco, Altus or the Senior Secured Lenders about the Labour Rates.

9.58 In summary, in the period after CCM's termination and before the Control Agreement was executed, MI appears to have been paid a CM Fee equal to 3.5% plus fees for MI's staff

and labour calculated based on the Labour Rates. Coco signed Payment Listings that included amounts paid based on the Labour Rates and the Senior Secured Lenders advanced the funds requested in the Payment Listings. Coco did not, however, explicitly agree (or authorize the Debtors to agree) that MI would be entitled to charge the Labour Rates in addition to the CM Fee going forward.

(xiii) May 2021 – the parties enter into the Control Agreement granting Sam control over the Project and MI a 5% CM Fee pending the sale of Coco's interest in the Project

9.59 In May 2021, Mizrahi and Coco, among others, entered into the Control Agreement to govern the operation of the Project pending completion of a contemplated purchase by Mizrahi of Coco's interest in the Project (the "**Purchase**") by August 30, 2022. The Debtors are not parties to the Control Agreement. The Control Agreement is attached hereto as **Appendix "20"**.

9.60 The Control Agreement effectively provided Mizrahi with sole control and management of the Project, with certain limitations, until the Purchase closed. Importantly, during this interim period, Mizrahi was entitled to execute most documents on behalf of the Debtors without Coco's approval. This meant that, when the Control Agreement was in force (defined above as the "Control Period"), Mizrahi was able to authorize payments by the Debtors to MI without Coco's approval.

9.61 The Control Agreement increased the CM Fee to 5% (as compared to the 3.5% fee allowed by the Mediator's Proposal). This revised CM Fee was to be retroactive, meaning that to the extent any payments were made to MI at a rate of less than 5% of the Hard Costs prior to the date of the Control Agreement, the difference between those payments and the 5%

rate was to be paid to MI immediately upon execution of the Control Agreement. Sam caused the Debtors to make this retroactive payment to MI after executing the Control Agreement.

(xiv) May 4, 2022 – Sam's Unilateral Amendment to the GC Agreement

9.62 As previously noted, the GC Agreement remained in force since May 2019, even though MI did not abide by the payment terms, budget or schedule pursuant to the GC Agreement.

9.63 Sam unilaterally executed an amendment to the GC Agreement dated May 4, 2022 (the "**Unilateral Amendment**") by signing for both MI and the Nominee. The Unilateral Amendment is attached hereto as **Appendix "21"**. Coco did not sign the Unilateral Amendment, and Mizrahi has alleged that her signature was not required because the Control Agreement remained in force.

9.64 The Unilateral Amendment purported to remove any limit on the price that MI could charge to complete the Project, or the schedule to complete the Project. It replaced the Contract Price and Contract Schedule in the GC Agreement with the following term:

> 1.1 **Claims for a Change in the Contract Price**
>
> The Owner and the Contractor agree that pursuant to Article GC 6.6 of the Original Contract, the Contract Price in Article A-4 and timelines set out in the Contract Documents, including the Construction Schedule (Schedule "B" shall be amended to reflect the updated progress reporting by the Consultant as provided from time to time.

9.65 The Unilateral Amendment purported to amend the budget and schedule for the Project based on Altus' updated progress reports. However, Altus advised the Receiver that it did

not receive a copy of the Unilateral Amendment until August 28, 2023. The e-mail from MI to Altus sending the Unilateral Amendment is attached hereto as **Appendix "22"**.

9.66 Coco has advised that it was not provided with a copy of the Unilateral Amendment when it was executed, or at any time prior to the Appointment Date. The Senior Secured Lenders have also advised that they did not receive a copy of the Unilateral Amendment before the Appointment Date.

9.67 The Receiver has determined that the Unilateral Amendment is not an enforceable contract. An arbitral panel determined that the Control Agreement was intended to confer additional control to Mizrahi while the Purchase was pending. It did not authorize Mizrahi to make permanent changes to the relationship between MI and the Debtors. The relevant award (the "**2023 Award**") is attached hereto as **Appendix "23"**.

9.68 Moreover, the Receiver is concerned that Sam unilaterally agreeing (on behalf of both MI and the Debtors) that the Debtors would pay MI an unlimited amount and waiving any deadline for completing the work (subject only to Altus' updated progress reports) raises significant conflict of interest issues and issues with respect to Sam's fiduciary and other duties to the Debtors.

9.69 In any event, the validity of the Unilateral Amendment is not directly relevant to the MI Payment Motion. The Unilateral Amendment does not authorize the MI Payment Practices. Indeed, the Unilateral Agreement does not authorize MI to charge any CM Fee (including a 5% CM Fee as claimed by MI) or any Labour Rates for its work on the Project.

(xv) August 6, 2022 – Sam purported to execute Control Resolution extending his control over the Project indefinitely

9.70 On August 6, 2022 (just prior to the expiration of the Control Agreement), Mizrahi unilaterally executed a resolution purporting to grant himself sole control over the Project (the "**Control Resolution**"), which would have effectively extended the Control Agreement indefinitely. The Control Resolution does not address the CM Fee to be paid to MI. The Control Resolution is attached hereto as **Appendix "24"**.

9.71 The Control Resolution was declared invalid in the 2023 Award.

(xvi) August 30, 2022 to October 18, 2023 – the Control Agreement terminated and Coco objected to the amounts charged by MI

9.72 Ultimately, Mizrahi did not close the Purchase by August 30, 2022. The Control Agreement was therefore terminated on August 30, 2022.

9.73 After the Control Agreement expired, Coco consistently objected to the amounts charged to the Project by MI, including the Labour Rates. Relevant excerpts from the Payment Listings from August 2022 to September 2023 are attached hereto as **Appendix "25"**.

10.0 MI'S CONTRACTUAL ENTITLEMENT

10.1 As set out above, the Receiver has conducted a detailed review of the agreements between MI and the Debtors. It has concluded that the CM Fee that MI was entitled to charge varied over time, depending on the agreement that governed payment to MI at the relevant time. This is summarized in the table below.

Period	Agreement	CM Fee Authorized
July 7, 2014 - May 14, 2019	First GC Agreement	**No CM Fee authorized.** The First GC Agreement was a fixed price contract. MI agreed to complete the Project for $422.7 million, and it was entitled to be paid based on progress achieved.
May 14, 2019 - November 26, 2019	GC Agreement	**No CM Fee authorized.** The First GC Agreement was a fixed price contract. MI agreed to complete the Project for $583.2 million, and it was entitled to be paid based on progress achieved.
November 26, 2019 - May 2021	Mediator's Proposal	**3.5% CM Fee.**
May 2021 – August 30, 2022	Control Agreement	**5% CM Fee, including a retroactive payment.**
August 31, 2022 - March 13, 2024	Mediator's Proposal governed the parties' relationship after the Control Agreement expired	**3.5% CM Fee.**

10.2 At no time did any agreement between MI and the Debtors authorize payment of the Labour Rates.

10.3 In conclusion, the Receiver has been unable to find any evidence that the MI Payment Practices, and specifically the payment of Labour Rates plus the payment of a 5% CM Fee, were required pursuant to any agreement between MI and the Debtors. Accordingly, the Receiver is of the view that no contract between MI and the Debtors authorized the MI Payment Practices.

11.0 MI'S WORK ON THE PROJECT

11.1 With the assistance of KDC, the Receiver has also evaluated MI's performance as general contractor of the Project and determined that the very high fees paid pursuant to the MI Payment Practices are not justified by MI's performance and are not "at market" rates.

(i) MI did not successfully execute the Project

11.2 MI exercised significant (and sometimes total) control over the Project from its inception until the Effective Date. MI was the developer, general contractor and sales agent for the Project. Its efforts had a direct and significant impact on the success, or lack thereof, of the Project.

11.3 The Project did not succeed under MI's management. When it executed the GC Agreement, MI agreed to complete construction of the Project in accordance with the Contract Schedule for the Contract Price. MI failed to do so.

11.4 As of the Appointment Date, the construction of the Project was significantly behind schedule, and costs were significantly over budget.

11.5 The costs incurred up to the Effective Date is attached hereto as **Confidential Appendix "26"**, the estimated cost to complete the Project is attached hereto as **Confidential Appendix "27"**, and the schedule estimate produced on behalf of the Receiver is attached hereto as **Confidential Appendix "28"**.

11.6 In light of the foregoing, if MI is bound by the GC Agreement, then MI breached that agreement and the Debtors suffered significant losses as a result.

11.7 Based on the information available to the Receiver, it is anticipated that some or all of the Project's stakeholders will suffer a significant loss. It also appears, based on the information available to the Receiver, that Mizrahi made little or no equity investment in the Project.

11.8 The Project appears to have been a financial success for MI. MI has been paid significant fees for its work on the Project. Based on the Receiver's review of the books and records of the Debtors, those fees are summarized in the table below:

Fee	Amount
Development Fee	$30.0 million
CM Fees	$23.5 million[14]
Commissions	$19.4 million
Labour Rates	$47.4 million
Monthly Marketing Fees	$2.7 million
Total	**$123.0 million**

11.9 MI had to incur some expenses to earn the fees listed above (including the Labour Costs embedded in the Labour Rates) and the Receiver does not have the information required to calculate MI's actual profit on the Project. The Receiver notes, however, that MI appears to have charged most or all of the expenses that it incurred back to the Project. As a result, MI was likely able to retain a significant portion of the fees that it charged on the Project.

11.10 MI has advised the Receiver that several factors outside of its control, including the COVID-19 pandemic and global supply chain issues, adversely impacted the Project.

[14] This amount is based on the Receiver's review of the invoices provided by MI. The Receiver notes that this amount differs from Finnegan Marshall's cost to date report on the status of the Project as at March 12, 2024 by approximately $1.5 million (with the Finnegan Marshall figure being lower).

While the Receiver acknowledges that these factors had some effect on the Project, the Receiver does not believe that these issues provide a complete explanation for the delays and cost overruns on the Project.

(ii) Issues with MI's Performance

11.11 Shortly after it was appointed, the Receiver determined that it was necessary to engage a third-party project manager to oversee MI's work as general contractor. The Receiver engaged KDC on October 23, 2023, and KDC has maintained a full-time involvement with the Project ever since.

11.12 KDC is an experienced development manager and project manager. It has overseen the successful completion of a number of major projects, including the recent construction of "The Well", a major mixed-use development comprising 2.9 million square feet of new development on a 7.76 acre site in Toronto. A summary of KDC's relevant experience is attached hereto as **Appendix "29"**.

11.13 The Receiver worked with KDC to identify and address numerous deficiencies with MI's construction management processes. KDC prepared an Issues Log highlighting these problems, which is attached hereto as **Appendix "30"**. A summary of the major issues with MI's administration and management of the Project are listed below.

(a) MI's lack of formal processes

11.14 A significant issue that permeated all aspects of the Project's construction before the Receivership was the overlap between Sam's role as president of the Debtors, and president of MI. This led to a blurring of lines between Mizrahi's role as owner and MI's role as

general contractor. Upon its appointment, the Receiver discovered that there was an absence of formal processes to approve MI's actions and inadequate oversight of MI's work.

11.15 Importantly, as of the Appointment Date, MI had not prepared a reliable budget or schedule for completion of the Project. By way of example, the construction schedule provided by MI to the Receiver shortly after the Receiver's appointment projected completion by March 14, 2025 (approximately 17 months from the Appointment Date). This was an entirely unrealistic projection, as less than 50% of the Project's superstructure (i.e., concrete structure) had been formed at that time. MI's schedule also indicated that work had been completed when it had not. For example, images from one of KDC's October 2023 site visits showed certain core slab progress and formwork preparation underway, despite the fact that MI's schedule indicated that these elements had been finished 50 working days earlier. In short, MI's construction schedule did not provide accurate or reliable information about the status of construction or the path forward.

11.16 The construction schedule provided by MI was also not regularly maintained or updated. Instead, MI worked based on three-week "lookahead" schedules, which limited long-term projections and lacked progress tracking, actual dates of work performed, and historical analysis. Further, copies of lookahead schedules obtained by KDC on November 14, 2023, revealed inconsistencies and/or multiple versions of these documents existed.

11.17 This appears to have been a persistent issue on the Project, as status reports from Altus (the "**Altus Reports**") dating back to at least December 2021 noted MI's failure to produce a

realistic budget and schedule for the Project. Excerpts from the Altus Reports articulating these concerns are attached hereto as **Appendix "31"**.

11.18 KDC and the Receiver also noted that MI's management of the Project suffered from a number of issues, demonstrating a lack of governance, controls, and fiscal responsibility, including a lack of formal processes and procedures. KDC and the Receiver noted that:

(i) MI had no formal process for managing changes to the work to be performed by subcontractors, or the resulting costs charged by those subcontractors;

(ii) MI had no formal procurement plan or schedule, resulting in a disjointed procurement process;

(iii) MI did not properly document, execute and electronically store documents relating to the Project on a consistent basis;

(iv) MI did not demonstrate effective coordination on the Project amongst the different project managers;

(v) MI did not have an accurate or current schedule and did not have an appropriate system in place to assess construction progress against the schedule;

(vi) MI's reporting was inadequate for a project of the size and scope of the Project;

(vii) MI put forward incorrect construction progress data that was not in line with actual progress achieved;[15]

[15] For example, MI's monthly construction management report for October 2023, which is attached as **Appendix "32"**, indicated the Project's construction was approximately 83% complete. However, based on Altus' report on the

(viii) a failure to comply with statutory obligations, such as applying the required statutory holdback on key vendor invoices;

(ix) multiple "scope gaps" in certain trade subcontracts and design consultant contracts resulting in the issuance of additional change orders, purchase orders, and other subcontract amendments to address such scope gaps; and,

(x) a lack of internal budget management or cost control.

11.19 KDC concluded, and the Receiver agreed, that MI's management of the Project significantly deviated from standard industry practice and failed to meet the standards expected of a general contractor, let alone the general contractor for a project of this scale and significance.

(b) MI's Failure to Resolve Identified Issues

11.20 To address these issues, KDC and the Receiver attempted to work with MI throughout the fall and early winter to implement new practices and procedures to ensure that MI's work on the Project was in alignment with industry standards. This included the implementation of more formal reporting processes and procedures, such as a formal change management process.

---

construction status of the Project as at October 31, 2023, the superstructure of the Project (i.e., the concrete structure) had only progressed to the 42nd floor (out of a total of 85 floors), curtainwall installation was commencing on the 12th floor, and minimal interior work had been completed (with the exception of the installation of plumbing risers, electrical panels, etc.).

11.21 Despite the efforts of KDC and the Receiver, issues with the quality of MI's management and administration of the Project continued.

11.22 On December 31, 2023, KDC provided the Receiver with its first comprehensive report addressing the current status of the Project and MI's work to date. Among other things, the report outlined the significant steps that would need to be taken to get the Project on track, including supporting the preparation of a revised procurement schedule, construction schedule, budget and projected cost to complete. A copy of that report is attached hereto as **Confidential Appendix "33"**.

11.23 On January 2, 2024, KDC provided the Receiver with a further memo outlining its continuing concerns regarding MI's work and practices in its role as general contractor. A copy of this memo is attached hereto as **Confidential Appendix "34"**.

11.24 KDC's memo and updated Issues Log indicated that MI had made very little progress addressing the issues first identified by KDC in the fall. Again, KDC highlighted that MI's team appeared to be disorganized and administratively weak, with a general lack of understanding of the standard practices expected of a general contractor on a major project, and its associated responsibilities to the Debtors and the Project's stakeholders.

11.25 KDC also reiterated that numerous issues with the Project's management persisted, including:

(i) **General governance, control, and fiscal responsibility failures:** Among other things, MI had failed to meaningfully resolve problems such as the Project's general reporting, document management issues, and scheduling issues. MI also continued

to demonstrate a lack of critical path understanding to ensure that the Project's construction remained on schedule and a lack of effective coordination of trade activities.

(ii) **Refusal to Follow Implemented Procedures and Policies:** Although the Receiver and KDC attempted to implement new procedures and policies in the fall of 2023, such as the change management process, MI consistently failed to comply with these procedures by, among other things:

(a) failing to respond to KDC's requests for further information in respect of MI's change requests;

(b) failing to ensure that change orders reviewed by KDC and approved by the Receiver were finalized and executed by both parties;

(c) failing to ensure that letters of intent entered into with subcontractors reviewed by KDC and approved by the Receiver were converted into contracts or change orders; and

(d) improperly uploading change orders into the Project's construction management software for subcontractors/trades that did not have a properly executed contract.

(iii) **Poor Site-Level Management and Management of the Trades:** KDC concluded that MI mismanaged its relationships with key trades working on the Project and failed to address issues raised by them promptly and efficiently. For example, in response to payment issues caused by MI's failure to make timely payment to the

trades, MI attempted to deflect blame by advising certain of the trades that these payment issues stemmed from the Receiver and KDC.

(iv) **Missed Key Deliverables:** MI also failed to meet deadlines for key Project deliverables. In addition, it refused to acknowledge these missed deadlines or to take corrective actions in respect of them. By way of example, MI failed to resolve a known issue with an elevator prior to calling for inspection, resulting in a failed inspection. This resulted in unnecessary delays in the Project schedule that could and should have been avoided.

11.26 Throughout January 2024, MI also continued to fail to meet deadlines for outstanding deliverables that it had communicated to KDC and the Receiver. KDC prepared a memo to the Receiver cataloguing these outstanding deliverables on January 18, 2024. A copy of this memo is attached hereto as **Appendix "35"**.

(c) The Receiver Engaged Additional Consultants to Assist MI

11.27 Given the significance and scale of the management issues identified by KDC, the Receiver, with the assistance of KDC, determined that it was necessary to engage additional third parties to assist with the assessment and planning of the Project. In furtherance of this goal, the Receiver commissioned the following reports and analyses:

(i) on or about October 23, 2023, the Receiver engaged Altus to review the Project's schedule for accuracy, and to revise the Project's schedule accordingly. As part of this work, Altus discovered several inaccuracies in MI's existing Project schedule, resulting in significant revisions. As noted above, prior Altus Reports had also

noted significant issues with the schedules provided by MI. A copy of Altus' report dated January 23, 2024, is attached hereto as Appendix **"36"**; and

(ii) on or about January 22, 2024, the Receiver engaged the Project's architect, Core Architects Inc., MCW Consultants Ltd. and RJC Engineers Ltd. to review the status of the Project as of January 31, 2024, and prepare a construction progress report (the "**Construction Progress Report**"). The Construction Progress Report outlined significant issues with the Project's management, and particularly its documentation of trade contracts and invoices. The Construction Progress Report also identified that in several instances, the percentage of work completed by a trade was inconsistent with the amounts billed, either because the work performed exceeded the amounts billed to date (as no invoices were available for review or were not current), or because the amounts billed exceeded the percentage of work observed to be complete. A copy of the Construction Progress Report is attached hereto as **Confidential Appendix "37"**.

11.28 Put simply, every experienced professional that the Receiver has consulted with in respect of MI's performance as general contractor of the Project has identified significant issues.

12.0 SKYGRID'S PERFORMANCE

(i) SKYGRiD was able to provide superior service at a lower cost compared to MI

12.1 As noted above, the Receiver replaced MI with SKYGRiD as the Project's construction manager in March 2024. In its factum with respect to a production motion dated August 7, 2024, and attached hereto as **Appendix "38"**, MI asserted that "the value of the work

provided by MI to the Project is, in part, informed by the costs the Project is currently incurring with SKYGRiD and the efficiencies and the progress made by SKYGRiD in constructing the building." MI asserted that if it was paid less than SKYGRiD or made faster progress, then that would "conclusively establish" that MI was paid market rates.

12.2 Based on the Receiver's analysis, SKYGRiD has significantly outperformed MI in terms of both construction progress and efficient project management. It has charged less than MI and has provided significantly better services.

12.3 As a preliminary matter, and as the Receiver expected when it hired SKYGRiD, SKYGRiD has charged substantially less for its work on the Project as compared to MI. The Receiver has summarized these fees in the chart attached hereto as **Appendix "39"**. SKYGRiD has, on average, charged approximately $1 million per month less than MI in comparison to the MI Payment Practices.

12.4 SKYGRiD has also provided demonstrably better services than MI. Following MI's removal as general contractor, the Receiver asked KDC to provide its analysis of SKYGRiD's performance relative to MI's performance. KDC concluded that it observed significant improvements in the Project's construction management with respect to a number of key metrics. A copy of KDC's report dated August 21, 2024 outlining these improvements is attached hereto as **Appendix "40"**. Among other things, KDC's report identified the following:

(i) **Improved Controls:** In previous reports, KDC determined that MI's management was characterized by a lack of budgetary controls, tracking, and forecasting. These deficiencies necessitated the engagement of third-party services to help prepare a

detailed cost-to-complete estimate and baseline construction cost budget for the Project.

By contrast, on May 10, 2024 (less than 60 days after it was hired), SKYGRiD produced a comprehensive budget and schedule, without requiring the Receiver to retain additional third-party services. SKYGRiD's budget and schedule have been adopted by the Receiver, KDC and Finnegan Marshall.

(ii) **Improved Procedure, Schedule, and Change Controls:** In prior reports, KDC determined that MI altogether lacked a formalized procurement schedule and process. As such, subcontracts and purchase orders were generally issued on an as-needed basis and consisted of "drip-fed" scope, resulting in several trades having multiple contracts, and/or contracts in various states of transition and execution. These contracting practices increased the risk of claims and liability.

SKYGRiD issued a formal procurement schedule alongside its budget and schedule on May 10, 2024. SKYGRiD also prepared transition strategy matrixes with respect to several subcontracts and purchase orders, which were provided to stakeholders for review/comment. Adjustments and amendments were likewise made within reasonable timeframes based on associated progress, requests, and requirements.

(iii) **Inadequate use of Construction Management Software and Poor Document Management:** Throughout its tenure as general contractor, MI made ineffective use of its construction management software, known as "Procore". MI implemented no formalized management of Procore and tasked each member of staff with the responsibility of maintaining their respective documentation. This resulted in

discrepancies, lack of continuity and organization, and document gaps system wide. As a result, the Receiver and KDC were required to rely upon Project consultants and trades, as well as records held by other third parties, to compile a significant amount of documentation related to the Project.

Since its appointment, SKYGRiD has commenced the process of transitioning to a new construction management software. It has dedicated staff to the ongoing administration of its construction management software and focused on continued improvement and functionality. Documentation is also now centralized in the new software and accessible as needed.

(iv) **Quality Assurance and Quality Control Process**: Under MI, KDC determined that Project documentation, such as consultant site visit reports, general conformance reports, inspection and close-out reports, and Bulletin-19 related reporting archives, existed in various states of disarray. Archives of these records lacked continuity, organizational consistency, file structure, and overall document management controls. MI's approach to such documentation was siloed: project managers had restricted access to comprehensive Project documentation and were confined to their specific disciplines. Consultant and Project-related reports were frequently sent directly to MI executives, bypassing others. There was no centralized system or protocol for tracking or remedying deficiencies identified by consultants.

SKYGRiD has engaged all project consultants from the start, establishing formal systems for distributing, cataloging, and tracking reports and deficiencies.

Reporting is now centralized, giving all stakeholders and consultants direct access for effective communication and coordination. SKYGRiD also regularly updates, consolidates and distributes relevant documentation to stakeholders, and addresses concerns proactively during consultant coordination meetings.

(v) **Off-Site Storage Agreements:** Under MI, off-site storage agreements were often limited or non-existent, even though subcontractors were paid for materials that were held in off-site storage locations. Agreements, inventory, cost details, insurance, and on-site inspections were incomplete, and addressed only after SKYGRiD took over construction management.

(ii) Improvements to Project Schedule

12.5 On a complicated construction project, the project schedule is a key tool for both planning work (i.e., knowing when certain activities will be complete so the next part of the work can commence) and tracking progress (i.e., monitoring when work has been completed in order to fully understand how construction is progressing and whether the schedule is being met).

12.6 As described above, at the outset of the Receivership Proceedings, MI lacked an accurate and updated baseline schedule or budget. This made it difficult for anyone (including MI) to reliably track progress on the Project.

12.7 The Receiver and KDC tried to work with MI to develop a realistic construction schedule. Following the Receiver's appointment, MI was tasked with providing a revised baseline schedule to address such issues. However, even with the assistance of the Receiver, KDC

and Altus, the underlying schedule continued to contain several logic errors and remained a work in progress throughout MI's tenure.[16]

(b) SKYGRiD significantly improved the Project schedule

12.8 Upon taking over as construction manager of the Project, SKYGRiD prioritized developing a comprehensive schedule and budget, which were issued on May 10, 2024. SKYGRiD continues to refine the schedule, improve duration (i.e., the time that various construction activities would take to complete), and evaluate areas for potential efficiencies, with updates issued monthly. Its updated schedules now include progress tracking and actual dates of completed activities, showing ongoing improvements over both MI's projections and SKYGRiD's own baseline estimates.

12.9 SKYGRiD also continues to improve upon its own schedule projections. By way of example, SKYGRiD projects that it will achieve a 22-day gain on Tier 9 Corner Hanger installation, and a 54-day gain on curtainwall and cladding installation.

12.10 Overall, based on SKYGRiD's schedule, the Project is expected to be completed in the second half of 2027, in comparison to MI's last estimated completion date in the first half of 2028.

[16] MI submitted three iterations of a revised baseline schedule for review, none of which were in a form satisfactory to KDC, Altus and the Receiver. Each iteration of the schedule indicated a continuously deferred Project completion date from December 17, 2027 (per MI's schedule as of December 11, 2023) to May 15, 2028 (per MI's schedule as of February 29, 2024).

(iii) Improvements in value engineering

12.11 As SKYGRiD evaluates the existing and new scopes of work to be tendered on the Project, it has been effectively identifying and achieving value engineering (i.e., cost saving) opportunities. These include notable cost savings, such as:

(i) approximately $239,000 in cost savings with respect to the miscellaneous metals scope of work; and

(ii) approximately $4.8 million in respect of cost savings with respect to the sprinkler scope of work.

12.12 SKYGRiD has also identified considerable material, element, and sequencing substitutions where possible, including the following:

(i) **April 16, 2024 –** SKYGRiD shifted to the unitization of exterior wall and louvre systems, which had previously been installed under a "stick-built" or individual component methodology, resulting in potential cost savings of approximately $5 million.

(ii) **June 30, 2024** – SKYGRiD facilitated the relocation of the Project's site office one block south of the previous location, resulting in monthly cost savings of approximately $20,000 (which translates to an annual cost savings or approximately $240,000).

(iii) **August 13, 2024** – SKYGRiD substituted a galvanized heel-safe grille in lieu of drilled granite pavers at ground floor exterior, resulting in both substantial current cost savings at a material level, and future savings from a post-construction

maintenance perspective, resulting in potential cost savings of approximately $300,000.

12.13 In sum, since SKYGRiD's appointment as the Project's construction manager, KDC has reported substantial improvements in Project management regarding several key performance indicators when compared to MI's tenure.

(iv) Conclusion with respect to MI's claims against the Debtors

12.14 For the reasons described above, the Receiver has concluded that MI is not entitled to any further payment by the Debtors. Contrary to MI's allegations, MI is not entitled to any further payment pursuant to the terms of the Receivership Order. It is not entitled to any further payment pursuant to any contract with the Debtors (and has, in fact, been significantly overpaid under those contracts). Finally, no further payment to MI is owed (or can be justified) based on MI's performance as general contractor.

13.0 THE DEBTORS' CLAIMS AGAINST MI

13.1 MI's claim for post-receivership work is only one part of a broader relationship between MI and the Debtors. As set out in the First Report and the Second Report, the Receiver has investigated, and continues to investigate, various potential claims that the Debtors have against MI.

(1) MI was paid Labour Rates it is not entitled to

13.2 As noted above, no agreement between MI and the Debtors allowed MI to charge the Labour Rates to the Debtors. MI charged the Debtors, and was paid, a total of approximately $49.3 million, comprised of Labour Rates totaling $47.4 million plus

$1.9 million in applicable CM Fees that MI charged on the Labour Rates. The Receiver does not believe that MI was entitled to these amounts.

13.3 The GC Agreement specifically required that MI provide "and pay for" the labour required to complete the Project. The relevant section is reproduced below:

> **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*.

13.4 This term in the GC Agreement was not amended by any subsequent agreement or document. No separate document executed by the parties authorized MI to charge the Labour Rates.

(2) Claims against MI for breach of the ELA and Mediator's proposal

13.5 In addition to this claim, the Receiver has identified the following claims against MI to date:

Claim	Amount
(i) Commissions that MI is obliged to return pursuant to the ELA	$1,816,012.85
(ii) Amounts paid to outside brokers in breach of the ELA	$891,778.60
(iii) Reserve not held by MI in breach of the Mediator's Proposal	$1,200,000.00
(iv) Monthly Marketing Fees improperly charged by MI	$2,700,000.00
(v) CM Fees improperly charged by MI	$2,932,062.26
Total	**$9,539,853.71**

13.6 In summary, even if the Debtors owe any further amount to MI (which the Receiver denies), MI owes significantly more to the Debtors.

(i) Commissions that MI is obliged to return pursuant to the ELA

13.7 The Receiver has concluded that MI is required to repay commissions totaling approximately $1.8 million that it received in respect of Condominium Sales Agreements ("**CSAs**"). Certain of the CSAs were terminated by the Receiver on behalf of the Debtors because the purchasers failed to pay all (and in several cases, any) of the deposits they owed.

(a) The terms of the ELA

13.8 Pursuant to the ELA, MI had the exclusive right to sell condominium units in the Project. It was entitled to be paid commissions on these sales, but MI had an obligation to return any commissions paid to it with respect to a sold condominium unit if the CSA for that unit was subsequently terminated for purchaser default. A number of the CSAs have been terminated for purchaser default, and MI is obliged to return the related commissions.

13.9 The relevant terms of the ELA are summarized below:

(i) **Section 4(a)(i)**: commissions of 4.89% of the net sale price are payable in respect of all sales other than those to "Friends and Family", for which commissions of 2.5% of the net sale price are payable, and those to "equity investors", for which no commission is payable;

(ii) **Section 4(a)(ii)**: commissions are payable: (a) 33% after 10 business days of execution of the CSA; (b) 33% upon construction financing; and (c) 34% upon final closing of each condominium unit;

(iii) **Section 4(a)(iii)**: MI is to receive advances of $100,000 per month against commissions earned to a maximum of $3.6 million from August 1, 2017, until the conclusion of the sales program, at which time advances will be reconciled against the commissions payable and any required adjustments will be made upon such final accounting;

(iv) **Section 4(a)(v)(2)**: upon termination of a CSA due to default by a condominium unit purchaser, any commissions paid to MI are promptly returnable to the Nominee; and

(v) **Section 2(a)**: the term of the ELA was originally three years from the date of execution but was revised thereafter to be five years, plus an additional three years (being until July 12, 2025).

(b) The Importance of Deposits

13.10 Deposits are a key component of condominium sales that occur before, or during, construction of the condominium building. Sales can occur several years before the building is complete and the sale transaction can be closed. Condominium developers and builders typically require a significant deposit (typically in the range of 20% of the unit's purchase price) to ensure that purchasers are committed to completing the transaction, and

to potentially access a meaningful percentage of the capital required to complete the Project.

13.11 Deposits are particularly important for sales to foreign buyers. It can be difficult (and, depending on their location, practically impossible) to enforce contracts with foreign buyers. A foreign purchaser that does not pay a substantial deposit may be able to walk away from the contract without facing any meaningful consequence. Because of this risk, it is common to require that foreign buyers pay higher deposits.

13.12 As noted above, deposits can also be an important source of funding for a condominium project. The Debtors have used deposit funds totaling approximately $102 million to finance construction of the Project. These amounts are described in paragraph 3.9(i) of the First Report.

13.13 The Credit Agreement recognized the importance of deposits and required that the Debtors enter into and maintain CSAs that constitute "Qualifying Sales Agreements" with projected "Gross Sale Proceeds" (as defined in the Credit Agreement) of not less than $522,965,855 as a condition of funding.

13.14 A Qualifying Sales Agreement must meet the following criteria (undefined capitalized terms below have the meaning given to them in the Credit Agreement):

(i) provide for a minimum deposit of 25% of the sale price in respect of which 20% has been received;

(ii) have a purchaser who is not a non-resident of Canada, is not a Related Person of any of the Credit Parties, and is not (together with its Affiliates or Related Persons) acquiring more than two units; and

(iii) not entitle the purchaser to rescind or terminate the CSA.

13.15 Based on the Receiver's analysis, there were approximately $482 million worth of Qualifying Sales Agreements as of the Appointment Date. If a purchaser did not enter into a Qualifying Sales Agreement or failed to pay a required deposit, then that purchaser's sale is considered an "Unqualified Sale" under the Credit Agreement.

13.16 As described in greater detail below, in its review of the CSAs the Receiver identified numerous incidents of unpaid, short paid and below standard deposits. When the Receiver inquired with MI about this, MI provided an e-mail dated May 1, 2023, from an employee of the Senior Secured Lenders stating that "the terms of certain Agreements of Purchase and Sale (APS) from time to time deviated from those of the Standard Form Residential Sales Agreement. The dates and amounts to be received as the deposits on the APS are business decisions. However, please put your best effort to collect the deposits in a timely manner so it does not breach the APS." This e-mail is attached hereto as **Appendix "41"**.

(c) Standard Deposit Requirements

13.17 The standard form of the CSA executed with purchasers on the Project (the "**Standard CSA**") required an initial deposit upon execution of the CSA, plus an additional amount to be paid within 30 days, together totaling 5% of the gross sale price (inclusive of HST), plus additional 5% increments to be paid within 90, 180 and 360 days after execution of the

CSA (the "**Interim Milestones**"), and a final 5% on occupancy of the condominium unit such that the combined total was a 25% deposit by the time of occupancy.

13.18 Upon the Appointment Date: (i) the residential component of the Project was comprised of 416 condominium units; (ii) a total of 346 units were sold and subject to a CSA; and (iii) the Interim Milestones dates for all but 10 of the 346 units with CSAs had passed, such that deposit amounts totaling 20% were due and payable. The remaining 10 CSAs were executed within one year prior to the Appointment Date such that some, but not all, of the Interim Milestones dates had passed for those CSAs.

(d) The Defaulting Purchasers

13.19 Unit purchasers (the "**Defaulting Purchasers**") with CSAs for a total of 28 units owed overdue deposits totaling approximately $23.8 million. The Defaulting Purchasers breached the applicable CSA by failing to pay some or all of the deposit amounts in accordance with the Interim Milestones. Because of these breaches, the Debtors were entitled to terminate the CSAs for breach of this obligation.

13.20 The large number of short-paid deposits were identified before the Receiver was appointed. On October 5, 2023, the Senior Secured Lenders requested repayment of the commissions in respect of CSAs for which deposits had not been received at all. On October 6, 2023, MI suggested to the Senior Secured Lenders that such commissions be repaid either: (i) in equal installments over a 10-month period out of MI's CM Fees, or (ii) from commissions on future sales and then re-adjusted as the respective deposits were paid. A copy of this correspondence is attached hereto as **Appendix "42".** This proposal was not implemented before the Appointment Date.

13.21 The Receiver was particularly concerned about the CSAs for the following units (the "**Default CSAs**"):

(i) two units (combined to form a single unit), representing the most expensive sale in the Project, were sold to a resident of the United States who plead guilty to fraud in the United States. The deposit on this unit was significantly short-paid and represented less than 0.1% of the gross sale price;

(ii) three units were sold to members of a family resident in Iran on the eve of the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (Canada) (the "**Act**") coming into effect on January 1, 2023. The Act does not apply to non-Canadians who entered into a binding CSA before January 1, 2023. However, as no deposits were paid on these sales, their validity was determined to be questionable. Sam advised the Receiver that these parties are all from a single family, the principal of which (and the individual who was funding the purchases) died shortly after executing these agreements, and that the estate is in the equivalent of probate in Iran; and

(iii) one unit was sold to a company located in the United Arab Emirates purported to be owned by a Princess of Liechtenstein. This CSA required only a 10% deposit as of the Appointment Date (significantly below the Standard CSA), of which only $20,000 had been paid.

13.22 The Default CSAs referenced above are summarized in the chart below:

Unit Number	Commission paid to MI	Purchase Price	Deposit Paid
6803	$224,828.22	$7,847,844.00	$0
7003	$231,150.22	$8,069,194.00	$0
7303	$232,561.13	$8,118,594.00	$0
7603	$249,963.21	$8,727,888.00	$19,967.50
7901/7902	$877,510.07	$30,700,000.00	$20,000.00
Total	**$1,816,012.85**	**$63,463,520.00**	**$39,967.50**

13.23 Thus, on the Default CSAs alone, MI sold units worth $63.5 million and received commissions of approximately $1.8 million, but collected deposits totaling less than $40,000. The deposits received on these units represent approximately 0.06% of the aggregate purchase price.

(e) Termination of the Default CSAs

13.24 In light of the significant deposit defaults under the Default CSAs, and doubts about whether the purchasers could or would complete the sale transactions, the Receiver sent notices to those relevant Defaulting Purchasers on May 1, 2024 (each, a "**Default Notice**"). The Default Notices required that each Defaulting Purchaser with a Default CSA cure their default by May 13, 2024, by paying the overdue deposits, failing which the Default CSA would be terminated and any deposit amounts paid forfeited. None of the Defaulting Purchasers to whom Default Notices were sent responded to the Default Notice, nor did they pay any further deposit amounts. Accordingly, on May 13, 2024, the Default CSAs were terminated. Copies of the Receiver's letters sent to the respective Defaulting Purchasers are attached hereto as **Appendix "43"**

13.25 Pursuant to section 4(v)(2) of the ELA, upon termination of a CSA due to purchaser default, MI must promptly repay the Debtors the associated commissions. Accordingly, on May 15, 2024, the Receiver wrote (through counsel) to MI to advise of the termination of the Default CSAs and to request that the associated commissions of $1,816,012.85 be returned by June 1, 2024. A copy of this correspondence is attached hereto as **Appendix "44"**. By a responding letter dated May 29, 2024, MI refused to repay any commissions.

(f) Other units with purchasers in default

13.26 The Receiver has identified a further 22 CSAs for which Defaulting Purchasers owed approximately $12.0 million of deposits as of the Appointment Date. The Receiver may seek to terminate these CSAs in the future. MI has been paid commissions of approximately $2.3 million on these units. If these CSAs are terminated due to purchaser default, MI would be obligated to repay the Debtors the associated commissions pursuant to the ELA.

(ii) Amounts paid to outside brokers in breach of the ELA

13.27 The Receiver has also concluded that the Debtors are entitled to a return of the commissions and related amounts paid to third-party brokers in breach of the ELA.

13.28 In addition to the ELA, the Receiver has identified agreements with third-party brokers to which either MI or the Nominee are the counterparties. These agreements entitle the third-party brokers to commissions on top of those provided for in the ELA. Pursuant to these agreements, the third-party brokers have invoiced $1.6 million for commissions and a retainer, $892,000 of which has been paid.

13.29 The ELA did not authorize MI to hire third-party brokers to do the work that MI agreed to do. To the extent that MI decided to delegate certain responsibilities under the ELA to a third-party broker then MI, not the Debtors, is responsible for the resulting cost. MI was especially not entitled to claim its own commission *and* also cause the Debtors to pay a separate commission to a third-party broker.

(a) Magix Technologies LLC

13.30 MI entered into a Marketing Agency Agreement (the "**MAA**") with Magix Technologies LLC ("**Magix**") effective July 13, 2022. A copy of the MAA is attached hereto as **Appendix "45"**. Pursuant to the MAA, Magix received a non-refundable retainer of $367,500 to act as sales agent for MI in the Middle East and North Africa and a 5% commission on condominium unit sales.

13.31 The Senior Secured Lenders approved the retention of Magix. A copy of this correspondence is attached hereto as **Appendix "46"**. However, the Receiver is not aware of any evidence that Coco (and therefore the Debtors) or the Senior Secured Lenders approved both Magix and MI being paid commissions for the same unit sale. To date, Magix has been paid $190,000 by the Debtors out of $571,000 of commissions invoiced in respect of two units, one of which is among the Default CSAs that have since been terminated. This is in addition to the $368,000 in commissions paid to MI for the same units.

13.32 The MAA provides that commissions are to be paid to Magix by MI on a pro-rata basis as amounts are paid by the purchaser. However, it appears that Magix billed commissions to and was paid by the Debtors in advance of when they were due under the MAA.

(b) Royal LePage

13.33 MI entered into listing agreements with Royal LePage (the "**Listing Agreements**"). A copy of the Listing Agreements are attached hereto as **Appendix "47"**. Pursuant to the Listing Agreements, Royal LePage was to receive a 2.5% to 5% commission on condominium unit sales. To date, Royal Le Page has been paid $334,000 in commissions by the Debtors, with $353,000 remaining owing in respect of three units. This is in addition to the $545,000 of commissions paid to MI for the sale of the same units.

13.34 As noted, the ELA, which grants MI the exclusive rights to sell the units, states that MI "shall be responsible and shall pay for…the advertising and sales promotion in connection with the sales of the Units inclusive of promotional material and displays". Neither the ELA nor any other agreement allows MI to charge third-party commissions and its own commissions on the same units, nor were the Debtors obligated to pay any commissions to Magix or Royal LePage.

(iii) Reserve not held by MI in breach of the Mediator's Proposal

13.35 At the time of the mediation that led to the Mediator's Proposal, MI was holding $1.2 million partially in a non-segregated MI account and partially in a segregated MI account as a reserve against a potential future liability (the "**Reserve**").

13.36 The Mediator's Proposal (which Mizrahi and MI accepted) required that the Reserve be transferred into a joint trust account or used to purchase a GIC, to be held in trust in the event that the potential future liability arose.

13.37 The Receiver understands that the Reserve was not transferred into a trust account, used to purchase a GIC, or used to satisfy any Project-related liability. The Receiver has concluded that MI is liable for the missing reserve.

(iv) Marketing fees improperly charged by MI

13.38 Pursuant to the terms of the ELA, MI was responsible for all marketing costs in connection with the sale of condominium units for the Project. This responsibility was specifically affirmed in the Mediator's Proposal.

13.39 Despite these terms, MI charged a marketing fee of $100,000, plus HST, every month. The Mediator's Proposal provided that MI's sole compensation for marketing and selling the Project (apart from the commissions described above) was to be a Residential Management Fee (which is described below):

> 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.

13.40 Based on the foregoing, the Receiver has concluded that MI is not entitled to the marketing fees it invoiced from June 2021 to August 2023, totaling $2.7 million.

(v) CM Fees improperly charged by MI

13.41 In addition to the foregoing, the Receiver has concluded that MI was paid more on account of the CM Fee than it was entitled to.

13.42 As noted, the Mediator's Proposal permitted a 3.5% CM Fee. Coco and Mizrahi authorized an increase to the CM Fee from 3.5% to 5% during the Control Period pursuant to the Control Agreement. The Control Agreement expired in August 2022, yet MI continued to charge a 5% CM Fee thereafter.

13.43 The Receiver has reviewed the Control Agreement and considered the circumstances surrounding its execution and the period when it was to be in force. The Receiver has also considered the findings set out in the 2023 Award with respect to the scope and purpose of the Control Agreement. Specifically, as the 2023 Panel noted in the 2023 Award, when the parties entered into the Control Agreement, the documents required to complete the Purchase were being held in escrow pending the satisfaction of certain conditions (including payment of the purchase price). The Control Agreement was intended to address control of the Project while the documents were held in escrow:

> J. The parties wish to provide for certain matters with respect to the operation and control of the GP and the Partnership during the period from the date hereof until the mutual release of the escrow (the "**Escrow Period**");

13.44 The Control Agreement provided that Mizrahi could cause the Debtors to pay a CM Fee equal to 5% of Hard Costs "in accordance with the terms of the construction management agreement between [MI] and [the Debtors]". This was an increase from the 3.5% CM Fee allowed by the Mediator's Proposal, which governed MI's compensation before the Control Agreement was executed.

13.45 The Control Agreement does not indicate that MI is entitled to charge a 5% CM Fee after its expiration. Moreover, the 2023 Panel specifically found that the Control Agreement

"was entered into between the parties for a specific and limited purpose which was to provide Sam with exclusive operational control of the Project during the Escrow Period."

13.46 The Receiver accepts the finding in the 2023 Award that the Control Agreement was intended to operate during (and not after) the Control Period. Accordingly, the Receiver believes that the Control Agreement did not authorize MI to charge a 5% CM Fee after the Control Period ended.

13.47 As noted above, after the Control Period ended, Coco consistently objected to the 5% CM Fee charged by Sam. The Receiver has not seen any evidence that Coco (and, by extension, the Debtors) agreed to pay a 5% CM Fee after the Control Period ended.

13.48 In the period from August 30, 2022 (when the Control Period ended) to March 13, 2024 (when MI was replaced as general contractor), MI charged CM Fees of approximately $9.6 million. If MI had charged a 3.5% CM Fee for this period, then MI would have been paid CM Fees of $6.7 million. As noted above, the Receiver paid MI a 5% CM Fee during this period on an interim basis and without affirming any contract between MI and the Debtors.

13.49 In light of the foregoing, the Receiver has concluded that MI overcharged the Project for the CM Fees in the approximate amount of $2.9 million. The Receiver's calculation of the CM Fee overpayment is set out in **Appendix "48"**.

14.0 ISSUES STILL UNDER INVESTIGATION BY THE RECEIVER

(i) Amounts charged for work that may not have been performed

14.1 In addition to the claims identified above, the Receiver has identified a number of subcontractors that appear to have been paid for work (using funds from the Debtors) that that they did not actually perform. The Receiver has not yet asserted a claim against MI in respect of these matters, because it wants to provide MI and the relevant subcontractors with an opportunity to provide evidence that they did the work they were paid to do on the Project. However, based on the evidence currently available to the Receiver, there is reason to doubt whether the subcontractors completed the work they were paid to do. The aggregate amount of the costs outlined below total approximately $3.7 million (net of HST).

14.2 As noted above, MI was responsible for managing the various subcontractors that it hired to perform work on the Project. MI was also responsible for ensuring that these subcontractors performed the work that they were paid to perform and ensuring that it only invoiced the Debtors for work that was actually performed.

(ii) Payments to subcontractors where the Receiver has been unable to confirm the work was performed

14.3 1118741 Ontario Limited o/a Irpinia Kitchens ("**Irpinia**") invoiced and was paid by MI using funds from the Debtors for $565,000 (net of HST and 10% holdback) for "Early Procurement of Material" for the Project's kitchens on February 2, 2023. The Project had not advanced to the point that kitchen material was required (or close to being required) by February 2023. The invoice is attached hereto as **Appendix "49"**.

14.4 SKYGRiD (on behalf of the Receiver) asked Irpinia to deliver the material that it had been paid to procure for the Project. Irpinia advised SKYGRiD that it did not procure any material. Irpinia then claimed that the payment was compensation for meetings with MI.

14.5 The Receiver has reviewed the Electronic Project Records produced by MI. It has not found any evidence of an agreement by MI to pay Irpinia to attend meetings, and it has found relatively few references to meetings between MI and Irpinia.

14.6 More importantly, Irpinia admitted that it did not perform the procurement work that it was paid to perform.

14.7 Pereira Construction and Carpentry ("**Pereira**") invoiced and was paid by MI using funds from the Debtors for $204,417 (net of HST and 10% holdback) as a "deposit for material". Pereira has advised SKYGRiD that it did not purchase any materials for the Project. It claims that the payments to it related to the rental of a shop for millwork.

14.8 Mar-Tec Woodworking Ltd. ("**Mar-Tec**") invoiced and was paid by MI using funds from the Debtors for $111,870 (net of HST and 10% holdback) for "Shop Drawings for Commercial Retail Fitout". SKYGRiD asked Mar-Tec to provide the shop drawings that it prepared, but Mar-Tec advised SKYGRiD that it did not prepare shop drawings.

14.9 Royal Bedrock Inc. ("**Royal Bedrock**") invoiced MI, and was paid using funds from the Debtors, a total of $2,798,261.50 (net of HST) to supply certain stone hardscape material for the Project. Most of these payments were for materials that Royal Bedrock agreed to provide to the Project when they were required. However, SKYGRiD has not been able to

determine that the goods that were paid for were actually received and delivered to the Project, which the Receiver continues to investigate.

14.10 Anthony Guido of Royal Bedrock sent additional invoices to SKYGRiD for the material required by the Project. These invoices are attached hereto as **Appendix "50"**. According to records available to the Receiver, the Debtors have already paid MI for the material listed in Royal Bedrock's invoices. Indeed, internal correspondence between MI employees, attached as **Appendix "51"**, expressed significant surprise about the cost of the stone. Esteban Yanquelevech, MI's Vice President, Construction, wrote that the material to be supplied by Royal Bedrock was to cost "no more than $1 million" and that he would "lose it" if MI had spent $2.8 million on stone.

14.11 In light of the current uncertainty about whether Royal Bedrock has already been paid for the materials for which MI invoiced the Debtors, the Receiver seeks further information with respect to what the payments to Royal Bedrock relate to.

14.12 The Receiver's investigation into the above remains ongoing, including providing MI and the contractors listed above the opportunity to provide evidence that they actually provided the services or materials to the Project that they were paid for. After considering that evidence, the Receiver will determine how to proceed.

(iii) Ongoing forensic review

14.13 The Receiver also continues to analyze various issues relating to MI's work on the Project, including how various funds paid into MI's bank accounts were used. This investigation has been made more difficult by MI's failure to produce certain accounting records held in

its QuickBooks accounting system in their native format. Although MI claims that it is technically unable to export these files, it previously exported other QuickBooks files in their native format from the same system.

14.14 In the absence of native files, the Receiver has been forced to manually navigate excel files in order to reconcile various transactions. This cumbersome process has delayed the completion of the Receiver's investigation. The Receiver reserves the right to assert further claims against MI once its investigation is complete.

15.0 MI'S CLAIM FOR RESIDENTIAL MANAGEMENT FEES

15.1 MI asserted by letter dated May 29, 2024, and attached hereto as **Appendix "52"**, that the Debtors owe MI approximately $20.4 million and so it has no obligation to pay any amount to the Debtors even if it is found liable for any amount claimed by the Receiver. MI's claim is summarized below:

Earned	
Owing	6,213,429.69
Owed at Closing	6,213,429.69
Total Owing	12,426,859.38
Deposits owed on Mizrahi Units	2,704,640.00
Net Owing	9,722,219.38
Amount Owing for Unsold Units	10,738,685.94
Gross Amount Owing	20,460,905.32

15.2 As a preliminary matter, the Receiver notes that any debt owed by the Debtors to MI in respect of the Residential Management Fee would be an unsecured pre-receivership debt and it would rank behind all secured claims.

15.3 The Mediator's Proposal does provide for payment of a Residential Management Fee equal to 2% of the selling price of a condominium unit. Half of this amount is payable upon "entering into a firm agreement of purchase and sale with payment of the appropriate deposit." The other half is payable upon "closing of each unit."

15.4 Based on the Receiver's analysis, as at the Appointment Date, there were Qualifying Sales Agreements totaling $482,466,690. This would translate to a Residential Management Fee owing to date of $4,824,666.90 (not the $6.2 million claimed by MI).

15.5 In addition, based on its review of the Debtors' books and records, the Receiver has determined that MI has already been paid $719,121.49 of that amount, leaving $4,105,545.41 unpaid. Documents relating to this payment are attached hereto as **Appendix "53"**.

15.6 Moreover, parties related to Mizrahi purchased units in the Project with deposit requirements that are approximately $2.7 million below those required by the Standard CSA (allowing for certain provisions of the Mediator's Proposal) and have paid only $40,000 of such deposits. MI is of the view that if the Residential Management Fee is determined to be owed, the difference between the Standard CSA deposit requirements and the deposit amounts actually paid by the Mizrahi related parties should be deducted from the Residential Management Fee. If these deductions are accepted, then the amount owing to MI would be $1,400,905.41.

15.7 The Receiver does not believe that there is any amount owed in respect of MI's other claims with regards to the Residential Management Fee. Specifically:

(i) MI claims $6.2 million in respect of "amounts owed at closing". As noted, half of the Residential Management Fee is owed "on closing of each unit". These closings have not occurred, and there is no certainty with respect to when (or if) the sales will be completed. There is no basis for MI to claim that these fees are owed now as they may never be owed. Further, as noted above, this claim is similarly inflated relative to the actual value of the Qualifying Sales Agreement; and

(ii) MI claims a further $10.7 million in respect of "amount owing on unsold units". This appears to be an estimate of what MI would have been owed on the Residential Management Fee if it had sold the remaining units in the Project. However, MI did not sell these units and accordingly no amount is owed under the terms of the Mediator's Proposal.

15.8 In light of the foregoing, the Receiver has concluded that MI has significantly overstated the amount it is owed in respect of the Residential Management Fee. To the extent that the Residential Management Fee is relevant to the MI Payment Motion at all (which the Receiver does not accept), the value of MI's claim is approximately $1.4 million and not $20.4 million, as claimed by MI.

16.0 CONFIDENTIALITY

16.1 The proposed Confidential Appendices contain confidential and sensitive commercial information regarding the business and operations of the Debtors. Public disclosure of the Confidential Appendices and the information contained therein may negatively impact the ongoing sale and investment solicitation process for the Debtors and other restructuring initiatives to the detriment of the Debtors and their stakeholders.

16.2 In addition, certain Confidential Appendices contain personally identifying information relating to employees and former employees of MI.

16.3 As such, the Receiver recommends that the Confidential Appendices be filed with the Court on a confidential basis and remain sealed pending further order of the Court.

17.0 CONCLUSION AND RECOMMENDATION

17.1 For the reasons set out in this Fifth Report, the Receiver is of the view that MI is not entitled to the relief sought on the Payment Motion, having regard to the circumstances outlined herein. The Receiver has also determined that MI owes significant amounts to the Debtors. Accordingly, the Receiver respectfully requests that the Court deny the relief sought in the Payment Motion and grant the relief sought on the Cross-Motion.

*****

All of which is respectfully submitted,

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

Per: _____

Name: Stephen Ferguson

Title: Senior Vice-President

Per: _____

Name: Josh Nevsky

Title: Senior Vice-President

SCHEDULE "A"
SUMMARY OF CONTRACTS RELEVANT TO MI PAYMENT MOTION

Date	Document	Parties	Description	Amounts Authorized by Agreement	Amounts charged by MI
July 7, 2014	CCDC2 Stipulated Price Contract dated July 7, 2014 (the "**First GC Agreement**")	MI and Mizrahi Development Group (The One) Inc.	Fixed price contract. MI agreed to complete the Project for a fixed price of $422.7 million, plus HST. MI agreed to commence work by February 8, 2015 and complete the work by September 30, 2021.	This was a fixed price contract. No CM Fee or Labour Rates were payable.	The Receiver understands that MI charged CM Fees totaling $490,000 during this period, although there were no hard costs incurred.
July 2017	Construction Management Contract (the "**CCM Contract**")	MI and Clark Construction Management Inc. ("**CCM**")	MI agreed to pay a 1.5% CM Fee and pay CCM staff costs based on the Labour Rates.	The Debtors were not parties to the CCM Contract.	MI charged the Labour Rates to CCM to the Debtors, although the Debtors were not parties to the CCM Contract.

Date	Document	Parties	Description	Amounts Authorized by Agreement	Amounts charged by MI
May 14, 2019	CCDC2 Stipulated Price Contract dated May 14, 2019 (the "**GC Agreement**")	MI and Mizrahi Development Group (The One) Inc.	GC Agreement required that MI complete the Project by December 31, 2022, for a total fixed price of approximately $583.2 million plus HST.	**The GC Agreement does not contemplate payment of a CM Fee or Labour Rates to MI.** MI was to be paid based on progress, and its profit (if any) depended on its ability to complete the Project for the agreed-upon amount.	During this period, **MI charged a 5% CM Fee**, and also charged certain staff costs to the Debtors as "general condition" costs.
November 26, 2019	Mediator's Proposal	Coco and Mizrahi	Both Mizrahi and Coco accepted a Mediator's Proposal made by Stephen Morrison to resolve their dispute with respect to, among other things, the fees charged by MI.	The Mediator's Proposal allowed MI to charge a **3.5% CM Fee**. MI was to pay a 1.5% CM Fee to CCM in accordance with the terms of the CCM Contract.	MI charged the Debtors a 3.5% CM Fee, and paid 1.5% to CCM.
October 26, 2020	Termination Notice to CCM	MI and CCM	MI terminated CCM as construction manager of the Project	MI purported to terminate CCM and assign the CCM Contract to itself.	MI continued to charge the Debtors a 3.5% CM Fee and also began charging staff costs based on the Labour Rates.

Date	Document	Parties	Description	Amounts Authorized by Agreement	Amounts charged by MI
May 2021	Control Agreement	Coco and Mizrahi	Control Agreement to govern the operation of the Project pending completion of a contemplated purchase by Mizrahi of Coco's interest in the Project. The Control Agreement effectively granted Mizrahi sole control and management of the Project, with certain limitations	The Control Agreement authorized a 5% CM Fee retroactively.	MI charged a 5% CM Fee and staffing costs based on the Labour Rates.
August 2022	Expiration of Control Agreement	Coco and Mizrahi	The Control Agreement expired on August 30, 2022, because the purchase of Coco's interest contemplated by the Control Agreement did not close.	After the Control Agreement expired, MI's compensation was again governed by the Mediator's Proposal. MI was entitled to charge a 3.5% CM Fee.	MI continued to charge a 5% CM Fee together with staffing costs based on the Labour Rates.

SCHEDULE "B"
KEY PARTIES REFERENCED IN THE FIFTH REPORT OF THE RECEIVER

12823543 Canada Ltd. ("**128**") (previously 8891303 Ontario Inc.) – one of the limited partners of the Beneficial Owner. Holds 50% of the common shares of GP Inc., and has a 50% equity interest in the Project. Owned, directly or indirectly, by members of the Coco family.

Altus Group Limited ("**Altus**") – the independent cost consultant for the Project until February 2024, appointed to review the cost and schedule of the Project against the approved Project budget and schedule.

Alvarez & Marsal Canada Inc. (the "**Receiver**") – The receiver and manager, without security, of all of the assets, undertakings and properties of the Debtors, acquired for, or used in relation to the development of an 85-storey condominium, hotel and retail tower located on the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario.

Clark Construction Management ("**CCM**") – the construction manager for the Project between July 2017 and October 2020. Retained as a subcontractor to MI.

Jenny Coco ("**Jenny**") – a director and indirect owner of the Debtors. She (together with Rocky Coco) has a 50% indirect interest in the Beneficial Owner through 128.

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 (the "**Senior Secured Lenders**") – the Debtors' senior secured lenders.

Knightsbridge Development Corporation ("**KDC**") – Project Manager retained by the Receiver on October 23, 2023.

Mark Kilfoyle ("**Mr. Kilfoyle**") – the Chief Financial Officer and Chief Operating Officer of MI.

Mizrahi Commercial (The One) GP Inc. ("**GP Inc**.") – The Beneficial Owner's sole general partner, incorporated under the laws of Ontario. One of the Debtors.

Mizrahi Commercial (The One) LP (the "**Beneficial Owner**") – an Ontario-based limited partnership formed to undertake the development of the Project and the beneficial owner of One Bloor. One of the Debtors.

Mizrahi Development Group (The One) Inc. (the "**Nominee**") – a corporation incorporated under the laws of Ontario that is wholly owned by GP Inc. It is the registered owner of One Bloor as bare trustee on behalf of the Beneficial Owner. One of the Debtors.

Mizrahi Inc. ("**MI**") – a corporation incorporated under the laws of Ontario owned and controlled by Sam Mizrahi. The former developer and general contractor of the Project from 2014 until March 13, 2024.

Rocky Coco ("**Rocky**") – Together with Jenny Coco, has an 50% indirect interest in the Beneficial Owner through his indirect ownership of 128.

Sam M Inc. (together with Sam, "**Mizrahi**") – one of the limited partners of the Beneficial Owner. Holds 50% of the common shares of GP Inc., and has a 50% equity interest in the Project. Owned, directly or indirectly, by Sam or members of his family.

Sam Mizrahi ("**Sam**") – the president, a previous director, and an indirect owner of the Debtors, and the president and ultimate owner of MI. He has a 50% indirect interest in the Beneficial Owner through his ownership of Sam M Inc.

SKYGRiD Construction Inc. ("**SKYGRiD**") – replaced MI as the construction manager on the Project in March 2024.