

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

**B E T W E E N:**

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

Applicant

- and -

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

Respondents

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

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

**FEBRUARY 26, 2024**

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## 1.0 INTRODUCTION

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

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

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

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

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

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

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

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

2.4 This First Report has been prepared to provide general information regarding these Receivership Proceedings and to provide the Court with further information regarding the relief sought in the Receiver's motion, returnable March 7, 2024 (the "**Receiver's Motion**"). Accordingly, the reader is cautioned that this First Report is not appropriate for any other purpose, and that the Receiver will not assume any responsibility or liability for any losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report.

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

2.6 Further information regarding the Debtors, the Project and these Receivership Proceedings, as well as copies of public Court materials filed in connection with same, are available on the Receiver's case website at: [www.alvarezandmarsal.com/theone](http://www.alvarezandmarsal.com/theone) (the "**Case Website**").

### **3.0 BACKGROUND**

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

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

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

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

3.5 Based on the Receiver's review of the Debtors' books and records<sup>1</sup>, as of October 31, 2023, the total secured indebtedness in respect of the Project was approximately \$1.9 billion<sup>2</sup>, inclusive of interest, as set out below:

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

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

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

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

Senior Secured Lenders

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

Other Secured Creditors

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

- (i) Aviva Insurance Company of Canada Inc. (“**Aviva**”) in the total approximate amount of \$102 million<sup>4</sup> in respect of potential indemnity obligations of certain of the Debtors pertaining to: (a) Aviva’s bond issued to Tarion Warranty Corporation (“**Tarion**”) on behalf of the Nominee in connection with the Project, in the amount of \$8,320,000; and (b) excess deposit condominium insurance (“**ECDI**”) issued to the Nominee in respect of the Project, which coverage limit is \$201,680,000. The Nominee and Aviva are parties to a deposit trust agreement dated November 24, 2017 (the “**Deposit Trust Agreement**”), requiring the Nominee to deposit funds received from purchasers of condominium units in the Project (“**Unit Purchasers**”) into a designated trust account (the “**Deposit Trust Account**”). The Receiver understands a total of \$105 million in deposits have been funded by Unit Purchasers, approximately \$102 million of which was used to fund construction prior to these Receivership Proceedings. As of the Appointment Date, there was approximately \$4.04 million held in the Deposit Trust Account, including interest. As security, the Nominee granted Aviva: (a) a charge against One Bloor in the

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<sup>4</sup> As indicated in footnote 3, above, this amount is a potential debt.

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

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

(iv) CERIECO Canada Corp. and its agent 10216267 Canada Corp. (collectively, “CERIECO”), in the total approximate amount of \$254 million<sup>5</sup>, in respect of amounts owing pursuant to several agreements whereby CERIECO advanced a contractor’s loan in the amount of \$213 million in connection with the first stage of construction of the Project. Advances under these agreements are secured by, among other things: (a) a charge against One Bloor in the principal sum of \$213 million, registered against title to One Bloor pursuant to the LTA; and (b) a security interest over the Borrower’s interest in all present and after-acquired personal property, in respect of which a financing statement has been registered pursuant to the PPSA.

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

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

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

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

#### **4.0 OVERVIEW OF THE RECEIVER'S KEY ACTIVITIES TO DATE**

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

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

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

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

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

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

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

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

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

#### Construction Status

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

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<sup>6</sup> The principal of MI is Mizrahi.

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

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

#### Project Management

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

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

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

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

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

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

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

- (iii) a revamped Owner-Architect-Contractor meeting process with enhanced information, reporting, and tracking of responsibilities amongst the different parties;
- (iv) a formal process, including timeline and activities, to update the Schedule and the Budget, develop the Cost to Complete, and track progress in respect of same;
- (v) a documented procurement process for tendering and bid leveling;
- (vi) a requirement that MI improve the quality of its monthly construction management reports and revise the format of same such that information can be incorporated into the Cost to Complete and used to update the Schedule and Budget;
- (vii) a requirement that MI prepare a revised baseline Schedule and Budget, and assistance to MI in respect of same<sup>7</sup>;
- (viii) a process to update Procore to ensure that all relevant documentation is uploaded to the database in a timely manner and remains current; and
- (ix) a review and reconciliation of outstanding holdback on MI's General Contractor invoices issued to the Project to date.

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

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

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

## **5.0 REPLACEMENT OF MIZRAHI INC. AS GENERAL CONTRACTOR**

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

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

### MI's Contracts and Compensation

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

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

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

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

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

<b>Cost Category</b>	<b>Budget<sup>9</sup></b>
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
<b>Total</b>	<b>\$ 583,164,090</b>

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

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

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

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

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

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

5.12 The Receiver also understands that, in connection with the execution of the Credit Agreement, the Beneficial Owner, the Nominee, MI and KEB Hana Bank Canada also entered into the Agreement Re: Developer Agreements dated August 30, 2019 (the “**Agreement Re: Developer Agreements**”), which, among other things, clarified the obligations that remained owing to MI under the Construction Management Agreement and the GC Agreement. A copy of the Agreement Re: Developer Agreements is attached hereto as **Appendix “E”**. The Agreement Re: Developer Agreements reflects: (i) that nothing remained owing to MI pursuant to the Construction Management Agreement or in connection with development management services for the Project; and (ii) that \$3,749,402.69 of the \$24,020,316.30 CM Fee payable to MI had been paid as at August 30, 2019. As of October 31, 2023, MI had received CM Fees totalling approximately \$20 million<sup>11</sup>, or approximately 72% of the budgeted total per the Contract Price, even though less than 50% of the Project had been completed at that point.

5.13 By further Amending Agreement dated May 4, 2022 (the “**Second Amendment**”), MI and the Nominee agreed to amend the GC Agreement to replace the Contract Price and Contract Schedule with an agreement to amend both the Contract Price and Contract Schedule “to reflect the updated progress reporting by the Consultant<sup>12</sup> as provided from time to time.”

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

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<sup>11</sup> Based on Altus Report No. 52 as at October 31, 2023.

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

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

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

*Amounts Paid to MI Prior to the Appointment Date*

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

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

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

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

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

Disclaimer of the Construction Management Agreement and the GC Agreement

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

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

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

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

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

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

*The SISP*

- 5.27 While it was negotiating with MI, the Receiver was also working to design a SISP that would maximize the value of the Project and the likelihood of its efficient and orderly completion. These efforts are described further in Section 11.0 below.
- 5.28 In the course of considering the SISP and discussing matters relating to the SISP with its advisors, the RFCA Lender and Senior Secured Lenders, and certain other stakeholders who had signed the Stakeholder NDA<sup>14</sup> and their respective advisors, the Receiver formed a view that MI's continued involvement as General Contractor of the Project would not enhance the prospects of completing a value maximizing SISP.

*Misalignment between MI and the Receiver*

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

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<sup>14</sup> The Receiver notes that MI declined to sign the Stakeholder NDA.

*Decision to Disclaim*

- 5.30 In light of the factors discussed above and following consultations with the RFCA Lender and Senior Secured Lenders and their advisors, the Receiver determined that it was appropriate to explore the possibility of engaging a new construction manager, as authorized by paragraph 4(e) of the Receivership Order. As described in greater detail below, following its review, including discussions with alternative potential construction managers, the Receiver ultimately determined that it was in the best interests of the Project to disclaim the Construction Management Agreement and the GC Agreement, and to retain Skygrid as construction manager for the Project on the terms and conditions described below.
- 5.31 Accordingly, the Receiver, with the consent of the RFCA Lender as required by the RFCA, issued a notice of Disclaimer to counsel to Mizrahi, Mizrahi Inc. and Sam M Inc. on February 26, 2024, with the disclaimer to be effective on March 13, 2024 (being the CM Effective Date), in accordance with the Receivership Order. A copy of the notice of Disclaimer is attached hereto as **Appendix “I”**.

Engagement of Skygrid

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

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

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

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

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

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

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

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

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

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

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

On a monthly basis, these savings can be summarized as follows:<sup>15</sup>

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

## **6.0 PROPOSED CONSTRUCTION CONTINUANCE ORDER**

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

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

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

6.6 Importantly, the obligation to continue services provided for in the Receivership Order applies to Persons that have contracts with MI. The obligation to continue providing goods or services to the Project is not predicated upon a direct contractual relationship with the Debtors and, as a result, the Disclaimer does not give rise to any rights on behalf of subcontractors, trades, suppliers or other service providers having contractual arrangements with MI to stop providing goods or services to the Project.

6.7 The Receiver understands that the transition of the Project to a new construction manager could potentially raise questions for some parties as to, among other things, liability for payments and other contractual obligations. The Construction Continuance Order seeks to address these questions by providing clarity and certainty with respect to these matters in a fair and reasonable manner, as follows:

- (i) Limitation on Liability of MI: As noted above, MI has contracts with many of the subcontractors working on the Project. The Receiver does not believe that MI should have liability under these contracts for events that occur after it ceases to serve as General Contractor. Accordingly, the Construction Continuance Order provides that MI shall have no liability in respect of the supply of services or materials to the Project by any contractor, subcontractor, trade supplier or other Person on or after the CM Effective Date (a “**Post-Disclaimer Supply**”), and MI shall continue to benefit from the stay of proceedings provided for in the Receivership Order, pending further Order of the Court; provided, however, that nothing in the Construction Continuance Order shall release MI from any liability that does not relate to a Post-Disclaimer Supply, including but not limited to liabilities relating to services or materials supplied to or ordered for the Project

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

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

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

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

## **7.0 PROPOSED LIEN REGULARIZATION ORDER**

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

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

### Overview of Proposed Lien Regularization Order

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **8.0 RECEIVERSHIP FUNDING CREDIT AGREEMENT**

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

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

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

Overview of RFCA Milestones

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

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

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

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

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

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

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

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

## **9.0 RECEIPTS AND DISBURSEMENTS**

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

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

9.2 During the Reporting Period:

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

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

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

## 10.0 UPDATED CASH FLOW FORECAST

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

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

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

### Cost to Complete

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

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

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

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

#### **11.0 RECEIVER'S CONTEMPLATED NEXT STEPS**

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

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

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

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

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

## **12.0 OTHER RECEIVERSHIP UPDATES**

### Condominium Matters

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

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

### *Receiver's Review of CSAs and Deposits*

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

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

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

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

*Commissions paid to MI*

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

12.5 Certain key provisions of the ELA are as follows:

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

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

12.6 In addition to the ELA, the Receiver noted four agreements with third-party brokers to which either MI or the Nominee are the counterparties.

12.7 Prior to the receivership, total commissions of approximately \$19.4 million have been paid to MI, and commissions and other amounts totaling approximately \$900,000 have been paid to certain of the third-party brokers.

12.8 The Receiver is conducting a detailed review of commissions paid and will report further in respect of same, as well as any next steps with respect to the ELA, upon completion of its review.

#### *Deposit Insurance*

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

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

Secured Creditor Communications

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

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

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

#### Management of Disputes and Settlements

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

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

*Apple Settlement*

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

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

*CERIECO Litigation*

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

*Khavari Litigation*

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

*Transition of Dentons Mandates*

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

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

*15-19 Bloor Street West*

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

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

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

*Trade Claims*

12.27 Since the Appointment Date, the Receiver has managed a number of trade-related matters, including in respect of construction lien claims (or potential claims) and related issues. As of the date of this First Report, only one construction lien has been registered against the Project in respect of a claim that has not yet been resolved, as briefly outlined below.

12.28 In connection with its work on the Project, Cult Iron Works Limited (“**Cult Iron**”) registered a lien claim against the Project in the amount of \$444,669.05 (the “**Cult Lien**”). The Receiver consented to a temporary lift of the stay of proceedings provided for under the Receivership Order such that Cult Iron could perfect the Cult Lien, following which the Receiver proceeded with a motion to vacate same. In connection with its motion, the Receiver posted security with the Ontario Superior Court of Justice in the total amount of \$494,669.05, inclusive of \$50,000 as security for costs. The Cult Lien has since been vacated from title to One Bloor, and the Receiver and KDC continue to work with MI to address Cult Iron’s claim and resolve the underlying issues.

**13.0 CONCLUSION AND RECOMMENDATION**

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

\*\*\*\*\*

All of which is respectfully submitted,

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

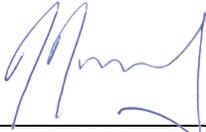
Per:



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Name: Stephen Ferguson  
Title: Senior Vice-President

Per:



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Name: Josh Nevsky  
Title: Senior Vice-President

**APPENDIX "A"**  
**RECEIVERSHIP ORDER**



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

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

THE HONOURABLE MR. )  
JUSTICE OSBORNE )  
WEDNESDAY, THE 18TH  
DAY OF OCTOBER, 2023

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

Applicant

- and -

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

Respondents

**ORDER  
(Appointing Receiver)**

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

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

### **SERVICE AND REFERENCES**

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

### **APPOINTMENT**

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

### **RECEIVER’S POWERS**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

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

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

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

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

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

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

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

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

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

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

## **NO EXERCISE OF RIGHTS OR REMEDIES**

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

## **NO INTERFERENCE WITH THE RECEIVER**

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

## **CONTINUATION OF SERVICES**

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

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

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

#### **RECEIVER TO HOLD FUNDS**

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

## EMPLOYEES

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

## PIPEDA

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

## LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

### **LIMITATION ON THE RECEIVER’S LIABILITY**

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

### **RECEIVER’S ACCOUNTS**

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

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

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

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

#### **FUNDING OF THE RECEIVERSHIP**

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

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

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

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

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

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

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

## SERVICE AND NOTICE

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

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

## GENERAL

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

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

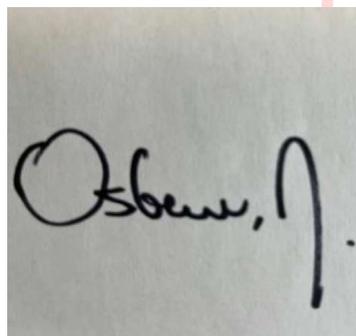
36. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

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

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



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## SCHEDULE "A"

### LEGAL DESCRIPTION OF THE PROJECT

PIN 21109-0244 (LT)

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

## SCHEDULE "B"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

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

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

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

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

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

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_.

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

Per: \_\_\_\_\_

Name:

Title:

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

Applicant

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

Respondents

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

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

PROCEEDING COMMENCED AT: TORONTO

**ORDER**

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Lawyers for the Applicant

**APPENDIX "B"**  
**CONSTRUCTION MANAGEMENT AGREEMENT**

**MIZRAHI COMMERCIAL (THE ONE) LP**

- and -

**MIZRAHI INC.**

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**COMMERCIAL DEVELOPMENT MANAGEMENT  
AGREEMENT**

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THIS COMMERCIAL DEVELOPMENT MANAGEMENT AGREEMENT is made as of the 25th day of July, 2014.

**BETWEEN:**

**MIZRAHI COMMERCIAL (THE ONE) LP**

(hereinafter referred to as the "Owner")

**OF THE FIRST PART;**

- and -

**MIZRAHI INC.**

(hereinafter referred to as the "Manager")

**OF THE SECOND PART.**

**WHEREAS** the Owner and the Manager have agreed to enter into this Agreement for the Manager to act on behalf of the Owner in connection with the development and construction of the Commercial Development and the marketing, sales and leasing of premises and units therein;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and the sum of One Dollar (\$1.00) paid by each Party to the other Party (the receipt and sufficiency of which is hereby acknowledged by each Party), the Parties covenant and agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

**1.1 Definitions**

In this Agreement unless there is something in the subject matter or context inconsistent therewith, the following words shall have the respective meanings set forth in this Section 1.1:

"**Affiliate**" shall have the meaning ascribed thereto in the *Business Corporations Act* (Ontario).

"**Agreement**" means this Commercial Development Management Agreement.

"**Applicable Law**" means, with respect to any Person, property, transaction or event, all laws, by-laws, rules, regulations, orders, judgments, decrees, decisions or other requirements having the force of law relating to or applicable to such Person, property, transaction or event.

"**Approval**" has the meaning ascribed to it in Subsection 6.2(a).

**“Approved by the Owner”** or **“Approval of the Owner”** means the approval of the Owner pursuant to Article 6 of this Agreement, and where the Commercial Limited Partnership Agreements require approval by Bridging with respect to a particular matter, provided such approval of Bridging has been provided in accordance with the Commercial Limited Partnership Agreements.

**“Approved Leasing Plan”** means a leasing plan approved or deemed to be approved by the Owner from time to time pursuant to Subsection 4.2(a) and any revisions thereof.

**“Approved Sale Agreement”** means an agreement of purchase and sale in the standard form used by the Manager, and containing the normal industry protections for the Owner or Nominee as vendor, to sell any Unit(s) in the Development and provided that any such agreement shall be deemed Approved by the Owner so long as it is not amended in any material way that is detrimental to the Owner or Nominee as vendor, outside of normal industry standards.

**“Article”**, **“Section”**, and **“Subsection”** means an article, section and subsection of this Agreement.

**“Bridging”** means 8891303 Canada Inc.

**“Business Day”** means Monday to Friday, both inclusive, except any such day which is a statutory holiday under the laws of either Canada or the Province of Ontario.

**“City”** means the City of Toronto, in the Province of Ontario.

**“Commencement of Construction”** means the commencement of the first to occur of demolition of any Improvements and excavation for building foundations for the Commercial Project.

**“Commercial Approved Budget”** (also called the **“Final Budget”**) has the meaning given to it in Section 3.2(f).

**“Commercial Construction Management Agreement”** (also called the **“Construction Management Agreement”**) means the construction management agreement to be entered into by the Nominee (as contracting party) and the Commercial Construction Manager, as manager/contractor, with respect to the construction of the Commercial Project, in the form as attached hereto as Schedule E, and as same may be amended, modified or supplemented from time to time only by adding the completed Development Plan, any required specifications as schedules and adding any related or missing information necessary to complete the agreement.

**“Commercial Construction Manager”** (also called the **“Contractor”**) means Mizrahi Inc. and includes its successors and permitted assigns under the Commercial Construction Management Agreement.

**“Commercial Development Manager”** (also called the **“Manager”**) means Mizrahi Inc. and includes its successors and permitted assigns under this Agreement.

"**Commercial Initial Budget**" (also called the "**Initial Budget**") has the meaning given to it in Section 3.2(f).

"**Commercial Limited Partnership Agreements**" means collectively the Limited Partnership Agreement and the Unanimous Shareholders Agreement.

"**Commercial Project**" means the commercial project, including retail components and, if applicable, office components, together with any parking components intended for the commercial project and not the Residential Development, to be constructed on the Properties.

"**Construction Financing**" means Financing which is:

- (a) Provided by an institutional lender for the purpose of funding a significant portion of the Development Cost (but excluding the original equity contribution of the Owner and any other equity contribution or loan that is not in the nature of construction financing such as the Development Loan);
- (b) as anticipated by the Owner in the Development Budget, unless otherwise approved by the Owner in writing.

"**Construction Management Fee**" shall have the meaning set out in Section 3.9 herein.

"**Contracts**" means all contracts (excluding Leases) entered into with third parties by the Manager within the scope of its authority pursuant to Article 3 and Article 4 of this Agreement or entered into by the Nominee or the Nominee Parent, as the case may be, upon the direction of the Manager and the Owner shall direct the Nominee or Nominee Parent to enter into all such Contracts at the request of the Manager.

"**Cost Consultant**" means the cost consultant and payment certifier engaged in respect of the Commercial Project, being Altus Group Limited.

"**Development**" means the Properties, the Commercial Project and all Improvements and all other property, whether real or personal, now or hereafter acquired by or on behalf of the Owner in its capacity as such in connection with the Commercial Project, all present and future Leases, all in accordance with a Development Plan and a Development Schedule prepared by the Manager and Approved by the Owner in accordance with the terms and conditions of this Agreement, all service contracts and agreements with respect to the Properties, the Commercial Project and all Improvements, all funds generated from the Properties, the Commercial Project and all Improvements and not distributed to the Owner and all other rights, benefits, obligations and appurtenances pertaining to the ownership and operation of the Properties, the Commercial Project and all Improvements.

"**Development Budget**" means the pro-forma budget for the Development Cost of the Development, prepared by the Manager to be Approved by the Owner and the Cost Consultant which initial draft Development Budget is attached hereto as Schedule "C", as may be amended (provided any material amendments or increases shall require the Approval of the Owner and the Cost Consultant). For clarity, the Development Budget shall be the Commercial Initial Budget

until such time as there is a Commercial Approved Budget (which shall be prepared by the Manager once the Development Plan is completed and which shall require Approval of the Owner and the Cost Consultant), at which time the Development Budget shall become the Commercial Approved Budget (subject to any further amendments agreed to by the Parties).

**“Development Charges”** means all development charges, levies or other similar capital payments required to be made to the City, or any school board in connection with the Properties and the construction of a commercial development thereon.

**“Development Cost”** means the aggregate of all costs and expenses (including reasonable legal fees and disbursements) arising both before and after the date of this Agreement in connection with the (i) the assembly and acquisition of the Properties, including due diligence costs and expense and interest costs and lender fees incurred in connection with the purchase of the Properties, (ii) the Commercial Project soft costs included in the Commercial Initial Budget or the Commercial Approved Budget, as the case may be (iii) the planning, designing, development, constructing, leasing, marketing and sale of Units and completion of the Commercial Project in accordance with the Commercial Initial Budget or the Commercial Approved Budget, as the case may be, and is not otherwise funded by the Construction Loan, whether incurred or paid by the Owner or the Manager, determined as of the Substantial Completion Date, from and on the basis of the final Development Budget, including the Development Management Fee, and including without limitation of the foregoing and without duplication:

- (i) all costs incurred to acquire ownership of the Properties including, without limitation, deposits and purchase prices, all due diligence costs including consultant costs in respect of due diligence, land transfer taxes, title insurance (owners and lenders policies) and all other costs of acquisition and including all costs required to obtain vacant possession of the Properties (if any existing leases are assumed upon acquisition) and to obtain, clarify and/or defend legal title to the Properties, including, without limitation, to acquire any rights or extinguish the rights of any other Person;
- (ii) the cost of site preparation, site improvements, and servicing costs for the Properties;
- (iii) the costs incurred with respect to contractors, subcontractors, workmen and the costs of labour, services, materials and supplies (including duties and taxes on such items) relating to or in respect of the construction of the Development;
- (iv) the costs incurred with respect to machinery, plant equipment and apparatuses required for or used in connection with construction of the Development, including rental charges for machinery and equipment;
- (v) the costs incurred in connection with planning matters and municipal fees relating to the Development;

- (vi) the cost of all improvements for the Development (including permits, finishing and partitioning costs, landscaping and fixtures) and of all personal property necessary for the operation of the Development;
- (vii) the cost of all insurance in connection with the Development;
- (viii) the cost of all fees and disbursements payable to third parties (including without limitation, project management fees, planning, architectural, engineering, consulting, legal and audit fees) in connection with the design, planning, development, construction, leasing, marketing and sale of Units and completion of the Development, including, without limitation, the fees payable under this Agreement and under the Commercial Construction Management Agreement;
- (ix) the cost of all reasonable and approved travel, entertainment, printing and similar out-of-pocket costs and expenses incurred in connection with the Development;
- (x) the cost of property taxes and assessments for the Development and the Properties;
- (xi) the cost of advertising, promotion, marketing and public relations for the Development;
- (xii) the cost of leasing space in the Development (including without duplication lease take-over costs, tenant allowances, leasing commissions payable to the Manager and third parties, marketing and advertising costs, legal fees and tenant inducements) and all costs incurred in connection with Prospective Tenants;
- (xiii) the cost of project signage, financing costs (including legal and broker fees, but not including interest costs), Development Charges, permit fees and similar costs;
- (xiv) the net cost of operating the Development prior to the Substantial Completion Date, including the cost and expense of labour, materials, supplies, utilities and services;
- (xv) any other cost not enumerated above but in the spirit of this Agreement and related to the Development;

provided that upon the Substantial Completion Date for the Development, subject to Section 3.7(c) the actual and final Development Cost shall be determined.

**“Development Management Fee”** means the complete remuneration and benefits payable by the Owner to the Manager in consideration for the Development Management Services and Leasing Management Services in accordance with Articles 4 and 5 respectively.

**“Development Loan”** means the development loan as described in Section 5.7(a) of the Limited Partnership Agreement.

**“Development Management Services”** means development management services to be provided by the Manager in accordance with Article 3.

**“Development Plan”** means the plan prepared in accordance with the Development Budget respecting the layout of the Improvements to be constructed on the Properties, as prepared by the Manager and to be Approved by the Owner, as may be amended from time to time by the Manager with the Approval of the Owner.

**“Development Schedule”** means the pro-forma timeline for the Development as prepared by the Manager and Approved by the Owner, as may be amended from time to time by the Manager with the Approval of the Owner.

**“Dispute”** has the meaning ascribed to it in Section 8.3.

**“Effective Date”** means July 25, 2014.

**“Event of Default”** means, in the case of the Manager or Owner, all defaults under this Agreement by such Party which are not “Material Events of Default” and **“Material Event of Default”** means, in the case of the Manager,

- (a) the gross negligence of the Manager to perform its duties and discharge its obligations under this Agreement (for clarity, cost-overruns in respect of the Development may not be considered as possible negligence or gross negligence by the Manager unless greater than 5% of the whole of the Commercial Approved Budget, save and except for any cost increases due to Force Majeure);
- (b) a breach by the Manager of any trust or fiduciary duty:
  - (i) created by this Agreement for funds received by it or the Manager’s refusal to account for such funds; or
  - (ii) in connection with any other activities of the Manager relating to its duties under this Agreement and which is a material breach; or
  - (iii) an act of fraud by the Manager;
- (c) an Event of Insolvency;
- (d) a material breach of any of the Manager’s duties or responsibilities herein;
- (e) an uncured and material event of default by the Commercial Construction Manager under the Construction Management Agreement; and

- (f) an uncured and material event of default by any Affiliate of the Manager under any of the Commercial Limited Partnership Agreements or the Residential Limited Partnership Agreements,

and means, in the case of the Owner, the failure of the Owner to perform its duties and discharge its obligations under this Agreement or an Event of Insolvency with respect to the Owner, or the failure to pay Development Costs under the Development Budget generally or within reasonable periods of time or provide approvals in a timely matter, provided that in any case of default by either Party, no Event of Default or Material Event of Default shall be stated to have occurred unless the non-defaulting party has given a written notice to the other specifying the default alleged, and if such default is capable of cure, the defaulting party has failed to cure such default within ten (10) days or such longer period as may be reasonably required to cure such default (or in the event of a default of subsection (f) above, such period as is provided for in the Commercial Limited Partnership Agreements or the Residential Limited Partnership Agreements, as the case may be).

**“Event of Insolvency”** means any one or more of the following events:

- (a) if a Party shall:
  - (i) be wound up, dissolved, or liquidated, or become subject to the provisions of the *Winding-up Act*, R.S.C. 1985, c. W-11 or have its existence terminated or have any resolution passed therefor;
  - (ii) make a general assignment for the benefit of its creditors or a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3; or
  - (iii) propose a compromise or arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future law relative to bankruptcy, insolvency, or other relief for debtors or for the benefit of creditors;
- (b) if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, winding up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to companies' bankruptcy, insolvency or other relief for or against debtors and the Party shall acquiesce in the entry of such order, judgment or decree and such order, judgment or decree shall remain invoked or unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the day of entry thereof; or if any trustee in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers shall be appointed for the Part or of all or any substantial part of its property with the consent or acquiescence of the Party or such appointment shall remain

invoked or unstayed for an aggregate of thirty (30) days (whether or not consecutive).

**“Financing”** means financing for the purposes of the Development and Approved by the Owner as a Major Decision.

**“Force Majeure”** means an event by which a Party is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes or labour troubles; inability to procure materials or services; power failure; restrictive governmental laws or regulations; delays in governmental or municipal approvals; riots; insurrection; sabotage; rebellion; war; act of God; or other reason whether of a like nature or not which is not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement (each being considered an event of **“Force Majeure”**), and all other causes beyond the reasonable control of the Party asserting Force Majeure (financial inability excepted) and which prevents or delays a Party from performing one of its obligations under this Agreement.

**“Gross Receipts”** means, for any period, all amounts received by the Owner or the Manager in connection with the operation of the Development during such period in connection with the Development including without limiting the generality of the foregoing:

- (a) rents, interest, operating cost recoveries and other revenue received of any nature or kind whatsoever;
- (b) proceeds from Financing;
- (c) proceeds received from an expropriation of any portion of the Properties and/or Improvements;
- (d) proceeds of insurance received; and
- (e) sale proceeds received in respect of the sale of any Unit or component of the Development.

**“Improvements”** means all buildings and other fixed improvements now or hereafter constructed on the Properties including, without limitation, any additions thereto or replacements thereof, but excluding those constructed as part of the Residential Project.

**“Leases”** means agreements to lease, or leases, or any other contract or binding agreement permitting any Person, now or in the future, to make use of or occupy any part of the Properties or Improvements and **“Lease”** means any one of the Leases.

**“Leasing Management Services”** means leasing management services to be provided by the Manager in accordance with Article 4.

**“Limited Partnership Agreement”** means that limited partnership agreement dated July 25, 2014 in connection with the formation and governance of Mizrahi Commercial (The One) LP.

**“Major Decisions”** means the decisions more particularly described in Schedule “B”, being decisions which are required to be made by the Owner with respect to the Development (and as between the parties comprising the Owner, and which require approval of Bridging to the extent set out in the Commercial Limited Partnership Agreements) except to the extent specifically delegated to the Manager pursuant to this Agreement. For greater certainty all decisions are either: (i) Major Decisions; or (ii) decisions to be made by the Manager as provided in this Agreement.

**“Manager”** means the manager as set out on page 1 of this Agreement and its successors and permitted assigns.

**“Manager Parties”** has the meaning ascribed to it in Section 8.1.

**“Nominee”** means the nominee entity that will acquire title to the Properties for and on behalf of the Owner.

**“Nominee Parent”** means the parent corporation of the Nominee, owning 100% of the shares of the Nominee.

**“Notice of Complaint”** means a written notice issued by one Party notifying the other Party that the other Party has caused an Event of Default and specifies in reasonable detail such Event of Default.

**“Notice of Termination”** means a written notice issued by one Party notifying the other Party of the notifying Party’s decision to terminate this Agreement in accordance with an applicable Section of this Agreement.

**“Offer to Lease”** has the meaning ascribed to it in Subsection 4.3(a).

**“Owner”** means the owner as set out on page 1 of this Agreement and any successor or assign.

**“Owner Contributions”** means, collectively, all funds, monies and other credits extended, from time to time by the Owner as a creditor on account of payment of Development Costs in accordance with this Agreement.

**“Parties”** means the Owner and the Manager, and a **“Party”** means one of them.

**“Partnership”** means the Owner.

**“Permanent Financing”** means Financing which:

- (a) is not equity or equity or mezzanine financing for the Development;
- (b) is not Construction Financing;
- (c) at the time that such Financing is created or assumed is in a principal amount Approved by the Owner;

- (d) has a term that is Approved by the Owner; and
- (e) shall be at a fixed or floating rate of interest.

**“Permitted Financing”** means Financing that is:

- (a) Permanent Financing;
- (b) Construction Financing;
- (c) the Development Loan; or
- (d) other Financing Approved by the Owner.

**“Person”** means an individual, a corporation, a government or any department or agency thereof, a trustee, any unincorporated organization or association and the heirs, executors, administrators or other legal representatives of an individual.

**“Pro-forma Lease”** means the form of Lease to be used for Tenants as Approved by the Owner, as amended from time to time by the Manager with the Approval of the Owner as to any amendments that would increase the Development Budget or the Owner’s liabilities outside of industry standard lease negotiations for similar premises, provided that the material terms of each lease shall be approved by Bridging.

**“Properties”** means the properties municipally known as set forth in, and legally described in, Schedule "A" hereto, which the parties intend to assemble and upon which the parties intend to construct the Commercial Project (which shall be either fully a commercial project or a strata portion thereof in the event that the planned Residential Development is constructed).

**“Property Account”** has the meaning set out in Section 3.2(r).

**“Residential Limited Partnership Agreements”** means collectively the limited partnership agreement dated July 25, 2014 and entered into in connection with the formation and governance of Mizrahi Residential (The One) LP and the unanimous shareholders agreement dated July 25, 2014 and entered into in connection with the governance of Mizrahi Residential (The One) GP Inc.

**“Substantially Completed”** means completion of the Development to the same extent as a contract is required to be substantially performed, as both “contract” and “substantially performed” are defined in accordance with the provisions of the *Construction Lien Act* (Ontario), excluding tenant improvement work. **“Substantial Completion”** shall have a corresponding meaning.

**“Substantial Completion Date”** means the date on which the Development is Substantially Completed.

**“Tenants”** mean all those persons and parties having a right to occupy any rental area of the Development pursuant to any of the Leases. **“Prospective Tenants”** means those prospective

persons and parties who may enter into an agreement or other commitment to have a right to occupy any such rental area. **“Tenant”** and **“Prospective Tenant”** means any one of the Tenants or Prospective Tenants, respectively.

**“Term”** shall have the meaning ascribed to it in Section 2.1.

**“Unanimous Shareholders Agreement”** means that shareholders agreement dated July 25, 2014 in respect of the governance of Mizrahi Commercial (The One) GP Inc.

**“Units”** means the commercial, retail or parking components (or any part that is or will be legally divided for separate ownership) in the Commercial Development for lease or sale and **“Unit”** means any one of them.

**“Working Capital”** has the meaning ascribed to it in Subsection 3.7(a).

**“Written Order”** has the meaning ascribed to it in Subsection 3.7(a).

## **1.2 Decisions**

All Major Decisions are to be Approved by the Owner.

## **1.3 Effective Date**

The Parties acknowledge and agree that this Agreement shall commence as of the Effective Date.

## **1.4 Applicable Law**

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

## **1.5 Accounting Principles**

All calculations required or permitted under this Agreement and the interpretation of accounting terms used herein shall be made in keeping with the practices as commonly used in the real estate industry in Canada, applied on a consistent basis.

## **1.6 General**

Headings contained herein are inserted for convenience of reference only and are not to be considered for the purposes of interpretation. All monetary references are to Canadian dollars and exclusive of applicable taxes. If anything herein falls to be done on a day which is not a Business Day, the same shall be done on the next succeeding Business Day.

### **1.7 Further Assurances**

The Owner and the Manager, from time to time and upon every reasonable written request to do, shall give, execute and deliver all such further assurances as may be required for more effectually implementing and carrying out the true intent and meaning of this Agreement.

### **1.8 Schedules**

The following Schedules are attached to this Agreement:

- Schedule "A" - Properties
- Schedule "B" - Major Decisions
- Schedule "C" - Development Budget
- Schedule "D" - Leasing Plan
- Schedule "E" - Form of Commercial Construction Management Agreement  
(as same may be amended, modified or supplemented from time to time only by adding the completed Development Plan, any required specifications as schedules and adding any related or missing information necessary to complete the agreement)

## **ARTICLE 2** **TERM**

### **2.1 Term**

The term of this Agreement (herein called the "Term") shall commence on the Effective Date and, shall terminate on the date of termination as determined under Article 7.

## **ARTICLE 3** **DEVELOPMENT MANAGEMENT SERVICES**

### **3.1 Appointment**

The Owner hereby appoints the Manager to manage the design, development, construction and completion of the Development and marketing and sales of units, leasing of premises of the Development and all other related matters, on behalf of the Owner during the Term.

### **3.2 Specific Obligations and Services of Manager**

Pursuant to Section 3.1 and in accordance with any agreements made by the Owner relating to the Development, but subject to obtaining the Owner's prior written approval where the Approval of the Owner is required herein (subject to Section 6.2(a)), the Manager shall:

- (a) negotiate agreements of purchase and sale in respect of each of the Properties (and in respect of 1 Bloor Street West, if required, a share purchase agreement in place of an agreement of purchase and sale for real property);
- (b) conduct all normal due diligence in respect of each of the Properties and provide material information thereon to the Owner;
- (c) engage a qualified and reputable architect to design the Development;
- (d) commission and finalize the Development Plan;
- (e) co-ordinate the approval processes for site plan approval and all other approvals required, if any, pursuant to the *Planning Act* (Ontario) and other Applicable Law for the Development;
- (f) formulate, present and finalize changes to the Development Plan, the Development Schedule and the Development Budget, for Approval by the Owner. The parties acknowledge that the initial budget for the Development (the “**Commercial Initial Budget**”) attached to the Construction Management Agreement is subject to Approval by the Owner and will be the Development Budget until the final budget (the “**Commercial Approved Budget**”) has been Approved by the Owner, at which time the Commercial Approved Budget shall be the Development Budget (and replace the Commercial Initial Budget) and the draft Commercial Initial Budget is attached hereto as Schedule C and applies until the Commercial Initial Budget is Approved by the Owner;
- (g) apply in the name of the Owner (or the Nominee) to governmental and quasi-governmental authorities for, and obtain all licenses, permits, consents and approvals necessary or required for the Development (including excavation, development and building permits and their related agreements);
- (h) appoint and manage all architects, engineers, the Cost Consultant and other consultants for the Development;
- (i) prepare in respect of the Development, contracts for execution by the Owner (or Nominee where possible and applicable) with architects, engineers, contractors, consultants, suppliers, realtors, brokers and others; and co-ordinate and direct their work, scrutinize and settle their accounts and supervise and use its commercially reasonable best efforts to ensure their performance;
- (j) without limiting any of the foregoing, direct the layout, design and engineering for the Development, including without limitation, the preparation of all drawings and specifications, and obtain the Approval of the Owner for the first complete set drawings and specifications, and thereafter for any change to the drawings and specifications which has or may reasonably be expected to result in an increase in the Development Budget;

- (k) arrange for the preparation of “tender packages” consisting of working drawings and specifications and other documents sufficient for the tendering of contracts, to the extent deemed appropriate by the Manager, acting reasonably;
- (l) prepare or arrange for the preparation of all necessary construction contracts and other related documentation in addition to the “tender packages” referred to in subparagraph (k) above and negotiate same on behalf of the Owner for execution by the Owner;
- (m) arrange and effect on behalf of the Owner such insurance relating to the Development as determined by the Manager acting reasonably, based upon insurance which a reasonable owner of a similar project would obtain, and maintain same in good standing to standards acceptable to the Owner acting reasonably. No later than Commencement of Construction, the Manager shall arrange for the Owner and the Manager to be named insureds thereunder;
- (n) identify the construction lender and negotiate and complete the Construction Financing together with the Owner (and subject to any approval rights of Bridging in the Limited Partnership Agreement)
- (o) co-ordinate and direct to completion the construction of the Development, including without limitation, the demolition, site preparation, time schedules and insurance coverage;
- (p) co-ordinate leasing of any rental units constructed as more particularly set out in Article 4 of this Agreement;
- (q) the planning and construction of tenant improvements in the Development;
- (r) co-ordinate and direct the moves of Tenants into the Development and the opening of the Development to the public for business;
- (s) submit to the Owner monthly:
  - (i) a cost and financial pro-forma analysis for the Development and a consolidated report showing projected capital costs, costs incurred to date, costs to complete and projected operating costs for the Development;
  - (ii) reports on any significant construction, personnel, contractual and legal matters and any other significant issues relating to the Development; and
  - (iii) an updated timetable for the construction and completion of the Development and the expenditure of funds for the Development;
- (t) establish and implement an appropriate cost and cash flow process and provide full accounting services for the Owner with respect to the Development, including without limitation, collection of accounts receivable and payment of accounts

payable, management of cash balances and investment and reinvestment of excess funds (which shall be subject to audit at the Owner's expense whenever the Owner so requests in writing); and establish and administer the Owner's bank account for the Development (the "Property Account");

- (u) institute, prosecute and defend legal actions affecting the Development (including those involving construction liens);
- (v) subject to the Approval of the Owner, arrange for Permitted Financing;
- (w) co-ordinate the installation of municipal and utility services for the Development, including water, storm, sanitary sewers, gas, electric power services, telephone and other communication facilities and such other services as may be necessary for normal construction and operation of the Development;
- (x) organize and manage the Development, including, engaging a project manager on such basis as the Manager shall determine, planning and administering accounting, financing, planning and control, information systems, banking and the care and custody of funds and other financial assets;
- (y) carry out such other duties as are normally carried out by a development manager of a development similar in size and location to the Development, with the intent that the Manager shall use its reasonable best efforts to cause the Development to be constructed and completed, all in conformity with the requirements of all applicable contracts, and Applicable Law and the Development Budget and the Development Plan.

It is acknowledged and agreed that the Manager shall have the ability to make and shall control all decisions with respect to the Commercial Project and Commercial Development and with respect to all contracts in connection therewith, other than Major Decisions (and subject to the approval rights of Bridging set out in the Commercial Limited Partnership Agreements) and provided that all fundamental decisions to be made prior to the date that the required rezoning or zoning by-law amendment for the Development has been obtained, even if not defined as a Major Decision, shall require the Approval of the Owner.

All contracts shall be entered into by the Nominee if possible, and where not possible, by the Owner and not the Manager, unless otherwise agreed to by the Parties, save and except that the Manager may enter into any contracts on behalf of the Owner, as may be normal industry practice, or is reasonable to do so, at the Manager's option and the Manager shall be entitled to execute all contracts, documents, deeds, instruments, applications, agreements or other documents relating to the obligations and services to be performed by the Manager herein, including as set out above, on behalf of the Owner, subject to any such document or act being Approved by the Owner when required. When requested by the Manager, the Owner shall direct and cause the Nominee (or if applicable, the Owner itself) to execute any all contracts, documents, deeds, instruments, applications, agreements or other documents requested by the Manager within five (5) days of request, failing which the Manager shall have the ability to

execute contracts as agent for the Nominee (or the general partner of the Owner, if applicable), subject to any such document or act being Approved by the Owner when required.

### **3.3 Manager's Standard of Care**

The Manager represents and covenants with the Owner that it has and that it will continue to have throughout the term of this Agreement the facilities, personnel and expertise to provide to the Owner the Services in a competent and efficient manner in keeping with the standards of the industry for a similar project in downtown Toronto. The Manager accepts its appointment as development manager of the Commercial Project in accordance with the terms hereof and covenants and agrees to perform its obligations hereunder in a competent, honest manner, as would a reasonable and prudent Person who is experienced in providing the Services for mixed-use projects similar to the Commercial Project.

The Manager shall attend to the discharge of its obligations hereunder utilizing trained, experienced personnel employing current industry-standard real estate development practices and techniques in an efficient manner and acting at all times in accordance with the Development Schedule and the Development Budget, in the best interests of the Owner for completion of the Development and within the Manager's scope of authority hereunder (collectively, the "Standard of Care"). The Manager shall at all times act in a fiduciary capacity with respect to the proper protection of and accounting for the Commercial Project and all revenues and proceeds thereof, including, without limitation, maintaining adequate books and records with respect to the Project, and in dealing with the Property Account and shall cause the Commercial Project to be constructed in a professional manner consistent with the standard of comparable projects and, except as authorized under the provisions of this Agreement or as Approved by the Owner, shall not make any payment to or enter into any arrangements with any Affiliate of the Manager unless disclosed to the Owner and any payments shall be based on market standards and the Manager shall not take or permit any Affiliate of the Manager to take any action in contravention of the Commercial Limited Partnership Agreements. Without limiting the foregoing, the Manager shall inform the Owner of any fact or circumstance of which it is aware which the general partner is obligated to disclose under the Commercial Limited Partnership Agreements (or any of them).

### **3.4 Inspection**

The Owner and its representatives shall at all times have access at their own risk to the Development during the construction and development of the Development.

### **3.5 Safety Measures**

The Manager shall use commercially reasonable efforts to cause all contractors employed on the Development to be responsible for the safety of all workmen and equipment on the Development in accordance with all applicable legislation governing construction safety.

### 3.6 Discharge Liens

The Manager, throughout the term of this Agreement, shall use its reasonable best efforts to cause all contractors employed on the Development to cause any and all construction liens and other liens for labour, services or materials alleged to have been furnished to or to have been charged to or for the Owner, the Manager, any subcontractor or any of them or on their or its behalf for the Development which may be registered against or otherwise affect the Properties to be paid, satisfied, released, cancelled and vacated forthwith including any payment into court within 15 days of receiving notice thereof.

### 3.7 Development Cost

- (a) The Owner shall be responsible for payment of the Development Cost, as well as any cost payable in respect of the ownership of the Properties including taxes or otherwise.
- (b) Without limiting the specific obligations contained in Section 3.8, the Owner shall extend Owner Contributions to the Manager for the Development Cost in accordance with the Development Budget and the Permitted Financing in a timely manner.
- (c) The total Development Cost shall be determined as of the Substantial Completion Date and Approved by the Owner in accordance with accounting principles commonly used in the commercial real estate industry in Canada, applied consistently. In determining the total Development Cost there shall be included therein the costs and expenses to be incurred and those reasonably anticipated to be incurred following the Substantial Completion Date on account of matters relating to the total Development Cost.

### 3.8 Payment of Development Costs

- (a) The Manager shall not be obligated to expend any funds on account of the Development Cost. At any time, the Manager shall be entitled to apply to the Owner for additional Owner Contributions on account of payment of that portion of the Development Cost incurred prior to Construction Financing or if after Construction Financing is in place, that portion of the Development Cost not included in advances made on account of the Construction Financing (“**Working Capital**”) by delivering to the Owner a written order (herein referred to as a “**Written Order**”) for payment thereof provided all of the costs being the subject of the Written Order are costs contemplated by the Development Budget. Each Written Order shall:
  - (i) state the aggregate amount of the Development Cost previously paid to or as directed by the Manager under this Section 3.8;
  - (ii) state the amount of the Development Cost paid or payable by the Manager on behalf of the Owner at the date of the Written Order in addition to the

Development Cost stated pursuant to Subsection 3.8(a) (being the amount requested for payment in the Written Order), indicating which amounts have been paid and those which are immediately payable but not yet paid;

- (iii) state that all amounts included in such Written Order are Development Costs, describing the items constituting such Development Cost in reasonable detail;
- (iv) not be delivered more frequently than once per month, except in unusual circumstances when reasonable required; and
- (v) be accompanied by all material and standard supporting documentation including the appropriate certificate or authorization of the Cost Consultant, and if required, invoices for all material amounts requested in such Written Order, and, to the extent the Written Order includes a claim for construction costs, a written request from the Contractor or Manager requesting payment of such construction costs and a certificate for payment from the Cost Consultant (acting as payment certifier) (and acknowledged by the Contractor or Manager) certifying the amount to which the Contractor is entitled, which certificate shall have attached thereto the following:
  - A. Contractor's or Manager's progress claim with respect to amounts payable at the date of such certificate, describing such amounts in reasonable detail;
  - B. executed statutory declaration by the Contractor or Manager confirming payment of all amounts as set forth in the previous progress claim of the Contractor or Manager in a satisfactory form;
  - C. progress claims from each subcontractor in respect of which amounts are payable pursuant to the Contractor's or Manager's progress claim, describing such amounts in reasonable detail.

Each Written Order shall be delivered to the Owner as aforesaid, shall be signed by an officer of the Manager (which Written Order shall exclude the personal liability of such officer for the statements set forth therein) and shall state that, to the best of the Manager's knowledge, all Development Costs set forth in such Written Order, payment or reimbursement of which is requested in such Written Order, are Development Costs incurred in connection with the development and construction of the Development in accordance with this Agreement. Within five (5) Business Days of the receipt of such Written Order together with such supporting documentation, the Owner shall pay on account of Owner Contributions to or as directed by the Manager, the Development Costs set forth in such Written Order and in respect of which payment is requested by the Manager (provided that "payment" shall include depositing such amount into the Property Account and the Manager is entitled to debit the Property Account by

all such amounts to pay the Development Costs sought). The Manager shall forthwith deposit all Owner Contributions, except to the extent they are directly payable to third parties, and all Gross Receipts in the Project Account and all interest earned on such moneys in such account shall be credited to the Owner. The Manager shall forthwith apply such Owner Contributions (from the Property Account or directly to a third party is made payable to a third party) to the payment of any amounts specified pursuant to Subsection 3.8(a) as being payable but which are not yet paid.

- (b) The Owner shall on the Effective Date and thereafter from time to time during the Term, but no later than five (5) days after a written request by the Manager advance Owner Contributions to the Manager on account of Working Capital. All Owner Contributions on account of Working Capital shall be applied by the Manager to expenditures made on account of Development Costs during the Term in accordance with the Manager's obligations under this Agreement and with the Development Budget. The amount of Working Capital shall be maintained at levels determined by the Manager to be reasonably necessary to meet those of its expenditure obligations on account of Development Costs.
- (c) The Manager shall forthwith deposit all Owner Contributions in the Property Account and all interest earned on such moneys in such account shall be credited to the Owner. If the Owner does not advance the Working Capital within the five (5) day time period, the Owner shall be in default of this Agreement and without limiting any other right of the Manager, the Manager shall have the right to withdraw such amount from future Owner Contributions otherwise due under this Agreement. Upon termination of this Agreement pursuant to Article 7 hereof, the Manager shall, except as otherwise provided in this Agreement, return the outstanding balance of the Working Capital to the Owner.
- (d) The Manager shall be entitled to deposit and debit the Property Account in connection with payment of Development Costs and Sam Mizrahi (his signature only) shall have authority to debit the Property Account on behalf of the Manager for any amount that is set out in the Development Budget, and any one of Sam Mizrahi or any person he designates in writing who is employed by the Manager, shall have authority to debit the Property Account on behalf of the Manager for any amount that is set out in the Development Budget but is less than \$10,000. Further, the Manager shall be entitled to debit any amount from the Project Account before the cost is incurred, in order to pay such cost (for example, if payment for any materials are required prior to delivery of such materials, or if any retainer is necessary for a consultant) in which case the Manager shall provide a Written Order after the fact, modified as appropriate to show the funds have already been used from the Property Account.
- (e) The parties acknowledge that the Manager shall be entitle to group Development Costs for payment into one Written Order, so long as there is sufficient detail to identify the line items in accordance with the Development Budget.

- (f) The Manager shall deposit all revenues or credits received in respect of the Development on behalf of the Owner, into the Project Account.

### **3.9 Interest on Owner Contributions**

The interest earned on Owner Contributions in the Property Account shall accrue to the benefit of the Owner, but shall at all times be kept in the Property Account unless requested by the Owner to be paid to the Owner.

### **3.10 Revision of Development Budget for Force Majeure**

The Parties acknowledge and agree that the Development Budget shall be revised to reflect any changes to the Development Budget resulting from any event of Force Majeure and the parties agree to act reasonably to do so and to approve such revisions to the Development Budget.

## **ARTICLE 4** **LEASING SERVICES OF THE MANAGER**

### **4.1 Leasing Management**

During the Term, the Manager shall manage, as independent contractor, all aspects of the leasing of the Development and otherwise perform all of its duties and services set out in this Article 4 to professional standards similar to those of prudent owners and leasing managers of comparable developments of the same class in downtown Toronto.

### **4.2 Leasing Plan**

In connection with its obligation to act as the leasing manager and perform its duties and services under this Article 4, the Manager shall:

- (a) Leasing Plan: prepare and submit to the Owner for its initial approval and thereafter for the Approval of the Owner, amendments thereto at such times as the Manager shall reasonably request, a leasing plan which shall set forth proposals on rental rates, and any other material terms and conditions for Leases for premises in the Development). A leasing plan shall be either Approved by the Owner (the "**Approved Leasing Plan**") or the Owner shall provide comments on such materials by not later than five (5) Business Days after their receipt, failing which the leasing plan shall be deemed to be approved, and so long and to the extent that any leasing plan proposed hereunder has not been so approved or deemed Approved by the Owner, the Manager may proceed on the basis of the most recently Approved Leasing Plan. A copy of the Approved Leasing Plan as of the date of this Agreement is attached hereto as Schedule "D";

Monthly Reports: commencing after the first Lease or Offer to Lease is entered into, prepare and provide to the Owner a written leasing report for the Development including, but not limited to, current unleased rental areas, leasing

activity and any issues with Tenants or Prospective Tenants and update such report each month; and

- (b) Keeping Records: the Manager shall maintain information and reports with respect to matters arising under the Leases.

#### **4.3 Scope of Authority re: Leasing Management**

In connection with the performance by the Manager of its duties under this Article 4, the Manager shall have the authority to and shall:

- (a) locate, designate and obtain agreements or other commitments for Leases from Prospective Tenants for the Development;
- (b) execute on behalf of the Owner, or cause the Nominee to execute (and the Owner shall direct the Nominee to execute) any offer to lease, letters of intent to lease or other non-binding agreement pertaining to the proposed leasing of the Development (collectively, an “**Offer to Lease**”) provided that the proposed terms contained in any Offer to Lease are not, taken as a whole, materially less favourable to the Owner than those of the current Approved Leasing Plan.
- (c) negotiate and settle the terms of all Leases for the occupancy of space and rental areas in the Development provided that:
  - (i) such terms, taken as a whole, are not materially less favourable to the Owner than those of the current Approved Leasing Plan and subject to Bridging’s approval of all material terms of each Lease;
  - (ii) the Pro-forma Lease is used without material amendment other than amendments to reflect whatever reasonable requirements the Prospective Tenant may make; and
  - (iii) the Owner, at the request of the Manager from time to time shall execute or cause the Nominee to execute all Leases negotiated by the Manager within the scope of its authority.

#### **4.4 Services of Manager**

In furtherance of its obligations under this Article 4, but subject always to the terms and provisions of Sections 4.2 and 4.3, the Manager shall:

- (a) **Leasing and Re-leasing**: endeavour to obtain Prospective Tenants who will lease premises in the Development and to cause such premises to be leased under its general supervision and direction;
- (b) **Installing Tenants**: develop and implement plans concerning the installation of all Tenants of the Development and supervise the same;

- (c) **Tenant Liaison:** supervise the establishment and maintenance of a suitable scheme of liaison between each Tenant and the Owner;
- (d) **Notice to Tenants:** be responsible for the giving of all notices and statements required to be given to Tenants under the terms of their respective Leases, including, without limitation, notices of default, enforcement and termination;
- (e) **Lease Forms:** prepare for execution forms of Leases, Lease extensions and related documents for use in the leasing of premises in the Development;
- (f) **Enforcement:** enforce the terms of any Lease when reasonably required and make strategic determinations in the enforcement of any Lease, including, without limitation, default and/or termination proceedings (provided the initiation of any litigation or defence of any litigation shall require the Approval of the Owner).

#### **4.5 Personnel**

The Manager shall be responsible for making available such of its employees or employees of Affiliates of the Manager (who shall not for any purpose be, or be deemed to be, the employees of the Owner) as shall be necessary and desirable for the performance by the Manager of its obligations under Article 4.

#### **4.6 Services, Materials and Supplies**

The Manager shall contract for or purchase all services, materials and supplies as may be necessary in the performance of its duties and responsibilities under this Article 4 and Approved by the Owner, which services, materials and supplies shall be paid for by the Owner.

### **ARTICLE 5** **FEES**

#### **5.1 Development Management Fee**

- (a) The Owner shall pay the Development Management Fee to the Manager. The Development Management Fee shall be as set out as the "Development Fee" on the Development Budget.
- (b) The Development Management Fee (plus applicable HST thereon) shall be paid by the Owner as follows:
  - (i) \$10,000,000 upon the closing of the acquisition of those Properties outlined on Schedule A hereto as the "Required Commercial Properties" (and for these purposes, acquisition of the registered owner by share purchase agreement if applicable), provided if such properties are acquired on different dates, the later of the two dates;

- (ii) \$10,000,000 upon receipt of the earlier of: (A) zoning or rezoning approval for the Development; and (B) site plan approval (the "Project Approvals"); and
  - (iii) \$10,000,000 upon closing and registration of security on title to the Required Commercial Properties of the Construction Financing.
- (c) Notwithstanding the foregoing, in the event that the parties proceed with the Residential Project or are able to acquire any of the other Properties listed on Schedule A that are not "Required Commercial Properties", or both, the Development Fee shall not exceed \$30,000,000 (the "Total Development Fee"), and in the event that the Residential Project is constructed, the parties shall allocate the total Development Fee between this Development Management Agreement and the development management agreement for the Residential Project.
- (d) In the event that the Manager pays out the Total Development Fee to third parties to ensure the progression of the Development as planned generally or in any particular manner or aspect, but determines that a higher amount is required for other similar payments or purposes, the Manager shall be entitled to pay such further amounts as may be required to third parties over and above the Total Development Fee and in such cases, the Owner shall fund all such further payments deemed necessary by the Manager, provided that either:
  - (i) the Manager is able to fund such payments from savings attained for any line item or combination of line items within the Development Budget or from any contingency amount in the Development Budget, or both (provided for such purposes, the parties shall reassess and recalculate such amounts so paid after the total Development Costs are known, to determine if the funding of such additional amount(s) was actually funded from savings or contingencies once all amounts are finally determined) and the Manager shall cause Mizrahi Enterprises Inc., the Class B limited partner under the Commercial Limited Partnership Agreements, to execute and deliver to Bridging a letter directing that any overage amount of such payment(s), once the total Development Costs are calculated, which was not available through savings or contingencies in the Development Budget as aforesaid, be deducted from amounts payable to Mizrahi Enterprises Inc. pursuant to Section 7.5(a)(iv)(B) under the Limited Partnership Agreement; or
  - (ii) the Manager shall cause Mizrahi Enterprises Inc., the Class B limited partner under the Commercial Limited Partnership Agreements, to execute and deliver to Bridging a letter directing that any such additional payment(s) be deducted from amounts payable to Mizrahi Enterprises Inc. pursuant to Section 7.5(a)(iv)(B) under the Limited Partnership Agreement.

- (e) Any portion of the Total Development Fee not required to be spent on third party payments, shall belong to the Manager.
- (f) No Written Request shall be required for any third party payments paid from the Development Fee, nor shall the payment of any such amount require the Approval of the Owner. The Manager shall be entitled to determine to whom such payments are reasonably necessary and in what amounts, and make such payments.

## **5.2 Rights of Examination by Owner**

The Manager, at any and all times during normal business hours and upon reasonable notice, upon a written request from the Owner, will provide any reasonable background information as to Development Costs incurred and shall permit the Owner to examine all books of account, records, reports and other papers of the Manager relating to the services performed for the Owner by the Manager under this Agreement, to make copies thereof or extracts therefrom or to have the same audited by an auditor appointed by the requester for the Development, which audit shall be carried out at the expense of the requester.

## **5.3 Expenses of Development and Leasing Management**

The Owner shall pay to the Manager the amount of any necessary:

- (i) reasonable and bona fide out-of-pocket costs and expenses in accordance with the Development Budget and any amounts expended for or on behalf of the Owner as permitted herein;
- (ii) third party real estate brokers respecting leasing commissions; and
- (iii) such other expenses Approved by the Owner or in the Development Budget and paid by the Manager to third parties in connection with its services under Articles 3 and 4, respectively.

The charges of any such counsel or consultants as are included within the Development Budget shall be for the account of the Owner.

## **5.4 Concessions**

The Manager hereby undertakes not to accept for its own account in the execution of its duties hereunder any commissions, reductions, finder's fees or other concessions from any third party including tenants or realtors. If such concessions are received by the Manager they shall be remitted to or credited to the Owner forthwith after receipt.

## **5.5 Construction Management Fee**

As part of the Developments Costs, the Owner shall be responsible for the fees payable to the Contractor, pursuant to the Commercial Construction Management Agreement (the

“Construction Management Fees”). The Construction Management Fees shall be paid by the Owner as required in the Commercial Construction Management Agreement and in any event on a monthly basis for the duration of the construction of the Development, commencing at the start of demolition of any buildings or improvements on the Properties provided all monthly draws have been authorized by the Cost Consultant.

## **ARTICLE 6** **OWNER APPROVALS AND DUTIES**

### **6.1 Approvals of the Owner**

In addition to specific approvals otherwise provided for in this Agreement, the Manager shall submit to the Owner for Approval by the Owner the following:

- (a) the Development Budget and any amendments thereto having the effect of increasing the total Development Budget;
- (b) the Development Plan, the Development Schedule and any material amendments thereto once initially Approved;
- (c) any action to institute, prosecute and defend legal actions affecting the Development including taking appropriate action to deal with substantial construction liens encumbering the Development and making payments into court on behalf of the Owner with respect thereto;
- (d) the Pro-forma Lease;
- (e) entering into any Contract with any person with whom the Manager or any shareholder or director of the Manager or an Affiliate of the Manager does not deal at arm's length;
- (f) the acquisition or disposal of any property or the incurring of any non-capital obligation involving a sum in excess of One Hundred Thousand Dollars (\$100,000.00) for any transaction or group of similar or related transactions except for expenditures made and obligations incurred pursuant to the Development Budget;
- (g) any other matter being a Major Decision; and
- (h) any matters for which the approval of Bridging is required pursuant to the Commercial Limited Partnership Agreements, including, without limitation, Section 4.4 of the Unanimous Shareholders Agreement.

## 6.2 Procedure for Approvals

- (a) Whenever the provisions of this Agreement provide for an approval or consent or agreement to any action, document or plan by the Owner (collectively, an “**Approval**”), provided that approval of Bridging specifically is either not required pursuant to the Commercial Limited Partnership Agreements, or if it is required thereunder, such approval of Bridging has been obtained, then such Approval may not be unreasonably or arbitrarily withheld (except in the case of a Major Decision, in which case the Approval of the Owner shall be in the sole and absolute discretion of the Owner) and regardless, the Owner shall respond thereto within a period of five (5) days thereafter. A failure by the Owner to respond within such period shall be deemed to be an Approval unless the Owner provides a written notice during such period that it requires further information in order to consider the item for which approval or consent was requested. To be valid, any disapproval by the Owner shall be in writing, shall be reasonable and shall contain the reasons for such disapproval.
- (b) Notwithstanding subparagraph (a) and anything else in this Agreement to the contrary, in the event that any work or action is urgently required at a time when the authorized representatives of the Owner cannot be reasonably located for the purpose of giving approval, or where the Manager has received a notice for further information but due to urgent demands of the Development, cannot provide such further information prior to the date that an urgent action or steps needs to be taken in connection with the Development (the parties acknowledging and agreeing that no delays for approvals or consents shall be permitted to unduly stall the Development Schedule), the Manager is hereby authorized and instructed to proceed with such steps as in its discretion are deemed urgently necessary, and the Manager will promptly give written notice thereof to the Owner.

## 6.3 Responsibilities of Owner

In addition to the specific obligations and responsibilities of the Owner otherwise referred to in this Agreement, the Owner shall:

- (a) be responsible for payment of all Owner Contributions which at any time will equal the difference between the Development Cost less the amounts available from Permitted Financing as provided in Section 3.7 and payable in accordance with Section 3.8;
- (b) provide Approvals in accordance with Section 6.2;
- (c) provide all relevant information to the Manager in the possession of the Owner currently and in the future regarding the Properties and the Development in a timely manner; and
- (d) pay the Development Management Fee when due and as contemplated herein.

#### **6.4 Manager an Independent Contractor to the Owner**

- (a) Nothing in this Agreement shall be construed as or shall constitute a partnership between the Manager and the Owner. The duties to be performed and the obligations assumed by the Manager under this Agreement shall be performed and assumed by the Manager as an independent contractor and not as the agent or otherwise as the representative of the Owner.
- (b) In carrying out its responsibilities, obligations and duties to the Owner under this Agreement, the Manager shall employ personnel on its own behalf and the Manager's personnel shall be and remain employees of the Manager.
- (c) Except with regard to its employees as provided in subparagraph (b), in carrying out its responsibilities, obligations and duties to the Owner under this Agreement, the Manager shall act on behalf of the Owner, and all agreements, permits, licenses, Contracts, Leases, accounts and other documents shall be for and in the name of the Owner.
- (d) The Manager shall not be required to make any payments on behalf of the Owner, except to the extent that funds are made available to the Manager by the Owner therefor.

#### **6.5 Access to Records**

The Manager shall provide to the Owner, and to others as the Owner may from time to time designate, full and free access at all reasonable times to all records, documents and materials in the possession or control of the Manager which relate to the duties and obligations of the Manager under this Agreement.

### **ARTICLE 7** **TERMINATION**

#### **7.1 Termination by the Owner**

- (a) If, in the case of the Manager, an Event of Default occurs, the Owner may provide a Notice of Complaint to the Manager specifying in reasonable detail the Event of Default. If within thirty (30) days of receipt of any Notice of Complaint, the Manager fails to cure or remedy the Event of Default in a reasonable manner, or if more than thirty (30) days are required to cure or remedy the Event of Default the Manager fails to proceed and continue diligently to cure or remedy or give reasonable assurances to the Owner that such Event of Default will be cured or remedied within a reasonable period of time, the parties shall submit the dispute to arbitration in accordance with Section 7.3 below.

It is acknowledged and agreed that other than termination of the Development or sale of the Development as set out in Sections 7.3 and 7.4 respectively below, and subject to the immediately following paragraph (which applies only after

Commencement of Construction), the Owner may not terminate this Agreement for any reason other than a Material Event of Default and only then: (a) if the default is cureable, the Manager has been given proper written notice of the alleged default with specifics and the Manager has failed to cure the default within a reasonable period of time considering the nature of the default; and in addition (b) provided that the Parties have first have proceeded to arbitration to resolve the issue at hand and then only if the arbitration decision is adverse to the Manager and the Manager does not comply with the arbitration decision within a reasonable period of time (which period of time shall be determined by the arbitrator and included in the arbitration decision).

Notwithstanding the foregoing, if Commencement of Construction has occurred, the Owner shall not be entitled to terminate this Agreement for any reason other than an incurable Event of Insolvency, fraudulent acts of the Manager or any gross negligence of the Manager that is incapable of being cured and which is likely to substantially delay or prevent the completion of the Commercial Project or materially increase the Development Budget or result in new material liability to the Owner.

- (b) If the Owner is entitled to terminate this Agreement as set out above, the Owner may terminate this Agreement by written notice by issuing a Notice of Termination to the Manager stating that this Agreement is terminated and the reason for termination. Such termination shall be effective as and from the last day of the month in which the Notice of Termination is received by the Manager unless the reason for termination is bona fide disputed by the Manager as not being a reason permitting termination as set out above (in which case termination shall not occur until and unless the parties have submitted to arbitration on the matter and the arbitrator's decision is that the reason did permit termination and the termination if permitted hereunder (unless both Parties agree to waive arbitration in this case and agree to the termination)).
- (c) In the event of any termination of this Agreement, all fees shall be pro-rated and paid up to the date of termination except in the event of fraud or other intentional malfeasance (i.e. misappropriation of funds) in which case no pro-rated fees shall be owing to the Manager (except instalments already owing shall be paid to the Manger) and such entitlements shall not terminate but shall survive termination of this Agreement.

## **7.2 Termination by Manager**

If, in the case of the Owner, an Event of Default occurs, the Manager may provide a Notice of Complaint to the Owner specifying in reasonable detail the Event of Default. If within thirty (30) days of the receipt of any Notice of Complaint, the Owner fails to cure or remedy the Event of Default in a reasonable manner, or if more than thirty (30) days are required to cure the Event of Default, the Owner fails to proceed and continue diligently to cure or remedy or give reasonable assurances to the Manager that, such Event of Default will be cured or remedied within a

reasonable period of time, the Manager may terminate this Agreement by issuing a Notice of Termination to the Owner stating that this Agreement is terminated and the reason for termination. Such termination shall be effective as and from the last day of the month in which the Notice of Termination is received by the Owner.

Notwithstanding the foregoing, if Commencement of Construction has occurred, the Manager shall not be entitled to terminate this Agreement for any reason other than an incurable Event of Insolvency, or a Material Event of Default of the Owner or any fraudulent act of the Owner, or any gross negligence of the Owner in performing its obligations that is incapable of being cured (and is not cured within a reasonable cure period having regard to the nature of the default).

### **7.3 Termination of the Development**

In the event it is determined that the Development cannot go ahead due to external factors to the Owner and/or Manager (e.g. the Properties cannot be acquired or the City fails to approve the Development or any adjusted Development or the Parties cannot obtain sufficient financing), and the decision to develop the Development is cancelled or otherwise aborted by the Owner as a result, this Agreement shall be terminated by issuing a Notice of Termination to the Manager stating that the development of the Development has been terminated, cancelled or otherwise aborted and the reasons therefor and this Agreement shall be terminated effective upon receipt of the Notice of Termination by the Manager.

### **7.4 Termination because of Sale of the Development**

In the event the decision is made by the Owner to sell the Development or in the event of periodic phase dispositions then the final phase of the Development, as the case may be, in accordance with the Owner's rights under the Commercial Limited Partnership Agreement, this Agreement shall be terminated effective the closing date of such sale.

### **7.5 Effect of Continued Performance**

If this Agreement is terminated, the Owner shall be under no obligation to pay to the Manager any amount whatsoever for services performed by the Manager after the date of termination of this Agreement unless such performance has been expressly Approved by the Owner on a quantum meruit basis.

### **7.6 Termination – Survival of Outstanding Obligations**

Notwithstanding the termination of this Agreement, all obligations hereunder which are outstanding as of the date of such termination required to be performed following the termination hereof and final settlement of payments required to be made hereunder shall continue to be obligations of each of the relevant Parties.

### **7.7 Deliveries to Owner**

If this Agreement is terminated, notwithstanding such termination, the Manager shall forthwith upon termination and from time to time thereafter deliver to the Owner all moneys received and

held by the Manger pursuant to this Agreement, and all records and documents, including without limitation, all Leases, plans, schedules, budgets, operating records, books of account and ancillary documents maintained with respect to the Development and the Properties, including those relating to leasing management which are then in the possession or control of the Manager and which the Owner may reasonably require and which relate directly or indirectly to the Development and the Properties; provided however, that the Manager may elect to retain copies of such records, books of account and documents. Notwithstanding such termination the Owner shall thereafter and from time to time for a reasonable period of time produce at their offices the originals of such records, books of account and documents whenever the Manager reasonably requires them for its purposes in connection with its prior leasing management and development management of the Development and the Properties. The Manager shall keep all such information confidential, provided that if the Development is aborted, subject to the terms of the Commercial Limited Partnership Agreement, the Manager shall be entitled to remain as manager of the Development, if the Development is continued by the Mizrahi Partner under the Commercial Limited Partnership Agreements.

#### **7.8 Development Management Fee and Construction Fee on Termination**

In the event of a termination of this Agreement pursuant to Article 7, subject to Section 7.1(c), the Manager shall be entitled to payment of any remaining accrued Development Management Fee (and any accrued interest thereon) up to the date of termination, and a pro-rated portion of each of the next instalment payment(s) of the Development Management Fee not yet due, with such pro-rated amount deemed to be earned as of the date immediately prior to the termination date. Such pro-rated amount shall be based on the next milestone requirement forming the basis of the trigger for such payment being achieved in each of subsections 5.1(b)(i), (ii) and (iii) (e.g. Construction Financing is completed) and the amount to be pro-rated based on a fraction, the numerator being the number of days from the due date of the last instalment payment to the date of termination of this Agreement, and the denominator being the number of days from the due date of the last instalment payment to the date of such milestone being achieved.

By way of example, if the termination date is 30 days after the acquisition of the Required Commercial Properties, Project Approvals are obtained 180 days after the closing of the acquisition of the Required Commercial Properties and the Construction Financing is achieved 120 days after the obtaining the Project Approvals, the pro-rata portion of the next instalment payments of the Development Management Fee owing to the Manager would be 30/180 for the second instalment and 30/300 for the third instalment.

The Owner shall pay all such remaining accrued Development Management Fees and pro-rata portions thereof to the Manager within ten (10) days of termination of this Agreement and this obligation of the Owner to pay such fees shall survive the expiry or termination of this Agreement.

**ARTICLE 8**  
**GENERAL**

**8.1 Indemnity by Owner**

Notwithstanding the termination of this Agreement, the Owner shall indemnify and save the Manager harmless from any action, cause of action, suit, debt, cost, expense, claim, liability or demand whatsoever at law or in equity, in connection with the performance by the Manager of any and all of its obligations under this Agreement, including without limitation, any damage or injury whatsoever to any employee or other person or property arising out of the foregoing during the Term of this Agreement, and anything arising from the Manager having executed any contract or document on behalf of the Nominee or Owner, in compliance with the terms of this Agreement, but the indemnity provided under this Section 8.1 shall not extend to any gross negligence, fraud or wilful misconduct of the Manager or its employees, directors, officers or agents (the "**Manager Parties**") and shall not extend to any action taken by the Manager Parties outside the terms and provisions of this Agreement.

**8.2 Indemnity by Manager**

Notwithstanding the termination of this Agreement, the Manager shall indemnify and save the Owner harmless in respect of any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever, at law or in equity, resulting from any gross negligence, fraud or wilful misconduct of the Manager, its employees, agents or those for whom at law it is responsible during the Term of this Agreement or by reason of any action taken the Manager outside the terms and provisions of this Agreement.

Notwithstanding the foregoing in Sections 8.1 and 0, neither Party shall be liable for any consequential, indirect, special or incidental damages including without limitation, the loss of profits or revenue.

**8.3 Insurance**

The Manager shall take out and obtain all such insurance as would a reasonable and prudent development manager managing a similar development in downtown Toronto.

The Owner shall take out and maintain all such insurance as would a reasonable owner of a similar development project in downtown Toronto.

**8.4 Arbitration**

Notwithstanding any other provision in this Agreement, in the event that any dispute or claim arises out of or in connection with this Agreement (the "Dispute"), the Parties shall promptly seek to resolve the Dispute by negotiations between representatives of the Parties who have authority to settle the Dispute. The negotiations shall commence on the date one Party provides written notice to the other Party identifying the Dispute and requesting the commencement of negotiations. If the Dispute has not been resolved within 10 Business Days from the date negotiations commence, either Party may submit the Dispute to arbitration by providing written

notice of its intention to arbitrate. The parties agree that if negotiations fail to resolve the Dispute, then arbitration shall be the exclusive forum for resolution of the Dispute. The provisions of the Ontario *Arbitration Act, 1991*, S.O. 1991, c.17, as amended (the "Act") shall apply. The Parties shall agree to a single arbitrator with expertise in the issue being arbitrated, and failing such agreement, the arbitrator shall be determined in accordance with the Act.

## 8.5 Notice

Any notice, approval, consent, document, *pro forma*, information, instruction, direction or other communication to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery or by facsimile or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic communication number as may from time to time be the subject of a notice hereunder:

The Owner at:

(a) to the General Partner:

Mizrahi Commercial (The One) GP Inc.  
189 Forest Hill Road  
Toronto, Ontario M5P 2N3

Attention: President and Vice-President  
Facsimile: (416) 440-0006 and (416) 633-6765  
Email: Sam@MizrahiCorp.Com and [jcoco@cocogroup.com](mailto:jcoco@cocogroup.com)

(b) with a copy to:

Bridging Finance Inc.  
77 King Street West, Suite 2925, P.O. Box 322  
Toronto, Ontario M5K 1K7

Attention: Ms. Natasha Sharpe  
Facsimile: (888)920-9599

Email: [nsharpe@bridgingfinance.ca](mailto:nsharpe@bridgingfinance.ca)

(c) with a copy to:

Coco Paving Inc.  
949 Wilson Avenue  
Toronto, Ontario  
M3K 1G2

Attention: Ms. Virginia Jenny Coco  
 Facsimile: (416) 633-6765  
 Email: [jcoco@cocogroup.com](mailto:jcoco@cocogroup.com)

(d) with a copy to:

Fogler, Rubinoff LLP  
 77 King Street West, Suite 3000  
 Toronto, Ontario M5K 1G8

Attention: Mr. Ian Kady  
 Facsimile: (416) 941-8852  
 Email: [ikady@foglers.com](mailto:ikady@foglers.com)

The Manager at:

(a) Mizrahi Inc.  
 189 Forest Hill Road  
 Toronto, Ontario M5P 2N3  
 Attention: Sam Mizrahi  
 Facsimile: (416) 440-0006  
 Email: [Sam@MizrahiCorp.Com](mailto:Sam@MizrahiCorp.Com)

(e) with a copy to:

Dentons Canada LLP  
 77 King Street West, Suite 400  
 Toronto, Ontario M5K 0A1

Attention: Ms. Sonja Homenuck  
 Facsimile: (416) 863-4592  
 Email: [sonja.homenuck@dentons.com](mailto:sonja.homenuck@dentons.com)

Any notice, approval, consent, information, instruction, direction or other communication to be given under or in connection with this Agreement, if personally delivered or sent by facsimile, shall be deemed to have been given and received on the date of delivery and if sent by facsimile or other electronic communication with confirmation of transmission after 5:00 p.m., or on a day other than a Business Day, shall be deemed to have been given and received on the Business Day following the day on which it was received.

## **8.6 Assignment by Manager**

The Manager shall not assign this Agreement without the prior consent of the Owner, which consent may be unreasonably and arbitrarily withheld. No assignment shall relieve the Manager of its responsibilities, duties and obligations under this Agreement.

### **8.7 Assignment by the Owner**

The Owner shall have the right to assign its interests in this Agreement so long as, and only if:

- (a) the assignee enters into an agreement with the remaining Party whereby the assignee shall be bound by and entitled to the benefit of this Agreement; and
- (b) the interest of the Owner in the Development is contemporaneously transferred to the same assignee.

### **8.8 Entire Agreement**

This Agreement constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes any prior understanding or agreement, whether or not in writing or expressed to be binding among them.

### **8.9 Invalidity of Provisions**

If any covenant, obligation or agreement of this Agreement, or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement to Persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each covenant, obligation or agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

### **8.10 Successors**

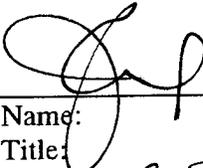
This Agreement and all rights, entitlements, duties and obligations arising from it shall bind the Parties and their respective successors and assigns and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

### **8.11 Succession Regarding Sam Mizrahi**

It is acknowledged and agreed that the involvement of Sam Mizrahi as principal of Mizrahi Inc. is of critical importance to the Commercial Project. In the event that Sam Mizrahi dies or becomes Incapacitated (as defined in the Commercial Limited Partnership Agreements), at any time prior to the return of the amount of the Class A1 Capital Contributions to the Class A1 Limited Partner (equity refund to Bridging) pursuant to Section 7.5(a)(ii)(A) of the Limited Partnership Agreement (and as such terms are defined therein), the parties hereto appoint Bridging to act as the Manager, with all authority as set out in this Agreement for the role of the Manager, provided Bridging accepts such appointment, to administer and manager the completion of the Commercial Project, but further provided that Bridging shall be entitled, in its sole discretion, not to accept such appointment and to itself appoint a qualified Person in its place and stead, to fulfill the role of Manager herein, on the terms set out herein.

**IN WITNESS WHEREOF** the Parties hereto have properly executed this Agreement under seal as evidence by their properly authorized officers in that behalf as of the day and year first above written.

**MIZRAHI COMMERCIAL (THE ONE) LP, by  
its general partner, MIZRAHI COMMERCIAL  
(THE ONE) GP INC.**

per:   
Name: J. COLO  
Title: \_\_\_\_\_

per:   
Name: N. SHARPE  
Title: SECRETARY

I/We have authority to bind the Corporation.

**MIZRAHI INC.**

per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I have authority to bind the Corporation.

**IN WITNESS WHEREOF** the Parties hereto have properly executed this Agreement under seal as evidence by their properly authorized officers in that behalf as of the day and year first above written.

**MIZRAHI COMMERCIAL (THE ONE) LP, by  
its general partner, MIZRAHI COMMERCIAL  
(THE ONE) GP INC.**

per: \_\_\_\_\_  
Name:  
Title:

per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.

**MIZRAHI INC.**

per:  \_\_\_\_\_  
Name:  
Title: **SAM MIZRAHI**  
**PRESIDENT**

I have authority to bind the Corporation.

**SCHEDULE "A"**

**PROPERTIES**

**Required Commercial Properties:**

1 Bloor Street West, Toronto, Ontario

11 Bloor Street West, Toronto, Ontario

*D180-784 Yonge St., Toronto, Ontario*

**Additional Properties (but not required properties) to be Sought for Commercial Project:**

~~780-784 Yonge Street, Toronto, Ontario~~

13 Bloor Street West, Toronto, Ontario

15 Bloor Street West, Toronto, Ontario

17 Bloor Street West, Toronto, Ontario

770 Yonge Street, Toronto, Ontario

774 Yonge Street, Toronto, Ontario

778 Yonge Street, Toronto, Ontario

## **SCHEDULE "B"**

### **MAJOR DECISIONS**

**"Major Decisions"** means decisions to be made with respect to any of the following matters:

- (a) the Development Plan;
- (b) the Development Budget;
- (c) any matter that would have the affect of additional or increased obligations or liabilities (other than costs included in the Development Budget) on the Owner (or any Party comprising the Owner) outside of the normal course for a similar project;
- (d) any matters in connection with the Development requiring expenditure / Development Costs in excess of the Development Budget, as the case may be;
- (e) the material terms and conditions of any Financing;
- (f) the Disposition of all or any portion of the Development (other than any Lease entered into in accordance with the Leasing Plan and other than any Unit sold pursuant to an Approved Sale Agreement);
- (g) the appointment of a replacement Manager under this Agreement;
- (h) any other matters listed in Section 6.1 of this Agreement and not referred to in the list above; and
- (i) any matters listed in the subsections of "Material Agreements and Actions" and "Decisions Relation to the Partnership and the Title Nominee" in Section 4.4 of the Unanimous Shareholders Agreement, to the extent applicable to the contents of this Agreement, actions of the Manager or the Development.

**SCHEDULE "C"**  
**DEVELOPMENT BUDGET**



**AltusGroup**

One Bloor West

800 Residential Condominium Units with Retail and Office

Yonge and Bloor

Toronto, Ontario

Report: Proforma

Date: 28-Jun-14

Project No.: 100675

*AM*

*PRD*

Executive Summary

Preliminary Net Project Revenue	1,437,492,281	
Project Budget	1,020,000,000	
Total Profit	<u>417,492,281</u>	
Profit as % Budget		40.93%
Profit as % Equity		146.49%









One Bloor West  
 800 Residential Condominium Units with Retail and Office  
 Toronto, Ontario

Report: Proforma  
 Date: 28-Jun-14  
 Project No.: 100675

Preliminary Projected Source and Use of Funding

Source of Funding

Equity	285,000,000	27.94%
Insured Deposits	84,800,000	8.31%
Deferred Costs	17,200,000	1.69%
Construction Loan	983,000,000	62.06%
Source of Funds	<u>1,020,000,000</u>	100.00%

Insured Residential Deposits

Total Gross Pricing	565,369,100	800 Units
Assumed 75% Presales	424,026,825	600 Units
Assumed 20% Presale Deposits Required	84,805,365	600 Sold Tarion Units
	<u>84,800,000</u>	
Tarion	12,000,000	
ECDI	72,800,000	

Deferred Costs

Legal Fees (Closing)	800,000
Discharge Fees	56,000
Commissions Lead (50%)	3,356,072
Commissions Outside (50%)	9,810,057
Purchaser Incentives/Giveaways	3,200,000
Total	17,222,130
Required	<u>17,200,000</u>

*Handwritten signature and initials*

**SCHEDULE "D"**  
**LEASING PLAN**

**SCHEDULE "E"**

**COMMERCIAL CONSTRUCTION MANAGEMENT AGREEMENT**

**APPENDIX "C"**  
**GC AGREEMENT**

CCDC 2

stipulated price contract

2 0 0 8

Apply a CCDC 2 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 2 – 2008 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE  
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE  
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

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- GC 10.1 Taxes and Duties
- GC 10.2 Laws, Notices, Permits, and Fees
- GC 10.3 Patent Fees
- GC 10.4 Workers' Compensation

### PART 11 INSURANCE AND CONTRACT SECURITY

- GC 11.1 Insurance
- GC 11.2 Contract Security

### PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

- GC 12.1 Indemnification
- GC 12.2 Waiver of Claims
- GC 12.3 Warranty

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- Public Sector Owners
- Private Sector Owners
- Canadian Bar Association (Ex-Officio)
- \* The Association of Canadian Engineering Companies
- \* The Canadian Construction Association
- \* Construction Specifications Canada
- \* The Royal Architectural Institute of Canada

\*Committee policy and procedures are directed and approved by the four constituent national organizations.

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**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

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

**This Agreement** made on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ .

**by and between the parties**

hereinafter called the "*Owner*"

**and**

hereinafter called the "*Contractor*"

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

**ARTICLE A-1 THE WORK**

The *Contractor* shall:

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

*insert above the name of the Work*

located at

*insert above the Place of the Work*

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

*insert above the name of the Consultant*

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

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

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

**ARTICLE A-2 AGREEMENTS AND AMENDMENTS**

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

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

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## ARTICLE A-3 CONTRACT DOCUMENTS

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

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

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

**ARTICLE A-4 CONTRACT PRICE**

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

/100 dollars \$

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

/100 dollars \$

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

/100 dollars \$

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

4.5 All amounts are in Canadian funds.

**ARTICLE A-5 PAYMENT**

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

percent ( %), the *Owner* shall:

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

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

5.3 Interest

.1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:

- (1) 2% per annum above the prime rate for the first 60 days.
- (2) 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

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

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

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

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

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

### Owner

*name of Owner\**

*address*

*facsimile number*

*email address*

### Contractor

*name of Contractor\**

*address*

*facsimile number*

*email address*

### Consultant

*name of Consultant\**

*address*

*facsimile number*

*email address*

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

## ARTICLE A-7 LANGUAGE OF THE CONTRACT

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

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

**ARTICLE A-8 SUCCESSION**

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

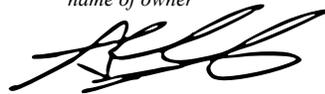
**In witness whereof** the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED  
in the presence of:

**WITNESS**

**OWNER**

  
signature

name of owner  
  
signature

name of person signing

name and title of person signing

signature

signature

name of person signing

name and title of person signing

**WITNESS**

**CONTRACTOR**

  
signature

name of Contractor  
  
signature

name of person signing

name and title of person signing

signature

signature

name of person signing

name and title of person signing

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

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## DEFINITIONS

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

**1. Change Directive**

A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Contractor* to proceed with a change in the *Work* within the general scope of the *Contract Documents* prior to the *Owner* and the *Contractor* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.

**2. Change Order**

A *Change Order* is a written amendment to the *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Contractor* stating their agreement upon:

- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.

**3. Construction Equipment**

*Construction Equipment* means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

**4. Consultant**

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Work*. The term *Consultant* means the *Consultant* or the *Consultant's* authorized representative.

**5. Contract**

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

**6. Contract Documents**

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS and amendments agreed upon between the parties.

**7. Contract Price**

The *Contract Price* is the amount stipulated in Article A-4 of the Agreement - CONTRACT PRICE.

**8. Contract Time**

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement - THE WORK from commencement of the *Work* to *Substantial Performance of the Work*.

**9. Contractor**

The *Contractor* is the person or entity identified as such in the Agreement. The term *Contractor* means the *Contractor* or the *Contractor's* authorized representative as designated to the *Owner* in writing.

**10. Drawings**

The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

**11. Notice in Writing**

A *Notice in Writing*, where identified in the *Contract Documents*, is a written communication between the parties or between them and the *Consultant* that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

**12. Owner**

The *Owner* is the person or entity identified as such in the Agreement. The term *Owner* means the *Owner* or the *Owner's* authorized agent or representative as designated to the *Contractor* in writing, but does not include the *Consultant*.

**13. Place of the Work**

The *Place of the Work* is the designated site or location of the *Work* identified in the *Contract Documents*.

**14. Product**

*Product or Products* means material, machinery, equipment, and fixtures forming the *Work*, but does not include *Construction Equipment*.

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

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

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

**GC 1.2 LAW OF THE CONTRACT**

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

**GC 1.3 RIGHTS AND REMEDIES**

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

## **GC 1.4 ASSIGNMENT**

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

## **PART 2 ADMINISTRATION OF THE CONTRACT**

### **GC 2.1 AUTHORITY OF THE CONSULTANT**

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

### **GC 2.2 ROLE OF THE CONSULTANT**

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

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

### **GC 2.3 REVIEW AND INSPECTION OF THE WORK**

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

### **GC 2.4 DEFECTIVE WORK**

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

## **PART 3 EXECUTION OF THE WORK**

### **GC 3.1 CONTROL OF THE WORK**

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

### **GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS**

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

### **GC 3.3 TEMPORARY WORK**

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

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

#### **GC 3.4 DOCUMENT REVIEW**

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

#### **GC 3.5 CONSTRUCTION SCHEDULE**

3.5.1 The *Contractor* shall:

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

#### **GC 3.6 SUPERVISION**

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

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

#### **GC 3.7 SUBCONTRACTORS AND SUPPLIERS**

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

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

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

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

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

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

### **GC 3.8 LABOUR AND PRODUCTS**

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

### **GC 3.9 DOCUMENTS AT THE SITE**

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

### **GC 3.10 SHOP DRAWINGS**

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

### **GC 3.11 USE OF THE WORK**

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

### **GC 3.12 CUTTING AND REMEDIAL WORK**

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

### **GC 3.13 CLEANUP**

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

## **PART 4 ALLOWANCES**

### **GC 4.1 CASH ALLOWANCES**

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

## **GC 4.2 CONTINGENCY ALLOWANCE**

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

## **PART 5 PAYMENT**

### **GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER**

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

### **GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT**

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

### **GC 5.3 PROGRESS PAYMENT**

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

#### **GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK**

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

#### **GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

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

#### **GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK**

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

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

#### **GC 5.7 FINAL PAYMENT**

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

#### **GC 5.8 WITHHOLDING OF PAYMENT**

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

#### **GC 5.9 NON-CONFORMING WORK**

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

### **PART 6 CHANGES IN THE WORK**

#### **GC 6.1 OWNER'S RIGHT TO MAKE CHANGES**

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

#### **GC 6.2 CHANGE ORDER**

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

### GC 6.3 CHANGE DIRECTIVE

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

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

#### **GC 6.4 CONCEALED OR UNKNOWN CONDITIONS**

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

#### **GC 6.5 DELAYS**

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

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

## **GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE**

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

## **PART 7 DEFAULT NOTICE**

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

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

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

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

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

## **PART 8 DISPUTE RESOLUTION**

### **GC 8.1 AUTHORITY OF THE CONSULTANT**

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

### **GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION**

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

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

### **GC 8.3 RETENTION OF RIGHTS**

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

## **PART 9 PROTECTION OF PERSONS AND PROPERTY**

### **GC 9.1 PROTECTION OF WORK AND PROPERTY**

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

### **GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

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

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

### **GC 9.3 ARTIFACTS AND FOSSILS**

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

### **GC 9.4 CONSTRUCTION SAFETY**

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

## **GC 9.5 MOULD**

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

## **PART 10 GOVERNING REGULATIONS**

### **GC 10.1 TAXES AND DUTIES**

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

### **GC 10.2 LAWS, NOTICES, PERMITS, AND FEES**

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

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

### **GC 10.3 PATENT FEES**

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

### **GC 10.4 WORKERS' COMPENSATION**

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

## **PART 11 INSURANCE AND CONTRACT SECURITY**

### **GC 11.1 INSURANCE**

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

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

## GC 11.2 CONTRACT SECURITY

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

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

## PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

### GC 12.1 INDEMNIFICATION

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

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

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

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

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

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

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

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

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

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

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

## GC 12.2 WAIVER OF CLAIMS

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

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

### **GC 12.3 WARRANTY**

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

**CCDC 41**  
**CCDC INSURANCE REQUIREMENTS**

**PUBLICATION DATE: JANUARY 21, 2008**

1. General liability insurance shall be with limits of not less than \$5,000,000 per occurrence, an aggregate limit of not less than \$5,000,000 within any policy year with respect to completed operations, and a deductible not exceeding \$5,000. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320. To achieve the desired limit, umbrella or excess liability insurance may be used. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts.
2. Automobile liability insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy, shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death and damage to property, covering all vehicles owned or leased by the *Contractor*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Contractor* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Contractor*.
3. Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft (if used directly or indirectly in the performance of the *Work*), including use of additional premises, shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than \$5,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to the *Owner*.
4. "Broad form" property insurance shall have limits of not less than the sum of 1.1 times *Contract Price* and the full value, as stated in the *Contract*, of *Products* and design services that are specified to be provided by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$5,000. The insurance coverage shall not be less than the insurance provided by IBC Forms 4042 and 4047 (excluding flood and earthquake) or their equivalent replacement. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts.
5. Boiler and machinery insurance shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects forming part of the *Work*. The insurance coverage shall not be less than the insurance provided by a comprehensive boiler and machinery policy.
6. "Broad form" contractors' equipment insurance coverage covering *Construction Equipment* used by the *Contractor* for the performance of the *Work*, shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance, the *Owner* may agree to waive the equipment insurance requirement.
7. Standard Exclusions
  - 7.1 In addition to the broad form property exclusions identified in IBC forms 4042(1995), and 4047(2000), the *Contractor* is not required to provide the following insurance coverage:
    - Asbestos
    - Cyber Risk
    - Mould
    - Terrorism

## **SCHEDULE 'B'**

### **SCOPE OF WORK**

The work to be undertaken shall consist of the furnishing of all material, labour, tools, equipment and all facilities and the satisfactory performance of all work necessary for the complete construction of luxury Condominium building including Retail at grade component and hotel space, ready for use and legal occupancy, in strict compliance with the plans, specifications and other related documents. Provide direction to planning, scheduling and engineering functions as required.

The principal items of construction work are listed below:

- Securing of all necessary permits and final certification for the entire construction
- Preparation and clearing of site, shoring, excavation and backfilling
- Concrete and reinforced concrete work
- Masonry and tile work
- Precast work
- Carpentry and joinery work
- Waterproofing
- Rough and finishing hardware
- Electrical work
- Plumbing work
- Mechanical work
- Security
- Fire Alarm
- Storm drainage work
- Painting work
- Provide all building equipment, operating manuals and warranty information, and coordinating startup of the building systems with operational personnel
- Commissioning
- Provide warranty program in accordance with TARION terms and conditions

**APPENDIX "D"**  
**FIRST AMENDMENT TO GC AGREEMENT**

**AMENDING AGREEMENT**

**CCDC 2 STIPULATED PRICE CONTRACT  
THE ONE, 1 BLOOR STREET WEST**

**THIS AMENDING AGREEMENT** (this "**Agreement**") is made effective on the 27<sup>th</sup> day of September, 2019.

**BETWEEN:**

**MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.**

(the "**Owner**")

**AND:**

**MIZRAHI INC.**

(the "**Contractor**")

**WHEREAS:**

- A. The Owner and the Contractor are parties to a CCDC 2 Stipulated Price Contract dated May 14, 2019 (the "**Contract**"); and
- B. The Owner and the Contractor wish to amend the Contract as set out in this Agreement.

**ACCORDINGLY**, in consideration of the payment of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party), the Owner and the Contractor agree as follows:

**1.0 AMENDMENTS TO THE CONTRACT**

**1.1 The Work**

The Owner and the Contractor agree that Article A-1.3 of the Contract is hereby deleted and replaced with the following provision:

"1.3 commence the *Work* by the 1<sup>st</sup> day of August in the year 2017 and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, progress with the Work in accordance with the construction schedule attached hereto as Schedule "B" and attain *Substantial Performance of the Work* by the 31<sup>st</sup> day of December in the year 2022."

**1.2 Contract Documents**

The Owner and the Contractor agree that Article A-3.1 of the Contract is hereby deleted and replaced with the following provision:

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



- Agreement between *Owner* and *Contractor*
- Definitions
- The General Conditions of the Stipulated Price Contract
- Schedule "A" – Scope of Work
- Schedule "B" – Construction Schedule
- Schedule "C" – Specifications and Drawings"

### **1.3 Definitions**

The Owner and the Contractor agree that the definition of "Work" set forth in Section 25 of the Definitions of the Contract is hereby deleted and replaced with the following provision:

"25. Work

The *Work* means the total construction and related services required by the *Contract Documents*, including as set forth in Schedule "A" – Scope of Work."

### **1.4 Schedule "A" of the Contract**

The Owner and the Contractor agree that Schedule "B" – Scope of Work of the Contract is hereby deleted and replaced by a Schedule "A" – Scope of Work, set forth in Exhibit A hereto.

### **1.5 Schedule "B" of the Contract**

The Owner and the Contractor agree that a Schedule "B" – Construction Schedule, set forth in in Exhibit B hereto, is hereby added to the Contract.

### **1.6 Schedule "C" of the Contract**

The Owner and the Contractor agree that a Schedule "C" – Specifications and Drawings, set forth in Exhibit C hereto, is hereby added to the Contract.

## **2.0 GENERAL**

### **2.1 Confirmation**

The Owner and the Contractor agree and confirm that the Contract remains in full force and effect, unamended and unmodified, save and except as the Contract is explicitly amended in accordance with the terms of this Agreement. The Contract, as it is amended by this Agreement, is hereby ratified and confirmed by the Contractor and the Owner.

### **2.2 Interpretation**

All capitalized terms used in this Agreement shall have the same meaning as are ascribed to such terms in the Contract, except as is otherwise expressly provided for in this Agreement.

### **2.3 Enurement**

The Owner and the Contractor agree that all of the terms of this Agreement shall extend to and be binding upon the Contractor and the Owner, together with their respective successors and assigns.



**2.4 Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario.

**2.5 Counterparts**

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

**IN WITNESS WHEREOF**, the Owner and the Contractor have caused this Agreement to be signed by their respective officers duly authorized to do so effective as of the day and year first above written.

**THE OWNER**

**Mizrahi Development Group (The One) Inc.**

By:   
Name: Sam Mizrahi  
Title: President

By: \_\_\_\_\_  
Name: Jenny Coco  
Title: Vice-President

I have authority to bind the Corporation.

**THE CONTRACTOR**

**Mizrahi Inc.**

By:   
Name: Sam Mizrahi  
Title: President

I have authority to bind the Corporation.

**2.4 Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario.

**2.5 Counterparts**

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

**IN WITNESS WHEREOF**, the Owner and the Contractor have caused this Agreement to be signed by their respective officers duly authorized to do so effective as of the day and year first above written.

**THE OWNER**

**Mizrahi Development Group (The One) Inc.**

By: \_\_\_\_\_  
Name: Sam Mizrahi  
Title: President

By:  \_\_\_\_\_  
Name: Jenny Coco  
Title: Vice-President

I have authority to bind the Corporation.

**THE CONTRACTOR**

**Mizrahi Inc.**

By: \_\_\_\_\_  
Name: Sam Mizrahi  
Title: President

I have authority to bind the Corporation.

**EXHIBIT A**

## Schedule "A" – Scope of Work

The *Work* includes the furnishing of all material, labour, tools, equipment and other facilities and the satisfactory performance of all *Work* required by the *Contract Documents* and necessary for the complete construction of the luxury condominium building (including its retail at grade component and hotel space) known as "One Bloor Street West", delivering the building to the *Owner* ready for use and legal occupancy, the whole in compliance with the construction schedule attached hereto as Schedule "B" – Construction Schedule and the *Drawings* and *Specifications* attached hereto as Schedule "C" - Specifications and Drawings. The *Contractor* shall also provide direction to planning, scheduling and engineering functions as required.

The principal items of *Work* are listed below:

- Securing of all necessary permits and final certification for the work
- Preparation and clearing of site, shoring, excavation and backfilling
- Concrete and reinforced concrete work
- Masonry and tile work
- Precast work
- Carpentry and joinery work
- Waterproofing
- Rough and finishing hardware
- Electrical work
- Plumbing work
- Mechanical work
- Security
- Fire Alarm
- Storm drainage work
- Painting work
- Provide all building equipment, operating manuals and warranty information, and coordinating startup of the building systems with operational personnel
- Commissioning
- Provide warranty program in accordance with TARION terms and conditions

\*\*\*

**EXHIBIT B**

Schedule "B" – Construction Schedule



**EXHIBIT C**

Schedule "C" – Specifications and Drawings

A handwritten signature or set of initials in black ink, located in the bottom right corner of the page. The signature is stylized and appears to consist of a few connected letters.

**APPENDIX "E"**  
**AGREEMENT RE: DEVELOPER AGREEMENTS**

**AGREEMENT RE: DEVELOPER AGREEMENTS**

**THIS AGREEMENT** is made as of the 30th day of August, 2019

**B E T W E E N:**

**MIZRAHI COMMERCIAL (THE ONE) LP**

(the “**Beneficial Owner**”)

- and –

**MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.**

(the “**Nominee**”, and collectively with the Beneficial Owner, the “**Borrower**”)

- and –

**MIZRAHI INC.**

(the “**Developer**”)

- and -

**KEB HANA BANK CANADA, as Administrative Agent**

(the “**Administrative Agent**”)

**RECITALS:**

- A. The Beneficial Owner is the beneficial owner and the Nominee is the registered owner of the lands municipally known as One Bloor Street West and 768 Yonge Street, Toronto, Ontario, the legal description of which is annexed as Schedule “A” hereto (the “**Property**”).
- B. The Borrower intends to construct a 84-storey mixed-use building (the “**Building**”), including (i) a condominium consisting of an area of approximately 720,000 gross square feet (approximately 518,000 of which is anticipated to be net saleable square feet – inclusive of interior and exterior/outdoor spaces) located within the Building with approximately 416 luxury condominium units on floors 19 through 84, inclusive, of the Building (the “**Condominium Project**”) and (ii) a hotel component consisting of an area of approximately 130,000 gross square feet, to be operated as a full-service hotel, and related amenity areas, a retail component consisting of an area of approximately 60,000 gross square feet and a below-grade parking component consisting of an area of approximately 115,000 gross square feet with approximately 291 parking spaces and related driveways and ramps, located within and underneath the Building (the “**Commercial Project**”, and together with the Condominium Project, the “**Project**”) in accordance with the plans and specifications approved by the Senior Lender and the Lenders on the Property.

- C. The Developer has entered into the Developer Agreements (as defined below), pursuant to which the Developer has been engaged to provide development management services in respect of the Commercial Project and has been engaged to construct the Building.
- D. Pursuant to the Credit Agreement, certain lenders party to the Credit Agreement (the “**Lenders**”) have agreed to make available certain credit facilities to the Borrower on the terms and subject to the conditions more particularly set forth therein.
- E. The Administrative Agent (acting on the instructions of the Required Lenders) requires that this Agreement be entered into and the Nominee, the Beneficial Owner and the Developer have agreed to do so.

**NOW THEREFORE** in consideration of the sum of Two (\$2.00) Dollars of lawful money of Canada and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto hereby agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

#### **Section 1.01 Definitions**

In this Agreement, unless there is something in the subject matter or context inconsistent therewith or unless the context otherwise specifies or requires, the following terms have the meanings herein specified.

- (a) “**Agreement**”, “this Agreement”, “hereto”, “hereof” “herein”, “hereby”, “hereunder” and similar expressions mean or refer to this agreement as amended from time to time and any agreement or instrument supplemental or ancillary hereto or in implementation hereof and the expressions “Article”, “Section”, “Subsection”, “Paragraph” and “Subparagraph” followed by a number or letter mean and refer to the specified Article, Section, Subsection, Paragraph or Subparagraph of this agreement;
- (b) “**Business Day**” means any day other than a Saturday, a Sunday and any other day on which the Lenders are authorized or obligated to close in Toronto, Ontario;
- (c) “**Credit Agreement**” means the credit agreement dated August \_\_\_\_, 2019 between, *inter alia*, the Borrower, as borrower, the Administrative Agent, as administrative agent, the Lenders, as lenders, and the Developer, as a credit party, as the same may be amended, supplemented, otherwise modified or restated from time to time; and
- (d) “**Developer Agreements**” means the commercial development management agreement dated July 25, 2014 between the Beneficial Owner and the Developer (the “**CDMA**”) and the CCDC2 stipulated price contract dated May 14, 2019 between the Nominee and the Developer (the “**CCDC2**”), together with any other agreement entered into between the Developer and the Nominee and/or the Beneficial Owner in accordance with the Credit Agreement, in each case as

amended in accordance with the terms of this Agreement and “**Developer Agreement**” means any one of the Developer Agreements.

### **Section 1.02 Capitalized Terms**

Unless otherwise indicated, the capitalized terms used in this Agreement but not specifically defined herein, shall have the same meanings as are ascribed to such terms in the Credit Agreement.

### **Section 1.03 Applicable Law**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### **Section 1.04 Extended Meaning**

A reference to any one or more of the parties to this Agreement shall be deemed to be a reference to the respective heirs, executors, administrators, successors and assigns of such person.

### **Section 1.05 Entire Agreement**

This Agreement supersedes all agreements between the parties hereto relative to the subject matter hereof, and no party shall be bound by any representation or promise made by any person relative thereto which is not embodied herein.

### **Section 1.06 Business Day**

If the day on which any act or payment is required to be done or made is a day which is not a Business Day, then such act or payment shall be duly performed or made if done on the next following Business Day.

### **Section 1.07 Statutory References**

References herein to any statute or any provision thereof includes such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto or other legislation in *pari materia* therewith.

## **ARTICLE 2**

### **REPRESENTATIONS AND WARRANTIES**

#### **Section 2.01 Representations**

The Borrower and the Developer hereby represent and warrant as follows:

- (a) The CDMA and the CCDC2, certified copies of which are provided in Schedule “B” hereto:
  - (i) were duly and validly authorized, executed and delivered by each of the parties thereto;

- (ii) are in full force and effect, unamended, as of the date hereof; and
- (iii) are the only Developer Agreements in existence as of the date hereof;
- (b) As of the date hereof, the Developer is the sole general contractor and the sole provider of development management services in connection with the Building and the Project;
- (c) As of the date hereof, \$30,000,000 has been paid to the Developer pursuant to the CDMA or in connection with development management services for the Project, and nothing remains to be paid to the Developer pursuant to the CDMA or in connection with development management services for the Project;
- (d) The amount of all fees payable in connection with the development and management of the Building and the Project, including the Development Management Fee (as defined in the CDMA), shall not exceed \$30,000,000 in the aggregate;
- (e) As of the date hereof, \$3,749,402.69 has been paid to the Developer pursuant to the CCDC2 (other than amounts corresponding to amounts paid to subcontractors) or in connection with construction of the Project, and \$24,020,316.30 (other than amounts corresponding to amounts paid to be paid to subcontractors) remains to be paid to the Developer pursuant to the CCDC2 or in connection with construction of the Project;
- (f) Except as set out herein, there are no fees, payments, incentives or inducements (i) owed to the Developer or owed by the Borrower in connection with development management for or construction of the Project or (ii) owed to the Developer pursuant to the Developer Agreements; and
- (g) There is no default existing on the part of any party to any Developer Agreement in the observance or performance of its respective obligations pursuant to the Developer Agreements.

## **Section 2.02 Developer Representations**

The Developer hereby represents and warrants as follows:

- (a) The Developer has all requisite corporate capacity, power and authority to execute and deliver this Agreement and this Agreement constitutes legal, valid and binding obligations on the part of the Developer enforceable against the Developer in accordance with its terms; and
- (b) The Developer has not assigned, pledged, encumbered, disposed of or created any security interest in any Developer Agreement or its interest therein.

### ARTICLE 3

#### **DEVELOPMENT MANAGEMENT SERVICES – CONDOMINIUM PROJECT**

##### **Section 3.01 Development Management of the Project**

The Developer and the Borrower acknowledge, covenant and agree that notwithstanding anything to the contrary in the Developer Agreements or the CERIECO Agreements, the Developer shall provide Development Management Services (as defined in the CDMA) in respect of both the Commercial Project and the Condominium Project.

##### **Section 3.02 Amendment of CDMA**

The Beneficial Owner and the Developer agree that, on request of the Administrative Agent (acting on the instructions of the Required Lenders), the Beneficial Owner and the Developer shall amend the CDMA to set out that the Developer is obligated to provide Development Management Services for the Project, including the Condominium Project. Such amendment shall be in a form satisfactory to the Administrative Agent (acting on the instructions of the Required Lenders in their sole discretion), and shall not include any further payments, inducements, fees or other incentives in favour of the Developer. For greater clarity, the Developer agrees to perform Development Management Services for the Project, being both the Commercial Project and the Condominium Project, for the Development Management Fee (as defined in the CDMA).

### ARTICLE 4

#### **SCOPE OF CONSTRUCTION WORK**

##### **Section 4.01 Construction of the Project**

The Developer and the Borrower acknowledge that the Developer is required to complete construction of the Building as further set out in the CCDC2 (as may be amended). The Developer and the Borrower further acknowledge, covenant and agree that notwithstanding anything to the contrary in the Developer Agreements or the CERIECO Agreements, the plans and specification, budgets and project schedules set out in Schedule “C” hereto (being the Plans and Specifications, Project Budgets and Project Schedules as defined in the Credit Agreement) shall be the plans and specification, budgets and project schedules for construction of the Building and the Project.

##### **Section 4.02 Amendment of CCDC2**

The Nominee and the Developer agree that, on request of the Administrative Agent (acting on the instructions of the Required Lenders), the Nominee and the Developer shall amend the CCDC2 to replace the Scope of Work set out in Schedule “B” thereto with a scope of work acceptable to the Administrative Agent (acting on the instructions of the Required Lenders), acting reasonably.

### **Section 4.03 Construction Contracts**

The Developer agrees that each of the Construction Contracts entered into after the date hereof shall contain a provision in form and substance acceptable to the Administrative Agent (acting on the instructions of the Required Lenders) pursuant to which the relevant party: (i) consents to (A) the assignment of the Construction Contract by the Developer to the Administrative Agent as security for the Obligations, (B) to any assignment of the Subcontract by the Developer to the Nominee and (C) to any assignment of the Construction Contract by the Administrative Agent in connection with any enforcement of the Security; and (ii) agrees that it shall not have any right to terminate the Construction Contract in connection with Developer default or insolvency or any matter beyond the control of the Administrative Agent and that it shall not have a right to terminate the Construction Contract in connection with a termination of any Developer Agreement provided that the Construction Contract has been assigned to the Nominee or the Administrative Agent (or has otherwise been assigned to the owner of Project in connection with enforcement of the Security). The Developer agrees to use commercially reasonable efforts to cause each Construction Contract existing as of the date hereof to contain the foregoing terms.

## **ARTICLE 5**

### **CERIECO AGREEMENTS**

#### **Section 5.01 No Development or Construction under the CERIECO Agreements**

The Developer and the Borrower acknowledge, covenant and agree that, notwithstanding anything to the contrary in the CERIECO Agreements, the Developer Agreements or any other documents or instruments, no construction, development or management of the Project (or any portion or component thereof) has been or will be done pursuant to the CERIECO Agreements. In the event of any conflict or inconsistency between the terms of the CERIECO Agreements and the terms of the Developer Agreements in connection with the construction, development or management of the Project, the Developer Agreements will govern.

#### **Section 5.02 Claims and Termination of CERIECO Agreements**

The Developer acknowledges that it shall have no rights, entitlements, interests or claims, and hereby waives in full and in perpetuity all of its rights, entitlements, interests and claims pursuant to or in connection with the CERIECO Agreements. Upon the occurrence of an Event of Default, the Administrative Agent (acting on the instructions of the Required Lenders), any receiver or receiver and manager appointed by the Administrative Agent (acting on the instructions of the Required Lenders), any CERIECO Party or any Credit Party may decide, at any time, to terminate any of the CERIECO Agreements to which the Developer is a party and the Developer agrees to terminate such CERIECO Agreements forthwith upon written notice from the applicable counterparty and without compensation of any kind to the Developer.

## ARTICLE 6

### ASSIGNMENT OF AND AMENDMENTS TO DEVELOPER AGREEMENTS

#### **Section 6.01 Assignment**

The Developer acknowledges and agrees that the Borrower may assign its interest in the Developer Agreements to the Administrative Agent and the Administrative Agent (acting on the instructions of the Required Lenders) may assign the Developer Agreements, in each case, without the consent of the Developer; and the Administrative Agent (acting on the instructions of the Required Lenders) and its assignees may enforce any rights and/or obligations arising under the Developer Agreements against the Developer in respect of the Property.

#### **Section 6.02 Changes to Developer Agreements**

The Developer and Borrower agree that they shall not amend, supplement, replace or restate any existing Development Agreement and that they shall not enter into any new Developer Agreement without the prior written consent of the Administrative Agent (acting on the instructions of the Required Lenders).

## ARTICLE 7

### DEFAULTS AND RIGHT TO TERMINATE

#### **Section 7.01 Right to Terminate or Replace the Developer**

The Administrative Agent (acting on the instructions of the Required Lenders) or any receiver or receiver and manager appointed by the Administrative Agent shall be entitled, at any time, to terminate any of the Developer Agreements (notwithstanding that the Administrative Agent is not a party thereto), or to require the Developer to assign its interest in the Developer Agreements to a Person designated by the Administrative Agent (acting on the instructions of the Required Lenders), upon providing the Developer with 30 days written notice, without compensation of any kind to the Developer, upon the occurrence and continuance of an Event of Default. The termination (or assignment) shall be effective on the date specified in the notice, but in any event, no less than 30 days thereafter. The Borrower and not the Administrative Agent or any receiver or receiver and manager appointed by the Administrative Agent, shall be responsible for all fees due to the Developer in respect of the period up to the termination (or assignment) of the applicable Developer Agreement(s) and reimbursement for all costs and expenses payable to the Developer pursuant to the terms of such Developer Agreement(s). The Developer acknowledges and agrees that its right to receive payment of fees and other amounts pursuant to the Developer Agreements are unsecured claims against the Borrower and not the Administrative Agent or any receiver or receiver and manager appointed by the Administrative Agent, and that such claims rank subordinate to all indebtedness or other Obligations.

#### **Section 7.02 Defaults Under Management Agreement**

The Developer hereby agrees to deliver to the Administrative Agent notice of any default on the part of the Beneficial Owner pursuant to the CDMA or the Nominee pursuant to the CCDC2 which has not been cured or waived and to provide to the Administrative Agent with a

reasonable period of time in which, at the option of the Administrative Agent (acting on the instructions of the Required Lenders), the Administrative Agent (acting on the instructions of the Required Lenders) may remedy such default or enforce its remedies pursuant to the Loan Documents. Nothing herein contained shall, however, obligate the Administrative Agent to cure any default on the part of the Borrower pursuant to the Developer Agreements or to enforce its remedies pursuant to the Security or the Loan Documents.

### **Section 7.03 Liability of Administrative Agent**

The Administrative Agent shall be liable for the performance of the obligations of the Nominee or Beneficial Owner pursuant to applicable Developer Agreement, to the extent only that the same relate to the Property during the period in which the Administrative Agent is in possession or is the owner of the Property, unless the Administrative Agent (acting on the instructions of the Required Lenders) terminates the Developer Agreement pursuant to Section 7.01 hereof. In no event shall the Administrative Agent have any liability to the Developer for any unpaid fees or expenses of the Developer arising prior to the date on which the Administrative Agent (acting on the instructions of the Required Lenders) takes possession of the Property or after it ceases to have possession of the Property, or any fees which arise as a result of the termination of the Developer Agreement (provided that all unpaid fees or expenses of the Developer pertaining to or arising during the Administrative Agent's possession of the Property have been paid in full).

### **Section 7.04 Challenge**

The Developer shall not hereafter directly or indirectly take, and is hereby estopped from taking, any action, and the Developer shall not consent to the taking of any action and the Developer shall not nor shall it cause any person to take any action, in each case, to challenge the validity, legality, perfection, priority or enforcement of any, some or all of the Credit Agreement, the Loan Documents, or the Security or the security interests created thereby.

## **ARTICLE 8**

### **GENERAL**

#### **Section 8.01 Successors**

This Agreement shall enure to the benefit of and shall be binding on each of the parties hereto and their respective heirs, executors, administrators, successors and assigns, as the case may be.

#### **Section 8.02 Notices**

Any notice or other communication which may be or is required to be given or made pursuant to this Agreement shall be deemed to have been sufficiently and effectively given if signed by or on behalf of the party giving notice and delivered to the party for which it is intended at its address, as follows:

- (a) if to the Administrative Agent:

KEB Hana Bank Canada, as Administrative Agent

KEB Hana Bank Canada, Bloor Branch

627 Bloor Street West  
Toronto, ON, M6G 1K8

Attention: Young Choi, Branch Manager  
Facsimile: : 416-531-1047

- (b) if to the Borrower  
c/o Coco Paving  
949 Wilson Avenue  
Toronto, ON M3K 1G2

Attention: Jenny Coco

with a copy to:

189 Forest Hill Road  
Toronto, ON M5P 2N3

Attention: Sam Mizrahi

- (c) if to the Developer:

189 Forest Hill Road  
Toronto, ON M5P 2N3

Attention: Sam Mizrahi

Any notice or communication which may or is required to be given or made shall be made or given as herein provided or to such other address or in case of such other officer as a party may from time to time advise to the other parties hereto by notice in writing as aforesaid and shall not be deemed received until actual receipt thereof by the party to whom such notice is given except if sent by telex or facsimile machine, in which case it shall be deemed received on the Business Day next following the date of transmission. In the event that an interruption in postal service occurs or is anticipated in Canada, which interruption will delay or is likely to delay receipt of any notice herein, any such notice shall be delivered personally or by courier or shall be given by facsimile machine or telex.

### **Section 8.03 Severability**

If one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

**Section 8.04 Amendments**

No amendment or variation of the terms, conditions, warranties, covenants, agreements or undertakings set forth herein shall be of any force and effect unless the same shall be reduced to writing duly executed by all parties hereto in the same manner and with the same formality as this Agreement is executed.

**Section 8.05 Termination of Agreement**

The provisions of this Agreement shall remain in full force and effect as general and continuing collateral security until payment in full of all monies, the performance of all Obligations, and until the Lenders have no further obligation to provide Credit Facilities under the Credit Agreement. If the Borrower pays the Obligations, the Borrower performs, satisfies and extinguishes all Obligations, and if the Lenders no longer have any further obligation to provide or continue to provide the Credit Facilities to the Borrower pursuant to the Credit Agreement, this Agreement shall be and become fully ended and terminated and all covenants and agreements of the Nominee, Beneficial Owner and the Developer hereunder shall be at an end and the Administrative Agent, upon the request and at the expense of the Borrower or Developer, shall forthwith execute such instruments, discharges or re-assignments and give such notification or assurances as the Borrower or Developer may properly require to fully release, discharge and cancel this Agreement in the circumstances.

**Section 8.06 Counterparts and Formal Date**

This Agreement may be executed in several counterparts and by facsimile, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear date as of the date written at the beginning of this Agreement.

***[Remainder of page intentionally left blank]***

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement as of the date first above written.

**KEB HANA BANK CANADA, as  
Administrative Agent**

By:   
Name: Moon Sung Lee  
Title: CEO & President

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Bank.

**MIZRAHI INC.**

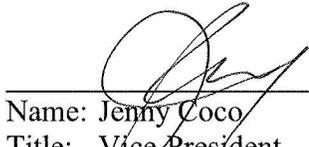
By:   
Name: Sam Mizrahi  
Title: President

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.

**MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.**

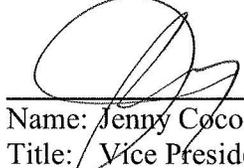
By:   
Name: Sam Mizrahi  
Title: President and Secretary

By:   
Name: Jenny Coco  
Title: Vice-President

We have authority to bind the Corporation.

**MIZRAHI COMMERCIAL (THE ONE) LP  
by its general partner MIZRAHI  
COMMERCIAL (THE ONE) GP INC.**

By:   
Name: Sam Mizrahi  
Title: President

By:   
Name: Jenny Coco  
Title: Vice President

We have authority to bind the Corporation.

**APPENDIX "F"**  
**SECOND AMENDMENT TO GC AGREEMENT**

## AMENDING AGREEMENT

### CCDC 2 STIPULATED PRICE CONTRACT THE ONE, 1 BLOOR STREET WEST

**THIS AMENDING AGREEMENT** (this “**Agreement**”) is made effective on the 4<sup>th</sup> day of May, 2022.

**BETWEEN:**

**MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.**  
(the “**Owner**”)

**AND:**

**MIZRAHI INC.**  
(the “**Contractor**”)

**WHEREAS:**

- A.** The Owner and Contractor are parties to a CCDC 2 Stipulated Price Contract dated May 14, 2019 (the “**Original Contract**”);
- B.** The Original Contract was amended by an Amending Agreement dated September 27, 2019 (the Original Contract and Amending Agreement collectively referred to as the “**Contract**”); and
- C.** The Owner and the Contractor wish to further amend the Contract as set out in this Agreement.

**ACCORDINGLY**, in consideration of the payment of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party), the Owner and the Contractor agree as follows:

**1.0**    **AMENDMENTS TO THE CONTRACT**

**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.



## 2.0 **GENERAL**

### 2.1 **Confirmation**

The Owner and the Contractor agree and confirm that the Contract remains in full force and effect, unamended and unmodified, save and except as the Contract is explicitly amended in accordance with the terms of this Agreement. The Contract, as it is amended by this Agreement, is hereby ratified and confirmed by the Contractor and the Owner.

### 2.2 **Interpretation**

All capitalized terms used in this Agreement shall have the same meaning as are ascribed to such terms in the Contract, except as is otherwise expressly provided for in this Agreement.

### 2.3 **Enurement**

The Owner and the Contractor agree that all of the terms of this Agreement shall extend to and be binding upon the Contractor and the Owner, together with their respective successors and assigns.

### 2.4 **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario.

### 2.5 **Counterparts**

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

*Signature page to follow*



**IN WITNESS WHEREOF**, the Owner and the Contractor have caused this Agreement to be signed by their respective officers duly authorized to do so effective as of the day and year first above written.

**THE OWNER**

WITNESS

**Mizrahi Development Group (The One) Inc.**

By:   
Name: *Amanda Brown*  
Title:

By:   
Name: Sam Mizrahi  
Title: President

By:  
Name:  
Title:

By: Signature not required per Control Agreement  
Name: Jenny Coco  
Title: Vice-President

I have authority to bind the Corporation

**THE CONTRACTOR**

WITNESS

**Mizrahi Inc.**

By:   
Name: *Amanda Brown*  
Title:

By:   
Name: Sam Mizrahi  
Title: President

**APPENDIX "G"**  
**OCTOBER AND NOVEMBER PAYMENT LETTERS**

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

Sam and Mark –

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

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

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

Thank you,  
Josh

Josh Nevsky  
Alvarez & Marsal  
D: 416.847.5161  
M: 416.710.0910



October 27, 2023

**DELIVERED BY EMAIL**

**Mizrahi Inc.**

125 Hazelton Ave  
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

**MIZRAHI INC.**

Per: 

Name: Sam Mizrahi President

Title:

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.  
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF  
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)  
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR  
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President  
cc: Brendan O'Neill, Goodmans LLP  
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoice (Invoice #C1416)

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

Sam,

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

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

Thank you,  
Josh

Josh Nevsky  
Alvarez & Marsal  
D: 416.847.5161  
M: 416.710.0910



October 30, 2023

**DELIVERED BY EMAIL**

**Mizrahi Inc.**

125 Hazelton Ave  
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

**MIZRAHI INC.**

Per:   
Name: \_\_\_\_\_  
Title: **Sam Mizrahi President**

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.  
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF  
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)  
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR  
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President  
cc: Brendan O'Neill, Goodmans LLP  
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoice (Invoice #C1416)

---

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

Sam,

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

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

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

Thanks,

**Andrew Sterling, CFA**

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

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December 4, 2023

**DELIVERED BY EMAIL**

**Mizrahi Inc.**

125 Hazelton Ave  
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

**MIZRAHI INC.**

Per:



Name:

Title: **Sam Mizrahi President**

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.  
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF  
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)  
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR  
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President  
cc: Brendan O'Neill, Goodmans LLP  
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoices #C1429 and #C1437

**Schedule A**

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

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

Sam,

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

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

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

Thanks,

**Andrew Sterling, CFA**  
Associate  
Alvarez & Marsal Canada  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1  
Direct: +1 416 847 5152  
Mobile: +1 647 994 7646  
[AlvarezandMarsal.com](http://AlvarezandMarsal.com)  
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November 30, 2023

**DELIVERED BY EMAIL**

**Mizrahi Inc.**

125 Hazelton Ave  
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

**MIZRAHI INC.**

Per:   
Name: \_\_\_\_\_  
Title: **Sam Mizrahi President**

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.**  
**SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF**  
**MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)**  
**INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR**  
**CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President

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

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

**Schedule A**

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



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

Sam,

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

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

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

Thanks,

**Andrew Sterling, CFA**  
Senior Associate  
Alvarez & Marsal Canada  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1  
Direct: +1 416 847 5152  
Mobile: +1 647 994 7646  
[AlvarezandMarsal.com](http://AlvarezandMarsal.com)  
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December 5, 2023

**DELIVERED BY EMAIL**

**Mizrahi Inc.**

125 Hazelton Ave  
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

**MIZRAHI INC.**

Per:



Name:

Title: **Sam Mizrahi President**

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.  
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF  
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)  
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR  
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President  
cc: Brendan O'Neill, Goodmans LLP  
Chris Armstrong, Goodmans LLP

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

**Schedule A**

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

---

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

Sam,

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

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

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

Thanks,

**Andrew Sterling, CFA**  
Associate  
Alvarez & Marsal Canada  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1  
Direct: +1 416 847 5152  
Mobile: +1 647 994 7646  
[AlvarezandMarsal.com](http://AlvarezandMarsal.com)  
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November 30, 2023

**DELIVERED BY EMAIL**

**Mizrahi Inc.**

125 Hazelton Ave  
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

**MIZRAHI INC.**

Per:   
Name: \_\_\_\_\_  
Title: **Sam Mizrahi President**

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.  
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF  
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)  
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR  
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President  
cc: Brendan O'Neill, Goodmans LLP  
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoices

### Schedule A

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

**APPENDIX "H"**  
**DECEMBER PAYMENT LETTERS**

---

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

Sam,

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

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

Thanks,

**Andrew Sterling, CFA**

Associate

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

Direct: +1 416 847 5152

Mobile: +1 647 994 7646

[AlvarezandMarsal.com](http://AlvarezandMarsal.com)

**ALVAREZ & MARSAL**

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December 22, 2023

**DELIVERED BY EMAIL**

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

Attention: Mr. Sam Mizrahi

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

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

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

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

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

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

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

Yours very truly,

**ALVAREZ & MARSAL CANADA INC., SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF ALL OF THE ASSETS, UNDERTAKINGS AND PROPERTIES OF MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC. AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

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

**AGREED AND ACKNOWLEDGED this \_\_\_\_ day of December, 2023**

**MIZRAHI INC.**

Per:   
Name: Sam Mizrahi  
Title: President

## SCHEDULE A

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

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

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

Sam,

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

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

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

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

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

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

<b>Grand Total</b>	<b>\$13,129,193.62</b>	
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Thanks,

**Andrew Sterling, CFA**

Senior Associate

Alvarez & Marsal Canada

200 Bay Street, Suite 2900

Toronto, ON M5J 2J1

Direct: +1 416 847 5152

Mobile: +1 647 994 7646

[AlvarezandMarsal.com](http://AlvarezandMarsal.com)

**ALVAREZ & MARSAL**

LEADERSHIP. ACTION. RESULTS.™



December 22, 2023

**DELIVERED BY EMAIL**

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

Attention: Mr. Sam Mizrahi

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

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

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

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

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

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

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

Yours very truly,

**ALVAREZ & MARSAL CANADA INC., SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF ALL OF THE ASSETS, UNDERTAKINGS AND PROPERTIES OF MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC. AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

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

**AGREED AND ACKNOWLEDGED this \_\_\_\_ day of December, 2023**

**MIZRAHI INC.**

Per:   
Name: Sam Mizrahi  
Title: President

**SCHEDULE A**

<b>Vendor</b>	<b>Invoice Amount</b>	<b>Invoice</b>
2218840 Ontario Inc.	1,009.10	683
Bass Curtainwalls Inc.	193,164.47	3295
Blockwall Masonry 18 Inc.	28,311.04	2956
BM Windows Joint Stock Company	363,287.32	TOT-003
CanAM Waste Products Inc.	33,306.75	205249
Cult Iron Works LTD	5,085.00	SI-9009
Detal International Co. Limited	1,154,746.41	DTE-3087-02, DTE-3096-04 DTE-3096-05, DTE-3096-06 DTE-3098-04
Gamma Windows & Walls International Inc.	1,317,237.87	1808-50
GNI Management Group Inc.	24,322.44	1645048
Guardtek Systems Inc.	678,890.78	23865 , 23866
Hardwall Construction LTD.	1,759,922.12	J007596
Huizhou Alcade Curtainwall Co. Limited	247,551.37	3097-02
Innocon Partnership	528,461.40	Various
Modern Niagara Toronto Inc.	2,030,307.84	INTO0072493
Onyx Fire Protection Services Inc.	267,702.31	22545, 22546
Otis Canada Inc.	1,232,541.59	FTM659048067
Ozz Electric Inc.	302,567.44	J027038
Earl Paddock Transportation Inc.	30,295.30	W700126, W700127
Riverside Group LTD.	950,715.67	8574, 8575, 8576
Read Jones Christoffersen Ltd.	66,115.72	425363, 425697
Salit Steel	652,100.26	11123U1010 11123U1062
Tecoustics Limited	142,973.25	39971, 39973
Tractel LTD.	11,921.27	8L45-Nov 2023
United Drywall LTD	424,348.31	7255157, 7255158
Walters Inc.	45,861.62	B111430
Yarl Metal Fabrications Inc.	6,305.54	63517
Todd & Don Expense	28,262.59	C1444
Previously Submitted - Haimul	(1,100.00)	C1448
Previously Submitted - Detal	(2,136.25)	C1448
Previously Submitted - BM	(20,084.60)	C1448
<b>Total</b>	<b>\$12,503,993.93</b>	

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

<b>Grand Total</b>	<b>\$13,129,193.62</b>	
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**APPENDIX "I"**  
**NOTICE OF DISCLAIMER**



February 26, 2024

**DELIVERED BY EMAIL**

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

and

Counsel to Sam Mizrahi, Mizrahi Inc. and Sam M Inc.

Attention: Mr. Sam Mizrahi and Counsel

**Re: Notice by Receiver to Disclaim an Agreement**

Pursuant to the Order (Appointing Receiver) of the Ontario Superior Court of Justice (Commercial List) dated October 18, 2023 (the “**Receivership Order**”), Alvarez & Marsal Canada Inc. was appointed as receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (together, the “**Debtors**”) acquired for, or used in relation to, a business carried on by the Debtors, including in connection with the development of the 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario (the “**Project**”). Capitalized terms used herein and not otherwise defined have the meaning given to them in the Receivership Order.

Pursuant to paragraph 4(c) of the Receivership Order, the Receiver is entitled to, among other things, cease to perform, terminate or disclaim any contracts of the Debtors, subject to paragraph 5 of the Receivership Order. Pursuant to paragraph 5 of the Receivership Order, the Receiver shall be at liberty to cease to perform, terminate or disclaim either the Construction Management Agreement or the GC Agreement, subject to providing at least 15 days’ notice to counsel to the Mizrahi Group.

In accordance with the terms of the Receivership Order, the Receiver hereby gives notice of its decision to disclaim the Construction Management Agreement and the GC Agreement, with such disclaimer being effective as of 12:01 AM (Toronto time) on March 13, 2024 (the “**Disclaimer**”).

The Disclaimer is without prejudice to the Debtors’ rights and the Receiver’s rights, including rights arising under the Construction Management Agreement and the GC Agreement prior to the Disclaimer, rights under the Receivership Order, or otherwise. All such rights are explicitly reserved. Without limiting the generality of the foregoing, the Disclaimer is not a waiver of any right that the Debtors or the Receiver have in respect of any breach of the GC Agreement or the Construction Agreement arising prior to the Disclaimer. The Disclaimer is also not an admission by the Receiver or the Debtors of any fact.

Yours truly,

**ALVAREZ & MARSAL CANADA INC., SOLELY IN ITS  
CAPACITY AS COURT-APPOINTED RECEIVER AND  
MANAGER OF MIZRAHI COMMERCIAL (THE ONE)  
LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)  
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP  
INC., AND NOT IN ITS PERSONAL OR CORPORATE  
CAPACITY**

Per: 

Name: Stephen Ferguson

Title: Senior Vice-President

cc: Josh Nevsky, Alvarez & Marsal Canada Inc.  
Brendan O'Neill, Goodmans LLP  
Chris Armstrong, Goodmans LLP  
Roger Jaipargas, Borden Ladner Gervais LLP  
Scott Hutchison, Henein Hutchison Robitaille LLP  
Avril Lavallee, McCarter Grespan Lawyers  
Keith Bannon, Glaholt Bowles LLP  
Gary Brummer, Glaholt Bowles LLP  
Jerome Morse, Morse Shannon LLP  
David Trafford, Morse Shannon LLP  
Steven Weisz, Cozen O'Connor LLP



**APPENDIX “J”**  
**SKYGRID ENGAGEMENT LETTER**



**Via Email**

February 26, 2024

Stephen Ferguson  
Senior Vice-President  
Alvarez & Marsal Canada Inc., in its capacity as receiver  
and manager of all of the assets, undertakings and  
properties of Mizrahi Development Group (The One) Inc.,  
Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc.  
200 Bay St, Toronto, Suite 2900  
Toronto, ON M5J 2J1

Dear Stephen:

**RE: Engagement Letter for The One Project at 1 Bloor Street West, Toronto, Ontario (the "Project")**

We are pleased that Alvarez & Marsal Canada Inc., solely in its capacity as Court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc., Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc. (collectively, the "**Debtors**"), and not in its personal or corporate capacity, wishes to retain SKYGRiD Construction Inc. ("**Skygrid**" or the "**Construction Manager**") to provide construction management services and/or work for the Project on the terms and conditions set out in this Engagement Letter (the "**Engagement Letter**").

This Engagement Letter confirms the Services and/or Work that the Construction Manager will provide in relation to the Project. For the interim period from the date of this Engagement Letter until the effective date of the termination of the existing general contractor for the Project (which is expected to be on or about March 8, 2024) (the "**Effective Date**"), the Construction Manager shall provide the Services and/or Work on a strictly consultative and hourly basis, at the hourly rates set forth on Schedule A hereto. Following the Effective Date, the Construction Manager shall become the operative construction manager for the Project, to be compensated in accordance with the full set of compensation terms set forth herein.

The Construction Manager shall perform the Services and/or Work, on the basis set forth in the preceding paragraph, in accordance with the terms and conditions of this Engagement Letter until such time as the Receiver and the Construction Manager execute the final CCDC 5B (2010) Construction Management Contract – for Services and Construction, with Supplementary Conditions to be mutually agreed, in respect of the Project (the "**Definitive CCDC 5B Contract**"), after which the Services and/or Work shall continue in accordance with the terms and conditions of the Definitive CCDC 5B Contract.

Certain capitalized terms herein have the meanings ascribed to them in the industry standard form of CCDC 5B contract unless otherwise defined. All dollar amounts referenced herein are in Canadian dollars.

Concurrently with the execution of this Engagement Letter, the Receiver and the Construction Manager shall continue to exercise reasonable commercial efforts and engage in good faith

**SKYGRiD CONSTRUCTION INC.**

#200 – 5750 Explorer Drive, Mississauga, ON L4W 0A9  
T 416.622.9602 • F 416.622.9616 • Website: [www.skygrid.ca](http://www.skygrid.ca)



negotiations, with the intention of entering into the Definitive CCDC 5B Contract on an as-soon-as-practical basis and in any event no later than 21 calendar days after execution of the Engagement Letter, unless such date is mutually extended by the Receiver and the Construction Manager (the “**Definitive CCDC 5B Contract Deadline**”).

Until such time as the Definitive CCDC 5B Contract is executed, the rights and obligations of the Receiver and the Construction Manager with respect to the Services and/or Work will be as set out in this Engagement Letter. Once the Definitive CCDC 5B Contract is executed and delivered, the Services and/or Work will be subject to the terms and conditions of the Definitive CCDC 5B Contract and the parties’ rights, obligations and remedies under this Engagement Letter shall be superseded by the Definitive CCDC 5B Contract, and this Engagement Letter shall have no further force or effect.

## **COMPENSATION AND FEE**

The Construction Manager shall be paid in relation to the Services and/or Work performed pursuant to this Engagement Letter as follows:

*i) Prepayment Amount*

Upon execution of this Engagement Letter, the Receiver shall pay the Construction Manager the sum of \$100,000.00, plus HST, as a pre-payment of its Construction Manager’s Fee (as herein defined) and said sum shall be applied against the Construction Manager’s final invoice. If a credit balance remains after the application of the pre-payment amount, the Construction Manager shall refund the remaining balance to the Receiver.

*ii) Compensation for the Interim Period*

For the interim period from the date of this Engagement Letter until the Effective Date (the “**Interim Period**”), the Construction Manager shall provide the Services and/or Work on a strictly consultative and hourly basis, at the hourly rates set forth in Schedule A hereto. During this interim period, the Receiver reserves the right, exercisable at its sole and absolute discretion, to terminate this Engagement Letter prior to the conclusion of the Interim Period by providing written notice to the Construction Manager. In such circumstances, the verified hourly charges incurred by the Construction Manager during the Interim Period shall be the sole payment obligation of the Receiver to the Construction Manager, and the Prepayment Amount shall be returned to the Receiver by the Construction Manager without deduction or set-off on a forthwith basis.

*iii) Construction Manager’s Fee*

For all Services and/or Work performed by the Construction Manager following the Effective Date and prior to any termination of this Engagement Letter or the Definitive CCDC 5B Contract once entered into (such period being, the “**Effective Period**”), as consideration for the performance by the Construction Manager of the Services (as such term is defined in the industry standard form of CCDC 5B contract and/or as specified herein) related to the Services and the Work, the Construction Manager shall be entitled to (i) a percentage fee of 2.85% of the Hard Costs of Construction as the Hard Costs of Construction accrue (the “**Construction Manager’s Fee**”), and (ii) hourly rates based on Schedule B hereto, in both cases plus HST. For the purposes of this Engagement Letter, “Hard Costs of Construction” means in respect of this Project, the actual hard construction costs described in Divisions

**SKYGRiD CONSTRUCTION INC.**



1 to 16 (inclusive) from the National Master Specifications Division Master Format (2016 edition), accruing from the Effective Date to the earlier of (a) the date of termination of this Engagement Letter or of any Definitive CCDC 5B Contract or (b) the Total Completion of the Work (for purposes of this Engagement Letter, Total Completion of the Work means when all of the following have occurred: Substantial Performance of the Work has been achieved; the entire Work has been performed, including the rectification of any deficiencies, to the requirements of the Contract Documents and is so certified by the *Consultant* and/or *Owner*; and the *Consultant* and/or *Owner* has certified that the Contract is deemed to have been completed within the meaning of subsection 2(3) of the *Construction Act* (Ontario)), but in all cases expressly excluding: (x) any costs and expenses related to reimbursable expenses (except items 5 and 10 from Schedule A2 of the industry standard form CCDC 5B contract, as modified); (y) any hourly rates ascribed to persons listed on Schedule B hereto; and (z) the Construction Manager's Fee itself.

*iv) Additional Fee*

For all Services and/or Work performed by the Construction Manager during the Effective Period, the Construction Manager shall also be entitled to payment of an additional amount of 0.35% of the Hard Costs of Construction, plus HST (the "**Additional Fee**") accruing from the Effective Date to the date of termination by the Receiver of this Engagement Letter or of any Definitive CCDC 5B Contract. In the event that the parties execute the Definitive CCDC 5B Contract and the Construction Manager continues being the Construction Manager until Total Completion of the Work, then the Construction Manager shall be paid an Additional Fee based on terms and conditions to be agreed to in the Definitive CCDC 5B Contract (which shall include a covenant of the Receiver and the Construction Manager to work consensually together following the execution of the Definitive CCDC 5 B Contract to develop appropriate milestone conditions in connection with the payment of Additional Fee amounts).

*v) No Consequential Damages*

In no event shall the Receiver be liable to the Construction Manager (or any of its Subcontractors, trades or Suppliers) for any Consequential Damages arising out of, or in connection with this Engagement Letter or the Definitive CCDC 5B Contract. "**Consequential Damages**" means indirect, incidental, special or consequential damages whatsoever arising out of or in connection with this Engagement Letter or the Definitive CCDC 5B Contract, whether arising out of a claim by the Receiver, the Construction Manager or a claim by a third party, in negligence, tort, statute, equity or common law, or any other cause of action or legal theory, even if the party has been advised of the possibility of those damages, including without limitation: lost profits, anticipated or lost revenue, loss of product, loss of use of any systems, networks, rental expenses, income, financing, business and reputation, loss of management or employee productivity or the services of such persons, principal office expenses, compensation of personnel stationed at principal office, failure to realize expected savings or any other commercial or economic loss, whether incurred by the Receiver, the Construction Manager or a third party. Notwithstanding the foregoing, the Construction Manager shall have shall have no liability in respect of the Pre-Engagement Risk, as defined below.

**SKYGRiD CONSTRUCTION INC.**

#200 – 5750 Explorer Drive, Mississauga, ON L4W 0A9  
T 416.622.9602 • F 416.622.9616 • Website: [www.skygrid.ca](http://www.skygrid.ca)



## INVOICING AND PAYMENT

The Construction Manager shall invoice the Receiver for the Services and/or Work authorized under this Engagement Letter on a calendar monthly basis, with such payment applications being submitted between the 20<sup>th</sup> and 30<sup>th</sup> day of each calendar month for the end of the prior calendar month. During the Interim Period, said payment applications shall be based solely on the hourly rates set out in Schedule A hereto. For greater certainty, no Construction Manager's Fee and no Additional Fee shall be payable during the Interim Period.

During the Effective Period, said payment applications shall include backup documentation related to the Hard Costs of Construction (including, but not limited to, costs related to Subcontractors, trades and Suppliers, such as invoices and delivery slips, and time sheets and costs related to the Construction Manager's staffing in relation to the Project), reimbursable expenses and the Construction Manager's Fee for the relevant time period. The format of the Construction Manager's invoice will be agreed upon by the Receiver and adjusted by the Construction Manager as reasonably requested and required.

The Construction Manager shall provide, together with each application for payment and invoice, a statutory declaration (in usual form) and a WSIB clearance certificate.

The Receiver shall pay the Construction Manager the verified and undisputed amounts in connection with this Engagement Letter within 30 calendar days after the Receiver's receipt of a proper invoice, as said term is defined in the *Construction Act* (Ontario).

All payments made by the Receiver to the Construction Manager shall be subject to holdback as mandated by the *Construction Act* (Ontario). For greater certainty, the holdback shall be retained by the Receiver with respect to the Construction Manager's Fee.

Notwithstanding what is set out herein or elsewhere, the Receiver and Construction Manager agree that the *Construction Lien Act* as it read on June 30, 2018, applies to the Project as the criteria established by Section 87.3 of the *Construction Act* (as it read on July 1, 2018) are satisfied. As a result, among other things, the prompt payment and adjudication provisions of the current *Construction Act* do not apply.

During the Effective Period, Project staffing will be charged out at the rates set out at Schedule B hereto.

A Project Staffing Matrix shall be agreed upon by the parties within 30 calendar days of signing of this Engagement Letter. Such Project Staffing Matrix shall expressly set out the percentage of working hours that the Construction Manager's project manager and site superintendent shall devote to the Project until Total Completion of the Project. The Project Staffing Matrix shall identify a list of the Construction Manager's key personnel related to the Project who will not be removed or replaced during the course of the Work without the written consent of the Receiver. Key personnel shall include, but not be limited to, the Construction Manager's Project Director, Project Manager and senior Site Superintendent. This provision shall not apply to employees of the Construction Manager who retire, cease their employment with the Construction Manager, are terminated for cause and those that enter into a disability or other proper leave. Further, the Receiver shall have the right to approve the key personnel and, with cause and acting reasonably, to require the Construction Manager to replace any of the key personnel. Said key

### SKYGRiD CONSTRUCTION INC.

#200 – 5750 Explorer Drive, Mississauga, ON L4W 0A9  
T 416.622.9602 • F 416.622.9616 • Website: [www.skygrid.ca](http://www.skygrid.ca)



personnel shall have relevant knowledge and experience in projects similar to this Project in the Province of Ontario.

## **SCOPE OF SERVICES**

The Construction Manager agrees to diligently and efficiently perform the Services and/or Work required under this Engagement Letter for and with the Receiver (or its designees, as the case may be, with respect to any particular Service or Work performed hereunder), and under any Definitive CCDC 5B Contract, during the Effective Period.

The Services and/or Work are defined to include, but not be limited to, the following principal activities and any other types of activities reasonably required by the Receiver during the Effective Period:

- Services described in Schedule A1 to the industry standard form of CCDC 5B contract, as may be modified by any Supplementary Conditions.
- Health and Safety - The Construction Manager shall present to the Receiver, for the information of the Receiver, its plan for monitoring and safeguarding the health and safety of all parties involved on the Project, including the discharge of the Construction Manager's obligations as "constructor" under OSHA, as amended, and all regulations passed under it for construction projects. The plan submitted by the Construction Manager shall include an outline of how the Construction Manager intends to review the safety programs of each of the Subcontractors and Suppliers, their sub-subcontractors and suppliers, and the activities of the Construction Manager's own forces while they are performing Work or supplying materials or Products to the Project. The Construction Manager shall arrange and minute regular safety meetings in relation to the Work.
- Act as "constructor" under OSHA, including filing a Notice of Project.
- Plan and arrange for required Temporary Work.
- Provide initial assessment and transition services as set forth in Schedule C hereto.
- Attend regular design meetings during Project development and during the construction of the Project and provide recommendations on construction feasibility, alternatives, availability of materials and labour, time requirements for installation and construction, and factors related to cost. It is acknowledged by the Construction Manager that development of the Project's design shall continue beyond the time of execution of this Engagement Letter.
- Provide value engineering/cost savings proposals to the Receiver with respect to the Work on an ongoing basis without assuming liability for the design of the Project.
- Review Drawings and Specifications and provide regular and timely feedback to the Receiver with respect to the completeness and co-ordination of the Contract Documents.
- Provide recommendations on construction feasibility, means and methods, the availability of materials and labour, time requirements for installation and construction, and all other factors related to design, procurement, execution, schedule, quality, cost and constructability, including ongoing estimates of the construction cost for use by the Receiver.

### **SKYGRiD CONSTRUCTION INC.**

#200 – 5750 Explorer Drive, Mississauga, ON L4W 0A9  
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- Provide advice to the Receiver with respect to appropriate trades and with respect to the documentation required for and the scope and timing of remaining tender packages.
- Provide the Receiver with the Construction Manager's estimate of Project Schedule and Costs to Complete.
- Develop and update the construction schedule for the advancement of the Project.
- Chair, minute and distribute regular Project meetings with the Receiver, any sub-consultants and Subcontractors.
- Issue a construction management plan, detailing construction methodology and schedule to suit the Project conditions and circumstances.
- Where directed by the Receiver, engage in Subcontractor negotiations, and procure subcontracts and/or supply agreements.

## TERMINATION

The Receiver reserves the right to cancel or terminate (at its sole and unfettered discretion) the whole or any part of the Engagement Letter or any associated Services and/or Work provided hereunder. The Receiver may cancel any part or component of this Engagement Letter without terminating it. For the avoidance of doubt, and without limiting the generality of the foregoing termination right of the Receiver, the Receiver reserves the right to terminate this Engagement Letter in the event that (i) the Ontario Superior Court of Justice (Commercial List) (the "**Court**") does not grant, or does not timely grant, the Construction Continuance Order being sought by the Receiver in the receivership proceedings, or (ii) a mutually acceptable Definitive CCDC 5B Contract is not entered into by the Receiver and the Construction Manager by the Definitive CCDC 5B Contract Deadline.

In the event of either failure to reach agreement on the Definitive CCDC 5B Contract or the cancellation or termination of this Engagement Letter:

- (a) the Receiver shall only be responsible for payment of the following amounts up to the date of such failure to reach agreement, cancellation or termination:
  - (i) verified hourly rates incurred during the Interim Period, as prescribed herein;
  - (ii) any applicable Construction Manager's Fee earned as prescribed herein;
  - (iii) any applicable Additional Fee earned as prescribed herein; and
  - (iv) any applicable, reasonable and verified reimbursable expenses as prescribed herein.
- (b) the Construction Manager will have no further liability in connection with cancelled services or works, except in regard to its failures and/or negligence regarding Services and/or Work provided from and after the date of this Engagement Letter; and
- (c) the Receiver shall not be prohibited in any way from negotiating with and/or engaging a third party to provide the construction management services with respect to the Project, provided the same occurs only after there is a failure to reach agreement on the Definitive CCDC 5B Contract or this Engagement Letter is cancelled or terminated.

### SKYGRiD CONSTRUCTION INC.



## **LIMITATION ON LIABILITY OF SKYGRID**

The Construction Manager shall have no liability in respect of any Services, labour work and/or materials of any kind provided to the Project by any contractor, Subcontractor, trade supplier, Consultant, or other third party for any period prior to the date of execution of this Engagement Letter, which includes without limitation any claims or costs relating to Consequential Damages, deficiencies, defects, unpaid invoices, delays, extras or wrongful termination (collectively, the “**Pre-Engagement Risk**”).

## **INSURANCE**

The Construction Manager shall provide, maintain and pay for appropriate insurance in respect of the Project and the Services and Work to be provided at minimum limits and durations acceptable to and as approved by the Receiver, and in each case in respect of the Effective Period, which shall include at a minimum: (i) automobile insurance, (ii) equipment insurance, (iii) commercial general liability insurance, (iv) pollution liability insurance, and (v) Builder’s Risk insurance. The Receiver shall be named as a loss payee on all such insurance policies.

The Construction Manager shall provide the Receiver with certificates of insurance evidencing the insurance policies required under this Engagement Letter prior to the execution of this Engagement Letter.

All insurance policies described herein shall be issued by insurance companies licensed to carry on business in Ontario and reasonably acceptable to the Receiver. Such policies shall only be acceptable to the Receiver if they contain terms, conditions, exclusions, limits and deductibles reasonably acceptable to the Receiver.

## **ADDITIONAL PROVISIONS**

This Engagement Letter is governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario, which will be deemed to be the proper law of this Engagement Letter. The Receiver and Construction Manager agree that the Court shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Engagement Letter and each hereby irrevocably attorn to the exclusive jurisdiction of the Court.

The Construction Manager and its Subcontractors, trades and Suppliers agree to comply with all applicable laws, permits and approvals in effect from time to time related to the work and services, and specifically the Services and Work.

If any provision of this Engagement Letter is prohibited by law or held to be unenforceable, the remaining provisions hereof shall not be affected, and this Engagement Letter shall continue in full force and effect as if such provision had never constituted a part hereof, and the enforceable provision shall be automatically amended so as to best accomplish the objectives of such unenforceable provision within the limits of the applicable law.

This Engagement Letter supersedes all prior communications between the parties, both oral and written, unless such communication are delineated herein.

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This Engagement Letter shall not be assigned by the Construction Manager to any other person or party without the prior written consent of the Receiver, such consent to be at the Receiver's complete and absolute discretion. The Receiver may assign or otherwise dispose of the benefit of the whole or part of this Engagement Letter to any person without the prior consent of the Construction Manager, upon prior written notice to, and consultation with, the Construction Manager.

This Engagement Letter may be executed and delivered (including, without limitation, by facsimile transmission or by e-mail of a PDF copy) in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

#### **NO PERSONAL LIABILITY OF RECEIVER**

The Construction Manager acknowledges and agrees that (i) the Receiver is entering into this Engagement Letter solely in its capacity as Receiver and not in its personal or corporate capacity, (ii) the Construction Manager shall only have recourse to the assets, properties and undertakings of the Debtors that are subject to the receivership with respect to the obligations of the Receiver hereunder, and only with leave of the Court to seek such recourse, and (iii) the obligations of the Receiver under this Engagement Letter and any other agreement or instrument which may be entered into by the Receiver in connection with this Engagement Letter, including the Definitive CCDC 5B Contract, are entirely non-recourse to Alvarez & Marsal Canada Inc. and any of its affiliates and any of their respective shareholders, directors, officers, employees, agents, attorneys or advisors. For greater certainty, neither the Receiver nor any of its affiliates or any of their respective shareholders, directors, officers, employees, agents, attorneys or advisors, shall have any personal liability under or in connection with this Engagement Letter or the Definitive CCDC 5B Contract, and the Receiver expressly disclaims any such liability.

Please confirm your agreement to proceed on the foregoing terms by signing the duplicate copy attached and returning to my attention.

Yours Truly,

**SKYGRiD Construction Inc.**

*[Signature Page Follows]*

**ACKNOWLEDGED AND AGREED BY BOTH PARTIES**

**Company:** SKYGRiD Construction Inc.

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

**Name:** Fernando Tito

**Name:** Stephen Ferguson

**Title:** President

**Title:** Senior Vice President

**Signature:**   
\_\_\_\_\_

**Signature:**   
\_\_\_\_\_



**SCHEDULE A**  
**Interim Period Labour Rates**

Executive	\$345
VP Operations	\$253
Director Estimating/Preconstruction	\$223

**SCHEDULE B  
Labour Rates and Expenses**

Project Director	\$253	\$43,852
Senior Project Manager	\$160	\$27,733
Project Manager	\$135	\$23,400
Assistant Project Manager	\$103	\$17,853
Project Coordinator	\$92	\$15,946
Project Accountant	\$78	\$13,520
BIM Specialist	\$107	\$18,546
Scheduler	\$107	\$18,546
Senior Superintendent	\$214	\$35,360
Superintendent	\$161	\$27,906
Assistant Superintendent	\$110	\$19,066
Field Coordinator	\$ 78	\$13,520
Construction Site Clerk (Student)	\$46	\$7,973
General Labour/Hoist Operator	\$95.85	N/A
Handyman	\$97.05	N/A
Labour Foreman	\$98.35	N/A
Security Guard / Flagman	\$28.12	N/A

- Staff costs are included in the Construction Budget, General Conditions.
- Non-Union staff will be charged at the monthly rate.
- Rates are based on a 2024 commencement of construction.
- Escalation of 3% per annum will apply to all staff rates beginning January 2025.
- Labour Personnel earn overtime and double overtime. Union affiliation is LIUNA Local 183.



**SCHEDULE C**  
**Assessment & Transition Services**

In consultation with the Receiver and/or the Receiver's designee:

1. Develop communication plan with Subcontractors and/or Suppliers to address transition of the Project to the Construction Manager.
2. Develop and implement a plan to secure the Project at the time of turnover to the Construction Manager to ensure control and minimize the chances of vandalism, theft and other negative actions.
3. Interview and align consultants with intended Project transition and targeted/scheduled Project completion.
4. Assess current Subcontractor, Supplier and employee relationships and develop an appropriate go-forward plan, including but not limited to:
  - Interviews and alignment with all remaining Subcontractors as to the Construction Manager's project completion plan;
  - Assessment of any outstanding Subcontractor and/or Supplier claims, and make recommendations regarding settlements and negotiations;
  - Develop a working relationship with all manufacturers of the Curtainwall and its components; and assess and revise plan for Curtainwall scope (confirm delivery and fabrication status of materials and find the quickest path to commence with critical path installation), as necessary;
  - Develop plan for mechanical scope, including assessment of residential mechanical tender packages
  - Consider options for potential alternative residential suite layouts and impact on costs / schedule for the Project;
  - Conduct staff assessment and interviews to determine who from the current staff is suitable and necessary to join the Construction Manager's team;
  - Review current Project status and percentage complete assessment, based on consultants' existing Cost to Date and percentage complete assessment;
  - Assess current contracts in place and unbought scope and recommendations on an action plan to address same;
  - Review and action all pending Change Orders;
  - Provide updated Division 1 Labour forecasts as required; and
  - Review status of all existing suite upgrades and finish selections.
5. Develop and implement plan to secure/move all goods currently stored at offsite locations.
6. Assist with permit assessment, as required.
7. Formalize and implement enhanced Project controls, including procurement, cost control, contract administration, schedule control, Subcontract/Purchase Order approval workflow, financial and cash flow reporting process, etc.).
8. Enter into agreements with Subcontractors, trades and/or Suppliers (or assign, novate or terminate, as needed).
9. Meet with all relevant stakeholders, understand communication requirements, identify all reporting requirements and build comprehensive communication and reporting protocols to be administered.

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10. Assess current consumables spend and identify areas for improvement.
11. Assess schedule impacts and areas for improvement, including but not limited to slab cycle time, Curtainwall cycle time, top of house analysis, hoist suite in-fill plan, podium completion, interim occupancy, commissioning.
12. Formalize and add detail to updated Master Construction Schedule.
13. Assess Value Engineering/Project acceleration opportunities
14. Schedule all relevant recurring meetings and associated partnering sessions required to execute plan.

[1403-4209-3322](tel:1403-4209-3322)

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**APPENDIX "K"**  
**UPDATED CASH FLOW FORECAST**

**Mizrahi Development Group (The One) Inc et al.**  
**Monthly Cash Flow Forecast for the Period February 1, 2024 to May 31, 2024**  
*Unaudited, CA\$000s*

<b>Cash Flow Month End</b>	<b>Notes</b>	<b>Feb-24</b>	<b>Mar-24</b>	<b>Apr-24</b>	<b>May-24</b>	<b>4-Month Total</b>
<b>Receipts</b>	1	\$ 1,205	\$ -	\$ -	\$ -	\$ 1,205
<b>Disbursements</b>						
Construction Costs	2	\$ (15,375)	\$ (23,711)	\$ (23,598)	\$ (23,598)	\$ (86,281)
Design Related Costs	3	(733)	(733)	(733)	(733)	(2,933)
General, Administrative & Marketing	4	(582)	(582)	(835)	(582)	(2,580)
Land & Development Costs	5	(779)	(779)	(779)	(779)	(3,115)
Restructuring Professional Fees	6	(2,265)	(2,162)	(1,780)	(1,839)	(8,045)
<b>Total Disbursements</b>		<b>\$ (19,734)</b>	<b>\$ (27,967)</b>	<b>\$ (27,724)</b>	<b>\$ (27,530)</b>	<b>\$ (102,955)</b>
<b>Net Cash Flow</b>		<b>\$ (18,529)</b>	<b>\$ (27,967)</b>	<b>\$ (27,724)</b>	<b>\$ (27,530)</b>	<b>\$ (101,750)</b>
<b>Cash Balance</b>						
Opening Cash		\$ 65,616	\$ 97,087	\$ 69,120	\$ 66,396	\$ 65,616
Net Cash Flow		(18,529)	(27,967)	(27,724)	(27,530)	(101,750)
Advances		50,000	-	25,000	25,000	100,000
<b>Ending Cash</b>		<b>\$ 97,087</b>	<b>\$ 69,120</b>	<b>\$ 66,396</b>	<b>\$ 63,866</b>	<b>\$ 63,866</b>
<b>Receivership Facility</b>						
Opening Facility Capacity		\$ 213,635	\$ 162,431	\$ 161,134	\$ 134,662	\$ 213,635
Draw		(50,000)	-	(25,000)	(25,000)	(100,000)
Accrued Interest (Paid in Kind)		(1,204)	(1,298)	(1,472)	(1,746)	(5,720)
<b>Ending Capacity</b>		<b>\$ 162,431</b>	<b>\$ 161,134</b>	<b>\$ 134,662</b>	<b>\$ 107,915</b>	<b>\$ 107,915</b>

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

**Disclaimer**

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

*The Forecast is presented in thousands of Canadian dollars.*

**Notes**

**(1) Receipts**

Shortly following the Receivership Date, the Canada Revenue Agency ("**CRA**") commenced an HST audit on the input tax credit ("**ITC**") claimed during the pre and post Receivership period. As the HST audit is ongoing, the Receiver does not anticipate receipt of HST refunds in the ordinary course. No receipts from the sale of condominium units or related deposits have been included during the forecast period.

**(2) Construction Costs**

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

**(3) Design Related Costs**

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

**(4) General, Administrative, & Marketing**

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

**(5) Land & Development Costs**

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

**(6) Restructuring Professional Fees**

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

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

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

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

Applicant

Respondents

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

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**FIRST REPORT OF THE RECEIVER  
ALVAREZ & MARSAL CANADA INC.  
FEBRUARY 26, 2024**

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